



## **PLEASE NOTE**

This document, prepared by the [Legislative Counsel Office](#), is an office consolidation of this Act, current to August 1, 2005. It is intended for information and reference purposes only.

This document is *not* the official version of the Act. The Act and the amendments as printed under the authority of the Queen's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the [Table of Public Acts](#).

If you find any errors or omissions in this consolidation, please contact:

Legislative Counsel Office  
Tel: (902) 368-4291  
Email: [legislation@gov.pe.ca](mailto:legislation@gov.pe.ca)

**CHAPTER I-4**  
**INSURANCE ACT**

**1. In this Act**

Definitions

- (a) “accident insurance” means insurance by which the insurer undertakes, otherwise than incidentally to some other class of insurance defined by or under this Act, to pay insurance money in the event of accident to the person insured, but does not include insurance by which the insurer undertakes to pay insurance money both in the event of death by accident and in the event of death from any other cause; accident insurance
- (a.1) “accidental death insurance” means insurance undertaken by an insurer as part of a contract of life insurance whereby the insurer undertakes to pay an additional amount of insurance money in the event of the death by accident of the person whose life is insured; accidental death insurance
- (a.2) “adjuster” means a person who, for compensation, not being a barrister or solicitor acting in the usual course of his profession or a trustee or an agent of the property insured, directly or indirectly solicits the right to negotiate the settlement of a loss under a contract of insurance on behalf of the insured or the insurer, or holds himself out as an adjuster of losses under such contracts; adjuster
- (b) “agent” means a person who, for compensation, solicits insurance on behalf of any insurer or transmits, for a person other than himself, an application for or a policy of insurance to or from such insurer or offers or acts or assumes to act in the negotiation of such insurance or in negotiating the continuance or renewal of other than life insurance contracts, but does not include a salaried employee of the insurer who does not receive commission or a salary in lieu thereof for negotiating such insurance; agent
- (b.1) “aircraft insurance” means insurance against loss of or damage to an aircraft and against liability for loss or damage to persons or property caused by an aircraft or by the operation thereof; aircraft insurance
- (b.2) “appeal” includes a judicial revision or review of a judgment, decision, order, direction, determination, finding or conviction, and a case stated or reserved, and a removal of proceedings by way of *certiorari* or otherwise; appeal
- (c) “automobile” includes a trolley bus and a self-propelled vehicle, and the trailers, accessories, and equipment of any of them but does automobile

not include railway rolling stock that runs on rails, or watercraft, or aircraft of any kind;

automobile  
insurance

(c.1) “automobile insurance” means insurance  
 (i) against liability arising out of  
 (A) bodily injury to or the death of a person, or  
 (B) loss of or damage to property, caused by an automobile or  
 the use or operation thereof,  
 (ii) against loss of or damage to an automobile and the loss of use  
 thereof,  
 and includes insurance otherwise coming within the class of  
 accident insurance where the accident is caused by an automobile  
 or the use or operation thereof, whether liability exists or not, if  
 the contract also includes insurance described in clause (a);

boiler and  
machinery  
insurance

(c.2) “boiler and machinery insurance” means insurance against loss  
 or damage to property and against liability for loss or damage to  
 persons or property through the explosion, collapse, rupture, or  
 breakdown of, or accident to, boilers or machinery;

broker

(d) “broker” means a person who, for compensation, acts or aids in  
 negotiating contracts of insurance or placing risks or effecting  
 insurance, or in negotiating the continuance or renewal of such  
 contracts for a person other than himself;

chief agency

(d.1) “chief agency” means the principal office or place of business  
 in Prince Edward Island of any licensed insurer having its head  
 office out of Prince Edward Island;

contract

(d.2) “contract” means a contract of insurance and includes a policy,  
 certificate, interim receipt, renewal receipt, or writing evidencing the  
 contract, whether sealed or not, and a binding oral agreement;

court

(e) “court” means the Supreme Court;

credit insurance

(e.1) “credit insurance” means insurance against loss to the insured  
 through the insolvency or default of a person to whom credit is  
 given in respect of goods, wares or merchandise;

disability insurance

(e.2) “disability insurance” means insurance undertaken by an  
 insurer as part of a contract of life insurance whereby the insurer  
 undertakes to pay insurance money or to provide other benefits in  
 the event that the person whose life is insured becomes disabled as a  
 result of bodily injury or disease;

employees mutual  
benefit society

(f) “employees mutual benefit society” means a society incorporated  
 by the officers or officers and employees of a corporation for the  
 purpose of providing support and pensions to such of the officers or  
 employees as become incapacitated or as cease to be employed by

the corporation or for the purpose of paying pensions, annuities or gratuities to or for dependants of such officers or employees or funeral benefits upon the death of such officers or employees;

(f.1) “employers’ liability insurance” means insurance (not being insurance incidental to some other class of insurance defined by or under this Act) against loss to an employer through liability for accidental injury to or death of an employee arising out of or in the course of his employment, but does not include workers’ compensation insurance; employers’ liability insurance

(f.2) “endowment insurance” means an undertaking to pay an ascertained or ascertainable sum at a fixed future date, if the person whose life is insured is then alive, or at his death, if he dies before such date; endowment insurance

(g) “exchange” or “reciprocal or inter-insurance exchange” means a group of subscribers exchanging reciprocal contracts of indemnity or inter-insurance with each other through the same attorney; exchange or reciprocal inter-insurance exchange

(g.01) “Facility Association” means an association of insurers referred to in subsection 21(2); Facility Association

(g.1) “fire insurance” means insurance (not being insurance incidental to some other class of insurance defined by or under this Act) against loss of or damage to property through fire, lightning or explosion due to ignition; fire insurance

(g.2) “foreign jurisdiction” includes any jurisdiction other than Prince Edward Island; foreign jurisdiction

(h) “fraternal society” means a society, order or association incorporated for the purpose of making with its members only and not for profit, contracts of life, accident or sickness insurance in accordance with its constitution, bylaws and rules and this Act; fraternal society

(h.1) “guarantee insurance” means the undertaking to perform an agreement or contract or to discharge a trust, duty or obligation upon default of the person liable for such performance or discharge, or to pay money upon such default or in lieu of such performance or discharge, or where there is loss or damage through such default and includes insurance against loss or liability for loss due to the invalidity of the title to any property or of any instrument or to any defect in such title or instrument, but does not include credit insurance; guarantee insurance

(h.2) “hail insurance” means insurance against loss of or damage to growing crops caused by hail; hail insurance

head office	(i) “head office” means the place where the chief executive officer of an insurer transacts his business;
industrial contract	(i.1) “industrial contract” means a contract of life insurance for an amount not exceeding \$2,000, exclusive of any benefit, surplus, profit, dividend or bonus also payable under the contract, and which provides for payment of premiums at fortnightly or shorter intervals or, if the premiums are usually collected at the home of the insured at monthly intervals;
inland transportation insurance	(i.2) “inland transportation insurance” means insurance (other than marine insurance) against loss of or damage to property <ul style="list-style-type: none"> <li>(i) while in transit or during delay incidental to transit, or</li> <li>(ii) where, in the opinion of the Superintendent, the risk is substantially a transit risk;</li> </ul>
insurance	(j) “insurance” means the undertaking by one person to indemnify another person against loss or liability for loss in respect of a certain risk or peril to which the object of the insurance may be exposed, or to pay a sum of money or other thing of value upon the happening of a certain event;
insurance fund	(j.1) “insurance fund” as applied to a fraternal society or as applied to any corporation not incorporated exclusively for the transaction of insurance, includes all money, securities for money and assets appropriated by the rules of the society or corporation to the payment of insurance liabilities or appropriated for the management of the insurance branch, department or division of the society, or otherwise legally available for insurance liabilities, but does not include funds of a trade union appropriated to or applicable for the voluntary assistance of wage earners unemployed or upon strike;
insured	(j.2) “insured” means a person insured by a contract whether named or not;
insurer	(k) “insurer” includes any corporation, or any society or association incorporated or unincorporated, any fraternal society or person, or any underwriter or group of underwriters, that undertakes or effects, or agrees, or offers to undertake or effect, a contract of insurance;
life insurance	(k.1) “life insurance” means insurance whereby an insurer undertakes to pay insurance money <ul style="list-style-type: none"> <li>(i) on death, or</li> <li>(ii) on the happening of an event or contingency dependent on human life, or</li> <li>(iii) at a fixed or determinable future time, or</li> <li>(iv) for a term dependent on human life,</li> </ul> and without restricting the generality of the foregoing, includes

(v) accidental death insurance, but not accident insurance,  
 (vi) disability insurance, and  
 (vii) an undertaking, entered into by an insurer in the ordinary course of its business, to provide an annuity or what would be an annuity except that the periodic payments may be unequal in amount;

(k.2) “livestock insurance” means insurance (not being insurance incidental to some other class of insurance defined by or under this Act) against loss through the death or sickness of or accident to an animal; livestock

(l) “lodge” includes a primary subordinate division by whatever name known, of a fraternal society; lodge

(l.1) “marine insurance” means insurance against marine losses; that is to say, the losses incidental to marine adventure, and may by the express terms of a contract or by usage of trade extend so as to protect the insured against losses on inland waters or by land or air which are incidental to any sea voyage; marine insurance

(l.2) “Minister” means that member of the Executive Council charged for the time being with the administration of this Act; Minister

(m) “motor vehicle” has the same meaning as automobile; motor vehicle

(m.1) “motor vehicle liability policy” means a policy, or that part of a policy, evidencing a contract insuring motor vehicle liability policy

(i) the owner or driver of an automobile, or  
 (ii) a person who is not the owner or driver thereof where the automobile is being used or operated by his employee or agent or any other person on his behalf,  
 against liability arising out of bodily injury to or the death of a person or loss or damage to property caused by an automobile or the use or operation thereof;

(m.2) “mutual benefit society” means a mutual corporation formed for the purpose of providing sick and funeral benefits for its members where the amounts paid for sick benefits do not exceed \$12 per week and for funeral benefits \$400, or for this and any other purposes except life insurance, but does not include any employees’ mutual benefit society; mutual benefit society

(n) “mutual insurance” means a contract of insurance, other than life, accident and sickness insurance, in which the consideration is not fixed or certain at the time the contract is made and is to be determined at the termination of the contract or at fixed periods during the term of the contract according to the experience of the mutual insurance

insurer in respect of all similar contracts whether or not the maximum amount of such consideration is predetermined, and includes a contract of insurance in which, although part of the consideration may be fixed or certain at the time the contract is made, the insured is liable to the insurer in respect of other similar contracts of insurance made or to be made by the insurer during the term of the contract, and the term “cash plan” or “cash premium plan” shall not refer to such mutual insurance;

mutual insurance  
company

(n.1) “mutual insurance company” means an insurer incorporated under the laws of the province and carrying on a mutual insurance business in the province and which is not licensed under the laws of any other government;

non-owners’ policy

(n.2) “non-owners’ policy” means a motor vehicle liability policy insuring a person solely in respect of the use or operation by him or on his behalf of an automobile that is not owned by him;

officer

(o) “officer” includes any trustee, director, manager, treasurer, secretary or member of the board or committee of management of an insurer or person appointed by the insurer to sue and be sued in its behalf;

owner’s policy

(o.1) “owner’s policy” means a motor vehicle liability policy insuring a person in respect of the ownership, use or operation of an automobile owned by him and within the description or definition thereof in the policy, and, if the contract so provides, in respect of the use or operation of any other automobile;

paid in

(o.2) “paid in” when applied to the capital stock of an insurer or to any shares thereof, means the amount paid to the insurer on its shares, not including the premium, if any, paid thereon, whether such shares are or are not fully paid;

paid up

(p) “paid up” when applied to the capital stock of an insurer or to any shares thereof, means capital stock or shares on which there remains no liability, actual or contingent, to this issuing insurer;

person

(p.1) “person” includes a partnership;

plate glass  
insurance

(p.2) “plate glass insurance” means insurance (not being insurance incidental to some other class of insurance defined by or under this Act) against loss of or damage to plate, sheet or window glass, whether in place or in transit;

policy

(q) “policy” means the instrument evidencing a contract;

premium

(q.1) “premium” means the single or periodical payment to be made for the insurance, and includes dues and assessments;

- (q.2) “premium note” means an instrument given as consideration for insurance whereby the maker undertakes to pay such sums as are legally demanded by the insurer, the aggregate of such sums not to exceed an amount specified in the instrument and includes any undertaking to pay such sums regardless of the form thereof and whether or not accompanied by a deposit of money or security; premium note
- (r) “property” includes profits, earnings and other pecuniary interests, and expenditure for rents, interest, taxes and other outgoings and charges and in respect of inability to occupy the insured premises, but only to the extent of express provision in the contract; property
- (r.1) “property damage insurance” means insurance against loss or damage to property which is not included in or incidental to some other class of insurance defined by or under this Act; property damage insurance
- (r.2) “provincial company” means a company incorporated by or under an Act of the Legislature; provincial company
- (s) “public liability insurance” means insurance against loss or damage to the person or property of others which is not included in or incidental to some other class of insurance defined by or under this Act; public liability insurance
- (s.1) “regulations” means regulations made under the authority of this Act; regulations
- (s.2) “sick and funeral benefits” includes insurance against sickness, disability or death; sick and funeral benefits
- (t) “sickness insurance” means insurance by which the insurer undertakes to pay insurance money in the event of sickness of the person or persons insured, but does not include disability insurance; sickness insurance
- (t.1) “sprinkler leakage insurance” means insurance against loss of or damage to property through the breakage or leakage of a sprinkler equipment or other fire protection system, or of pumps, water pipes or plumbing and its fixtures; sprinkler leakage insurance
- (t.2) “Superintendent” means the Superintendent of Insurance; Superintendent
- (u) “theft insurance” means insurance against loss or damage through theft, wrongful conversion, burglary, house-breaking, robbery or forgery; theft insurance
- (u.1) “weather insurance” means insurance against loss or damage through windstorm, cyclone, tornado, rain, hail, flood, or frost, but does not include hail insurance; weather insurance



workers' compensation insurance

(u.2) "workers' compensation insurance" means insurance of an employer against the cost of compensation prescribed by statute for bodily injury, disability or death of a worker through accident or disease arising out of or in the course of his employment. R.S.P.E.I. 1974, Cap. I-5, s.1; 1976,c.15,s.1; 1994,c.27,s.1.

## PART I SUPERINTENDENT AND HIS DUTIES

Appointment of Superintendent

**2.** (1) The Lieutenant Governor in Council may appoint an officer to be called the Superintendent of Insurance.

Duties of Superintendent

(2) The Superintendent shall act under the instructions of the Minister, have general supervision of the business of insurance within the province, see that the laws relating thereto are enforced and obeyed, and examine and report to the Minister upon all matters connected therewith.

Officers & clerks

(3) The Lieutenant Governor in Council may appoint officers and clerks under the Superintendent. R.S.P.E.I. 1974, Cap. I-5, s.2.

Power to receive affidavit & examine & compel witnesses

**3.** In carrying out his duties and in exercising his powers under this Act or under any other Act relating to insurance, the Superintendent may require and may take and receive affidavits, statutory declarations and depositions, and may examine witnesses upon oath; and he shall have the same power to summon persons to attend as witnesses, to enforce their attendance, to compel them to produce books, documents and things, and to give evidence as any court has in civil cases. R.S.P.E.I. 1974, Cap. I-5, s.3.

Oaths, administration of

**4.** An oath required by this Act to be taken, may be administered by the Superintendent. R.S.P.E.I. 1974, Cap. I-5, s.4.

Superintendent not to own certain shares

**5.** Neither the Superintendent nor any officer under him shall be interested as a shareholder, directly or indirectly, in any insurance company doing business in the province. R.S.P.E.I. 1974, Cap. I-5, s.5.

Limitation of action against Superintendent

**6.** (1) Without a *fiat* of the Attorney General, no action or proceeding shall be brought or taken against the Superintendent for anything done or omitted in the performance, or intended or supposed performance of his duty under this Act, or under any other Act which imposes duties upon him.

Actions, Superintendent may bring

(2) The Superintendent may bring actions and institute proceedings in his name of office for the enforcement of this Act or for the recovery of fees and penalties payable hereunder.

(3) No action or proceeding for the recovery of fees and penalties payable hereunder shall be commenced without the leave of the Superintendent. R.S.P.E.I. 1974, Cap. I-5, s.6; 1997,c.20,s.3; 2000, c.5, s.3.

Recovery of fees,  
leave required

#### BOOKS AND RECORDS

7. (1) The Superintendent shall keep the following books and records:

(a) a register of all licenses issued pursuant to this Act, in which shall appear the name of the insurer, the address of its head office, the address of its principal office in Canada, the name and address of its principal general agent in the province, the number of the license, particulars of the classes of insurance for which the insurer is licensed, and such other information as the Superintendent considers necessary;

(b) a record of all securities deposited by each insurer with the Provincial Treasurer, naming them in detail, their par value, their date of maturity and value at which they are received as deposit;

(c) a record of all claims of which notice of dispute is filed pursuant to this Act; and

(d) a record of agents licensed or authorized under this Act.

Superintendent  
must keep certain

(2) The books and records required by this section to be kept shall be open to inspection at such time and upon payment of such fees as are prescribed. R.S.P.E.I. 1974, Cap. I-5, s.7; 1983, c.1, s.6; 1986, c.5, s.2; 1993, c.29, s.4.

Inspection of books  
and records

8. The Superintendent shall cause to be published yearly in the Gazette a list of the insurers licensed at the date of the list, and he shall forthwith cause notice of the issue of a license to an insurer not theretofore licensed and of the suspension, cancellation, revocation or revival of a license to be given by publication in the Gazette. R.S.P.E.I. 1974, Cap. I-5, s.8.

List of insurers,  
suspensions etc.  
published annually

9. (1) A certificate under the hand and seal of office of the Superintendent that on a stated day an insurer mentioned therein was or was not licensed under this Act, or that any insurer was originally admitted to license or that the license of any insurer was renewed, suspended, revived, revoked or cancelled on a stated day, is evidence of the facts stated in the certificate, without proof of the signature of the Superintendent or official signing the same.

Evidence of being  
licensed, certificate  
of Superintendent

(2) A certificate of the filing of any document required to be filed in the office of the Provincial Treasurer or of the Superintendent shall be evidence of the filing if signed or purporting to be signed by the

Evidence of filing  
documents

Superintendent. R.S.P.E.I. 1974, Cap. I-5, s.9; 1983, c.1, s.6; 1986, c.5, s.2; 1993, c.29, s.4.

#### DUTIES RESPECTING LICENSES

Determination of right to be licensed

**10.** The Superintendent shall determine the right of any insurer to be licensed under this Act, subject to appeal, and to the right of the Lieutenant Governor in Council or of the Minister to suspend or cancel any license as hereinafter provided. R.S.P.E.I. 1974, Cap. I-5, s.10.

Decisions of Superintendent, in writing

**11.** (1) Every decision of the Superintendent upon an application for a license shall be in writing and notice thereof shall be forthwith given to the insurer.

Certified copy of decision

(2) The insurer, or any person interested is entitled, upon payment of the prescribed fee, to a certified copy of the decision.

Reporting evidence by stenographer

(3) The evidence and proceedings in any matter before the Superintendent may be reported by a stenographer sworn before the Superintendent faithfully to report the same. R.S.P.E.I. 1974, Cap. I-5, s.11.

Appeal to Lt. Gov. in C.

**12.** An applicant for a license may appeal from the decision of the Superintendent refusing a license to the Lieutenant Governor in Council. R.S.P.E.I. 1974, Cap. I-5, s.12.

#### INVESTIGATION OF INSURERS

Inquiries *re* contracts or financial affairs of an insurer

**13.** The Superintendent may direct to an insurer any inquiry concerning its contracts or financial affairs, and the insurer shall make prompt and explicit answer to any such inquiry, and is, in case of refusal or neglect to answer, guilty of an offence. R.S.P.E.I. 1974, Cap. I-5, s.13.

Access to books, securities and documents of an insurer

**14.** The Superintendent, or any person authorized under his hand, shall, at all reasonable times, have access to all the books, securities and documents of an insurer, agent or adjuster, which relate to contracts of insurance, and any officer or person in charge, possession, custody or control of such books, securities or documents who refuses or neglects to afford such access is guilty of an offence. R.S.P.E.I. 1974, Cap. I-5, s.14.

Information to be provided

**15.** The officers, adjusters and agents of every licensed insurer, every other licensed person, and every insurer, shall furnish the Superintendent on his request with full information relative to any contract issued by the insurer or to the insured, and made or deemed to be made within the province or relative to any settlement or adjustment under any such contract. R.S.P.E.I. 1974, Cap. I-5, s.15.

16. (1) The Superintendent shall visit personally, or cause to be visited at least annually, the head office or chief agency in the province of every licensed insurer, other than a mutual benefit society having less than three hundred members, or any insurer as to which he adopts the inspection of some other government, and he shall verify the statement of the condition and affairs of each such insurer filed under this Act, and make such inquiries as are necessary to ascertain its ability to provide for the payment of its contracts as they mature, and whether or not it has complied with all the provisions of this Act applicable to its transactions; and the Superintendent shall report thereon to the Minister as to all matters requiring his attention and decisions.
- Annual visit to head office or chief agency of each licensed insurer & report thereon to Minister
- (2) Where the head office of any such insurer is not in the province the Minister may, in his discretion, instruct the Superintendent to visit the head office to inspect and examine its affairs and to make such inquiries as the Minister requires.
- Visit head office located outside province
- (3) The officers or agents of the insurer shall produce its books and records for the inspection of the Superintendent or other person making the inspection, and shall otherwise facilitate the examination so far as is in their power.
- Assist Superintendent in investigation
- (4) In order to facilitate such inspection the Superintendent, with the approval of the Minister, may require the insurer to produce the books and records at the head office or chief agency of the insurer in the province or at such other place as the Superintendent directs; any officer of the insurer who has custody of the books and records so attending is entitled to be paid by the insurer the actual expenses of the attendance.
- Production of books and records at head office or chief agency of insurer
- (5) The Superintendent, with the approval of the Minister, may cause abstracts to be prepared of the books and vouchers and a valuation to be made of the assets and liabilities of any such insurer and the cost thereof upon the certificate of the Superintendent, approved by the Minister, shall be paid by the insurer.
- Abstracts of books & vouchers, valuation of assets & liabilities of insurer
- (6) Where the office of an insurer at which an examination is made is out of the province, the insurer shall pay the account of the Superintendent in connection with such examination upon the certificate of the Superintendent approved by the Minister.
- Payment of account by insurer if out of province
- (7) With the consent of the Minister, the Superintendent may, with respect to any insurer, accept the inspection and report, in whole or in part, of, or made under the authority of, any other government in Canada.
- Inspection report by another government, adoption by P.E.I.
- R.S.P.E.I. 1974, Cap. I-5, s.16.

## SERVICE OF PROCESS

Head office of insurer outside province, service

**17.** (1) Where the head office of a licensed insurer is outside the province, notice or process in any action or proceeding in the province may be effectually served upon the insurer by leaving three copies of such notice or process with the Superintendent, or in his office with the person there in charge, or by forwarding such copies to the Superintendent by registered mail.

Notice of post office address, filed, to be

(2) Every licensed insurer shall file in the office of the Superintendent notice of a post office address to which any such notice or process may be forwarded by the Superintendent and shall notify the Superintendent of any change in the address.

Copy of notice returned by post to insurer

(3) The Superintendent shall forthwith after the receipt of such notice or process in triplicate, forward one copy thereof to the insurer by registered mail, postage prepaid, addressed in the manner last notified, to him for this purpose by the insurer.

Record of all service of process

(4) The Superintendent shall keep a record of all such proceedings, showing the day and hour of such service of process.

Judgment not to be entered against insurer until

(5) No judgment against the insurer shall be entered for default of appearance or defence in such action or proceeding unless and until an affidavit is filed in the court, out of or by which such process is issued, showing that the Superintendent has duly forwarded a copy thereof to the insurer. R.S.P.E.I. 1974, Cap. I-5, s.17.

## ANNUAL REPORT

Annual report to Minister, contents & publication

**18.** (1) The Superintendent shall prepare for the Minister, from the statements filed by the insurers and from any inspection or inquiries made, an annual report showing particulars of the business of each insurer as ascertained from such statements, inspection and inquiries; and such report may at the discretion of the Minister be printed and published.

Assets permitted to be shown for insurers

(2) In his report the Superintendent shall allow as assets only such of the investments of any insurer as are authorized by this Act, its charter or any other Act applicable to such investments.

