

New Zealand.



ANALYSIS.

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1928, No. 52.

AN ACT to require the Owners of Motor-vehicles to insure against their Liability to pay Damages on account of Deaths or Bodily Injuries caused by the Use of such Motor-vehicles. Title.
[9th October, 1928.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Motor-vehicles Insurance (Third-party Risks) Act, 1928, and shall come into force on the first day of January, nineteen hundred and twenty-nine. Short Title and commencement.
2. In this Act, unless the context otherwise requires,— Interpretation.
 - “Company” has the same meaning as in the Accident Insurance Act, 1908 :
 - “Motor-vehicle” has the same meaning as in the Motor-vehicles Act, 1924 :
 - “Owner,” in relation to a motor-vehicle, has the same meaning as in the Motor-vehicles Act, 1924 :

“Registrar” and “Deputy Registrar” mean respectively the Registrar and a Deputy Registrar of Motor-vehicles appointed under the Motor-vehicles Act, 1924.

Owners of motor-vehicles required to insure against liability to pay damages on account of accidents resulting in death of or bodily injury to any other person or persons.

3. (1) Every person being the owner of a motor-vehicle shall, in accordance with this Act and subject to the exceptions and limitations specified in section six hereof, insure against his liability to pay damages on account of the death of any person or of bodily injury to any person in the event of such death or bodily injury being sustained or caused through or by or in connection with the use of such motor-vehicle in New Zealand. For the purposes of this Act and of every contract of insurance thereunder every person other than the owner who is at any time in charge of a motor-vehicle, whether with the authority of the owner or not, shall be deemed to be the authorized agent of the owner acting within the scope of his authority in relation to such motor-vehicle. If at the time of any accident affecting a motor-vehicle any person other than the owner is in charge thereof with the authority of the owner, such person shall if he is the holder of a driver's license in force under the Motor-vehicles Act, 1924, be indemnified to the same extent as if he were the owner in respect of his liability (if any) to pay damages on account of such accident.

(2) Every contract of insurance entered into under this section shall be made in accordance with this Act with a company carrying on in New Zealand the business of accident insurance.

(3) For the purposes of this Act the Government Accident Insurance Office shall be deemed to be a company carrying on business in New Zealand.

Companies willing to undertake business in terms of this Act to notify the Registrar.

4. (1) Every insurance company willing to undertake insurance business in terms of this Act may at any time after the commencement of this Act give to the Registrar notice in the prescribed form of such fact. Every such notice shall take effect on the first day of June following the date of its delivery to the Registrar:

Provided that any such notice delivered to the Registrar after the thirty-first day of March and before the first day of June in any year shall take effect on the first day of June of the next succeeding year.

(2) Every notice given by a company as aforesaid to the effect that it is willing to undertake business in terms of this Act shall continue to have effect and to bind the company until a notice in writing revoking such former notice has been given to the Registrar and has begun to take effect as hereinafter provided. A notice revoking a former notice as aforesaid is hereinafter referred to as a notice of revocation.

(3) Any notice given by a company to the Registrar for the purposes of this Act may be delivered at the office of the Registrar in Wellington, or may be posted in a letter addressed to the Registrar at Wellington. If any such notice is sent to the Registrar by registered letter it shall be deemed to have been delivered to the Registrar when it would have been delivered in the ordinary course of post, and in proving the delivery it shall be sufficient to prove that the letter was properly addressed and posted.

(4) A notice of revocation given by any company as aforesaid shall not affect any contract of insurance theretofore entered into by that company, or deemed in accordance with this Act to have been so entered into.

(5) Except as provided in the last preceding subsection, a notice of revocation given by an insurance company shall as from the date on which it takes effect relieve such insurance company from its obligations under this Act. Such notice of revocation shall take effect as follows:—

- (a) Where no date is specified therein as the date on which it shall take effect, the notice shall take effect on the eighth day after the date of its delivery to the Registrar:
- (b) If the notice is expressed to take effect on a date earlier than the eighth day after the date of its delivery to the Registrar, it shall not take effect on the date specified therein, but shall take effect on the said eighth day after the date of its delivery:
- (c) In all other cases the notice shall take effect on such date as is specified in the notice in that behalf.

(6) The Registrar shall from time to time as occasion requires notify in the *Gazette* the name of every company that has given notice as hereinbefore provided of its willingness to undertake insurance business in terms of this Act, and shall also notify the name of every company which has given a notice of revocation as aforesaid, and the date on which such notice of revocation takes effect.

Names of companies to be gazetted.