Corrections in annual statements

(3) In his report the Superintendent shall make the necessary corrections in the annual statement of any insurer and may increase or diminish the liabilities of such insurer to the true and correct amounts thereof as ascertained from any examination of its affairs.

(4) If it appears to the Superintendent, or if he has any reason to suppose, from the annual statement that the value placed by an insurer, incorporated and licensed under the laws of the province, upon any of its real estate is too great, he may either require the insurer to secure an appraisal of the real estate by one or more competent valuers, or may himself procure the appraisal at the expense of the insurer, and the appraised value, if it varies materially from the statement made by the insurer, may be substituted in the annual report of the Superintendent.

Value of real estate,  
appraisal

(5) In like manner the Superintendent may procure an appraisal of any parcel of land which constitutes the security for any loan, and if from the appraisal it appears that the parcel is not adequate security for the loan and accrued interest, he may reduce the value to such an amount as is fairly realizable from such security, in no case to exceed the appraised value, and may insert the reduced value in his report.

Land used as  
security for loans,  
appraisal,  
amending, reporting

(6) In like manner the Superintendent may make or cause to be made an appraisal of the security taken for any investment of the insurer, and if it appears that the value of the securities as shown on the books of the insurer is greater than its true value as shown by the appraisal, he may reduce the book value of the same to such amount as is fairly realizable therefrom, and in no case to exceed such appraised value, and may insert the reduced amount in his annual report.

Appraisal of  
securities of an  
insurer

(7) The Superintendent may require any insurer incorporated and licensed under the law of the province to dispose of and realize any of its investments acquired after October 1, 1933, and not allowed in his report, and the insurer shall, within sixty days after receiving such request, absolutely dispose thereof and, if the amount realized therefrom falls below the amount paid by the insurer therefor, the directors of the insurer are jointly and severally liable for the payment to the insurer of the amount of the deficiency.

Disposal &  
realization of  
investments by  
insurer upon order  
of Superintendent

(8) Notwithstanding subsection (7) if any director present when such an investment was authorized did forthwith, or if any director then absent, did, within eight days after he becomes aware of such investment, protest and give notice thereof by registered letter to the Superintendent, such director may thereby, and not otherwise, exonerate himself from such liability.

Protest by director  
to exonerate himself  
from liability

(9) An insurer affected thereby may appeal to the Lieutenant Governor in Council from the ruling of the Superintendent as to the allowance in his report of any asset not allowed by him, or as to any item or amount added to liabilities, or as to any correction or alteration made in its statement. R.S.P.E.I. 1974, Cap. I-5, s.18.

Appeal to  
Lieutenant  
Governor in  
Council

### APPEAL FROM SUPERINTENDENT'S DECISION

Request for  
Superintendent's  
decision in writing  
& time for filing  
appeal

**19.** (1) Where by this Act an appeal to the Lieutenant Governor in Council is given to any person, the Superintendent shall, at the request of such person, give a certificate in writing, setting forth the ruling complained of and his reasons therefor, and the ruling shall be binding upon such person, unless within ten days after giving thereof such person serves upon the Superintendent notice of his intention to appeal therefrom, setting forth the grounds of appeal, and within ten days thereafter files his appeal with the Lieutenant Governor in Council and with due diligence prosecutes the same, in which case action on such ruling shall be suspended until the Lieutenant Governor in Council renders judgment thereon.

Decision to be  
certified and filed  
with Clerk of  
Executive Council

(2) The Superintendent shall certify and file with the Clerk of the Executive Council the decision appealed from and his reasons therefor, and the documents, statements, inspection reports, certificates, declarations, and other papers relating to the matter and any evidence taken and such other information as he had before him in making his decision. R.S.P.E.I. 1974, Cap. I-5, s.19.

### PART II GENERAL PROVISIONS APPLICABLE TO INSURERS IN PRINCE EDWARD ISLAND

Undertaking  
insurance in  
province, when  
deemed

**20.** (1) Any insurer undertaking a contract of insurance which, under this Act, is deemed to be made in the province, whether the contract is original or a renewal, except the renewal of life insurance policies, is deemed to be undertaking insurance in the province within the meaning of this Part.

Insurer carrying on  
business in  
province, who is  
deemed to be

(2) Any insurer that within the province,

- (a) undertakes or offers to undertake insurance;
- (b) sets up or causes to be set up any sign containing the name of the insurer;
- (c) maintains or operates either in its own name or in the name of an agent or other representative, any office for the transaction of the business of insurance either within or outside the province;
- (d) distributes or publishes or causes to be distributed or published any proposal, circular, card, advertisement, printed form, or a like document;
- (e) makes or causes to be made any written or oral solicitation for insurance;
- (f) issues or delivers any policy of insurance of interim receipt or collects or receives or negotiates for or causes to be collected or received or negotiated for any premium for a contract of insurance

or inspects any risk or adjusts any loss under a contract of insurance;  
 or  
 (g) prosecutes or maintains any action or proceeding in respect of a contract of insurance,  
 is deemed to be an insurer carrying on business in the province within the meaning of this Act.

(3) Every insurance company licensed to issue a motor vehicle liability policy shall:

Subscribership and membership, certain required

- (a) subscribe to the facility or any automobile insurance pool as approved by the Superintendent and shall be bound by any and all provisions governing such subscribers and members;
- (b) provide automobile insurance as required under Part XI of the *Highway Traffic Act* R.S.P.E.I. 1988, Cap. H-5. R.S.P.E.I. 1974, Cap. I-5, s.20; 1975,c.49,s.1; 1994,c.27,s.2.

**21.** (1) Without prejudice to subsection 20(3), every insurer carrying on the business of automobile insurance in the province shall be a participant in, and subject to the terms and conditions of, a government approved plan to ensure a market for automobile insurance to all owners and licensed operators of motor vehicles and to provide, in accordance with section 245.1 to 245.993, payment with respect to claims for damages made by persons who are not insured under a contract within the meaning of section 245 and who have no other insurance, or who have other insurance that is inadequate, with respect to the damages claimed and shall, in accordance with those articles of association or bylaws and this Act, establish and implement the Plan of Operation and carry out its obligations in the province with respect to that Plan.

Plan for automobile insurance coverage, including uninsured motorists

(2) A plan under subsection (1) may be administered by an association of insurers.

Association

(3) A copy of the constitution and bylaws of an association and the rules of a proposed plan shall be submitted to the Superintendent for approval and no association or plan shall become effective until such documents are filed with the Superintendent and he gives approval thereto.

Approval

(4) No change shall be made in the documents referred to in subsection (3) and no termination of a plan shall be effective unless notice thereof is given to the Superintendent at least thirty days before the proposed effective date and the change or termination is approved by the Superintendent.

Changes

(5) Repealed by 2003,c.1,s.1.

Rates

(6) Repealed by 2003,c.1,s.1.

Order



Agents (7) Where an agent submits an application under a plan to an insurer, the agent is bound by the constitution and bylaws of the association and the rules of the plan. 1982,c.12,s.1; 1994,c.27,s.3; 2003,c.1,s.1.

## LICENSES

Insurers must be licensed **22.** (1) Every insurer carrying on business in the province shall obtain from the Superintendent and hold a license under this Act.

Offence for not being licensed (2) Every insurer carrying on business in the province without having obtained a license as required by this section is guilty of an offence.

*Idem* (3) Any person who, within the province, does or causes to be done any act or thing mentioned in section 20 on behalf of, or as agent of, an insurer not licensed under this Act, or who receives, directly or indirectly, any remuneration for so doing, is guilty of an offence.

Exception to requirement for license (4) The following shall not be deemed insurers within the meaning of this Act or required or entitled to be licensed as such:

- (a) employees mutual benefit societies;
- (b) a trade union which, under the authority of its charter, has an assurance or benefit fund for the benefit of its own members exclusively;
- (c) such other organizations as the Lieutenant Governor in Council determines.

Insurer carrying on business outside province (5) An insurer incorporated and licensed by the province and which carries on or solicits business in any foreign jurisdiction without being first authorized so to do under the laws of the foreign jurisdiction, is guilty of an offence. R.S.P.E.I. 1974, Cap. I-5, s.21.

Reinsuring risk outside province **23.** Nothing in this Act prevents a licensed insurer who has lawfully effected a contract of insurance in the province from reinsuring the risk or any portion thereof with any insurer transacting business out of the province and not licensed under this Act. R.S.P.E.I. 1974, Cap. I-5, s.22.

Licenses, issuance of to certain classes **24.** (1) Upon due application and upon proof of compliance with this Act, the Superintendent may issue a license to undertake contracts of insurance and carry on business in the province to any insurer coming within one of the following classes:

- (a) joint stock insurance companies;
- (b) mutual insurance companies;
- (c) fraternal societies;
- (d) mutual benefit societies;
- (e) companies duly incorporated to undertake insurance contracts and not within any of the foregoing classes;

- (f) underwriters or syndicates of underwriters operating on the plan known as Lloyd's;
- (g) underwriting members of the Canadian Insurance Exchange.

(2) A license issued pursuant to this Act authorizes the insurer named therein to exercise within the province all rights and powers reasonably incidental to the carrying on of the business of insurance named therein, which are not inconsistent with this Act or its charter. R.S.P.E.I. 1974, Cap. I-5, s.23; 1987, c.35, s.1.

License, authority for certain powers

25. (1) Subject to Parts of this Act particularly relating to classes of insurers mentioned in section 24, a license may be granted to an insurer to carry on any one or more of the classes of insurance defined in section 1 and such other classes as may be prescribed by the regulations.

License for one or more classes of insurance

(2) A license may be issued subject to such limitation and conditions as the Minister may prescribe.

Limitation, imposed on license

(3) A license to carry on automobile insurance in the province is subject to the following conditions:

Conditions imposed on licenses to carry on automobile insurance

- (a) in any action in the province against the licensed insurer, or its insured, arising out of an automobile accident in the province, the insurer shall appear and shall not set up any defence to a claim under a contract made outside the province, including any defence as to the limits of liability under the contract, that might not be set up if the contract were evidenced by a motor vehicle liability policy issued in the province;
- (b) in any action in another province or territory of Canada against the licensed insurer, or its insured, arising out of an automobile accident in that province or territory, the insurer shall appear and shall not set up any defence to a claim under a contract evidenced by a motor vehicle liability policy issued in this province or territory that might not be set up if the contract were evidenced by a motor vehicle liability policy in the other province or territory.

(4) The license to an insurer who commits a breach of either of the conditions of license set out in subsection (3) may be cancelled.

Cancellation of license if breach of conditions

(5) Every insurer licensed for the transaction of life insurance may, under the authority of its license, unless the license expressly provides otherwise, issue annuities and endowments of all kinds and also include in any policy of life insurance, in respect of the same life or lives insured thereby, disability insurance and accidental death insurance.

Life insurance, license authorizes issue of annuities and endowments

(6) Every insurer licensed to carry on fire insurance may, subject to its act of incorporation, and subject to the restrictions prescribed by the license, insure or reinsure any property in which the insured has an

Fire insurance license, authorizes insurance or reinsurance

insurable interest against loss or damage by fire, lightning or explosion and may insure or reinsure the same property against loss or damage from falling aircraft, earthquake, windstorm, tornado, hail, sprinkler leakage, riot, malicious damage, weather, water damage, smoke damage, civil commotion and impact by vehicles and any one or more perils falling within such other classes of insurance as are prescribed by the regulations.

Fire insurance, license, authorizes insurance against loss or damage under Part IV policy

(7) An insurer licensed to carry on fire insurance may insure an automobile against loss or damage under a policy falling within Part IV of this Act, but in the case of a purely mutual fire insurance corporation, incorporated or licensed in Prince Edward Island and carrying on business on the premium note plan, the automobile shall be specifically insured under a policy separate from that insuring other property.

Determination of class of insurance into which a contract falls

(8) Where a question arises as to the class of insurance into which any specific contract of insurance or form of policy falls, the Superintendent may determine the question, and his determination shall be effective and final for the purposes of this Act. R.S.P.E.I. 1974, Cap. I-5, s.24; 1991,c.17,s.1.

Capital requirements

**26.** (1) A license shall not be granted to a joint stock insurance company not licensed before January 1, 1989, unless the company furnishes to the Superintendent satisfactory evidence that

(a) if the company is applying for a license to transact the business of life insurance, the company has paid up capital and surplus of not less than \$5,000,000 of which at least \$2,500,000 is paid up capital and at least \$1,250,000 is unimpaired surplus;

(b) if the company is applying for a license to transact any class of business other than life insurance, the company has paid up capital and surplus of not less than \$3,000,000 of which at least \$1,500,000 is paid up capital and at least \$750,000 is unimpaired surplus.

License for underwriters

(2) A license shall not be granted an insurance company mentioned in clause 24(1)(e), or to an underwriter or syndicate of underwriters operating on the plan known as Lloyd's or to an underwriting member of the Canadian Insurance Exchange except upon proof that

(a) its, or his, net surplus of assets over all liabilities exceeds the paid up capital stock required in the case of a joint stock company under the preceding subsection, carrying on the same class of insurance; and

(b) its net surplus together with the contingent liability of members, if any, exceeds the subscribed and allotted capital stock required in the case of such a joint stock insurance company.

(3) A license shall not be granted to a mutual insurance company, except upon proof that

License for mutual insurance company

- (a) the total amount insured under the contracts of the company in force at the expiration of one year from the date of the issue of the initial license amounts to at least \$100,000;
- (b) thereafter the total amount insured under contracts at all times equals at least \$100,000.

(4) A license shall not be granted to any insurer except upon proof that the insurer has complied with the Part of this Act and regulations applicable thereto.

Proof of compliance with Act

(5) Where the head office of an applicant for a license under this Act is outside the province, a license shall not be granted except upon proof of the applicant's ability to provide for the payment at maturity of all its contracts, but the Superintendent may accept as sufficient the fact that such insurer is licensed by any government in Canada, Federal or Provincial. R.S.P.E.I. 1974, Cap. I-5, s.25; 1984, c.24, s.1; 1987, c.35, s.2; 1990, c.24, s.1.

Head office of insurer outside province, license issued upon proof of certain facts

**27.** The Superintendent may require notice of the application for a license to be given by publication in the Gazette and elsewhere. R.S.P.E.I. 1974, Cap. I-5, s.26.

Publication of notice of application for license

**28.** (1) Before the issue of a license to an insurer, the insurer shall file in the office of the Superintendent

Insurer must file certain documents and information before issuance of license

- (a) a certified copy of its Act or charter of incorporation, which shall include its regulations verified in manner satisfactory to the Superintendent;
- (b) an affidavit or statutory declaration that the insurer is still in existence and legally authorized to transact business under its charter;
- (c) a certified copy of its last balance sheet and auditor's report thereon;
- (d) notice of the place where the head office of the insurer is situated, if outside the province;
- (e) notice of the place where the chief agency or head office of the insurer in the province is to be situated;
- (f) a statement showing the amount of the capital of the insurer and the number of shares into which it is divided, the number of shares subscribed and the amount paid up thereon;
- (g) a certified copy of the power of attorney to the Canadian chief agent, if any;
- (h) notice of appointment of chief agent or resident manager for the province;

- (i) a statement in such form as is required by the Superintendent of the condition and affairs of the insurer on December 31 then last preceding or up to usual balancing day of the insurer or as the Superintendent requires; and
- (j) such other evidence as the Superintendent requires.

Change in charter or head office, notification of Superintendent

(2) In the event of a change being made in the charter of the insurer or its head office or chief agency or in its chief agent, the insurer shall forthwith notify the Superintendent thereof and file with him such further certified copies, notices or powers of attorneys as are necessary to evidence the change. R.S.P.E.I. 1974, Cap. I-5, s.27.

Costs of incorporation & list of unpaid liabilities, statement to accompany application for license

**29.** (1) Upon application being made for a license by an insurer incorporated under the laws of the province after October 1, 1933, there shall be submitted to the Superintendent a sworn statement setting forth the several sums of money paid in connection with its incorporation and organization, and therein a list of all unpaid liabilities, if any, arising out of such incorporation and organization.

Limitation on payment of expenses before license issued

(2) Until the license is granted, no payment on account of such expenses, shall be made out of the moneys paid in by shareholders except reasonable sums for the payment of clerical assistance, legal services, office rental, advertising, stationery, postage and expense of travel, if any.

License not to be issued if certain procedures not followed

(3) The Superintendent shall not issue the license until he is satisfied that all requirements of this Act and of any other Act as to subscriptions of stock, payment of money by shareholders on account thereof, election of directors and other preliminaries have been complied with, and that the expenses of incorporation and organization, including the commission payable for the sale of the stock are reasonable. R.S.P.E.I. 1974, Cap. I-5, s.28.

License issued if security deposited

**30.** (1) When an insurer has deposited the security required by this Act and has otherwise complied with the requirements thereof and of any other Act of the province, the Superintendent may issue a license to it.

Form of license

(2) The license shall be in such form as the Superintendent may determine and shall

- (a) specify the business to be carried on by the insurer;
- (b) remain in force for a period not exceeding two years;
- (c) expire on such date as may be specified therein,

and may be renewed on application to the Superintendent and payment of the prescribed fee. R.S.P.E.I. 1974, Cap.I-5.s.29; 1997(2nd),c.66,s.1.

## CANCELLATION OF LICENSE

**31.** (1) Upon written notice to the Superintendent and upon proof of an undisputed claim arising from loss insured against in the province remaining unpaid for the space of sixty days after becoming due, or of a disputed claim, after final judgment and tender of a valid discharge, being unpaid, the Superintendent shall cancel the license of the insurer; but the Superintendent shall first by registered letter mailed to the insurer at its chief agency or head office within the province allow and require the insurer within ten days to show adequate cause why its license should not be cancelled.

Where Superintendent to cancel license

(2) The Superintendent may revive the license and the insurer may again carry on business if, within six months after notice to the Superintendent of the failure of the insurer to pay such an undisputed claim or the amount of the final judgment, the undisputed claim or final judgment is paid and satisfied. R.S.P.E.I. 1974, Cap. I-5, s.30.

Reviving license

**32.** When the insurer fails to keep unimpaired the deposit required by this Act, the Minister may suspend or cancel the license of the insurer. R.S.P.E.I. 1974, Cap.I-5, s.31.

Deposit not maintained, where

**33.** (1) If the Superintendent, upon examination, or from annual statements, or upon other evidence, finds that the assets of any insurer are insufficient to justify the continuance of the insurer in business or to provide proper security to persons effecting insurance with the insurer in the province or that the insurer has failed to comply with any provision of law, or its charter, he shall so report to the Minister.

Assets of insurer insufficient or insurer failed to comply with law, Superintendent to report to Minister

(2) In the case of an insurer undertaking contracts of life insurance, if its policy reserves, and, in the case of any other insurer, if its unearned premiums, in both cases, respecting outstanding contracts made or deemed to be made in the province, together with any other liabilities in the province, exceed its assets in the province, including the deposit in the hands of the Provincial Treasurer, the assets of the insurer shall be deemed insufficient to justify its continuance in business within the meaning of subsection (1).

When assets deemed to be insufficient

(3) If the Minister, after consideration of the report and after hearing or giving notice of a hearing to the insurer, and upon any further investigation he thinks proper, reports to the Lieutenant Governor in Council that he concurs in the report of the Superintendent, the Lieutenant Governor in Council may suspend or cancel the license of the insurer.

Suspension or cancellation of license by Lt. Gov. in C.

- Transacting business after suspension etc., an offence or conditional license, issuance to protect insureds
- (4) Upon the publication of notice of the suspension or cancellation of license in the Gazette, any person transacting business on behalf of the insurer, except for winding-up purposes, is guilty of an offence.
- (5) Where the Superintendent has so reported, the Minister or the Lieutenant Governor in Council may direct the issue of such modified, limited or conditional license as is considered necessary for the protection of persons in the province who have effected or effect contracts of insurance with the insurer. R.S.P.E.I. 1974, Cap. I-5, s.32; 1983, c.1, s.6; 1986, c.5, s.2; 1993, c.29, s.4.
- Suspension etc. in another province or by Canada
- 34.** Upon the suspension or cancellation of the license of an insurer by any government in Canada, the Superintendent may suspend or cancel the license of such insurer under this Act. R.S.P.E.I. 1974, Cap. I-5, s.33.
- Reviving a suspended or cancelled license
- 35.** Where the license of an insurer is suspended or cancelled, it may be revived if the insurer makes good the deposit, or the deficiency, or remedies its default, as the case may be, to the satisfaction of the Minister. R.S.P.E.I. 1974, Cap. I-5, s.34.
- Violation of Act by insurer, report to Minister, powers of Minister
- 36.** The Superintendent shall report to the Minister any violation of any of the provisions of this Act by a licensed insurer and thereupon the Minister may, in his discretion, suspend or cancel or refuse to renew the insurer's license. R.S.P.E.I. 1974, Cap. I-5, s.35.

#### DEPOSITS

Sections **37** to **60** are repealed by 1994,c.27,s.4.

#### INVESTMENTS

- Permitted investments for surplus funds & reserve
- 61.** (1) An insurer, incorporated and licensed under the laws of the province, may invest its surplus funds and reserve in the following securities and no others:
- (a) securities in which trustees are by law permitted to invest trust funds, but the total amount of investments in first mortgages on land shall not exceed twenty per cent of the total amount of the insurer's investment;
  - (b) the stock, funds or government securities issued or guaranteed by the United States;
  - (c) the bonds or debentures of any municipality or school district in Canada, or bonds or debentures secured by rates of taxes levied under the authority of the government of any province of Canada on property situated in such province, and collectable by the municipalities in which such property is situated;

(d) terminating debentures of incorporated companies which have, in Canada, for the last preceding five consecutive years, been actually supplying gas, water, heat, light, power or electricity to the public or to any municipal corporation; or of steam, electric or street railway or telegraph or telephone companies in actual operation in Canada but loans on the security of, or the investment in debentures of any of the companies mentioned in this clause shall not in the aggregate exceed one-fifth of the paid up capital of the insurer;

(e) in the case of a life insurer, life or endowment contracts issued by the insurer, but not in excess of the loan value of such contract.

(2) Uninvested funds of the insurer shall be kept on deposit in the name of the insurer in a savings institution. R.S.P.E.I. 1974, Cap. I-5, s.60; 1994,c.27,s.5. Uninvested funds,  
on deposit

#### BOOKS OF INSURERS

**62.** Each insurer shall keep such a classification of its contracts and such registers and books of account, as are directed or authorized by the Superintendent; and if it appears to the Superintendent that such books are not kept in such business-like way as to make a proper showing of the affairs and standing of the insurer, he shall thereupon nominate an accountant, under his direction, to audit the books and to give such instructions as will enable the insurer to keep them correctly thereafter; and the expense of the accountant shall not exceed \$10 per day and necessary travelling expenses, and shall be paid forthwith by the insurer upon being certified and approved by the Superintendent. R.S.P.E.I. 1974, Cap. I-5, s.61. Classification of  
contracts, registers  
& books to be kept  
by insurer, & audit  
by Superintendent

**63.** Where the insurer has a share or stock capital, the stock register or register of members shall at all reasonable times be open to the examination of the Minister or Superintendent. R.S.P.E.I. 1974, Cap. I-5, s.62. Stock register open  
to examination

#### RECORDS AND RETURNS

**64.** (1) Every licensed insurer that carries on the business of fire insurance shall keep a record of its premium income derived from risks located in the province and of claims paid in respect of such risks so as to show its experience according to the classification of occupancy hazards of the National Board of Fire Underwriters, with such modifications as the Superintendent prescribes. Fire insurance  
insurers, record of  
premium income

(2) If it appears to the Minister on the report of the Superintendent that such records are not kept in such a manner as to show correctly the experience of the insurer, the Minister may nominate an accountant to Records of insurer  
not accurate,  
accountant may be  
named to audit



proceed under his direction to audit the books and records of the insurer and to give such instructions as will enable the insurer to keep the records correctly thereafter.

Expense of audit

(3) The expense of such an audit shall not exceed \$15 per day and necessary travelling expenses and the account shall, when certified and approved by the Superintendent, be paid forthwith by the insurer.

Fire insurance insurer, statement of premium income & loss

(4) Every licensed insurer undertaking the business of fire insurance shall, if required by the Superintendent, prepare and file annually with the Superintendent on or before May 1 in each year, on a printed form to be supplied by the Superintendent, a sworn statement of the premium income and losses experienced within the province for the year last preceding the date of the return according to the records required to be kept by this section.

Offence for contravening section

(5) Any insurer and the principal officer within the province of any insurer who contravenes this section is guilty of an offence. R.S.P.E.I. 1974, Cap. I-5, s.63.

Automobile insurance

**65.** (1) Every licensed insurer that carries automobile insurance shall prepare and file with the Superintendent, or with such statistical agency as he may designate,

(a) a record of its automobile insurance claims, including information on identifiable individuals respecting specific automobile insurance claims; and

(b) a record of its automobile insurance premiums, and of its loss and expense costs in the province, in such form and manner and according to such system of classification, as he approves.

Disclosure of claims information to insurers

(1.1) The Superintendent may make available to automobile insurers information collected pursuant to subsection (1) either directly or through an agency.

Compilation of data at expense of insurers

(2) The Superintendent may require any agency so designated to compile the data so filed, and the expense of making such compilation shall be apportioned among the insurers, whose data are compiled by such agency, by the Superintendent, who shall certify in writing the amount due from each insurer and the amount shall be payable by the insurer to the agency forthwith.

Application of provisions of this section

(3) Subsections (2), (3) and (5) of section 64 apply, with appropriate changes to this section. R.S.P.E.I. 1974, Cap. I-5, s.64; 1990,c.24,s.2; 1991,c.17,s.2.

Definitions

**65.1** (1) In this section

- (a) “base rate per vehicle” has the meaning prescribed by the regulations;
- (b) “earned vehicle” has the meaning prescribed by the regulations;
- (c) “levy year” means a calendar year in which premiums are receivable in respect of automobile insurance business transacted in the province.

(2) Every licensed insurer that carries on the business of automobile insurance shall, in respect of each levy year, pay to the Superintendent a levy equal to the base rate per vehicle multiplied by the number of earned vehicles. Levy

(3) Every licensed insurer liable to pay a levy under subsection (2) shall, on or before the last day of the months of March, June, September and December in each levy year, pay an amount equal to one-quarter of the levy it estimates will be payable in respect of that levy year, calculated by reference to the number of earned vehicles for the preceding levy year and the base rate per vehicle. Quarterly payment of levy

(4) Every licensed insurer liable to pay a levy under subsection (2) shall, on or before March 31 of the year following the levy year, file a return, in such form as the Superintendent may require, showing the amount of the levy payable by it in respect of the levy year and shall remit to the Superintendent the amount of the levy, if any, payable by it after taking into account payments made under subsection (3). Return and adjustment

(5) Where the payments made under subsection (3) exceed the amount of the levy payable, the Superintendent shall refund the excess amount within thirty days following receipt of the return. Refund

(6) Where any levy is not paid in full on the date on which payment is due, the licensed insurer shall pay to the Superintendent the amount due, together with interest on the unpaid portion at the rate of 6% from the due date to the date of payment. Interest

(7) Where a levy is paid by a licensed insurer under this section, the rights of subrogation against that insurer Subrogation suspended by payment of levy

- (a) conferred by subsection 22(4) of the *Health Services Payment Act*; and
- (b) conferred by subsection 14(4) of the *Hospital and Diagnostic Services Insurance Act* R.S.P.E.I. 1988, Cap. H-8

are suspended. 1991,c.17,s.3; 1999,c.27,s.7.

**66.** Every insurer shall deliver to the Superintendent, within one month after the passing thereof, a certified copy of its bylaws and of every repeal, amendment or consolidation thereof or addition thereto. Bylaws, delivery to Superintendent  
R.S.P.E.I. 1974, Cap. I-5, s.65.

Balance sheet, financial statements, & auditor's report, delivery to Superintendent

**67.** A copy of every balance sheet or other statement published or circulated by an insurer purporting to show its financial condition, together with any auditor's report thereon, shall be mailed or delivered to the Superintendent concurrently with its issue to its shareholders or policyholders, or to the general public. R.S.P.E.I. 1974, Cap. I-5, s.66.

Auditor to report to shareholders certain matters

**68.** Each auditor of an insurer in the report to be made to shareholders shall state

- (a) that he has audited the books of the insurer and verified the cash, bank balance and securities;
- (b) in the case of insurers transacting other than life insurance, that he has checked the reserve of unearned premiums and that it is calculated as required by this Act;
- (c) that he has examined the reserve for unpaid claims and in his opinion it is adequate;
- (d) that he has verified the balances owing by agents and other insurers;
- (e) that the balance sheet does not include as assets, items prohibited by this Act from being shown in the annual statements required to be filed thereunder;
- (f) that, after due consideration, he has formed an independent opinion as to the position of the company and that, with his independent opinion so formed, and according to the best of his information, and the explanation given him, the balance sheet sets forth fairly and truly the state of affairs of the insurer; and
- (g) that all transactions of the insurer that have come within his notice have been within its powers. R.S.P.E.I. 1974, Cap. I-5, s.67.

Insurer's statement of condition of affairs for preceding year, contents

**69.** (1) Every licensed insurer shall prepare annually and deliver to the Superintendent on or before the last day of February of each year, a statement of the condition of affairs of the insurer as at December 31 last preceding, which statement shall be in such form as is prescribed by the Superintendent and shall exhibit the assets, liabilities, receipts and expenditures of the insurer for the year ended on that date, and it shall exhibit particulars of the business done in the province during such year and such other information as is required by the Minister or Superintendent.

Statement of corporation, verification by directors

(2) In the case of a corporation the statement shall be verified by the president, vice-president or managing director, or other director appointed for the purpose by the board of directors, and by the secretary or manager of the corporation.

Explanation of statement

(3) Every insurer shall, when required by the Superintendent, make prompt and explicit answer in reply to any inquiry directed to the insurer

by him in relation to the statement or in relation to the transactions of the insurer in the province.

(4) In the case of all classes of insurance other than life insurance, and insurance on the premium note plan, the statement shall show as a liability of the insurer, eighty per cent of the actual portions of unearned premiums on all business in force on December 31 then last past, or eighty per cent of fifty per cent of the premiums written in its policies and received in respect of contracts having one year or less to run, and in proportion on those for longer periods.

Certain classes of insurance to show actual portions of unearned premiums as liabilities

(5) In the case of insurers transacting life insurance the statements shall show as a liability the valuation of outstanding contracts of insurance according to the standard for valuation of policies of life insurance prescribed by this Act, or such higher standards as the insurer, with the approval of the Superintendent, adopts.

Valuation of outstanding contracts of insurance, liability in life insurance

(6) The statement shall not show as assets the unpaid balances owing by agents or other insurers in respect of business written prior to October 1 in the preceding year, or bills receivable on account thereof, or unpaid capital or premium on subscribed shares of capital stock, or investment in office furnishings or equipment, nor shall such statements include as assets any investments not authorized by any Act to which the insurer is subject.

Unpaid balances on business written prior to Oct. 1 not to be shown as assets

(7) Every licensed insurer may, in its annual statement or in any valuation of its securities, value all of its securities, having a fixed term and rate and not in default as to principal or interest, according to the following rules,

Valuation of securities by insurer

(a) if purchased at par, at the par value;

(b) if purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield meantime the effective rate of interest at which the purchase was made,

but the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase, and the Superintendent shall have full discretion in determining the method of calculating values according to the foregoing rule. R.S.P.E.I. 1974, Cap. I-5, s.68.

**70.** An insurer shall not publish or circulate a statement purporting to show the financial condition of an insurer differing from that shown by the statement filed with the Superintendent, or a balance sheet or other statement in form differing from that prescribed by the regulations, and if it does, it is guilty of an offence. R.S.P.E.I. 1974, Cap. I-5, s.69.

Offence for insurer to publish financial statement differing from one filed

Offence to represent license as guarantee of financial standing etc.

**71.** Every person, who represents orally or in writing that the issue of a license to an insurer or the printing or publication of an annual statement in the report or any other publication of the Superintendent or any other circumstance of the supervision or regulation of the business of the insurer by law is a warranty or guarantee of the financial standing of the insurer or of its ability to provide for the payment of its contracts at maturity, is guilty of an offence. R.S.P.E.I. 1974, Cap. I-5, s.70.

#### LIFE INSURANCE RESERVES

Valuation of contracts of life insurance, method

**72.** (1) The valuation of contracts of life insurance issued by insurers incorporated and licensed under the law of the province, except contracts of fraternal societies licensed under this Act, shall be based on the British Officers' Life Tables, 1893, Om (5), and on a rate of interest of three and one-half per cent per year, but any such insurer may, with the approval of the Superintendent, adopt the American Men Ultimate Table of Mortality Am (5), with interest at three and one-half per cent per year, for the valuation of contracts issued on and after January 1, 1929.

Deduction permitted from valuation

(2) In computing the valuation a deduction may be allowed from the value of a policy in the first policy year of an amount ascertained in the following manner, namely: in the case of a twenty payment life policy or any other form of policy, except a term policy, the net annual premium upon which is less than the corresponding net annual premium of a twenty payment life policy, the difference between the net annual premium for which such policy and the corresponding net premium for a one year term insurance, and in the case of a policy with a net annual premium greater than that of a twenty payment life policy, an amount equal to the deduction allowed in respect of a twenty payment life policy.

Deduction diminished in succeeding years

(3) After the first policy year the deduction allowed by subsection (1) shall be diminished each year by an amount not less than one ninth of the deduction in the first policy year so that in the tenth year from the date of issue, the value of the policy shall not be less than that ascertained in accordance with subsection (1).

Policies subject to less than ten annual premiums, deductions for

(4) In case of policies subject to less than ten annual premiums the deduction ascertained as provided in subsection (2) shall, in each year after the first policy year, be reduced by an amount not less than the equal parts thereof required to provide that the value of the policy at the end of the premium paying period shall be not less than that ascertained in accordance with subsection (1).

Contracts of life insurance to be self-supporting

(5) No insurer shall issue any contract of life insurance that does not appear to be self-supporting upon reasonable assumption as to interest, mortality and expenses.

(6) Where a contract of life insurance provides for accident or sickness insurance benefits, the Superintendent may prescribe by regulations the basis for valuing such benefits, but no deduction shall be allowed from the basis so fixed under subsection (2), and in the valuation of the life insurance benefits under such contracts, the amount of the net annual premium upon which the deduction provided for in the preceding subsections is to be based, shall be the net annual premium exclusive of the premium for such accident or sickness benefits.

Valuation of accident or sickness insurance benefits

(7) In the case of annuity contracts, whether immediate or deferred, the valuation shall be the British Officers' Select Life Annuity Table, 1893, (male or female according to the sex of the nominee), with interest at three and one-half per cent per year. R.S.P.E.I. 1974, Cap. I-5, s.71.

Annuity contracts, valuation of, method

#### INSURANCE WITH UNLICENSED INSURERS

**73.** (1) No person in the province shall enter into a contract of insurance with an insurer not licensed under this Act, except through a special broker duly licensed.

Prohibition from contracting with unlicensed insurer

(2) No person other than an insurer or its duly authorized agent shall advertise or hold himself out as a purchaser of life insurance policies or benefits thereunder, nor shall he traffic or trade in life insurance policies for the purpose of procuring the sale, surrender, transfer, assignment, pledge or hypothecation thereof, to himself or any other person, and if he does so, he is guilty of an offence. R.S.P.E.I. 1974, Cap. I-5, s.72.

Holding out as purchaser, seller, transferor etc. of life insurance policies, restricted

#### UNDERWRITERS' AGENCIES

**74.** (1) An insurer shall not issue a policy of insurance through an underwriters' agency unless the insurer is licensed to carry on business in the province and has obtained from the Superintendent a permit to issue contracts of insurance through the agency.

Permit required to issue insurance through an underwriters' agency

(2) Every policy of insurance issued through an underwriters' agency shall be in a form approved by the Superintendent, and shall bear upon its face the name and address of the insurer in a prominent and conspicuous manner, and the name of the underwriters' agency shall not appear on the face of the policy.

Form of policy issued through underwriters' agency

(3) On no other part of the policy shall the name of the underwriters' agency appear, except that for identification purposes the words "issued through the .....Underwriters' Agency" may be inscribed on the filing back of the policy, following the name of the insurer in a manner approved by the Superintendent.

Underwriters' agency name, location on policy

Proof of form of policy to be provided with application for permit

(4) Upon an application for a permit under this section the insurer shall furnish to the Superintendent evidence of its approval and adoption of the form of policy to be issued through the underwriters' agency and of the authority of the agency to bind the insurer.

Form of permit & expiry of

(5) The permit shall be in a form prescribed by the Superintendent, and shall expire on December 31 of the year of its issue, but shall be renewable from year to year.

Annual return of business transacted

(6) Every insurer issuing a policy of insurance through an underwriters' agency shall file an annual return of the business transacted through such agency in a form prescribed by the Superintendent. R.S.P.E.I. 1974, Cap. I-5, s.73.

#### FORFEITURE FOR NON-USER OR DISCONTINUANCE

Incorporated insurer does not go into business within two years, discontinues business or has license suspended, corporate powers cease

**75.** (1) If an insurer incorporated under the law of the province does not go into actual operation within two years after incorporation, or if, after an insurer has undertaken contracts, it discontinues business for one year, or if its license remains suspended for one year, or is terminated otherwise than by effluxion of time and is not renewed within the period of sixty days, the insurer's corporate powers shall thereupon cease and determine, except for the sole purpose of winding-up its affairs; and the court upon the application of the Attorney General, or of any person interested, may limit the time within which the insurer shall settle and close its accounts, and may, for that purpose or for the purpose of liquidation generally, appoint a receiver.

Creditors' rights not affected prejudicially

(2) No such forfeiture affects prejudicially the rights of creditors as they exist at the date of the forfeiture.

Onus of proof of user on insurer

(3) In any action or proceeding where such non-user is alleged, proof of user shall be upon the insurer. R.S.P.E.I. 1974, Cap. I-5, s.74; 1997,c.20,s.3; 2000,c.5,s.3.

#### WINDING-UP

Notice of intent to voluntarily liquidate

**76.** (1) When an insurer incorporated under or subject to the law of the province proposes to go into voluntary liquidation, at least one month's notice thereof shall be given to the Superintendent.

Contents of notice

(2) The notice shall state the date at which contracts are to cease to be taken by the insurer, and the name and address of the liquidator, or the intention of the insurer to apply on a stated date for the appointment of a liquidator.

(3) No fraternal society or mutual insurance company, to which this Act applies, shall go into voluntary liquidation or otherwise arrange for the winding up of its affairs without the written consent of the Superintendent. R.S.P.E.I. 1974, Cap. I-5, s.75.

Certain insurance companies require consent of Superintendent

**77.** Where an insurer is wound up, each person contracted with on the cash plan is entitled to a refund of the unearned proportion of the cash premium calculated from the date at which the insurer, according to the notice, ceased to undertake contracts; but this does not affect any other remedy which that person has against the insurer. R.S.P.E.I. 1974, Cap. I-5, s.76.

Persons on cash plan, entitlement to refund

**78.** (1) Upon a winding-up, the liquidator may, without the consent of the policyholders, arrange for the reinsurance of contracts in some other licensed insurer, and for the purpose of securing the reinsurance, the entire assets of the insurer in the province are available, except the amount required to pay the claims of the preferred creditors, the costs of liquidation, and the claims accrued under contracts, of which the insurer has received notice prior to the date of the reinsurance; all of the payments are a first charge upon the assets of the insurer, and its other creditors are entitled to a dividend on their claims only if the assets are more than sufficient to provide for such payments and the reinsurance.

Reinsurance of contracts by liquidator without consent of policyholders

(2) If the assets of the insurer are insufficient to provide for the payments, and the reinsurance in full, the liquidator may effect reinsurance of such a percentage of the several contracts as the available assets provide.

Reinsurance of some only of the contracts

(3) If the liquidator fails to secure reinsurance, the assets shall, subject to the payment of the costs of liquidation and the preferred claims, be available to pay the claims of the policyholders, calculated as at the date of winding-up, in the manner provided in the case of the administration of a deposit.

Liquidation proceeds applied to

(4) Nothing in this section prejudices or affects the priority of any mortgage, lien or charge upon the property of the insurer. R.S.P.E.I. 1974, Cap. I-5, s.77.

Certain priorities not affected

**79.** Where the insurer being a corporation is not constituted exclusively or chiefly for insurance purposes and the insurance branch and fund are completely severable from every other branch and fund of the corporation, the word "insurer" for the purposes of sections 77 and 78, mean only the insurance branch of the corporation. R.S.P.E.I. 1974, Cap. I-5, s.78.

Insurance business severable from other businesses of a company



Determination that endowment or expectancy be discontinued by resolution of fraternal society

**80.** (1) Where a fraternal society transacts endowment or expectancy insurance and has an endowment fund separate and distinct from its life insurance fund, the society may, by resolution passed at a general meeting after at least one months notice of such intended resolution, determine that the endowment or expectancy be discontinued, and that the endowment or expectancy fund be distributed in proportion among the members then in good standing who are contributing to the fund, to each member according to his total contribution.

Distribution of funds among persons entitled, discharge of liability

(2) After the resolution is assented to by the Superintendent and filed by him, the executive officers may proceed to ascertain the persons entitled to rank upon the fund and may distribute the fund among those entitled, and the distribution discharges the society and all executive officers thereof from all liability in respect of the fund and of the endowment or expectancy contracts undertaken by the society.

Where members interested in endowment or expectancy fund also interested as holders of life insurance contracts

(3) If all the members interested in the endowment or expectancy fund are also interested as holders of life insurance contracts, the general meeting, instead of determining that the endowment or expectancy fund be distributed, may determine that such fund be converted into or merged in a life insurance fund, and after the resolution is so assented to and filed, the endowment or expectancy fund shall become and be a life insurance fund. R.S.P.E.I. 1974, Cap. I-5, s.79; 1980, c.2, s.3.

Extension of license winding-up

**81.** For the purpose of a voluntary winding-up the Superintendent may renew or extend the license of the insurer. R.S.P.E.I. 1974, Cap. I-5, s.80.

#### PENALTIES

Penalty where no other provided

**82.** (1) Unless a penalty is otherwise provided, every person guilty of any act or omission prohibited or required by this Act, is guilty of an offence, and every person guilty of an offence is upon summary conviction liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both.

Suspension or cancellation of license where an offence committed

(2) In addition, where an insurer violates the prohibitions or fails to comply with the requirements of or is guilty of an offence under this Act, the Lieutenant Governor in Council may, upon the report of the Superintendent, suspend or cancel the license of the insurer.

Onus of proof of license on accused

(3) In any prosecution under this Act, whenever it appears that the accused has done any act or been guilty of any omission in respect of which he would be liable to some penalty under this Act or the regulations unless he had been duly licensed, it is incumbent upon the accused to prove that he is duly licensed.

(4) In case of default in making any return required by this Act to be made within a limited return, the insurer or the person required by this Act to make the return shall, in addition to the penalty provided by subsection (1), incur a further penalty of \$100 for every month or part thereof during which such insurer or person neglects to file the return.

Default in making return, additional penalty

(5) Every insurer undertaking insurance or carrying on business in the province without holding a license to do so may incur a penalty of twenty dollars for each and every day during which the default continues.

Penalty for each day default continues

(6) Any penalty when recovered shall be paid over to the Provincial Treasurer for the use of the province. R.S.P.E.I. 1974, Cap. I-5, s.81; 1982, c.12, s.2; 1983, c.1, s.6; 1986, c.5, s.2; 1993, c.29, s.4.

Penalty payable to

#### FEES AND REGULATIONS

**83.** (1) The Lieutenant Governor in Council may prescribe the fees payable to the department by an insurer or other person for services performed under this Act.

Fees payable by insurer, prescribed

(2) The insurer shall pay any such fees payable by it before a license or the renewal of a license is issued.

Payment of fees precondition to license

(3) The insurer shall pay any levy payable pursuant to section 65.1 before a license or the renewal of a license is issued. R.S.P.E.I. 1974, Cap. I-5, s.82; 1991, c.17, s.4.

Payment of levy

**84.** (1) The Lieutenant Governor in Council may make regulations

- (a) extending the provisions of this Act or any of them to a system or class of insurance not particularly mentioned herein;
- (b) providing for and for the making of reciprocal or other arrangements with any government in Canada in connection with the licensing, regulation and inspection of insurers;
- (c) generally for the better administration of this Act;
- (d) prescribing license fees for insurers;
- (e) prescribing definitions of "base rate per vehicle" and "earned vehicle" and such other matters as are considered necessary to give effect to the levy payable under section 65.1.

Regulations

(2) Every order in council made under this or section 83 shall be laid before the Legislative Assembly forthwith, if it is then in session, and if not, then within fifteen days of the opening of the next session. R.S.P.E.I. 1974, Cap. I-5, s.83; 1991, c.17, s.5.

Regulations to be laid before Legislative Assembly

PART III  
INSURANCE CONTRACTS IN PRINCE EDWARD ISLAND

Application of Part III	<b>85.</b> Where not inconsistent with this Act, this Part applies to every contract of insurance made in the province other than contracts of life and accident and sickness insurance. R.S.P.E.I. 1974, Cap. I-5, s.84.
Contract of insurance delivered or mailed, evidence thereof, moneys payable thereunder	<b>86.</b> Where the subject matter of a contract of insurance is property in the province, or an insurable interest of a person resident within the province, the contract, if signed, countersigned, issued or delivered in the province or committed to the post office or to any person to be delivered to the insured, his assign or agent in the province shall be deemed to evidence a contract made therein, and be construed according to the law thereof, and all moneys payable thereunder shall be paid at the head office or chief agency of the insurer in the province, in lawful money of Canada. R.S.P.E.I. 1974, Cap. I-5, s.85.
Terms and conditions of contract to be set out in full	<b>87.</b> (1) All the terms and conditions of the contract of insurance shall be set out in full in the policy or by writing securely attached to it when issued, or subsequently attached thereto, and unless so set out no term of the contract or condition, stipulation, warranty or proviso modifying or impairing its effect shall be valid or admissible in evidence to the prejudice of the insured or beneficiary.
Renewal of contract, ss (1) satisfied if	(2) Where the contract, whether or not it provides for its renewal, is renewed by a renewal receipt, it is a sufficient compliance with subsection (1) if the terms and conditions of the contract are set out in the contract and the renewal receipt refers to it by its number or date.
Application for insurance, not deemed part of contract against insured, except	(3) The application of the insured shall not, as against him, be deemed a part of or be considered with the contract of insurance, except in so far as the court determines that it contains a material misrepresentation by which the insurer was induced to enter into the contract.
Contract not voided by certain statements in application	(4) No contract of insurance shall contain or have endorsed upon it, or be made subject to, any term, condition, stipulation, warranty or proviso to the effect that the contract is to be avoided by reason of any statement in the application therefor, or inducing the insurer to enter into the contract, unless such term, condition, stipulation, warranty or proviso is and is expressed to be limited to cases in which such statement is material to the contract; and no contract shall be avoided by reason of the inaccuracy of any such statement unless it be material to the contract.
Materiality is question of fact	(5) The question of materiality in any contract shall be a question of fact; and no admission, term, condition, stipulation, warranty or proviso to the contrary, contained in the application for insurance, or in the

policy, or in any agreement or document relating thereto, shall have any force or validity.