5. (1) Every owner of a motor-vehicle on making application for the issue of a license or of registration-plates in respect of that vehicle pursuant to the Motor-vehicles Act, 1924, for the year commencing on the first day of June, nineteen hundred and twenty-nine, or for any period thereafter, shall pay to the Deputy Registrar the insurance premium in respect of that motor-vehicle prescribed pursuant to the provisions hereinafter contained, and shall in the prescribed form nominate the insurance company with which the contract of insurance is to be made, being in every case an insurance company then bound in accordance with the foregoing provisions of this Act to undertake insurance business in terms of this Act. If in respect of any motor-vehicle any person other than the owner pays the insurance premium and nominates an insurance company as herein provided, such person shall be deemed to be duly authorized by the owner to make such nomination.

Owners to pay insurance premiums with annual license fees.

(2) No license or registration-plates shall be issued for any period in respect of any motor-vehicle unless and until the owner or his agent as aforesaid has paid the prescribed insurance premium for that period in accordance with this Act and has nominated in the prescribed manner the insurance company with which the contract of insurance is to be made.

(3) This section shall apply equally whether application for a license or for registration-plates is made under section eleven or under section eighteen of the Motor-vehicles Act, 1924.

6. (1) On payment of the insurance premium in respect of any motor-vehicle as aforesaid the insurance company nominated by the owner shall be deemed to have contracted to indemnify him to the extent hereinafter provided from liability (including any extension of liability incurred by reason of the operation of subsection one of section three hereof) to pay damages (inclusive of costs) on account of the death of or of bodily injury to any person or persons, where such death or

Contract of insurance to be complete on payment of premium.

bodily injury is the result of an accident happening at any time during the period in respect of which the insurance premium has been paid, and is sustained or caused by or through or in connection with the use of such motor-vehicle in New Zealand.

Limit of liability under contract of insurance.

(2) The liability of an insurance company under any contract of insurance as aforesaid shall be limited to two thousand pounds for any claim made by or in respect of any passenger in the motor-vehicle to which the contract of insurance relates, and to twenty thousand pounds for all claims made by or in respect of such passengers. The amounts herein specified shall be inclusive of all costs incidental to any such claim or claims.

(3) Except as provided in the last preceding subsection, the liability of an insurance company for claims under the contract of insurance shall be unlimited as to amount.

(4) The liability of an insurance company under any contract of insurance as aforesaid shall not extend to indemnify the owner against—

- (a) Any claim made in respect of the death of or of injury suffered by any person living with the owner as a member of the same family, or in respect of the death of or of injury suffered by a relative of the owner where the degree of relationship is not more remote than the fourth; or
- (b) Any claim made in respect of the death of or of injury suffered by any person in the service of the owner at the time of the accident; or
- (c) Any claim against the owner of a motor-vehicle (not being a vehicle plying for hire or used in the course of the business of carrying passengers for hire) made in respect of the death of or of injury suffered by any person who was at the time of the accident in respect of which the claim has arisen being conveyed in the motor-vehicle, or was driving, or entering, or alighting from, or about to enter or alight from, such motor-vehicle; or
- (d) Any claim against the owner of a motor-vehicle plying for hire or used in the course of the business of carrying passengers for hire, made in respect of the death of or of injury suffered by any person who (not being a passenger for hire) was at the time of the accident in respect of which the claim has arisen being conveyed in the motor-vehicle, or was driving, or entering, or alighting from, or about to enter or alight from, such motor-vehicle.

Special provisions in respect of change of ownership.

7. (1) Every contract of insurance entered into for the purposes of this Act in respect of any motor-vehicle shall enure in favour of the owner for the time being, notwithstanding any change in the ownership of such motor-vehicle.

(2) Within seven days after the sale or other disposal of any motor-vehicle in respect of which a contract of insurance has been made under this Act, the former owner shall in the prescribed form give notice to the insurance company with which such contract of insurance is deemed to have been made of the fact of such disposal, of the name and address of the new owner, and of such other particulars as may be prescribed.

8. (1) If any person for the purpose of effecting a contract of insurance under this Act makes any statement that is false or misleading in any respect he commits an offence, and is liable on summary conviction to a fine of one hundred pounds, but the contract of insurance shall not thereby be avoided.

Offence to make false statement for purpose of effecting contract of insurance under this Act.

(2) Except as provided in the last preceding subsection, nothing therein shall take away or limit any right of action or other remedy that the insurance company may have against the owner or any other person in respect of any false statement as aforesaid.

9. (1) The foregoing provisions of this Act shall apply with respect to motor-omnibuses licensed under the Motor-omnibus Traffic Act, 1926.

Application of foregoing provisions to motor-omnibuses.

(2) Section thirteen of the said Act is hereby repealed as from the thirty-first day of May, nineteen hundred and twenty-nine; but the repeal of that section shall not affect any contract of insurance entered into pursuant thereto, or any right of action or other right that has arisen under or in respect of any such contract before that date.

10. (1) In the event of an owner dying insolvent or making a composition or arrangement with his creditors, or, if the owner is a body corporate, in the event of proceedings being commenced for winding-up that body corporate, after the happening of an accident giving rise to a claim for damages in respect of which the owner is indemnified by a contract of insurance under this Act, or in the event of an owner being bankrupt at the time of such accident or thereafter becoming bankrupt, the amount of the owner's liability, whether already determined or not, shall be a charge on all insurance-moneys which are or may become payable in accordance with this Act in respect of that liability, or which would be or become payable in respect thereof had no such insolvency, bankruptcy, composition, arrangement, or winding-up taken place.

In case of death or insolvency of owner, liability to be a charge on insurance-moneys.

(2) Where the same insurance-moneys are subject to two or more charges by virtue of this Act, those charges shall have priority between themselves in the order of the dates of the accidents out of which the liability arose.

(3) Every such charge as aforesaid shall be enforceable by way of an action against the insurance company in the same way as if the action were an action for damages against the owner; and in respect of any such action and of the judgment given therein the parties shall, to the extent of the charge, have the same rights and liabilities, and the Court shall have the same power, as if the action was against the owner.

(4) Such an action may be brought although judgment has been already recovered against the owner for damages in respect of the same matter.

(5) This section does not apply where a body corporate is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another body corporate.

(6) Any payment made by an insurance company under the contract of insurance without actual notice of the existence of any such charge shall to the extent of that payment be a valid discharge to the insurance company, notwithstanding anything in this section contained.

(7) In the case of any claim or claims to which subsection two of section six of this Act applies, no insurance company shall be liable under this section for any sum beyond the limits fixed by the aforesaid subsection.

Owner to give to insurance company notice of all accidents affecting motor-vehicle, and of consequent actions.

11. (1) On the happening of any accident affecting a motor-vehicle and resulting in the death of or of personal injury to any person, it shall be the duty of the owner forthwith after such accident, or if the owner was not in charge of the motor-vehicle at the time of the accident forthwith after he first becomes aware of the accident, to notify the insurance company of the fact of such accident, with particulars as to the date, nature, and circumstances thereof, and thereafter to give all such other information and to take all such steps as the insurance company may reasonably require in relation thereto, whether or not any claims have actually been made against the owner on account of such accident.

(2) Notice of every claim made or action brought against the owner or to the knowledge of the owner made or brought against any other person on account of any such accident shall be forthwith thereafter given by the owner to the insurance company, with such particulars as the insurance company may require.

(3) The owner shall not without the written consent of the insurance company enter upon or incur the expense of litigation as to any matter or thing in respect of which he is indemnified by a contract of insurance under this Act, nor shall he without such consent make any offer, promise, payment, or settlement, or any admission of liability as to any such matter.

(4) If the owner fails to give any notice or otherwise fails to comply with the requirements of this section in respect of any matter, the insurance company shall be entitled to recover from him as a debt due to it an amount equal to the total amount, including costs, paid by the insurance company in respect of any claim in relation to such matter.

Insurance company may settle claims.

12. An insurance company party to a contract of insurance under this Act may for the purposes of such contract undertake the settlement of any claim against the owner, and may take over during such period as it thinks proper the conduct and control on behalf of the owner of any proceedings taken or had to enforce any such claim, or for the settlement of any question arising with reference thereto, and may defend or conduct such proceedings in the name of the owner and on his behalf, and shall indemnify the owner against all costs and expenses of and incidental to any such proceedings while the company retains the conduct and control thereof. The owner shall sign all such warrants and authorities as the company may require for the purpose of enabling the company to have the conduct and control of any such proceedings.

Passengers for hire not to contract themselves out of benefits conferred by this Act.

13. In any action brought against the owner of a motor-vehicle, or against an insurance company under or for the purposes of this Act in respect of an accident causing the death of or bodily injury to any person being at the time of the accident a passenger for hire in such vehicle, it shall not be a defence that the contract of carriage had excluded or modified the liability of the owner or of any other person to

pay damages in respect of accidents due to the negligence or wilful default of the owner, his servants, or agents.