(6) This section does not apply to contracts of fire or automobile insurance. R.S.P.E.I. 1974, Cap. I-5, s.86. Application of section

**88.** Every insurer shall upon request furnish to the insured a true copy of his application or proposal for insurance. R.S.P.E.I. 1974, Cap. I-5, s.87. True copy of application

**89.** (1) No insurer shall make a contract of insurance inconsistent with this Act. Contracts not to be inconsistent with Act

(2) Any act or omission of the insurer resulting in non-compliance or imperfect compliance with this Act does not render a contract invalid as against the insured. R.S.P.E.I. 1974, Cap. I-5, s.88. Non-compliance by insurer, no effect *re* insured's contract

**90.** (1) Every policy shall contain the name of the insurer, the name of the insured, the name of the person or persons to whom the insurance money is payable, the premium for the insurance, the subject matter of the insurance, the indemnity for which the insurer may become liable, the event on the happening of which the liability is to accrue and the term of the insurance. Policy to contain certain information

(2) This section does not apply to contracts of guarantee insurance. R.S.P.E.I. 1974, Cap. I-5, s.89. Application of section

**91.** (1) This section applies to a contract containing a condition, statutory or otherwise, providing, in the event of difference or disagreement between the insured and the insurer, for appraisal to determine the matters specified in the condition. Application of section

(2) The appraisal shall be made by two disinterested appraisers, the insured and the insurer each selecting one and the two so chosen then selecting a competent and disinterested umpire. Appraisal of matters contained in condition, by whom

(3) The appraisers shall then determine the matters specified in the condition and, if they fail to agree, they shall submit their differences to the umpire, and the finding in writing of any two determines the matters. Determination of matters, failure to, reference to umpire

(4) Each party to the appraisal shall pay the appraiser selected by him and shall bear equally the expense of the appraisal and umpire. Payment of appraiser

(5) Where Appointment of appraiser by judge

(a) a party fails to name an appraiser within seven clear days after being served with written notice so to do;

(b) the appraisers fail to agree upon an umpire within fifteen days after their appointment; or

	(c) an appraiser or umpire refuses to act or is incapable of acting or dies, a judge of the Supreme Court may appoint an appraiser or umpire, as the case may be, upon the application of the insured or of the insurer. R.S.P.E.I. 1974, Cap. I-5, s.90; 1975, c.27, s.5.
Relief from forfeiture by court	<b>92.</b> Where there has been imperfect compliance with a statutory condition as to the proof of loss to be given by the insured or other matter or thing required to be done or omitted by the insured with respect to the loss, and a consequent forfeiture or avoidance of the insurance in whole or in part, and the court considers it inequitable that the insurance should be forfeited or avoided on that ground, the court may relieve against the forfeiture or avoidance on such terms as it considers just. R.S.P.E.I. 1974, Cap. I-5, s.91.
Currency of payment	<b>93.</b> Insurance money is payable in the province in lawful money of Canada. R.S.P.E.I. 1974, Cap. I-5, s.92.
Waiver of term or condition of a contract	<b>94.</b> (1) No term or condition of a contract shall be deemed to be waived by the insurer in whole or in part, unless the waiver is stated in writing and signed by a person authorized for that purpose by the insurer.
Certain acts not deemed a waiver	(2) Neither the insurer nor the insured shall be deemed to have waived any term or condition of a contract by any act relating to the appraisal of the amount of loss or to the delivery and completion of proofs, or to the investigation or adjustment of any claim under the contract. R.S.P.E.I. 1974, Cap. I-5, s.93.
Use of red ink prohibited on policy, except	<b>95.</b> No red ink shall be used on a policy except for the name, address and emblem of the insurer, and the policy number, and for the purposes mentioned in this Act. R.S.P.E.I. 1974, Cap. I-5, s.94.
Policy delivered but premium unpaid, effect on contract	<b>96.</b> (1) Where the policy has been delivered, the contract is as binding on the insurer as if the premium had been paid, although it has not in fact been paid, and although delivered by an officer or agent of the insurer who had not authority to deliver it.
Collection of unpaid premium by insurer, methods	(2) The insurer may sue for the unpaid premium and may deduct the amount thereof from the amount for which he is liable under the contract of insurance.
Insurer may terminate where cheque etc. given but not honoured	(3) Where a cheque, bill of exchange or promissory note is given, whether originally or by way of renewal, for the whole or part of any premium and the cheque, bill of exchange or promissory note is not honoured according to its tenor, the insurer may terminate the contract forthwith by giving written notice by registered mail postage prepaid. R.S.P.E.I. 1974, Cap. I-5, s.95.

## LOSS UNDER POLICY

- 97.** (1) Every insurer, immediately upon receipt of a request, and in any event not later than sixty days after receipt of notice of loss, shall furnish to the insured or person to whom the insurance money is payable, forms upon which to make the proof of loss required under the contract. Forms for proof of loss, provided by insurer upon request
- (2) An insurer who neglects or refuses to comply with subsection (1) is guilty of an offence, and, in addition, section 100 shall not be available to the insurer as a defence to an action brought, after such neglect or refusal, for the recovery of money payable under the contract of insurance. Non-compliance with subsection (1), offence
- (3) It shall be optional with the insurer to pay or allow claims, wholly or in part, that are void under any statutory condition. Claims void under statutory conditions, payment optional  
Providing proof of loss forms not an admission
- (4) The insurer, by furnishing forms to make proof of loss, shall not be taken to have admitted that a valid contract is in force or that the loss in question falls within the insurance provided by the contract. R.S.P.E.I. 1974, Cap. I-5, s.96; 1981, c.36, s.11.
- 98.** (1) Where several actions are brought for the recovery of money payable under a contract or contracts of insurance, the court may consolidate or otherwise deal therewith so that there shall be but one action for and in respect of all claims made in such actions. Consolidation of actions by Court
- (2) Where an action is brought to recover the share of one or more infants, all the other infants entitled, or the trustees, executors, or guardians entitled to receive payment of the shares of such other infants, shall be made parties to the action, and the rights of all the infants shall be determined in one action. Action brought for infants, all other entitled infants to be joined
- (3) In all actions where several persons are interested in the insurance money the court or judge may apportion among the persons entitled to any sum directed to be paid, and may give all necessary directions and relief. Apportionment by court among persons entitled to moneys
- (4) Where the person entitled to receive money due and payable under any contract of insurance, except insurance of the person, is domiciled or resides in a foreign jurisdiction and payment, valid according to the law of that jurisdiction, is made to such person, the payment is valid and effectual for all purposes. R.S.P.E.I. 1974, Cap. I-5, s.97. Payment to alien, valid in province, where
- 99.** (1) Where an insurer cannot obtain a sufficient discharge for insurance money for which it admits liability, the insurer may apply to the court without notice for an order for the payment thereof into court, and the court may order the payment into court to be made upon such Payment into court by insurer of money for which liability admitted

terms as to costs and otherwise as the court directs, and may provide to what fund or name the amount shall be credited.

Receipt of  
prothonotary  
discharges insurer

(2) The receipt of the prothonotary is sufficient discharge to the insurer for the insurance money so paid into court, and the insurance money shall be dealt with according to the orders of the court. R.S.P.E.I. 1974, Cap. I-5, s.98.

Action for recovery  
of money payable,  
limitation period

**100.** No action shall be brought for the recovery of money payable under a contract of insurance until the expiration of sixty days after proof, in accordance with the provisions of the contract,

(a) of the loss; or

(b) of the happening of the event upon which the insurance money is to become payable,

or of such shorter period as may be fixed by the contract of insurance. R.S.P.E.I. 1974, Cap. I-5, s.99.

#### NOTICES

Notice, how given

**101.** (1) Subject to any statutory condition, any notice given by an insurer, when the mode thereof is not otherwise expressly provided, may be given in the case of a member or person insured by mailing it to his post office address given in his original application for insurance or otherwise notified in writing to the insurer.

Delivery by written  
notice, how given

(2) Subject to any statutory condition, delivery of any written notice to an insurer, where the mode thereof is not otherwise expressly provided, may be by letter delivered at its head office or chief office in the province, or sent by registered post addressed to the insurer, its manager or agent at the head office or chief office or to an authorized agent of the insurer. R.S.P.E.I. 1974, Cap. I-5, s.100.

#### INSURANCE AS COLLATERAL SECURITY

Mortgagor or  
purchaser to  
insurer, term  
satisfied where

**102.** (1) When a contract of fire insurance is given as collateral security to a mortgage or vendor's lien on property, or where any such contract so given is about to expire and no specific insurer is named in the mortgage or agreement for sale, a term requiring the mortgagor or purchaser to insure is sufficiently satisfied, save as to the amount, by the production by the mortgagor or purchaser of a subsisting policy of insurance in any insurer licensed to carry on its business in the province.

Mortgagee not to  
receive commission  
or benefit for  
making contract  
under which loss  
payable to him

(2) A mortgagee shall not accept or be entitled to receive either directly or through his agent or employee, and no officer or employee of such mortgagee shall accept or receive any commission or other remuneration or benefit in consideration of effecting a contract of

insurance or renewal thereof under which contract loss, if any, is payable to him as mortgagee.

(3) No insurer or agent or broker shall pay, allow or give any commission or other remuneration or benefit to a mortgagee or to any person in his employ or on his behalf, in consideration of effecting a contract of insurance or renewal thereof, under which contract loss, if any, is payable to him as mortgagee.

Insurer not to receive commission for making contracts as mortgagee

(4) Any insurer or other person who contravenes this section is guilty of an offence. R.S.P.E.I. 1974, Cap. I-5, s.101.

Offence

**103.** (1) Where an insured assigns the right to refund of premiums which may accrue by reason of the cancellation or termination of a contract of insurance under the terms thereof, and notice of the assignment is given by the assignee to the insurer, the insurer shall pay the refund to the assignee notwithstanding any condition in the contract, whether prescribed under this Act or not, requiring the refund to be paid to the insured or to accompany any notice of cancellation or termination to the insured.

Assignment of refund of premiums, where notice given by assignee

(2) Where the condition in the contract dealing with cancellation or termination by the insurer provides that the refund shall accompany the notice of cancellation or termination, the insurer shall include in the notice a statement that in lieu of payment of the refund in accordance with the condition the refund is being paid to the assignee under this section. R.S.P.E.I. 1974, Cap. I-5, s.102.

Refund payable with notice of cancellation to assignee, where

#### CONTRACTS COUNTERSIGNED BY AGENT

**104.** (1) No insurer shall undertake any contract of fire insurance upon property situated in the province or described in any contract as situated therein, unless the contract, completed in accordance with this Act, is signed or countersigned by an agent holding a certificate of authority under this Act, who is to receive the commission or some part thereof when the premium stipulated in the contract is paid.

Fire insurance, sale of by person with certificate of authority

(2) If the policy is issued upon an application procured and submitted to the insurer and signed by the agent, it need not be signed or countersigned by him.

Exception to signing requirements

(3) This section does not apply to insurance covering the rolling stock of railroad corporations or property in transit which is in the possession and custody of railroad corporations or other common carriers nor to moveable property of common carriers used or employed by them in their business as such.

Rolling stock of railways not included



Insurer issuing contract contrary to section, offence	(4) Any insurer that issues a contract of insurance save as permitted by this section is upon summary conviction liable to a fine of not less than \$100 and not more than \$300 for each contract so issued.
Application of section	(5) This section does not apply to insurers with head office in Prince Edward Island. R.S.P.E.I. 1974, Cap. I-5, s.103.
Signing blank policy or contract	<b>105.</b> (1) No agent holding a certificate of authority shall sign a blank policy or contract of insurance.
Counter signing authority given outside province	(2) No such agent shall give a power of attorney to persons residing outside the province for the purpose of countersigning contracts. R.S.P.E.I. 1974, Cap. I-5, s.104.

#### MISCELLANEOUS

Form of policy or application, filing	<b>106.</b> (1) The Superintendent may require an insurer to file with him a copy of any form of policy or of the form of application for any policy issued or used by the insurer.
Unfair, or fraudulent application, prohibition of use	(2) The Superintendent shall report to the Minister any case where the insurer issues any policy or uses any application which in the opinion of the Superintendent is unfair, fraudulent, or not in the public interest, and after hearing the insurer the Minister may order the Superintendent to prohibit the insurer from issuing or using that form of policy or application.
Continuation of use, offence	(3) An insurer which after being so prohibited issues any such policy or uses any such application is guilty of an offence. R.S.P.E.I. 1974, Cap. I-5, s.105.
Violation of provincial law, effect on contract	<b>107.</b> Unless the contract otherwise provides, a violation of any law in force in the province or elsewhere does not, by that very fact, render unenforceable a claim for indemnity under a contract of insurance except where the violation is committed by the insured, or by another person with the consent of the insured, with intent to bring about loss or damage; but in the case of a contract of life insurance this section applies only to a disability insurance undertaken as part of the contract. R.S.P.E.I. 1974, Cap. I-5, s.106.
Misleading statements by insurer <i>re</i> dividends, profits etc., offence	<b>108.</b> Every insurer, and every officer, director, agent and employee of an insurer, who for the purpose of inducing any person to insure with the insurer makes or uses any misleading statement purporting to show the dividends, profits, or surplus which have been paid or may be paid by the insurer in respect of any policy, issued or to be issued by it as the case may be, is guilty of an offence. R.S.P.E.I. 1974, Cap. I-5, s.107.

PART IV  
FIRE INSURANCE

**109.** (1) This Part applies to insurance against loss of or damage to property arising from the peril of fire in any contract made in the province except Application of Part

- (a) insurance falling within the classes of aircraft, automobile, boiler and machinery, inland transportation, marine, plate glass, sprinkler leakage and theft insurance;
- (b) where the subject-matter of the insurance is rents, charges or loss of profits;
- (c) where the peril of fire is an incidental peril to the coverage provided; or
- (d) where the subject matter of the insurance is property that is insured by an insurer or group of insurers primarily as a nuclear risk under a policy covering against loss of or damage to the property resulting from nuclear reaction or nuclear radiation and from other perils.

(2) Notwithstanding subsection (1), this Part applies to insurance of an automobile as provided in clause 25(7). R.S.P.E.I. 1974, Cap. I-5, s.108; 1977, c.39, s.1. Application to automobiles

**110.** (1) Subject to subsection (4) and to clause 117(a), in any contract to which this Part applies, the contract shall be deemed to cover the insured property Fire insurance deemed to cover against certain risks

- (a) against fire (whether resulting from explosion or otherwise) not occasioned by or happening through
  - (i) in the case of goods, their undergoing any process involving the application of heat,
  - (ii) riot, civil commotion, war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military power;
- (b) against lightning, but excluding destruction or loss to electrical devices or appliances caused by lightning or other electrical currents unless fire originates outside the article itself and only for such destruction or damage as occurs from the fire; and
- (c) against explosion (not occasioned by or happening through any of the perils specified in subclause (a)(ii) of natural coal or manufactured gas in a building not forming part of a gas works, whether fire ensues therefrom or not.

(2) Unless a contract to which this Part applies otherwise specifically provides, it does not cover the insured property against loss or damage caused by contamination by radio-active material directly or indirectly Loss from radio-active material

resulting from fire, lightning or explosion within the meaning of subsection (1).

Property covered by insurance removed to prevent loss	(3) Where property insured under a contract covering at a specified location is necessarily removed to prevent loss or damage or further loss or damage thereto, that part of the insurance under the contract that exceeds the amount of the insurer's liability for any loss incurred shall, for seven days only or for the unexpired term of the contract if less than seven days, cover the property removed and any property remaining in the original location in the proportions which the value of the property in each of the respective locations bears to the value of the property in them all.
Extended coverage permitted	(4) Nothing in subsection (1) precludes an insurer giving more extended insurance against the perils mentioned therein, but in that case this Part does not apply to the extended insurance.
Lightning, meaning extended in contract insuring livestock	(5) An insurer licensed to carry on fire insurance may include in its insurance contracts a clause or endorsement providing that, in the case of livestock insured against death or injury caused by fire or lightning, the word "lightning" is deemed to include other electrical currents. R.S.P.E.I. 1974, Cap. I-5, s.109.
Renewal procedure	<b>111.</b> A contract may be renewed by the delivery of a renewal receipt identifying the policy by number, date or otherwise, or a new premium note. R.S.P.E.I. 1974, Cap. I-5, s.110.
Policy deemed in accordance with terms of application	<b>112.</b> After an application for insurance is made, if it is in writing, any policy sent to the insured shall be deemed to be intended to be in accordance with the terms of the application, unless the insurer points out in writing the particulars wherein it differs from the application, in which case the insured may, within two weeks from the receipt of the notification, reject the policy. R.S.P.E.I. 1974, Cap. I-5, s.111.
Loss payable to third party, rights of insurer	<b>113.</b> (1) Where the loss, if any, under a contract has, with the consent of the insurer, been made payable to a person other than the insured, the insurer shall not cancel or alter the policy to the prejudice of that person without notice to him.
Notice, how given	(2) The length of time and manner of giving the notice under subsection (1) is the same as notice of cancellation to the insured under the statutory conditions in the contract. R.S.P.E.I. 1974, Cap. I-5, s.112.
Statutory conditions: deemed included in all contracts	<b>114.</b> (1) The conditions set forth in this section shall be deemed to be part of every contract in force in Prince Edward Island and shall be printed on every policy with the heading "Statutory Conditions" and no

variation or omission of or addition to any statutory condition shall be binding on the insured.

(2) In this section, “policy” does not include interim receipts or binders. Policy defined

### STATUTORY CONDITIONS

1. If any person applying for insurance falsely describes the property to the prejudice of the insurer, or misrepresents or fraudulently omits to communicate any circumstance which is material to be made known to the insurer in order to enable it to judge of the risk to be undertaken, the contract shall be void as to any property in relation to which the misrepresentation or omission is material. Misrepresentation

2. Unless otherwise specifically stated in the contract, the insurer is not liable for loss or damage to property owned by any person other than the insured, unless the interest of the insured therein is stated in the contract. Property of others

3. The insurer shall be liable for loss or damage occurring after an authorized assignment under the *Bankruptcy Act* (Canada) R.S.C. 1985, Chap. B-3 or change of title by succession, by operation of law, or by death. Change of interest

4. Any change material to the risk and within the control and knowledge of the insured shall avoid the contract as to the part affected thereby, unless the change is promptly notified in writing to the insurer or its local agent; and the insurer when so notified may return the unearned portion, if any, of the premium paid and cancel the contract, or may notify the insured in writing that, if he desires the contract to continue in force, he must, within fifteen days of the receipt of the notice, pay to the insurer an additional premium; and in default of such payment the contract shall no longer be in force and the insurer shall return the unearned portion, if any, of the premium paid. Material change

5. (1) This contract may be terminated Termination of contract  
 (a) by the insurer giving to the insured fifteen days notice of termination by registered mail, or five days written notice of termination personally delivered;  
 (b) by the insured at any time on request.

(2) Where this contract is terminated by the insurer Termination by insurer  
 (a) the insurer shall refund the excess of premium actually paid by the insured over the proportional premium for the expired time, but in no event shall the proportional premium for the expired time be deemed to be less than any minimum retained premium specified; and

(b) the refund shall accompany the notice unless the premium is subject to adjustment or determination as to amount, in which case the refund shall be made as soon as practicable.

Termination by insured

(3) Where this contract is terminated by the insured, the insurer shall refund as soon as practicable the excess of premium actually paid by the insured over the short rate premium for the expired time, but, in no event shall the short rate premium for the expired time be deemed to be less than any minimum retained premium specified.

Refund, how payable

(4) The refund may be made by money, postal or express company money order, or by cheque payable at par.

Notice

(5) The fifteen days mentioned in clause (1)(a) of this condition commences to run on the day following the receipt of the registered letter at the post office to which it is addressed.

Requirements after loss

**6.** (1) Upon the occurrence of any loss of or damage to the insured property, the insured shall, if such loss or damage is covered by the contract, in addition to observing the requirements of Conditions 9, 10 and 11,

(a) forthwith give notice thereof in writing to the insurer;  
 (b) deliver as soon as practicable to the insurer a proof of loss verified by a statutory declaration

(i) giving a complete inventory of the destroyed and damaged property and showing in detail quantities, costs, actual cash value and particulars of amount of loss claimed,

(ii) stating when and how the loss occurred, and if caused by fire or explosion due to ignition, how the fire or explosion originated, so far as the insured knows or believes,

(iii) stating that the loss did not occur through any wilful act or neglect or the procurement, means or connivance of the insured,

(iv) showing the amount of other insurances and the names of other insurers,

(v) showing the interest of the insured and of all others in the property with particulars of all liens, encumbrances and other charges upon the property,

(vi) showing any change in title, use, occupation, location, possession or exposures of the property since the issue of the contract,

(vii) showing the place where the property insured was at the time of loss;

(c) if required, give a complete inventory of undamaged property and showing in detail quantities, cost, actual cash value;

(d) if required and if practicable, produce books of account, warehouse receipts and stock lists, and furnish invoices and other

vouchers verified by statutory declaration, and furnish a copy of the written portion of any other contract.

(2) The evidence furnished under clauses (1)(c) and (d) of this Condition shall not be considered proofs of loss within the meaning of Conditions 12 and 13. *Idem*

**7.** Any fraud or wilfully false statement in a statutory declaration in relation to any of the above particulars, shall vitiate the claim of the person making the declaration. *Fraud or wilfully false statement*

**8.** Notice of loss may be given, and proof of loss may be made, by the agent of the insured named in the contract in case of absence or inability of the insured to give the notice or make the proof, and absence or inability being satisfactorily accounted for, or in the like case, or if the insured refuses to do so, by a person to whom any part of the insurance money is payable. *Who may give notice and proof*

**9.** (1) The insured, in the event of any loss or damage to any property insured under the contract, shall take all reasonable steps to prevent further damage to any such property so damaged and to prevent damage to other property insured hereunder including, if necessary, its removal to prevent damage or further damage thereto. *Salvage*

(2) The insurer shall contribute in proportion towards any reasonable and proper expenses in connection with steps taken by the insured and required under subsection (1) of this condition according to the respective interests of the parties. *Contribution by insurer*

**10.** After any loss or damage to insured property, the insurer has an immediate right of access and entry by accredited agents sufficient to enable them to survey and examine the property, and to make an estimate of the loss or damage, and after the insured has secured the property, a further right of access and entry sufficient to enable them to make appraisement or particular estimate of the loss or damage, but the insurer is not entitled to the control or possession of the insured property, and without the consent of the insurer there can be no abandonment to it of insured property. *Entry, control, abandonment*

**11.** In the event of disagreement as to the value of the property insured, the property saved or the amount of the loss, those questions shall be determined by appraisal as provided under this Act before there can be any recovery under this contract whether the right to recover on the contract is disputed or not, and independently of all other questions; there shall be no right to an appraisal until a specific demand therefor is made in writing and until after proof of loss has been delivered. *Appraisal*

When loss payable	<b>12.</b> The loss shall be payable within sixty days after completion of the proof of loss, unless the contract provides for a shorter period.
Replacement	<b>13.</b> (1) The insurer, instead of making payment, may repair, rebuild, or replace the property damaged or lost, giving written notice of its intention so to do within thirty days after receipt of the proofs of loss.
Commencement of repair	(2) In that event, the insurer shall commence to so repair, rebuild, or replace the property within forty-five days after receipt of the proofs of loss, and shall thereafter proceed with all due diligence to the completion thereof.
Limitation of action	<b>14.</b> Every action or proceeding against the insurer for the recovery of any claim under or by virtue of this contract shall be absolutely barred unless commenced within one year next after the loss or damage occurs.
Notice, delivery	<b>15.</b> (1) Any written notice to the insurer may be delivered at, or sent by registered mail to, the chief agency or head office of the insurer in the province; written notice may be given to the insured named in this contract by letter personally delivered to him or by registered mail addressed to him at his latest known post office address as notified to the insurer.
Registered, defined	(2) In this condition, the expression “registered” means registered in or outside Canada. R.S.P.E.I. 1974, Cap. I-5, s.113.
Limitation of recovery under contract, notice to be printed on contract	<b>115.</b> A contract containing (a) a deductible clause; (b) a co-insurance, average or similar clause; or (c) a clause limiting recovery by the insured to a specified percentage of the value of any property insured at the time of loss, whether or not that clause is conditional or unconditional, shall have printed or stamped upon its face in bold type the words: “This policy contains a clause which may limit the amount payable”, and unless these words are so printed or stamped the clause shall not be binding upon the insured. R.S.P.E.I. 1974, Cap. I-5, s.114; 1994,c.27,s.6.
Payment of loss where more than one insurer	<b>116.</b> (1) Where, on the happening of any loss or damage to property insured, there is in force more than one contract covering the same interest, the insurers under the respective contracts are each liable to the insured for its rateable proportion of the loss unless it is otherwise expressly agreed in writing between the insurers.
Policy deemed in force	(2) For the purpose of subsection (1), a contract shall be deemed to be in force notwithstanding any term thereof that the policy shall not cover, come into force, attach, or become insurance with respect to the property until after full or partial payment of any loss under any other policy.

(3) Nothing in subsection (1) affects the validity of any divisions of the sum insured into separate items, or any limits of insurance on specified property, or any clause referred to in section 115 or any contract condition limiting or prohibiting the having or placing of other insurance.

Provisions not affected by subsection (1)

(4) Nothing in subsection (1) affects the operation of any deductible clause and

Deductible changes not affected

(a) where one contract contains a deductible, the proportion of the insurer under that contract shall be first ascertained without regard to the clause and then the clause shall be applied only to affect the amount of recovery under that contract; and

(b) where more than one contract contains a deductible, the proportion of the insurers under those contracts shall be first ascertained without regard to the deductible clauses and then the highest deductible shall be pro rated among the insurers with deductibles and these pro rated amounts shall affect the amount of recovery under those contracts.

(5) Nothing in subsection (4) shall be construed to have the effect of increasing the proportional contribution of an insurer under a contract that is not subject to a deductible clause.

Contribution of insurer not affected if no deductible

(6) Notwithstanding subsection (1), insurance on identified articles shall be a first loss insurance as against all other insurance. R.S.P.E.I. 1974, Cap. I-5, s.115.

Insurance on identified articles

**117.** Where a contract

(a) excludes any loss that would otherwise fall within the coverage prescribed by section 110; or

(b) contains any stipulation, condition or warranty that is or may be material to the risk including, but not restricted to, a provision in respect to the use, condition, location or maintenance of the insured property,

Unjust or unreasonable exclusions or conditions not binding, where

the exclusion, stipulation, condition or warranty shall not be binding upon the insured if it is held to be unjust or unreasonable by the court before which a question relating thereto is tried. R.S.P.E.I. 1974, Cap. I-5, s.116.

**118.** (1) The insurer, upon making any payment or assuming liability therefor under a contract of fire insurance, shall be subrogated to all rights of recovery of the insured against any person, and may bring action in the name of the insured to enforce such rights.

Subrogation, insurer has right to

(2) Where the net amount recovered after deducting the costs of recovery is not sufficient to provide a complete indemnity for the loss or

Indemnity incomplete, insured and insurer share difference, where



damage suffered, that amount shall be divided between the insurer and the insured in the proportions in which the loss or damage has been borne by them respectively. R.S.P.E.I. 1974, Cap. I-5, s.118.

PART V  
LIFE INSURANCE

INTERPRETATION

Definitions	<b>119. In this Part</b>
application	(a) “application” means an application for insurance or for the reinstatement of insurance;
beneficiary	(b) “beneficiary” means a person, other than the insured or his personal representative, to whom or for whose benefit insurance money is made payable in a contract or by a declaration;
child	(c) “child” includes an adopted child;
contract	(d) “contract” means a contract of life insurance;
court	(e) “court” means the Supreme Court or a judge thereof;
creditor’s group insurance	(f) “creditor’s group insurance” means insurance effected by a creditor in respect of the lives of his debtors whereby the lives of the debtors are insured severally under a single contract;
declaration	(g) “declaration” means an instrument signed by the insured <ul style="list-style-type: none"> <li>(i) with respect to which an endorsement is made on the policy,</li> <li>(ii) that identifies the contract, or</li> <li>(iii) that describes the insurance or insurance fund or a part thereof,</li> </ul> in which he designates, or alters or revokes, the designation of his personal representative or a beneficiary as one to whom or for whose benefit insurance money is to be payable;
family insurance	(h) “family insurance” means insurance whereby the lives of the insured and one or more persons related to him by blood, marriage or adoption are insured under a single contract between an insurer and the insured;
group insurance	(i) “group insurance” means insurance, other than creditor’s group insurance and family insurance, whereby the lives of a number of persons are insured severally under a single contract between an insurer and an employer or other person;
group life insured	(j) “group life insurance” means a person whose life is insured by a contract of group insurance but does not include a person whose life

is insured under the contract as a person dependent upon, or related to, him;

- (k) “instrument” includes a will; instrument
- (l) “insurance” means life insurance; insurance
- (m) “insurance money” includes all insurance money, benefits, surplus, profits, dividends, bonuses and annuities payable by an insurer under a contract of insurance; insurance money
- (n) “insured” insured
- (i) in the case of group insurance means, in the provisions of this Part relating to the designation of beneficiaries and the rights and status of beneficiaries, the group life insured, and
- (ii) in all other cases means the person who makes a contract with an insurer. R.S.P.E.I. 1974, Cap. I-5, s.118; 1976, c.15, s.1.1.

#### APPLICATION OF PART

**120.** (1) Notwithstanding any agreement, condition or stipulation to the contrary, this Part applies to a contract made in the province on or after July 1, 1962 and, subject to subsections (2) and (3) applies to a contract made in the province before that day. Application of Part

(2) The rights and interests of a beneficiary for value under a contract that was in force immediately prior to July 1, 1962 are those provided in Part V of this Act then in force. Previous contracts

(3) Where the person who would have been entitled to the payment of insurance money if the money had become payable immediately prior to the first day of July 1962 was a preferred beneficiary within the meaning of Part V of this Act then in force, the insured may not, except in accordance with that Part, Preferred beneficiary

- (a) alter or revoke the designation of a beneficiary;
- (b) assign, exercise rights under or in respect of, surrender or otherwise deal with the contract,

but this subsection does not apply after a time at which the insurance money, if it were then payable, would be payable wholly to a person other than a preferred beneficiary within the meaning of that Part. R.S.P.E.I. 1974, Cap. I-5, s.119.

**121.** In the case of a contract of group insurance made with an insurer authorized to transact insurance in the province at the time the contract was made, this Part applies in determining Application to group life insured

- (a) the rights and status of beneficiaries if the group life insured was resident in the province at the time he became insured; and

(b) the rights and obligations of the group life insured if he was resident in the province at the time he became insured. R.S.P.E.I. 1974, Cap. I-5, s.120.

#### ISSUANCE OF POLICY AND CONTENTS THEREOF

Issue of policy	<b>122.</b> (1) An insurer entering into a contract shall issue a policy.
Contract to include application etc.	(2) Subject to subsection (3) the provisions in <ul style="list-style-type: none"> <li>(a) the application;</li> <li>(b) the policy;</li> <li>(c) any document attached to the policy when issued; and</li> <li>(d) any amendment to the contract agreed upon in writing after the policy is issued,</li> </ul> constitute the entire contract.
Fraternal society contracts, what constitutes	(3) In the case of a contract made by a fraternal society, the policy, the Act or instrument of incorporation of the society, its constitution, bylaws and rules, and the amendments made from time to time to any of them, the application for the contract and the medical statement of the applicant constitute the entire contract.
Copy of application	(4) An insurer shall, upon request, furnish to the insured or to a claimant under the contract a copy of the application. R.S.P.E.I. 1974, Cap. I-5, s.121.
Application of section	<b>123.</b> (1) This section does not apply to a contract <ul style="list-style-type: none"> <li>(a) of group insurance;</li> <li>(b) of creditor's group insurance; or</li> <li>(c) made by a fraternal society.</li> </ul>
Particulars to be set forth in policy	(2) An insurer shall set forth the following particulars in the policy: <ul style="list-style-type: none"> <li>(a) the name or a sufficient description of the insured and of the person whose life is insured;</li> <li>(b) the amount, or the method of determining the amount, of the insurance money payable, and the conditions under which it becomes payable;</li> <li>(c) the amount, or the method of determining the amount, of the premium and the period of grace, if any, within which it may be paid;</li> <li>(d) whether the contract provides for participation in a distribution of surplus or profits that may be declared by the insurer;</li> <li>(e) the conditions upon which the contract may be reinstated if it lapses;</li> <li>(f) the options, if any,           <ul style="list-style-type: none"> <li>(i) of surrendering the contract for cash,</li> </ul> </li> </ul>

- (ii) of obtaining a loan or an advance payment of the insurance money, and
- (iii) of obtaining paid up or extended insurance. R.S.P.E.I. 1974, Cap. I-5, s.122.

**124.** In the case of a contract of group insurance or of creditor's group insurance, an insurer shall set forth the following particulars in the policy:

Particulars of group insurance policy or creditor's group insurance, to be set forth in policy

- (a) the name or a sufficient description of the insured;
- (b) the method of determining the persons whose lives are insured;
- (c) the amount, or the method of determining the amount, of the insurance money payable, and the conditions under which it becomes payable;
- (d) the period of grace, if any, within which the premium may be paid;
- (e) whether the contract provides for participation in a distribution of surplus or profits that may be declared by the insurer. R.S.P.E.I. 1974, Cap. I-5, s.123.

**125.** In the case of a contract of group insurance, an insurer shall issue, for delivery by the insured to each group life insured, a certificate or other document in which are set forth the following particulars:

Certificate for group life insured, contains certain particulars

- (a) the name of the insurer and an identification of the contract;
- (b) the amount, or the method of determining the amount, of insurance on the group life insured and on any person whose life is insured under the contract as a person dependent upon, or related to, him;
- (c) the circumstances in which the insurance terminates and the rights, if any, upon the termination, of the group life insured or of any person whose life is insured under the contract as a person dependent upon, or related to, him. R.S.P.E.I. 1974, Cap. I-5, s.124.

#### CONDITIONS GOVERNING FORMATION OF CONTRACT

**126.** (1) Subject to subsection (2), where at the time a contract would otherwise take effect, the insured has no insurable interest, the contract is void.

No insurable interest, contract void

(2) A contract is not void for lack of insurable interest

Exceptions

- (a) if it is a contract group insurance; or
- (b) if the person whose life is insured has consented in writing to the insurance being placed on his life.

(3) Where the person whose life is insured is under the age of sixteen years, consent to insurance being placed on his life may be given by one

Insured under 16

of his parents or by a person standing in the place of a parent to him. R.S.P.E.I. 1974, Cap. I-5, s.125.

Insurable interest includes

**127.** Without restricting the meaning of the expression “insurable interest”, a person has an insurable interest in his own life and in the life of

- (a) his child or grandchild;
- (b) his spouse;
- (c) any person upon whom he is wholly or in part dependent for, or from whom he is receiving support or education;
- (d) his employee; and
- (e) any person in the duration of whose life he has a pecuniary interest. R.S.P.E.I. 1974, Cap. I-5, s.126.

Contract, when to take effect

**128.** (1) Subject to any provision to the contrary in the application or the policy, a contract does not take effect unless

- (a) the policy is delivered to an insured, his assign or agent, or to a beneficiary;
- (b) payment of the first premium is made to the insurer or its authorized agent; and
- (c) no change has taken place in the insurability of the life to be insured between the time the application was completed and the time the policy was delivered.

Delivery of policy

(2) Where a policy is issued on the terms applied for and is delivered to an agent of the insurer for unconditional delivery to a person referred to in clause (1)(a), it shall be deemed, but not to the prejudice of the insured, to have been delivered to the insured. R.S.P.E.I. 1974, Cap. I-5, s.127.

When premium paid

**129.** (1) Where a cheque or other bill of exchange, or a promissory note or other written promise to pay, is given for the whole or part of a premium and payment is not made according to its tenor, the premium or part thereof shall be deemed not to have been paid.

Receipt of premium

(2) Where a remittance for or on account of a premium is sent in a registered letter to an insurer and is received by it, the remittance shall be deemed to have been received at the time of the registration of the letter. R.S.P.E.I. 1974, Cap. I-5, s.128.

Premium, who may pay

**130.** (1) Except in the case of group insurance, an assignee of a contract, a beneficiary or a person acting on behalf of one of them or of the insured may pay any premium that the insured is entitled to pay.

Period of grace for payment of premium

(2) Where a premium, other than the initial premium, is not paid at the time it is due, the premium may be paid within a period of grace of

(a) thirty days, or in the case of an industrial contract twenty-eight days, from and excluding the day on which the premium is due; or  
 (b) the number of days, if any, specified in the contract for premium of an overdue premium,  
 whichever is the longer period.

(3) Where the happening of the event upon which the insurance money becomes payable occurs during the period of grace and before the overdue premium is paid, the contract shall be deemed to be in effect as if the premium had been paid at the time it was due, but the amount of the premium, together with interest at the rate specified in the contract, but not exceeding six per cent per year, and the balance, if any, of the current years premium, may be deducted from the insurance money. R.S.P.E.I. 1974, Cap. I-5, s.129.

Contracts deemed to be in force during period of grace

**131.** (1) An applicant for insurance and a person whose life is to be insured shall each disclose to the insurer in the application, on a medical examination, if any, and in any written statements or answers furnished as evidence of insurability, every fact within his knowledge that is material to the insurance and is not so disclosed by the other.

Disclosure and misrepresentation by insured

(2) Subject to section 132, a failure to disclose, or a misrepresentation of, such a fact renders the contract voidable by the insurer. R.S.P.E.I. 1974, Cap. I-5, s.130.

Failure to disclose, contract voidable

**132.** (1) This section does not apply to a misstatement of age or to disability insurance.

Application of section

(2) Subject to subsection (3), where a contract has been in effect for two years during the lifetime of the person whose life is insured, a failure to disclose, or a misrepresentation of, a fact required to be disclosed by section 131 does not, in the absence of fraud, render the contract voidable.

Contract not voidable by misrepresentation, where

(3) In the case of a contract of group insurance a failure to disclose, or a misrepresentation of, such a fact in respect of a person whose life is insured under the contract does not render the contract voidable, but if evidence of insurability is specifically requested by the insurer the insurance in respect of that person is voidable by the insurer unless it has been in effect for two years during the lifetime of that person in which event it is not, in the absence of fraud, voidable. R.S.P.E.I. 1974, Cap. I-5, s.131.

Group insurance, effect of failure to disclose or misrepresentation

**133.** Where an insurer fails to disclose, or misrepresents, a fact material to the insurance, the contract is voidable by the insured, but in the absence of fraud the contract is not by reason of such failure or

Disclosure and misrepresentation by insurer

misrepresentation voidable after the contract has been in effect for two years. R.S.P.E.I. 1974, Cap. I-5, s.132.

Application of section

**134.** (1) This section does not apply to a contract of group insurance or of creditor's group insurance.

Misstatement of age

(2) Subject to subsection (3), where the age of a person whose life is insured is misstated to the insurer, the insurance money provided by the contract shall be increased or decreased to the amount that would have been provided for the same premium at the correct age.

Where insurable age expressly limited

(3) Where a contract limits the insurable age, and the correct age of the person whose life is insured at the date of the application exceeds the age so limited, the contract is, during the lifetime of that person but not later than five years from the date the contract takes effect, voidable by the insurer within sixty days after it discovers the error. R.S.P.E.I. 1974, Cap. I-5, s.133.

Misstatement of group insurance

**135.** In the case of a contract of group insurance or of creditor's group insurance, a misstatement to the insurer of the age of a person whose life is insured does not of itself render the contract voidable and the provisions, if any, of the contract, with respect to age or misstatement of age apply. R.S.P.E.I. 1974, Cap. I-5, s.134.

Suicide, effect of on contract

**136.** (1) Where a contract contains an undertaking, express or implied, that insurance money will be paid if a person whose life is insured commits suicide, the undertaking is lawful and enforceable.

*Idem*

(2) Where a contract provides that in case a person whose life is insured commits suicide within a certain period of time the contract is void or the amount payable under it is reduced, if the contract lapses and is subsequently reinstated on one or more occasions, the period of time commences to run from the date of the latest reinstatement. R.S.P.E.I. 1974, Cap. I-5, s.135.

Application of section

**137.** (1) This section does not apply to a contract of group insurance or to a contract made by a fraternal society.

Reinstatement of contract

(2) Where a contract lapses and the insured within two years applies for reinstatement of the contract, if within that time he

(a) pays the overdue premiums and other indebtedness under the contract to the insurer, together with interest at the rate specified in the contract, but not exceeding six per cent per year, compounded annually; and

(b) produces

(i) evidence satisfactory to the insurer of the good health, and

(ii) other evidence satisfactory to the insurer of the insurability,

of the person whose life was insured, the insurer shall reinstate the contract.

(3) Subsection (2) does not apply where the cash surrender value has been paid or an option of taking paid up or extended insurance has been exercised. Application of section

(4) Sections 131 and 132 apply with the necessary changes to reinstatement of a contract. R.S.P.E.I. 1974, Cap. I-5, s.136. Sections apply

#### DESIGNATION OF BENEFICIARIES

**138.** (1) An insured may in a contract or by a declaration designate his personal representative or a beneficiary to receive insurance money. Designation in contract

(2) Subject to section 139, the insured may alter or revoke the designation by a declaration. Revocation or alteration

(3) A designation in favour of the “heirs”, “next of kin” or “estate” of the insured, or the use of words of like import in a designation, shall be deemed to be a designation of the personal representative of the insured. R.S.P.E.I. 1974, Cap. I-5, s.137. Heirs, next of kin, estate, deemed to mean

**139.** (1) An insured may in a contract or by a declaration, other than a declaration that is part of a will, filed with the insurer at its head or principal office in Canada during the lifetime of the person whose life is insured, designate a beneficiary irrevocably and in that event the insured, while the beneficiary is living, may not alter or revoke the designation without the consent of the beneficiary and the insurance money is not subject to the control of the insured or of his creditors and does not form part of his estate. Irrevocable designation of beneficiary

(2) Where the insured purports to designate a beneficiary irrevocably in a will or in a declaration that is not filed as provided in subsection (1), the designation has the same effect as if the insured had not purported to make it irrevocable. R.S.P.E.I. 1974, Cap. I-5, s.138. Declaration not filed, effect of designation

**140.** (1) A designation in an instrument purporting to be a will is not ineffective by reason only of the fact that the instrument is invalid as a will, or that the designation is invalid as a bequest under the will. Designation under invalid will or valid will

(2) Notwithstanding the *Probate Act* R.S.P.E.I. 1988, Cap. P-21, a designation in a will is of no effect against a designation made later than the making of the will. Later made designation

(3) Where a designation is contained in a will, if subsequently the will is revoked by operation of law or otherwise, the designation is thereby revoked. Revocation of designation



<i>Idem</i>	<p>(4) Where a designation is contained in an instrument that purports to be a will, if subsequently the instrument if valid as a will would be revoked by operation of law or otherwise, the designation is thereby revoked. R.S.P.E.I. 1974, Cap. I-5, s.139.</p>
Payment by insurer to trustee	<p><b>141.</b> (1) An insured may in a contract or by a declaration appoint a trustee for a beneficiary and may alter or revoke the appointment by a declaration.</p> <p>(2) A payment made by an insurer to a trustee for a beneficiary discharges the insurer to the extent of the payment. R.S.P.E.I. 1974, Cap. I-5, s.140.</p>
Payment of share where beneficiary predeceases insured	<p><b>142.</b> (1) Where a beneficiary predeceases the person whose life is insured, and no disposition of the share of the deceased beneficiary in the insurance money is provided in the contract or by a declaration, the share is payable</p> <ul style="list-style-type: none"> <li>(a) to the surviving beneficiary;</li> <li>(b) if there is more than one surviving beneficiary, to the surviving beneficiaries in equal shares; or</li> <li>(c) if there is no surviving beneficiary, to the insured or his personal representative.</li> </ul> <p>(2) Where two or more beneficiaries are designated otherwise than alternatively, but no division of the insurance money is made, the insurance money is payable to them in equal shares. R.S.P.E.I. 1974, Cap. I-5, s.141.</p>
Two beneficiaries, no division of share, payable equally	
Beneficiary and trustee may enforce payment of insurance money	<p><b>143.</b> A beneficiary may enforce for his own benefit, and a trustee appointed pursuant to section 141 may enforce as trustee, the payment of insurance money made payable to him in the contract or by a declaration and in accordance with the provisions thereof, but the insurer may set up any defence that it could have set up against the insured or his personal representative. R.S.P.E.I. 1974, Cap. I-5, s.142.</p>
When insurance money not part of estate of insured	<p><b>144.</b> (1) Where a beneficiary is designated, the insurance money, from the time of the happening of the event upon which the insurance money becomes payable, is not part of the estate of the insured and is not subject to the claims of the creditors of the insured.</p>
Dealings with contract during lifetime of insured	<p>(2) While a designation in favour of a spouse, child, grandchild or parent of a person whose life is insured, or any of them, is in effect, the insurance money and the rights and interests of the insured therein and in the contract are exempt from execution or seizure. R.S.P.E.I. 1974, Cap. I-5, s.143.</p>

**145.** Where a beneficiary

- (a) is not designated irrevocably; or
- (b) is designated irrevocably but has attained the age of eighteen years and consents,

Rights of insured to deal with contract

the insured may assign, exercise rights under or in respect of, surrender or otherwise deal with, the contract as provided therein or in this Part or as may be agreed upon with the insurer. R.S.P.E.I. 1974, Cap. I-5, s.144.

**146.** (1) Notwithstanding the designation of a beneficiary irrevocably, the insured is entitled while living to the dividends or bonuses declared on a contract, unless the contract otherwise provides.

Insured entitled to deal with bonuses etc.

(2) Unless the insured otherwise directs, the insurer may apply the dividends or bonuses declared on the contract for the purpose of keeping the contract in force. R.S.P.E.I. 1974, Cap. I-5, s.145.

Application of dividends and bonuses to keep contract alive

**147.** (1) Notwithstanding the *Probate Act*, where in a contract or in an agreement in writing between an insurer and an insured it is provided that a person named in the contract or in the agreement has, upon the death of the insured, the rights and interests of the insured in the contract,

When rights and interest of insured not to form part of his estate

- (a) the rights and interests of the insured in the contract do not, upon the death of the insured, form part of his estate; and
- (b) upon the death of the insured, the person named in the contract or in the agreement has the rights and interests given to the insured by the contract and by this Part and shall be deemed to be the insured.

(2) Where the contract or agreement provides that two or more persons named in the contract or in the agreement shall, upon the death of the insured, have successively on the death of each of them, the rights and interests of the insured in the contract, this section applies successively, with the necessary changes, to each of such persons and to his rights and interests in the contract.

Application of section to successive interest

(3) Notwithstanding any nomination made pursuant to this section, the insured may, prior to his death, assign, exercise rights under or in respect of, surrender or otherwise deal with, the contract as if the nomination had not been made, and may alter or revoke the nomination by agreement in writing with the insurer. R.S.P.E.I. 1974, Cap. I-5, s.146.

Nomination effect of

**148.** (1) Where an assignee of a contract gives notice in writing of the assignment to the insurer at its head or principal office in Canada, he has priority of interest as against

Priority of interest of assignee

- (a) any assignee other than one who gave notice earlier in like manner; and

(b) a beneficiary other than one designated irrevocably as provided in section 139 prior to the time the assignee gave notice to the insurer of the assignment in the manner prescribed in this subsection.

Assignment as security

(2) Where a contract is assigned as security, the rights of a beneficiary under the contract are affected only to the extent necessary to give effect to the rights and interests of the assignee.

Absolute assignment

(3) Where a contract is assigned unconditionally and otherwise than as security the assignee has all the rights and interests given to the insured by the contract and by this Part and shall be deemed to be the insured.

Provision that right not assignable valid

(4) A provision in a contract to the effect that the rights or interests of the insured, or in the case of group insurance the group life insured, are not assignable is valid. R.S.P.E.I. 1974, Cap. I-5, s.147.

Enforcement by group life insured

**149.** A group life insured may in his own name enforce a right given to him under a contract, subject to any defence available to the insurer against him or against the insured. R.S.P.E.I. 1974, Cap. I-5, s.148.

#### MINORS

Capacity of minors to make contract

**150.** Except in respect of his rights as beneficiary, a minor who has attained the age of sixteen years has the capacity of a person of the age of eighteen years

- (a) to make an enforceable contract; and
- (b) in respect of a contract. R.S.P.E.I. 1974, Cap. I-5, s.149.

#### PROCEEDINGS UNDER CONTRACT

Insurer to pay insurance money

**151.** Where an insurer receives sufficient evidence of

- (a) the happening of the event upon which insurance money becomes payable;
- (b) the age of the person whose life is insured;
- (c) the right of the claimant to receive payment; and
- (d) the name and age of the beneficiary, if there is a beneficiary,

it shall, within thirty days after receiving the evidence, pay the insurance money to the person entitled thereto. R.S.P.E.I. 1974, Cap. I-5, s.150.

Payable in province

**152.** (1) Subject to subsection 153(2), insurance money is payable in the province.

Canadian money

(2) Unless a contract otherwise provides, a reference therein to dollars means Canadian dollars. R.S.P.E.I. 1974, Cap. I-5, s.151.

**153.** (1) Where a person entitled to receive insurance money is not domiciled in the province, the insurer may pay the insurance money to that person or to any other person who is entitled to receive it on his behalf by the law of the domicile of the payee.

Payable to person  
by law of domicile

(2) In the case of a contract of group insurance, insurance money is payable in the province or territory of Canada in which the group life insured was resident at the time he became insured. R.S.P.E.I. 1974, Cap. I-5, s.152.

In case of group life  
insured

**154.** Notwithstanding where a contract was made, an action on it may be brought in a court by a resident of the province if the insurer was authorized to transact insurance in the province at the time the contract was made or at the time the action is brought. R.S.P.E.I. 1974, Cap. I-5, s.153.

Where action to be  
brought

**155.** (1) Subject to subsection (2), an action or proceeding against an insurer for the recovery of insurance money shall not be commenced more than one year after the furnishing of the evidence required by section 151, or more than six years after the happening of the event upon which the insurance money becomes payable, whichever period first expires.

Time when action  
to commence

(2) Where a declaration has been made under section 158, an action or proceeding to which reference is made in subsection (1) shall not be commenced more than one year after the date of the declaration. R.S.P.E.I. 1974, Cap. I-5, s.154; 1977, c.39, s.1.

Limitation of action

**156.** (1) Until an insurer receives at its head or principal office in Canada an instrument or an order of a court affecting the right to receive insurance money, or a notarial copy or a copy verified by statutory declaration, of any such instrument or order, it may make payment of the insurance money and shall be as fully discharged to the extent of the amount paid as if there were no such instrument or order.