14. (1) Any insurance company that has entered into a contract of insurance in accordance with this Act in respect of any motor-vehicle may on the ground that the safety of the public is being unduly endangered apply to a Stipendiary Magistrate for an order cancelling any motor-driver's license held by the owner of the motor-vehicle, and in any such case the Magistrate may make an order accordingly for the cancellation of the license. Any order for the cancellation of a driver's license made under this subsection may include provisions disqualifying the holder from obtaining another such license for such period as the Magistrate thinks fit.

Insurance company may apply for cancellation of driver's license.

(2) The provisions of subsection five of section twenty-two of the Motor-vehicles Act, 1924, shall apply with respect to persons disqualified pursuant to this section from obtaining a motor-driver's license in the same manner as they apply with respect to persons disqualified pursuant to the said section.

(3) In the absence of regulations prescribing the procedure to be adopted with respect to applications under this section, or in so far as such regulations do not extend, the Magistrate shall determine the procedure to be adopted.

(4) Where an order is made under this section for the cancellation of a driver's license it shall be the duty of the holder to produce the license to the Court for cancellation, and if he fails so to do in accordance with the direction of the Court he commits an offence and is liable to a fine of ten pounds.

(5) From every order made by a Stipendiary Magistrate in accordance with this section there shall be a right of appeal to the Supreme Court, and in any such case the provisions of Part X of the Justices of the Peace Act, 1927, shall with the necessary modification apply.

15. (1) All premiums received by a Deputy Registrar under this Act shall be paid into the Post Office Account in accordance with the provisions of section ninety-four of the Post and Telegraph Act, 1928.

Application of moneys received by way of premiums under this Act.

(2) From the amount of every premium so received there shall be deducted such proportion or amount as may be from time to time prescribed in respect of administration expenses, and the residue shall without further appropriation than this section be paid to the insurance company nominated by the owner in accordance with the foregoing provisions of this Act.

(3) With every payment made to an insurance company under this section the Registrar shall supply a schedule of particulars in the prescribed form sufficient to inform the company, in relation to every contract of insurance represented by such payment, of the following matters:—

- (a) The registered number and the class of the motor-vehicle to which such contract of insurance relates:
- (b) The premium paid in respect thereof:
- (c) The date of payment of such premium and the period for which such payment was made:

(d) The name, address, and description of the owner :

(e) Any other prescribed matters.

Rates of premiums and forms of notices, &c., to be prescribed by regulations.

16. (1) The Governor-General may from time to time by Order in Council make regulations—

(a) Prescribing the amount of the premiums to be paid in respect of motor-vehicles under this Act :

(b) Prescribing forms for the nomination of insurance companies for the purposes of this Act by the owners of motor-vehicles :

(c) Prescribing forms of notice to be given for the purposes of this Act :

(d) Prescribing penalties, not exceeding in any case a fine of twenty pounds, for the breach of any regulation under this Act, or for the breach of any provisions of this Act for which no penalty is expressly provided herein :

(e) Generally for the purpose of giving full effect to the provisions and intent of this Act.

(2) Regulations prescribing premiums payable for the purposes of this Act may differentiate between different classes of motor-vehicles, and may differentiate between motor-vehicles, having regard to the purposes for which they are used or intended to be used.

Penal rates of insurance premiums in certain cases.

17. (1) If in accordance with the authority conferred by the last preceding section differential rates of insurance premiums are prescribed in respect of different classes of motor-vehicles, or in respect of different purposes for which such vehicles may be used, it shall not be lawful for the owner of any such vehicle to use it or permit it to be used unless the full amount of the insurance premium payable in respect thereof has been paid, but failure by an owner to comply with the requirements of this subsection shall not affect the contract of insurance. Every owner who uses any motor-vehicle or permits any motor-vehicle to be used in contravention of this subsection shall be liable to a fine of ten pounds for every day on which it is so used, and shall also be liable to pay such penal rate of insurance premium as may be prescribed.

(2) If any liability under a contract of insurance made for the purposes of this Act in respect of any motor-vehicle arises at a time while a premium less than the appropriate prescribed premium has been paid by the owner, the insurance company shall be entitled to recover from the owner as a debt due to it an amount equal to the total amount paid by it in the settlement of claims in respect of the motor-vehicle, including costs, or, in the alternative, to recover such penal rate of insurance premium as may be prescribed.

(3) Where after an insurance premium has been paid in respect of any motor-vehicle an additional premium or penal premium becomes payable in respect thereof, such additional premium or penal premium shall be paid to the insurance company direct and not to the Registrar.

Act to bind the Crown.

18. This Act, in so far as it requires the payment of insurance premiums by or on behalf of the owners of motor-vehicles, shall bind the Crown.