Payment of  
insurance money  
prior to court order

(2) Subsection (1) does not affect the rights or interests of any person other than the insurer. R.S.P.E.I. 1974, Cap. I-5, s.155.

Application of  
section

**157.** Where an insurer admits the validity of the insurance but does not admit the sufficiency of the evidence required by section 151 and there is no other question in issue except a question under section 158, the insurer or the claimant may, before or after action is brought and upon at least thirty days notice, apply to the court for a declaration as to the sufficiency of the evidence furnished, and the court may make the declaration or may direct what further evidence shall be furnished and on the furnishing thereof may make the declaration or, in special

Application for  
declaration of court

circumstances, may dispense with further evidence. R.S.P.E.I. 1974, Cap. I-5, s.156; 1977, c.39, s.1.

Application to court of declaration as to presumption of death

**158.** Where a claimant alleges that the person whose life is insured should be presumed to be dead by reason of his not having been heard of for seven years, and there is no other question in issue except a question under section 157, the insurer or the claimant may, before or after action is brought and upon at least thirty days notice, apply to the court for a declaration as to presumption of the death and the Court may make the declaration. R.S.P.E.I. 1974, Cap. I-5, s.157.

Order of court respecting payment of insurance money

**159.** (1) Upon making a declaration under section 157 or section 158, the court may make such order respecting the payment of the insurance money and respecting costs as it considers just and, subject to section 161, a declaration or direction or order made under this subsection is binding upon the applicant and upon all persons to whom notice of the application has been given.

Discharge of insurer

(2) A payment made under an order made under subsection (1) discharges the insurer to the extent of the amount paid. R.S.P.E.I. 1974, Cap. I-5, s.158.

Stay of pending action

**160.** Unless the court otherwise orders, an application made under section 157 or section 158 operates as a stay of any pending action with respect to the insurance money. R.S.P.E.I. 1974, Cap. I-5, s.159.

Appeal

**161.** An appeal lies to the Appeal Division from any declaration, direction or order made under section 157, section 158, or subsection 159(1). R.S.P.E.I. 1974, Cap. I-5, s.160.

Court may order an action

**162.** Where the court finds that the evidence furnished under section 151 is not sufficient or that a presumption of death is not established, it may order that the matters in issue be decided in an action brought or to be brought, or may make such other order as it deems just respecting further evidence to be furnished by the claimant, publication of advertisements, further inquiry or any other matter or respecting costs. R.S.P.E.I. 1974, Cap. I-5, s.161.

Application to court by insured where adverse claimants etc.

**163.** Where an insurer admits liability for insurance money and it appears to the insurer that

- (a) there are adverse claimants;
- (b) the whereabouts of a person entitled is unknown; or
- (c) there is no person capable of giving and authorized to give a valid discharge therefor, who is willing to do so,

the insurer may, at any time after thirty days from the date of the happening of the event upon which the insurance money becomes payable, apply to the court without notice for an order for payment of the

money into court, and the court may upon such notice, if any, as it thinks necessary make an order accordingly. R.S.P.E.I. 1974, Cap. I-5, s.162.

**164.** Unless a contract or declaration otherwise provides, where the person whose life is insured and a beneficiary die at the same time or in circumstances rendering it uncertain which of them survived the other, the insurance money is payable in accordance with subsection 142(1) as if the beneficiary had predeceased the person whose life is insured. R.S.P.E.I. 1974, Cap. I-5, s.163.

Uncertainty of survival, moneys payable beneficiary

**165.** (1) Subject to subsections (2) and (3), where insurance money is payable in instalments and a contract, or an instrument signed by the insured and delivered to the insurer, provides that a beneficiary has not the right to commute the instalments or to alienate or assign his interest therein, the insurer shall not, unless the insured subsequently directs otherwise in writing, commute the instalments or pay them to any person other than the beneficiary, and the instalments are not, in the hands of the insurer, subject to any legal process except an action to recover the value of necessaries supplied to the beneficiary or his infant children.

Dealing with insurance money payable in instalments

(2) A court may, upon the application of a beneficiary and upon at least ten days notice, declare that in view of special circumstances

Exceptions

- (a) the insurer may, with the consent of the beneficiary, commute instalments of insurance money; or
- (b) the beneficiary may alienate or assign his interest in the insurance money.

(3) After the death of the beneficiary, his personal representative may, with the consent of the insurer, commute any instalments of insurance money payable to the beneficiary.

Commutation of instalments

(4) In this section “instalments” includes insurance money held by the insurer under section 166. R.S.P.E.I. 1974, Cap. I-5, s.164.

Instalments, defined

**166.** (1) An insurer may hold insurance money

- (a) subject to the order of an insured or a beneficiary; or
- (b) upon trusts or other agreements for the benefit of the insured or the beneficiary,

as provided in the contract, by an agreement in writing to which it is a party, or by a declaration, with interest at a rate agreed upon therein or, where no rate is agreed upon, at the rate declared by the insurer in respect of insurance money so held by it.

Insurance money held by insurer subject to terms of contract or other directions

(2) The insurer is not bound to hold insurance money as provided in subsection (1) under the terms of a declaration to which it has not agreed in writing. R.S.P.E.I. 1974, Cap. I-5, s.165.

Insurer not bound to hold moneys if not agreed

- Order of court where insurer does not pay moneys when required **167.** Where an insurer does not within thirty days after receipt of the evidence required by section 151 pay the insurance money to some person competent to receive it or into court, the court may, upon application of any person, order that the insurance money or any part thereof be paid into court, or may make such other order as to the distribution of the money as it considers just, and payment made in accordance with the order discharges the insurer to the extent of the amount paid. R.S.P.E.I. 1974, Cap. I-5, s.166.
- Costs fixed by court **168.** The court may fix without taxation the costs incurred in connection with an application or order made under section 163 or section 167, and may order them to be paid out of the insurance money or by the insurer or the applicant or otherwise as it deems just. R.S.P.E.I. 1974, Cap. I-5, s.167.
- Payment by insurer into court **169.** (1) Where an insurer admits liability for insurance money payable to a minor and there is no person capable of giving, and authorized to give, a discharge thereof, who is willing to do so, the insurer may at any time after thirty days from the date of the happening of the event upon which the insurance money becomes payable pay the money, less the applicable costs mentioned in subsection (2), into court to the credit of the minor.
- Costs (2) The insurer may retain out of the insurance money for costs incurred upon payment into court under subsection (1) the sum of \$10 where the amount does not exceed \$1,000, and the sum of \$15 in other cases, and payment of the remainder of the money into court discharges the insurer.
- Filing affidavit with prothonotary (3) No order is necessary for payment into court under subsection (1), but the prothonotary or other proper officer shall receive the money upon the insurer filing with him an affidavit showing the amount payable and the name, date of birth and residence of the minor, and upon such payment being made the insurer shall forthwith notify the Public Trustee and deliver to him a copy of the affidavit. R.S.P.E.I. 1974, Cap. I-5, s.168; 1994, c.52, s.79.
- Where representative may accept payment **170.** Where it appears that a representative of a beneficiary who is under disability may under the law of the domicile of the beneficiary accept payments on behalf of the beneficiary, the insurer may make payment to the representative and any such payment discharges the insurer to the extent of the amount paid. R.S.P.E.I. 1974, Cap. I-5, s.169.

## MISCELLANEOUS PROVISIONS

- 171.** No officer, agent or employee of an insurer and no person soliciting insurance, whether or not he is an agent of the insurer shall, to the prejudice of the insured, be deemed to be the agent of the insured in respect of any question arising out of a contract. R.S.P.E.I. 1974, Cap. I-5, s.170. No officer of insurer an agent for insured
- 172.** An insurer does not incur any liability for any default, error or omission in giving or withholding information as to any notice of instrument that it has received and that affects the insurance money. R.S.P.E.I. 1974, Cap. I-5, s.171. Insurer giving or withholding information
- 173.** This Part shall be so interpreted and construed as to effect its general purpose of making uniform the law of those provinces which enact it. R.S.P.E.I. 1974, Cap. I-5, s.172. Interpretation of Part

PART VI  
ACCIDENT AND SICKNESS INSURANCE

- 174.** In this Part Definitions
- (a) “application” means a written application for insurance or for the reinstatement of insurance; application
- (b) “beneficiary” means a person designated or appointed in a contract or by a declaration, other than the insured or his personal representative, to whom or for whose benefit insurance money payable in the event of death by accident is to be paid; beneficiary
- (c) “blanket insurance” means that class of group insurance which covers loss arising from specific hazards incident to or defined by reference to a particular activity or activities; blanket insurance
- (d) “contract” means a contract of insurance; contract
- (e) “court” means the Supreme Court of the Province of Prince Edward Island; court
- (f) “creditor’s group insurance” means insurance effected by a creditor whereby the lives or well-being, or the lives and well-being, of a number of his debtors are insured severally under a single contract; creditor’s group insurance
- (g) “declaration” means an instrument signed by the insured declaration
- (i) with respect to which an endorsement is made on the policy,
- (ii) that identifies the contract, or
- (iii) that describes the insurance or insurance fund or a part thereof,



in which he designates or alters or revokes the designation of his personal representative or a beneficiary as one to whom or for whose benefit shall be paid the insurance money which is payable in the event of death by accident;

family insurance

(h) “family insurance” means insurance whereby the lives or well-being, or the lives and well-being, of the insured and one or more persons related to him by blood, marriage or adoption are insured under a single contract between an insurer and the insured;

group insurance

(i) “group insurance” means insurance other than creditor’s group insurance and family insurance, whereby the lives or well-being, or the lives and well-being of a number of persons are insured severally under a single contract between an insurer and an employer or other person;

group person insured

(j) “group person insured” means a person who is insured under a contract of group insurance and upon whom a right is conferred by the contract, but does not include a person who is insured thereunder as a person dependent upon or related to him;

instrument

(k) “instrument” includes a will;

insurance

(l) “insurance” means accident insurance, sickness insurance, or accident insurance and sickness insurance;

insured

(m) “insured”  
 (i) in the case of group insurance means, in the provisions of this Part relating to the designation of beneficiaries or of personal representatives as recipients of insurance money and their rights and status, the group person insured, and  
 (ii) in all other cases means the person who makes a contract with an insurer;

person insured

(n) “person insured” means a person in respect of an accident to whom, or in respect of whose sickness, insurance money is payable under a contract, but does not include a group person insured;

will

(o) “will” includes a codicil. R.S.P.E.I. 1974, Cap. I-5, s.173.

Act to prevail

**175.** (1) Notwithstanding any agreement, condition or stipulation to the contrary, this Part applies to a contract made in the province on and after October 1, 1970 and sections 174, 175, 176, 177, 185, 188, 189, 190, 194 and sections 196 to 212 apply also to a contract made in the province before that day.

Former statutory provisions apply to certain contracts

(2) Sections 177, 178, 187, 188, 190, 197 and 200 of Part VI of the Act in force immediately prior to October 1, 1970 apply to a contract made in the province before that day.

- (3) This Part does not apply to
- (a) accidental death insurance;
  - (b) creditor's group insurance;
  - (c) disability insurance; or
  - (d) insurance provided under section 245, 246, or 247. R.S.P.E.I. 1974, Cap. I-5, s.174.
- Exemptions
- 176.** In the case of a contract of group insurance made with an insurer authorized to transact insurance in the province at the time the contract was made, this Part applies in determining
- (a) the rights and status of beneficiaries and personal representatives as recipients of insurance money, if the group person insured was resident in the province at the time he became insured; and
  - (b) the rights and obligations of the group person insured if he was resident in the province at the time he became insured. R.S.P.E.I. 1974, Cap. I-5, s.175.
- Group insurance
- 177.** An insurer entering into a contract shall issue a policy. R.S.P.E.I. 1974, Cap. I-5, s.176.
- Policy to be issued
- 178.** (1) This section does not apply to
- (a) a contract of group insurance; or
  - (b) a contract made by a fraternal society.
- Application of section
- (2) An insurer shall set forth the following particulars in the policy:
- (a) the name or a sufficient description of the insured and of the person insured;
  - (b) the amount or the method of determining the amount of the insurance money payable and the conditions under which it becomes payable;
  - (c) the amount or the method of determining the amount of the premium and the period of grace, if any, within which it may be paid;
  - (d) the conditions upon which the contract may be reinstated if it lapses;
  - (e) the term of the insurance or the method of determining the day upon which the insurance commences and terminates. R.S.P.E.I. 1974, Cap. I-5, s.177.
- Contents of policy
- 179.** In the case of a contract of group insurance, an insurer shall set forth the following particulars in the policy:
- (a) the name or a sufficient description of the insured;
  - (b) the method of determining the group persons insured and persons insured;
- Group insurance, contents of policy

- (c) the amount or the method of determining the amount of the insurance money payable and the conditions under which it becomes payable;
- (d) the period of grace, if any, within which the premium may be paid;
- (e) the term of the insurance or the method of determining the day upon which the insurance commences and terminates. R.S.P.E.I. 1974, Cap. I-5, s.178.

## Definitions

**180.** (1) In this section

- (a) “original maximum benefit period” means, in relation to a contract of group insurance, the maximum period provided under that contract for the payment of any benefit payable thereunder in respect of loss of income;
- (b) “prescribed time period” means, in relation to a contract of group insurance, a continuous period of six months following the termination of the contract or a benefit provision therein or such longer continuous period as may be provided in that contract instead of that six month period.

## Termination of contract of group insurance, continuation of insurer’s liability

(2) Where a contract of group insurance or a benefit provision therein is terminated, the insurer continues, as though the contract or benefit provision had remained in full force and effect, to be liable, to or in respect of any group person insured under the contract, to pay benefits thereunder relating to

- (a) loss of income because of disability;
- (b) death;
- (c) dismemberment; or
- (d) accidental damage to natural teeth,

arising from an accident or sickness that occurred before the termination of the contract or benefit provision, if the disability, death, dismemberment or accidental damage to natural teeth is reported to the insurer within the prescribed time period.

## No liability for recurrence of disability

(3) Notwithstanding subsection (2), an insurer does not remain liable, under a contract or benefit provision described in that subsection, to pay a benefit for loss of income for the recurrence, after the termination of that contract or benefit provision, of a disability that recurs after a continuous period of six months, or such longer period as is provided in the contract, during which the group person insured was not disabled.

## Period for which benefits for loss of income payable

(4) An insurer who is liable under subsection (2) to pay a benefit for loss of income on account of the disability of a group person insured is not liable to pay benefits for any period longer than the period remaining of the original maximum benefit period in respect of the disability of the group person insured.

(5) Where a contract of group insurance (in this section referred to as the “replacing contract”) is entered into within thirty-one days of the termination of another contract of group insurance (in this section referred to as the “other contract”) and insures the same group or a part of the group insured under the other contract

Replacement  
contracts

(a) the replacing contract shall provide or shall be deemed to provide that any person who was insured under the other contract at the time of its termination is insured under the replacing contract from and after the termination of the other contract if

(i) the insurance on that person under the other contract terminated solely by reason of the termination of the other contract, and

(ii) the person is a member of a class eligible for insurance under the replacing contract;

(b) every person who was insured under the other contract and who is insured under the replacing contract is entitled to receive credit for satisfaction of any deductible earned before the effective date of the replacing contract; and

(c) no person who was insured under the other contract shall be excluded from eligibility under the replacing contract solely because of not being actively at work on the effective date of the replacing contract,

but if the replacing contract provides that the full benefits required to be paid pursuant to subsection (2) by the insurer of the other contract are to be provided instead under the replacing contract, the insurer of the other contract is not liable to pay any such benefits. 1980, c.29, s.1.

**181.** (1) Except as provided in subsection (2), in the case of a contract of group insurance an insurer shall issue for delivery by the insured to each group person insured, a certificate or other document in which are set forth the following particulars:

Group insurance,  
certificate, contents

(a) the name of the insurer and a sufficient identification of the contract;

(b) the amount or the method of determining the amount of insurance on the group person insured and on any person insured;

(c) the circumstances under which the insurance terminates, and the rights, if any, upon such termination of the group person insured and of any person insured.

(2) This section does not apply to a contract of blanket insurance or to a contract of group insurance of a non-renewable type issued for a term of six months or less. R.S.P.E.I. 1974, Cap. I-5, s.179.

Application of  
section

**182.** (1) Subject to section 183 and except as otherwise provided in this section, the insurer shall set forth in the policy every exception or

Exception or  
reduction

reduction affecting the amount payable under the contract, either in the provision affected by the exception or reduction, or under a heading such as “Exceptions” or “Reductions”.

Exception etc., in one provision only, location

(2) Where the exception or reduction affects only one provision in the policy it shall be set forth in that provision.

Exception etc., in endorsement

(3) Where the exception or reduction is contained in an endorsement, insertion or rider, the endorsement, insertion or rider shall, unless it affects all amounts payable under the contract, make reference to the provisions in the policy affected by the exemption or reduction.

Certain exception not to be set forth

(4) The exception or reduction mentioned in section 194 need not be set forth in the policy.

Application of section

(5) This section does not apply to a contract made by a fraternal society. R.S.P.E.I. 1974, Cap. I-5, s.180.

Statutory conditions to be set forth in or attached to policy

**183.** Subject to section 184 the conditions set forth in this section shall be deemed to be part of every contract other than a contract of group insurance, and shall be printed on or attached to the policy forming part of such contract with the heading “Statutory Conditions”.

#### STATUTORY CONDITIONS

Contract

**1.** (1) The application, this policy, any document attached to this policy when issued, and any amendment to the contract agreed upon in writing after the policy is issued, constitute the entire contract, and no agent has authority to change the contract or waive any of its provisions.

Waiver

(2) The insurer shall be deemed not to have waived any condition of this contract, either in whole or in part, unless the waiver is clearly expressed in writing signed by the insurer.

Copy of application

(3) The insurer shall, upon request, furnish to the insured or to a claimant under the contract a copy of the application.

Material facts

**2.** No statement made by the insured or person insured at the time of application for this contract shall be used in defence of a claim under or to avoid this contract unless it is contained in the application or any other written statements or answers furnished as evidence of insurability.

Changes in occupation

**3.** (1) If after the contract is issued the person insured engages for compensation in an occupation that is classified by the insurer as more hazardous than that stated in this contract, the liability under this contract is limited to the amount that the premium paid would have purchased for the more hazardous occupation according to the limits, classification of risks and premium rates in use by the

insurer at the time the person insured engaged in the more hazardous occupation.

(2) If the person insured changes his occupation from that stated in this contract to an occupation classified by the insurer as less hazardous and the insurer is so advised in writing, the insurer shall either

Change of occupation

(a) reduce the premium rate; or

(b) issue a policy for the unexpired term of this contract at the lower rate of premium applicable to the less hazardous occupation, according to the limits, classification of risks, and premium rates used by the insurer at the date of receipt of advice of the change in occupation, and shall refund to the insured the amount by which the unearned premium on this contract exceeds the premium at the lower rate for the unexpired term.

4. Where the benefits for loss of time payable hereunder, either alone or together with benefits for loss of time under another contract, including a contract of group accident insurance or group sickness insurance or of both and a life insurance contract providing disability insurance, exceed the money value of the time of the person insured, the insurer is liable only for that proportion of the benefits for loss of time stated in this policy that the money value of the time of the person insured bears to the aggregate of the benefits for loss of time payable under all such contracts and the excess premium, if any, paid by the insured shall be returned to him by the insurer.

Relation of earnings to insurance

5. The insured may terminate this contract at any time by giving written notice of termination to the insurer by registered mail to its head office or chief agency in the province, or by delivery thereof to an authorized agent of the insurer in the province, and the insurer shall upon surrender of this policy refund the amount of premium paid in excess of the short rate premium calculated to the date of receipt of such notice according to the table in use by the insurer at the time of termination.

Termination by insured

6. (1) The insurer may terminate this contract at any time by giving written notice of termination to the insured and by refunding concurrently with the giving of notice the amount of premium paid in excess of the proportional premium for the expired time.

Termination by insurer

(2) The notice of termination may be delivered to the insured, or it may be sent by registered mail to the latest address of the insured on the records of the insurer.

Notice of termination, delivery

(3) Where the notice of termination is delivered to the insured, five days notice of termination shall be given; where it is mailed to the

Periods of notice

insured, ten days notice of termination shall be given, and the ten days shall begin on the day following the date of mailing of notice.

Notice and proof of claim

**7.** (1) The insured or a person insured, or a beneficiary entitled to make a claim, or the agent of any of them shall

(a) give written notice of claim to the insurer

(i) by delivery thereof, or by sending it by registered mail to the head office or chief agency of the insurer in the province, or

(ii) by delivery thereof to an authorized agent of the insurer in the province,

~cw~not later than thirty days from the date a claim arises under the contract on account of an accident, sickness or disability;

(b) within ninety days from the date a claim arises under the contract on account of an accident, sickness or disability furnish to the insurer such proof as is reasonably possible in the circumstances of the happening of the accident or the commencement of the sickness or disability, and the loss occasioned thereby, the right of the claimant to receive payment, his age and the age of the beneficiary if relevant; and

(c) if so required by the insurer, furnish a satisfactory certificate as to the cause or nature of the accident, sickness or disability for which claim may be made under the contract and as to the duration of such disability.

Failure to give notice of proof

(2) Failure to give notice of claim or furnish proof of claim within the time prescribed by this statutory condition does not invalidate the claim if the notice or proof is given or furnished as soon as reasonably possible, and in no event later than one year from the date of the accident or the date a claim arises under the contract on account of sickness or disability if it is shown that it was not reasonably possible to give notice or furnish proof within the time so prescribed.

Insurer to furnish forms for proof of claim

**8.** The insurer shall furnish forms for proof of claim within fifteen days after receiving notice of claim but where the claimant has not received the forms within that time, he may submit his proof of claim in the form of a written statement of the cause or nature of the accident, sickness or disability giving rise to the claim and of the extent of the loss.

Rights of examination

**9.** As a condition precedent to recovery of insurance moneys under this contract

(a) the claimant shall afford to the insurer an opportunity to examine the person of the person insured when and so often as it reasonably requires while the claim hereunder is pending; and

(b) in the case of death of the person insured, the insurer may require an autopsy subject to any law of the applicable jurisdiction relating to autopsies.

**10.** All moneys payable under this contract, other than benefits for loss of time, shall be paid by the insurer within sixty days after it has received proof of claim.

When moneys payable

**11.** The initial benefits for loss of time shall be paid by the insurer within thirty days after it has received proof of claim, and payment shall be made thereafter in accordance with the terms of the contract but not less frequently than once in each succeeding sixty days while the insurer remains liable for the payments if the person insured when required to do so furnishes before payment proof of continuing disability.

When loss of time benefits payable

**12.** An action or proceeding against the insurer for the recovery of a claim under this contract shall not be commenced more than one year after the date the insurance money became payable or would have become payable if it had been a valid claim. R.S.P.E.I. 1974, Cap. I-5, s.181.

Limitation of actions

**184.** (1) Where a statutory condition is not applicable to the benefits provided by the contract it may be omitted from the policy or varied so that it will be applicable.

Statutory conditions, omission or variation

(2) Statutory conditions 3, 4, and 9 may be omitted from the policy if the contract does not contain any provisions respecting the matters dealt with therein.

*Idem*

(3) Statutory conditions 5 and 6 shall be omitted from the policy if the contract does not provide that it may be terminated by the insurer prior to the expiry of any period for which a premium has been accepted.

Omission of statutory conditions 5 and 6

(4) Statutory conditions 3, 4, 5, 6 and 9, and subject to the restriction in subsection (5), statutory condition 7, may be varied but if by reason of the variation the contract is less favourable to the insured, a person insured or a beneficiary than it would be if the condition had not been varied, the condition shall be deemed to be included in the policy in the form in which it appears in section 183.

Variation of statutory conditions 3, 4, 5, 6 & 9

(5) Statutory conditions 7(1)(a) and (b) may not be varied in policies providing benefits for loss of time.

Benefits for loss of time

(6) Statutory conditions 10 and 11 may be varied by shortening the periods of time prescribed therein, and statutory condition 12 may be varied by lengthening the period of time prescribed therein.

Shortening periods of time in statutory conditions 10 & 11



<p>Title of statutory condition, reproduced in policy</p> <p>Contract made by fraternal society</p>	<p>(7) The title of a statutory condition shall be reproduced in the policy along with the statutory condition, but the number of a statutory condition may be omitted.</p> <p>(8) In the case of a contract made by a fraternal society</p> <p style="padding-left: 20px;">(a) the following provision shall be printed on every policy in substitution for statutory condition 1(1):</p> <p style="padding-left: 40px;">1. (1) This policy, the Act or instrument of incorporation of the society, its constitution, bylaws and rules, and the amendments made from time to time to any of them, the application for the contract and the medical statement of the applicant, constitute the entire contract, and no agent has authority to change the contract or waive any of its provisions; and</p> <p style="padding-left: 20px;">(b) statutory condition 5 shall not be printed on the policy. R.S.P.E.I. 1974, Cap. I-5, s.182.</p>
<p>Accident insurance policy, statutory conditions not printed where notice given</p>	<p><b>185.</b> In the case of a policy of accident insurance of a non-renewable type issued for a term of six months or less or in relation to a ticket of travel, the statutory conditions need not be printed on or attached to the policy if the policy contains the following notice printed in conspicuous type:</p> <p style="padding-left: 40px;">“Notwithstanding any other provision herein contained, this contract is subject to the statutory conditions in the <i>Insurance Act</i> R.S.P.E.I. 1988, Cap. I-4 respecting contracts of accident insurance.”</p> <p>R.S.P.E.I. 1974, Cap. I-5, s.183.</p>
<p>Premium not fully paid but policy delivered</p>	<p><b>186.</b> (1) Where a policy evidencing a contract or a certificate evidencing the renewal of a contract is delivered to the insured and the initial premium or in the case of a renewal certificate the renewal premium therefor has not been fully paid,</p> <p style="padding-left: 20px;">(a) the contract or the renewal thereof evidenced by the certificate is as binding on the insurer as if such premium had been paid although delivered by an officer or an agent of the insurer who did not have authority to deliver it; and</p> <p style="padding-left: 20px;">(b) the contract may be terminated for the non-payment of the premium by the insurer upon ten days notice of termination given in writing to the insured and mailed postage prepaid and registered to the latest address of the insured on the records of the insurer and the ten days shall begin on the day following the date of mailing such notice.</p>
<p>Application of section</p>	<p>(2) This section does not apply to a contract of group insurance or to a contract made by a fraternal society. R.S.P.E.I. 1974, Cap. I-5, s.184.</p>

- 187.** (1) An insurer may
- (a) deduct unpaid premiums from an amount which it is liable to pay under a contract; or
  - (b) sue the insured for unpaid premiums.
- Collection of premium
- (2) Where a cheque or other bill of exchange or a promissory note or other written promise to pay is given for the whole or part of a premium and payment is not made according to its tenor the premium or part thereof shall be deemed never to have been paid.
- Cheque etc. given but payment not honoured
- (3) Clause (1)(a) does not apply to a contract of group insurance.
- Application of section 187
- (4) This section does not apply to a contract made by a fraternal society. R.S.P.E.I. 1974, Cap. I-5, s.185.
- 188.** Without restricting the meaning of the expression “insurable interest”, a person has an insurable interest in his own life and well-being and in the life and well-being of
- (a) his child or grandchild;
  - (b) his spouse;
  - (c) any person upon whom he is wholly or in part dependent for, or from whom he is receiving, support or education;
  - (d) his officer or employee; and
  - (e) any person in whom he has a pecuniary interest. R.S.P.E.I. 1974, Cap. I-5, s.186.
- Insurable interest, includes
- 189.** (1) Subject to subsection (2), where at the time a contract would otherwise take effect, the insured has no insurable interest, the contract is void.
- No insurable interest, contract void
- (2) A contract is not void for lack of insurable interest
- (a) if it is a contract of group insurance; or
  - (b) if the person insured has consented in writing to the insurance.
- Exceptions
- (3) Where the person insured is under the age of sixteen years, consent to the insurance may be given by one of his parents or by a person standing in the place of a parent to him. R.S.P.E.I. 1974, Cap. I-5, s.187.
- Insured under 16, consent given by
- 190.** Except in respect of his rights as beneficiary, a minor who has attained the age of sixteen years has the capacity of a person of the age of eighteen years
- (a) to make an enforceable contract; and
  - (b) in respect of a contract. R.S.P.E.I. 1974, Cap. I-5, s.188.
- Capacity, age of for making valid contracts

## MISREPRESENTATION AND NON-DISCLOSURE

Disclosure by applicant	<b>191.</b> (1) An applicant for insurance on his own behalf and on behalf of each person to be insured shall disclose to the insurer in any application, on a medical examination, if any, and in any written statements or answers furnished as evidence of insurability, every fact within his knowledge that is material to the insurance and is not so disclosed by the other.
Voidable contract if misrepresentation	(2) Subject to sections 192 and 195, a failure to disclose, or a misrepresentation of, such a fact renders a contract voidable by the insurer.
Contract of group insurance, failure to disclose, effect	(3) In the case of a contract of group insurance, a failure to disclose or a misrepresentation of such a fact with respect to a group person insured or a person insured under the contract does not render the contract voidable but, if evidence of insurability is specifically requested by the insurer, the insurance in respect of such a person is, subject to section 192, voidable by the insurer. R.S.P.E.I. 1974, Cap. I-5, s.189.
Effect of fraud & misrepresentation on certain contracts	<b>192.</b> (1) Subject to section 195 and except as provided in subsection (2), (a) where a contract, including renewals thereof, except a contract of group insurance, has been in effect continuously for two years with respect to a person insured, a failure to disclose or misrepresentation of a fact with respect to that person required by section 191 to be disclosed does not, except in the case of fraud, render the contract voidable; (b) where a contract of group insurance, including renewals thereof, has been in effect continuously for two years with respect to a group person insured or a person insured, a failure to disclose or a misrepresentation of a fact with respect to that group person insured or person insured required by section 191 to be disclosed does not, except in the case of fraud, render the contract voidable with respect to that group person insured or person insured.
Application of section	(2) Where a claim arises from a loss incurred or a disability beginning before a contract, including renewals thereof, has been in force for two years with respect to the person in respect of whom the claim is made, subsection (1) does not apply to that claim. R.S.P.E.I. 1974, Cap. I-5, s.190.
Reinstatement of contract, ss. 191 & 192 apply to	<b>193.</b> Sections 191 and 192 apply with the necessary changes to a failure at the time of reinstatement of a contract to disclose or a misrepresentation at that time, and the period of two years to which reference is made in section 192 commences to run in respect of a

reinstatement from the date of reinstatement. R.S.P.E.I. 1974, Cap. I-5, s.191.

**194.** Where a contract contains a general exception or reduction with respect to pre-existing disease or physical conditions and the person insured or group person insured suffers or has suffered from a disease or physical condition that existed before the date the contract came into force with respect to that person and the disease or physical condition is not by name or specific description excluded from the insurance respecting that person,

General exception or reduction for pre-existing disease

(a) the prior existence of the disease or physical condition is not, except in the case of fraud, available as a defence against liability in whole or in part for a loss incurred or a disability beginning after the contract, including renewals thereof, has been in force continuously for two years immediately prior to the date of loss incurred or commencement of disability with respect to that person; and

(b) the existence of the disease or physical condition is not, except in the case of fraud, available as a defence against liability in whole or in part if the disease or physical condition was disclosed in the application for the contract. R.S.P.E.I. 1974, Cap. I-5, s.192.

**195.** (1) Subject to subsections (2) and (3), if the age of the person insured has been misstated to the insurer then, at the option of the insurer, either

Age of insured misstated

(a) the benefits payable under the contract shall be increased or decreased to the amount that would have been provided for the same premium at the correct age; or

(b) the premium may be adjusted in accordance with the correct age as of the date the person insured became insured.

(2) In the case of a contract of group insurance, if there is a misstatement to the insurer of the age of a group person insured or person insured, the provisions, if any, of the contract with respect to age or mis-statement of age applies.

Group insurance, effect of mis-statement of age

(3) Where the age of a person affects the commencement or termination of the insurance, the true age governs. R.S.P.E.I. 1974, Cap. I-5, s.193.

True age governs beginning & end of insurance

## BENEFICIARIES

**196.** (1) Unless otherwise provided in the policy, an insured may in a contract or by a declaration designate his personal representative or a beneficiary to receive insurance money payable in the event of death by accident, and may from time to time alter or revoke the designation by declaration.

Designation of beneficiary by declaration

Will, designation by effective if will not	(2) A designation in an instrument purporting to be a will is not ineffective by reason only of the fact that the instrument is invalid as a will or that the designation is invalid as a bequest under the will.
Later designation prevails	(3) A designation in a will is of no effect against a designation made later than the making of the will.
Revocation of designation	(4) If a designation is contained in a will and subsequently the will is revoked by operation of law or otherwise, the designation is thereby revoked.
<i>Idem</i>	(5) If a designation is contained in an instrument that purports to be a will and subsequently the instrument, if it had been valid as a will would have been revoked by operation of law or otherwise, the designation is thereby revoked. R.S.P.E.I. 1974, Cap. I-5, s.194.
Designation of "heirs", etc., deemed to mean	<b>197.</b> (1) A designation in favour of the "heirs", "next-of-kin" or "estate" or the use of words of like import in a designation shall be deemed to be a designation of the personal representative.
Beneficiary predeceases insured, share payable to	(2) Where a beneficiary predeceases the person insured or group person insured, as the case may be, and no disposition of the share of the deceased beneficiary in the insurance money is provided in the contract or by declaration, the share is payable <ul style="list-style-type: none"> <li>(a) to the surviving beneficiary;</li> <li>(b) if there is more than one surviving beneficiary, to the surviving beneficiaries in equal shares; or</li> <li>(c) if there is no surviving beneficiary, to the insured or group person insured, as the case may be, or his personal representative.</li> </ul>
Payment to beneficiary, enforcement	(3) A beneficiary designated under section 196 may upon the death by accident of the person insured or group person insured enforce for his own benefit, and a trustee appointed pursuant to section 198 may enforce as trustee, the payment of insurance money payable to him, and the payment to the beneficiary or trustee discharges the insurer to the extent of the amount paid but the insurer may set up any defence that it could have set up against the insured or his personal representative. R.S.P.E.I. 1974, Cap. I-5, s.195.
Trustee for beneficiary, appointment	<b>198.</b> An insured may in a contract or by a declaration appoint a trustee for a beneficiary, and may alter or revoke the appointment by a declaration. R.S.P.E.I. 1974, Cap. I-5, s.196.
Discharge of insurer upon payment	<b>199.</b> (1) Until an insurer receives at its head or principal office in Canada an instrument or an order of a court affecting the right to receive insurance money, or a notarial copy or a copy verified by statutory declaration of such instrument or order, it may make payment of the

insurance money and is as fully discharged to the extent of the amount paid as if there were no such instrument or order.

(2) Subsection (1) does not affect the rights or interests of any person other than the insurer.

Interests of persons other than insurer

(3) Where an assignee of a contract gives notice in writing of the assignment to the insurer at its head or principal office in Canada, he has priority of interest as against

Assignee of contract, notice gives priority of interest

- (a) any assignee other than one who gave notice earlier in like manner; and
- (b) a beneficiary.

(4) Where a contract is assigned unconditionally and otherwise than as security, the assignee has all the rights and interests given by the contract and by this Part to the insured, and shall be deemed to be the insured.

Unconditional assignment

(5) A provision in a contract to the effect that the rights or interests of the insured, or in the case of a contract of group insurance the group person insured, are not assignable, is valid. R.S.P.E.I. 1974, Cap. I-5, s.197.

Non-assignment provisions, valid

**200.** (1) Where a beneficiary is designated, any insurance money payable to him is not, from the time of the happening of the event upon which it becomes payable, part of the estate of the insured, and is not subject to the claims of the creditors of the insured.

Estate of insured, moneys payable under policy to beneficiary, not part of

(2) While there is in effect a designation of beneficiary in favour of any one or more of a spouse, child, grandchild or parent of the person insured or group person insured, the rights and interests of the insured in the insurance money and in the contract so far as either relate to accidental death benefits are exempt from execution or seizure. R.S.P.E.I. 1974, Cap. I-5, s.198.

Execution or seizure, certain insurance moneys exempt from

**201.** A group person insured may, in his own name, enforce a right given by a contract to him, or to a person insured thereunder as a person dependent upon or related to him, subject to any defence available to the insurer against him or such person insured or against the insured. R.S.P.E.I. 1974, Cap. I-5, s.199.

Right of action by group person insured

**202.** Unless a contract or a declaration otherwise provides, where a person insured or group person insured and a beneficiary die at the same time or in circumstances rendering it uncertain which of them survived the other, the insurance money is payable in accordance with subsection 197(2) as if the beneficiary had predeceased the person insured or group person insured. R.S.P.E.I. 1974, Cap. I-5, s.200.

Beneficiary deemed to predecease, if joint disaster

<i>Ex parte</i> application by insurer to pay moneys into court	<p><b>203.</b> (1) Where the insurer admits liability for the insurance money or any part thereof, and it appears to the insurer that</p> <ul style="list-style-type: none"> <li>(a) there are adverse claimants;</li> <li>(b) the whereabouts of the person entitled is unknown; or</li> <li>(c) there is no person capable of giving or authorized to give a valid discharge therefor who is willing to do so,</li> </ul> <p>the insurer may apply without notice to the court for an order for payment of money into court, and the court may upon such notice, if any, as it considers necessary, make an order accordingly.</p>
Court costs in application	<p>(2) The court may fix without taxation the costs incurred upon or in connection with any application or order made under subsection (1), and may order the costs to be paid out of the insurance money or by the insurer or otherwise as it considers just.</p>
Insurer discharged	<p>(3) A payment made pursuant to an order under subsection (1) discharges the insurer to the extent of the payment. R.S.P.E.I. 1974, Cap. I-5, s.201.</p>
Minors, moneys payable to Public Trustee	<p><b>204.</b> (1) Where an insurer admits liability for insurance money payable to a minor and there is no person capable of giving and authorized to give a valid discharge therefor who is willing to do so, the insurer may at any time after thirty days from the date of the happening of the event upon which the insurance money becomes payable, pay the money, less the applicable costs mentioned in subsection (2), to the Public Trustee to the credit of the minor.</p>
Deduction of costs	<p>(2) The insurer may retain out of the insurance money for costs incurred under subsection (1), the sum of \$10 where the amount does not exceed \$1,000 and the sum of \$15 in other cases, and payment of the remainder of the money to the Public Trustee discharges the insurer.</p>
Affidavit	<p>(3) The Public Trustee shall receive the money upon the insurer filing with him an affidavit showing the amount payable and the name, date of birth and residence of the minor. 1997(2nd),c.66,s.2.</p>
Beneficiary under disability, payment to representative	<p><b>205.</b> Where it appears that a representative of a beneficiary who is under disability may, under the law of the domicile of the beneficiary, accept payments on behalf of the beneficiary, the insurer may make payment to the representative and any such payment discharges the insurer to the extent of the amount paid. R.S.P.E.I. 1974, Cap. I-5, s.203.</p>
Payment to person other than beneficiary, limits	<p><b>206.</b> Notwithstanding that insurance money is payable to a person, the insurer may if the contract so provides, but subject always to the rights of an assignee, pay an amount not exceeding \$2,000 to</p> <ul style="list-style-type: none"> <li>(a) a relative by blood or connection by marriage of a person insured or the group person insured; or</li> </ul>

(b) any person appearing to the insurer to be equitably entitled thereto by reason of having incurred expense for the maintenance, medical attendance or burial of a person insured or the group person insured, or to have a claim against the estate of a person insured or the group person insured in relation thereto,  
and any such payment discharges the insurer to the extent of the amount paid. R.S.P.E.I. 1974, Cap. I-5, s.204.

**207.** (1) Subject to subsection (2), insurance money is payable in the province. Payable in province

(2) In the case of a contract of group insurance, insurance money is payable in the province or territory of Canada in which the group person insured was resident at the time he became insured. Group insurance, moneys payable, location

(3) Unless a contract otherwise provides, a reference therein to dollars means Canadian dollars whether the contract by its terms provides for payment in Canada or elsewhere. Payable in Canadian currency

(4) Where a person entitled to receive insurance money is not domiciled in the province, the insurer may pay the insurance money to that person or to any person who is entitled to receive it on his behalf by the law of the domicile of the payee and any such payment discharges the insurer to the extent of the amount paid. Payment outside province

(5) Where insurance money is by the contract payable to a person who has died or to his personal representative and such deceased person was not at the date of his death domiciled in the province, the insurer may pay the insurance money to the personal representative of such person appointed under the law of his domicile, and any such payment discharges the insurer to the extent of the amount paid. R.S.P.E.I. 1974, Cap. I-5, s.205. Moneys payable to deceased outside province

**208.** Regardless of the place where a contract was made, a claimant who is a resident of the province may bring an action in the province if the insurer was authorized to transact insurance in the province at the time the contract was made or at the time the action is brought. R.S.P.E.I. 1974, Cap. I-5, s.206. Jurisdiction of courts

**209.** An insurer does not incur any liability for any default, error or omission in giving or withholding information as to any notice or instrument that it has received and that affects the insurance money. R.S.P.E.I. 1974, Cap. I-5, s.207. Limitation of liability of insurer

**210.** The insurer shall not in the policy give undue prominence to any provision or statutory condition as compared to other provisions or statutory conditions, unless the effect of that provision or statutory Undue prominence to provisions or statutory conditions in policy



condition is to increase the premium or decrease the benefits otherwise provided for in the policy. R.S.P.E.I. 1974, Cap. I-5, s.208.

Imperfect compliance with statutory conditions, relief from forfeiture

**211.** Where there has been imperfect compliance with a statutory condition as to any matter or thing to be done or omitted by the insured, person insured or claimant with respect to the loss insured against and a consequent forfeiture or avoidance of the insurance in whole or in part, and a court before which a question relating thereto is tried considers it inequitable that the insurance should be forfeited or avoided on that ground, the court may relieve against the forfeiture or avoidance on such terms as it considers just. R.S.P.E.I. 1974, Cap. I-5, s.209.

Persons not deemed agents of insured

**212.** No officer, agent, employee or servant of the insurer, and no person soliciting insurance, whether or not he is an agent of the insurer shall, to the prejudice of the insured, person insured or group person insured, be deemed to be the agent of the insured or of the person insured or group person insured in respect of any question arising out of the contract. R.S.P.E.I. 1974, Cap. I-5, s.210.

Powers of court

**213.** Under sections 203, 204 and 211 a court has power to order payments into court and to relieve against forfeiture. 1974(2nd), c.65, s.7.

## PART VII AUTOMOBILE INSURANCE

Definitions

**214.** In this Part

contract

(a) “contract” means a contract of automobile insurance;

insured

(b) “insured” means a person insured by a contract whether named or not and includes any person who is stated in a contract to be entitled to benefits payable under the insurance mentioned in subsection 246(1) and 247(1), whether described therein as an insured person or not. R.S.P.E.I. 1974, Cap. I-5, s.211.

Application of Part

**215.** (1) This Part applies to contracts providing automobile insurance made or renewed in the province on or after January 1, 1968.

Exception

(2) This Part does not apply to contracts insuring only against  
 (a) loss of, or damage to, an automobile while in or on described premises;  
 (b) loss of, or damage to, property carried in or upon an automobile;  
 or  
 (c) liability for loss of, or damage to, property carried in or upon an automobile.

(3) This Part does not apply to a contract providing insurance with respect to an automobile not required to be registered under the *Highway Traffic Act* R.S.P.E.I. 1988, Cap. H-5, unless it is insured under a contract evidenced by a form of policy approved under this Part.

Automobiles not required to be registered under *Highway Traffic Act*

(4) This Part does not apply to a contract insuring solely the interest of a person who has a lien upon, or has as security legal title to an automobile and who does not have possession of the automobile. R.S.P.E.I. 1974, Cap. I-5, s.212.

Application to persons having only security legal title

### APPROVAL OF FORMS

**216.** (1) No insurer shall use a form of application, policy, endorsement or renewal or continuation certificate in respect of automobile insurance other than a form approved by the Superintendent.

Use of forms approved by Superintendent

(2) An insurer may require additional information in an approved application form but the additional information does not constitute any part of the application for the purpose of section 219.

Insurer requiring more information

(3) Where, in the opinion of the Superintendent, any provision of this Part, including any statutory condition, is wholly or partly inappropriate to the requirements of a contract or is so inapplicable by reason of the requirements of any Act, he may approve a form of policy or part thereof, or endorsement, evidencing a contract sufficient or appropriate to insure the risks required or proposed to be insured; and the contract evidenced by the policy, part thereof or endorsement, in the form so approved, is effective and binding according to its terms notwithstanding that those terms are inconsistent with, vary, omit, or add to any provision or condition of this Part.

Approval of policies in special cases

(4) Except as to matters mentioned in section 229, the Superintendent may, if he considers it to be in the public interest, approve a form of motor vehicle liability policy or endorsement thereto that extends the insurance beyond that prescribed in this Part.

Approval of extension of insurance coverage

(5) The Superintendent, in granting an approval under subsection (4), may require the insurer to charge for the extension an additional premium and to state this in the policy or in any endorsement.

Additional premium for extended coverage

(6) The Superintendent may revoke any approval given under this section; and, upon notification of the revocation in writing, no insurer shall thereafter use or deliver a form that contravenes the notification.

Revocation of approval

(7) The Superintendent shall, on request of any interested insurer, specify in writing his reasons for granting, refusing or revoking an approval of a form.

Reason for decision to refuse or revoke a form

Insurance card (8) An insurer that issues or delivers an owner's policy in the province, or any renewal thereof, or any evidence of the continuation of the policy, shall issue to the insured a card evidencing the insurance; and the card shall be in a form approved by the Superintendent.

Owner's policy, approval of (9) The Superintendent may approve a form of owner's policy containing insuring agreements and provisions in conformity with this Part for use by insurers in general and which, for the purposes of section 218, shall be the standard owner's policy.

Copy of standard owner's policy, publication of (10) Where the Superintendent approves the form referred to in subsection (9), he shall cause a copy of this form to be published in the Gazette but it shall not be necessary for him to publish in the Gazette endorsement forms approved for use with the standard owner's policy. R.S.P.E.I. 1974, Cap. I-5, s.213.

#### APPLICATION AND POLICY

Persons forbidden to act as agents **217.** No person carrying on the business of financing the sale or purchase of automobiles, and no automobile dealer, insurance agent or broker and no officer or employee of such a person, dealer, agent or broker, shall act as the agent of an applicant for the purpose of signing an application for automobile insurance. R.S.P.E.I. 1974, Cap. I-5, s.214.

Copy of application in policy **218.** (1) A copy of the written application signed by the insured, or his agent, or if no signed application is made, a copy of the purported application, or such part of the application or purported application as is material to the contract, shall be embodied in, endorsed upon, or attached to the policy when issued by the insurer.

Application sent to insured before reissue of policy (2) If no signed written application is received by the insurer prior to the issue of the policy, the insurer shall deliver or mail to the insured named in the policy or the agent for delivery or mailing to the insured a form of application to be completed and signed by the insured and returned to the insurer.

Insurer to deliver policy to insured (3) Subject to subsection (6), the insurer shall deliver or mail to the insured named in the policy or the agent for delivery or mailing to the insured, the policy or a true copy thereof and every endorsement or other amendment of the contract.

Policy deemed to be in accordance with application (4) Where a written application signed by the insured, or his agent, is made for a contract, the policy evidencing the contract shall be deemed to be in accordance with the application unless the insurer points out in writing to the insured named in the policy in what respect the policy differs from the application, and, in that event, the insured shall be deemed to have accepted the policy unless within one week from the

receipt of the notification he informs the insurer in writing that he rejects the policy.

(5) Upon every application form and policy there shall be printed or stamped in conspicuous type a copy of subsection 219(1). Copy of ss. 219(1) on application and policy

(6) Where an insurer adopts the standard owner's policy, it may, instead of issuing the policy, issue a certificate in form approved by the Superintendent which when issued shall be of the same force and effect as if it was in fact the standard owner's policy, subject to the limits and coverages shown thereon by the insurer and any endorsements issued concurrently therewith or subsequent thereto, but at the request of an insured at any time, the insurer shall provide a copy of the standard owner's policy wording as approved by the Superintendent. Standard owner's policy, issuance of certificate in lieu of policy

(7) Where a certificate is issued pursuant to subsection (6), subsections (5) and 243(2) apply with the necessary changes. Certain provisions apply to certificates

(8) Where an insurer issues a certificate under the provisions of subsection (6), proof of the terms of the policy may be given by production of a copy of the Gazette containing the form of standard owner's policy approved by the Superintendent. R.S.P.E.I. 1974, Cap. I-5, s.215. Proof of terms of policy

**219.** (1) Where

(a) an applicant for a contract

- (i) gives false particulars of the described automobile to be insured, to the prejudice of the insurer, or
- (ii) knowingly misrepresents or fails to disclose in the application any fact required to be stated therein;

(b) the insured contravenes a term of the contract or commits a fraud; or

(c) the insured wilfully makes a false statement with respect to a claim under the contract,

a claim by the insured is invalid and the right of the insured to recover indemnity is forfeited. Misrepresentation or violation of conditions render claim invalid

(2) No statement of the applicant shall be used in defence of a claim under the contract unless it is contained in the signed written application therefor, or where no signed written application is made, in the purported application, or part thereof, that is embodied in, endorsed upon, or attached to the policy. Use of application as defence by insurer

(3) No statement contained in a purported copy of the application, or part thereof, other than a statement describing the risk and the extent of the insurance, shall be used in defence of a claim under the contract unless the insurer proves that the applicant made the statement attributed Idem

to him in the purported application, or part thereof. R.S.P.E.I. 1974, Cap. I-5, s.216.

Prohibited underwriting practices

**219.1** An insurer shall not, on the basis of any prohibited ground prescribed by the regulations,

- (a) decline to issue a contract;
- (b) refuse to renew a contract;
- (c) terminate a contract; or
- (d) refuse to provide or continue any coverage or endorsement in respect of a contract. 2003,c.1,s.2.

Regulations

**219.2** The Lieutenant Governor in Council may make regulations prescribing prohibited grounds for the purposes of section 219.1. 2003,c.1,s.2.

Statutory conditions deemed part of every contract

**220.** (1) Subject to subsection 216(3), section 221 and section 243(2),

- (a) the conditions set forth in this section are statutory conditions and shall be deemed to be part of every contract and shall be printed in every policy with the heading “Statutory Conditions”;
- (b) no variation or omission of or addition to a statutory condition is binding on the insured.

Policy defined

(2) In this section “policy” does not include an interim receipt or binder.

#### STATUTORY CONDITIONS

Insured, defined

In these statutory conditions, unless the context otherwise requires, the word “insured” means a person insured by this contract whether named or not.

Material change in risk

**1.** (1) The insured named in this contract shall promptly notify the insurer, or its local agent, in writing, of any change in the risk material to the contract, and within his knowledge.

Change in the risk material to the contract, includes

(2) Without restricting the generality of the foregoing, the words “change in the risk material to the contract” include

- (a) any change in the insurable interest of the insured named in this contract in the automobile by sale, assignment or otherwise, except through change of title by succession, death or proceedings under the *Bankruptcy Act* (Canada), and with respect to insurance against loss of or damage to the automobile;
- (b) any mortgage, lien or encumbrance affecting the automobile after the application for this contract;
- (c) any other insurance of the same interest, whether valid or not, covering loss or damage insured by this contract or any portion thereof.

2. (1) The insured shall not drive or operate the automobile
- (a) unless he is for the time being either authorized by law or qualified to drive or operate the automobile;
  - (b) while he is under the age of sixteen years or under such other age as is prescribed by the law of the province in which he resides at the time this contract is made as being the minimum age at which a license or permit to drive an automobile may be issued to him;
  - (c) for any illicit or prohibited trade or transportation;
  - (d) in any race or speed test; or
  - (e) while his license to drive or operate an automobile is suspended or while his right to obtain a license is suspended or while he is prohibited under order of any court from driving or operating an automobile.
- Uses of automobile  
by insured  
prohibited
- (2) The insured shall not permit, suffer, allow or connive at the use of the automobile
- (a) by any person
    - (i) unless that person is for the time being either authorized by law or qualified to drive or operate the automobile, or
    - (ii) while that person is under the age of sixteen years or under such other age as is prescribed by the law of the province in which he resides at the time this contract is made as being the minimum age at which a license or permit to drive an automobile may be issued to him;
  - (b) for any illicit or prohibited trade or transportation;
  - (c) in any race or speed test; or
  - (d) by any person who is a member of the household of the insured while his license to drive or operate an automobile is suspended or while his right to obtain a license is suspended or while he is prohibited under order by any court from driving or operating an automobile.
- Prohibited use of  
automobile by  
others
3. (1) The insured shall
- (a) promptly give to the insurer written notice, with all available particulars, of any accident involving loss or damage to persons or property, and of any claim made on account of the accident;
  - (b) verify by statutory declaration, if required by the insurer, that the claim arose out of the use or operation of the automobile and that the person operating or responsible for the operation of the automobile at the time of the accident is a person insured under this contract; and
  - (c) forward immediately to the insurer every letter, document, advice or writ received by him from or on behalf of the claimant.
- Requirements  
where loss or  
damage to persons  
or property

Settlement of claims and negotiations by insured	(2) The insured shall not <ul style="list-style-type: none"> <li>(a) voluntarily assume any liability or settle any claim except at his own cost; or</li> <li>(b) interfere in any negotiations or settlement or in any legal proceeding.</li> </ul>
Evidence, insured to assist in obtaining	(3) The insured shall, whenever requested by the insurer, aid in securing information and evidence and the attendance of any witness, and shall co-operate with the insurer, except in a pecuniary way, in the defence of any action or proceeding or in the prosecution of any appeal.
Requirements where loss or damage to automobile	<p>4. (1) Where loss of or damage to the automobile occurs, the insured shall, if the loss or damage is covered by this contract,</p> <ul style="list-style-type: none"> <li>(a) promptly give notice thereof, in writing to the insurer, with fullest information obtainable at the time;</li> <li>(b) at the expense of the insurer, and as far as reasonably possible, protect the automobile from further loss or damage; and</li> <li>(c) deliver to the insurer within ninety days after the date of the loss or damage a statutory declaration stating, to the best of his knowledge or belief, the place, time, cause and amount of the loss or damage, the interest of the insured and all others therein, the encumbrances thereon, all other insurance, whether valid or not, covering the automobile, and that the loss or damage did not occur through any wilful act or neglect, procurement, means or connivance of the insured.</li> </ul>
Failure to protect against further damage	(2) Any further loss or damage accruing to the automobile, directly or indirectly from a failure to protect it as required under subcondition (1) of this condition, is not recoverable under this contract.
Repairs other than those necessary to prevent further loss	<p>(3) No repairs, other than those that are immediately necessary for the protection of the automobile from further loss or damage, shall be undertaken and no physical evidence of the loss or damage shall be removed</p> <ul style="list-style-type: none"> <li>(a) without the written consent of the insurer; or</li> <li>(b) until the insurer has had a reasonable time to make the examination for which provision is made in statutory condition 5.</li> </ul>
Examination of insured	(4) The insured shall submit to examination under oath, and shall produce for examination, at such reasonable place and time as is designated by the insurer or its representative, all documents in his possession or control that relate to the matters in question; and he shall permit extracts and copies thereof to be made.
Insurer liable for cash value of automobile	(5) The insurer is not liable for more than the actual cash value of the automobile at the time any loss or damage occurs, and the loss or damage

shall be ascertained or estimated according to that actual cash value with proper deduction for depreciation, however caused, and shall not exceed the amount that it would cost to repair or replace the automobile, or any part thereof, with material of like kind and quality; but if any part of the automobile is obsolete and out of stock, the liability of the insurer in respect thereof shall be limited to the value of that part at the time of loss or damage not exceeding the maker's latest list price.

(6) Except where an appraisal has been made, the insurer instead of making payment, may, within a reasonable time, repair, rebuild or replace the property damaged or lost with other of like kind and quality, if, within seven days after the receipt of the proof of loss, it gives written notice of its intention to do so.

Repair or replacement

(7) There can be no abandonment of the automobile to the insurer without its consent; if the insurer exercises the option to replace the automobile, or pays the actual cash value of the automobile, the salvage, if any, shall vest in the insurer.

No abandonment to insurer without consent

(8) In the event of disagreement as to the nature and extent of the repairs and replacements required, or as to their adequacy, if effected, or as to the amount payable in respect of any loss or damage, those questions shall be determined by appraisal as provided under this Act before there can be recovery under this contract, whether the right to recovery on the contract is disputed or not, and independently of all other questions; there shall be no right to an appraisal until after proof of loss has been delivered and until a specific demand therefor is made in writing.

In case of disagreement as to repairs and replacements necessary

5. The insured shall permit the insurer at all reasonable times to inspect the automobile and its equipment.

Inspection of automobile

6. (1) The insurer shall pay the insurance money for which it is liable under this contract within sixty days after the proof of loss has been received by it, or, where an appraisal is made under subcondition (8) of statutory condition 4, within fifteen days after the award is rendered by the appraisers.

Time and manner of payment of insurance money

(2) The insured shall not bring an action to recover the amount of a claim under this contract unless the requirements of statutory conditions 3 and 4 are complied with nor until the amount of the loss has been ascertained as therein provided, or by a judgment against the insured after trial of the issue, or by agreement between the parties with the written consent of the insurer.

When action may be brought

(3) Every action or proceeding under the contract against the insurer in respect of a claim for indemnification for liability of the insured for

Limitation of actions



loss or damage to property of another person or for personal injury to or death of another person shall be commenced within two years after the liability of the insured is established by a court of competent jurisdiction and not afterwards. Every other action or proceeding against the insurer under the contract in respect of loss or damage to the automobile shall be commenced within two years from the time the loss or damage was sustained and not afterwards.

Who may give notice and proof of claim

**7.** Notice of claim may be given and proofs of claim may be made by the agent of the insured named in this contract in case of absence or inability of the insured to give the notice or make the proof, such absence or inability being satisfactorily accounted for, or in the like case, or if the insured refuses to do so, by a person to whom any part of the insurance money is payable.

Termination

**8.** (1) This contract may be terminated  
 (a) by the insurer giving to the insured fifteen days notice of termination by registered mail, or five days written notice of termination personally delivered;  
 (b) by the insured at any time on request.

Contract terminated by insurer, refunds

(2) Where this contract is terminated by the insurer  
 (a) the insurer shall refund the excess of premium actually paid by the insured over the proportional premium for the expired time, but, in no event, shall the proportional premium for the expired time be deemed to be less than any minimum retained premium specified; and  
 (b) the refund shall accompany the notices unless the premium is subject to adjustment or determination as to amount, in which case the refund shall be made as soon as practicable.

Contract terminated by insured, refunds

(3) Where this contract is terminated by the insured, the insurer shall refund as soon as practicable the excess of premium actually paid by the insured over the short rate premium for the expired time, but, in no event, shall the short rate premium for the expired time be deemed to be less than any minimum retained premium specified.

Refund, how made

(4) The refund may be made by money, postal or express company money order, or by cheque payable at par.

Limitation period starts, when

(5) The fifteen days mentioned in subcondition (1)(a) commences to run on the day following the receipt of the registered letter at the post office to which it is addressed.

Written notice, delivery to insured

**9.** (1) Any written notice to the insurer may be delivered at, or sent by registered mail to, the chief agency or head office of the insurer in this province; written notice may be given to the insured named in this

contract by letter personally delivered to him or by registered mail addressed to him at his latest post office address notified to the insurer.

(2) In this condition the expression “registered” means registered in or outside Canada. R.S.P.E.I. 1974, Cap. I-5, s.217; 1977,c.39,s.1; 1984,c.24,s.2.

Registered defined

**221.** (1) Except as otherwise provided in the contract, the statutory conditions set forth in section 220 do not apply to insurance coming within sections 245, 246 or 247.

Exceptions respecting statutory conditions

(2) Where a contract does not insure against liability for loss or damage to persons and property, statutory condition 3 is not a part of the policy and may be omitted from the printing of the conditions in the policy.

Statutory condition 3, omission from policy, when

(3) Where a contract does not insure against loss of or damage to the automobile, statutory condition 4 is not a part of the policy and may be omitted from the printing of the conditions in the policy. R.S.P.E.I. 1974, Cap. I-5, s.218.

Statutory condition 4, omission from policy, when

#### MOTOR VEHICLE LIABILITY POLICIES

**222.** (1) Every contract evidenced by an owner’s policy insures the person named therein and every other person who with his consent personally drives an automobile owned by the insured named in the contract and within the description or definition thereof in the contract against liability imposed by law upon the insured named in the contract or that other person for loss or damage

Coverage of owner’s policy, specific automobile

- (a) arising from the ownership, use or operation of any such automobile; and
- (b) resulting from bodily injury to or the death of any person, and damage to property.

(2) Where the contract evidenced by an owner’s policy also provides insurance against liability with respect to an automobile not owned by the insured named in the contract, an insurer may stipulate in the contract that the insurance is restricted to such persons as may be specified in the contract.

Coverage of automobile not owned by insured

(3) Where the insured named in an owner’s policy dies, the following persons shall be deemed to be the insured under the policy:

Death of person named in owner’s policy, person deemed to be the insured

- (a) the spouse of the deceased insured, if residing in the same dwelling premises at the time of his death; and
- (b) as respects the described automobile, a newly acquired automobile, if that automobile was acquired by the deceased insured

prior to his death, and a temporary substitute automobile, all as defined by the policy

- (i) any person having proper temporary custody thereof, until grant of probate or administration to the personal representative of the deceased insured, or
- (ii) the personal representative of the deceased insured. R.S.P.E.I. 1974, Cap. I-5, s.219.

Coverage of non-owner's policy

**223.** Every contract evidenced by a non-owner's policy insures the person named therein, and such other person, if any, as may be specified in the policy against liability imposed by law upon the insured named in the contract or that other person for loss or damage

- (a) arising from the use or operation of an automobile within the definition thereof in the policy, other than an automobile owned by him or registered in his name; and
- (b) resulting from bodily injury to, or death of, any person and damage to property. R.S.P.E.I. 1974, Cap. I-5, s.220.

Persons deemed not owners

**224.** For the purpose of this Part a person who has a lien upon, or has as security legal title to an automobile, shall not be deemed to be the owner of the automobile merely by reason of the lien or title. R.S.P.E.I. 1974, Cap. I-5, s.221.

Contamination of property carried in an automobile

**225.** Liability arising from contamination of property carried in an automobile shall not be deemed to be liability arising from the ownership, use or operation of such automobile. R.S.P.E.I. 1974, Cap. I-5, s.222.

Territorial limits

**226.** Insurance under sections 222 and 223 applies to the ownership, use or operation of the insured automobile within Canada and the United States of America, and upon a vessel plying between ports of those countries. R.S.P.E.I. 1974, Cap. I-5, s.223.

Rights of unnamed insured

**227.** Any person insured by but not named in a contract to which section 222 or 223 applies may recover indemnity, in the same manner, and to the same extent, as if named therein as the insured, and for that purpose shall be deemed to be a party to the contract and to have given consideration therefor. R.S.P.E.I. 1974, Cap. I-5, s.224.

Duties of insurer, where damage to persons or property

**228.** Every contract evidenced by a motor vehicle liability policy shall provide that where a person insured by the contract is involved in an accident resulting from the ownership, use or operation of an automobile in respect to which insurance is provided under the contract and resulting in loss or damage to persons or property, the insurer shall

- (a) upon receipt of notice of loss or damage caused to persons or property, make such investigations, conduct such negotiations with

the claimant, and effect such settlement of any resulting claims, as may be considered expedient by the insurer;

(b) defend in the name, and on behalf of, the insured and at the cost of the insurer, any civil action that is at any time brought against the insured on account of loss or damage to persons or property;

(c) pay all costs taxed against the insured in any civil action defended by the insurer and any interest accruing after entry of judgment upon that part of the judgment that is within the limits of the insurer's liability; and

(d) in case the injury is to a person, reimburse the insured for outlay for such medical aid as is immediately necessary at the time. R.S.P.E.I. 1974, Cap. I-5, s.225.

**229.** The insurer is not liable under a contract evidenced by a motor vehicle liability policy for any liability Exceptions from liability of insurer

(a) imposed by any workers' compensation law upon any person insured by the contract; or

(b) resulting from bodily injury to, or the death of, any employee of any person insured by the contract while engaged in the operation or repair of the automobile. R.S.P.E.I. 1974, Cap. I-5, s.226; 1984, c.24, s.3.

**230.** The insurer may provide under a contract evidenced by motor vehicle liability policy in either or both of the following cases, that it shall not be liable Insurer may contract not to be liable

(a) to indemnify any person engaged in the business of selling, repairing, maintaining, servicing, storing or parking automobiles, for any loss or damage sustained while engaged in the use or operation or while working upon the automobile in the course of that business unless the person is the owner of the automobile or his employee;

(b) for loss of or damage to property carried in or upon the automobile or to any property owned or rented by, or in the care, custody or control of the insured. R.S.P.E.I. 1974, Cap. I-5, s.227.

**231.** Subject to the limitations and exclusions of the endorsement, the insurer may provide by endorsement to a contract evidenced by a motor vehicle liability policy that it is not liable for loss or damage resulting from the ownership, use or operation of any machinery or apparatus, including its equipment, mounted on or attached to the automobile while it is at the site of the use or operation of that machinery or apparatus. R.S.P.E.I. 1974, Cap. I-5, s.228. Endorsement, limitation of liability may be stated in by insurer

**232.** (1) Where an insurer makes a payment on behalf of an insured under a contract evidenced by a motor vehicle liability policy to a person who is or alleges himself to be entitled to recover from the insured covered by the policy, the payment constitutes, to the extent of the Payment to person who alleges entitlement

payment, a release by the person or his personal representative of any claim that the person or his personal representative or any person claiming through or under him or by virtue of the *Fatal Accidents Act* R.S.P.E.I. 1988, Cap. F-5, may have against the insured and the insurer.

Release from payee precondition to payment

(2) Nothing in this section precludes the insurer making the payment from demanding as a condition precedent to such payment, a release from the person or his personal representative or any other person to the extent of such payment.

Adjudication without reference to payment

(3) Where the person commences an action, the court shall adjudicate upon the matter first without reference to the payment but, in giving judgment, the payment shall be taken into account and the person is only entitled to judgment for the net amount, if any.

Intent of section

(4) The intention of this section is to permit payments to a claimant without prejudice to the defendant or his insurer, either as an admission of liability or otherwise, and the fact of any payment shall not be disclosed to the judge or jury until after judgment but before formal entry thereof. R.S.P.E.I. 1974, Cap. I-5, s.229.

Insurer may by contract exempt himself from certain liabilities

**233.** (1) The insurer may provide under a contract evidenced by a motor vehicle liability policy in one or more of the following cases, that it shall not be liable while

- (a) the automobile is rented or leased to another person;
- (b) the automobile is used to carry explosives or to carry radioactive material for research, education, development or industrial purposes, or for purposes incidental thereto;
- (c) the automobile is used as a taxi-cab, public omnibus, livery, jitney, or sight-seeing conveyance or for carrying passengers for compensation or hire;
- (d) the automobile is used for towing a trailer owned by the insured unless like indemnity is also provided by the insurer in respect of the trailer;
- (e) the trailer, if it is the insured vehicle, is towed by an automobile owned by the insured unless like indemnity is also provided by the insurer in respect of the automobile.

Radioactive material defined

- (2) In clause (1)(b) "radioactive material" means
- (a) spent nuclear fuel rods that have been exposed to radiation in a nuclear reactor;
  - (b) radioactive waste material;
  - (c) unused enriched nuclear fuel rods; or
  - (d) any other radioactive material of such a quantity and quality as to be harmful to persons or property if its container were destroyed or damaged.

(3) The use by an employee of his automobile on the business of his employer and for which he is paid, does not fall within clause (1)(a). Use of automobile on business of employer

(4) The following do not fall within the words “for carrying passengers for compensation or hire”, used in clause (1)(c): For carrying passengers for compensation or hire, does not include

(a) the use by a person of his automobile for the carriage of another person in return for the former’s carriage in the automobile of the latter;

(b) the occasional and infrequent use by a person of his automobile for the carriage of another person who shares the cost of the trip;

(c) the use by a person of his automobile for the carriage of a temporary or permanent domestic servant of the insured or his spouse;

(d) the use by a person of his automobile for the carriage of a client or customer or a prospective client or customer; or

(e) the occasional and infrequent use by the insured of his automobile for the transportation of children to or from school activities conducted within the educational program. R.S.P.E.I. 1974, Cap. I-5, s.230.

**234.** (1) Every contract evidenced by a motor vehicle liability policy insures, in respect of any one accident, to the limit of at least \$200,000, exclusive of interest and costs, against liability resulting from bodily injury to, or the death of, one or more persons and loss of, or damage to, property. Minimum liability under motor vehicle policy

(2) The contract shall be interpreted to mean that where, by reason of any one accident, liability results from bodily injury or death and from loss of, or damage to, property, Priorities

(a) claims against the insured arising out of bodily injury or death have priority to the extent of \$190,000 over claims arising out of loss of, or damage to, property; and

(b) claims against the insured arising out of loss of, or damage to, property have priority to the extent of \$10,000 over claims arising out of bodily injury or death.

(3) The insurer may, instead of specifying a limit in the policy for an inclusive amount, specify a limit of liability of at least \$200,000, exclusive of interest and costs, against liability resulting from bodily injury to, or the death of, one or more persons and a limit of liability of at least \$200,000, exclusive of interest and costs, against liability for loss of, or damage to, property. Minimum limits where separate limits designated

(4) Nothing in this section or this Part precludes an insurer, with respect to a limit in excess of that specified in subsection (1) or (3), from increasing or reducing the limit specified in the contract with respect to Variation of limits by insurer

the use or operation of the automobile by a named person, but no reduction is effective for a limit less than that required under subsection (1). R.S.P.E.I. 1974, Cap. I-5, s.231; 1980, c.29, s.3; 1985, c.26, s.1.

Stipulations in motor vehicle liability policy

**235.** Every motor vehicle liability policy issued in the province shall provide that in the case of liability arising out of the ownership, use or operation of the automobile in any province or territory of Canada

(a) the insurer shall be liable up to the minimum limits prescribed for that province or territory if those limits are higher than the limits prescribed by the policy;

(b) the insurer shall not set up any defence to a claim that might not be set up if the policy were a motor vehicle liability policy issued in that province or territory; and

(c) the insured, by acceptance of the policy, constitutes and appoints the insurer his irrevocable attorney to appear and defend in any province or territory of Canada in which an action is brought against the insured arising out of the ownership, use or operation of the automobile. R.S.P.E.I. 1974, Cap. I-5, s.232.

First loss insurance & excess insurance

**236.** (1) Nothing in this Part precludes an insurer from providing insurance under a contract evidenced by a motor vehicle liability policy restricted to a limit in excess of that provided by another designated contract evidenced by a motor vehicle liability policy whether the designated contract is a first loss insurance or an excess insurance.

Termination of excess insurance

(2) Where the contract designated in the excess contract terminates, or is terminated, the excess contract is also automatically terminated. R.S.P.E.I. 1974, Cap. I-5, s.233.

Agreement for partial payment of claim to third party by insured

**237.** Nothing in this Part precludes an insurer from entering into an agreement with its insured under a contract evidenced by a motor vehicle liability policy, providing that the insured will reimburse the insurer in an agreed amount with respect to any claim by or judgment in favour of a third party against the insured, and the agreement may be enforced against the insured according to its tenor. R.S.P.E.I. 1974, Cap. I-5, s.234.

Nuclear energy hazard defined

**238.** (1) In this section “nuclear energy hazard” means the radioactive, toxic, explosive or other hazardous properties of prescribed substances under the *Atomic Energy Control Act* (Canada) R.S.C. 1985, Chap. A-16.

Liability when nuclear energy contract also in force

(2) Where an insured is covered, whether named therein or not, under a contract evidenced by a motor vehicle liability policy, for loss or damage resulting from bodily injury to, or the death of, any person or damage to property arising directly or indirectly out of a nuclear energy hazard and is also covered, whether named therein or not, against such

loss or damage under a contract evidenced by a policy of nuclear energy hazard liability insurance issued by a group of insurers and in force at the time of the event giving rise to the loss or damage,

(a) the motor vehicle liability insurance is excess to the nuclear energy hazard liability insurance and the insurer under the contract of motor vehicle liability insurance is not liable to pay beyond the minimum limits prescribed by section 234; and

(b) the unnamed insured under the contract of nuclear energy liability insurance may, with respect to the loss or damage, recover indemnity under that contract in the same manner, and to the same extent, as if named therein as the insured, and for that purpose he shall be deemed to be a party to the contract and to have given consideration therefor.

(3) For the purpose of this section, a contract of nuclear energy hazard liability insurance shall be deemed to be in force at the time of the event giving rise to the loss or damage, notwithstanding that the limits of liability thereunder have been exhausted. R.S.P.E.I. 1974, Cap. I-5, s.235.

When contract deemed to be in force

**239.** (1) Where a person is insured under more than one contract evidenced by a motor vehicle liability policy, whether the insurance is first loss insurance or excess, and a question arises under clause 228(b) between an insurer and the insured or between the insurers, as to which insurer shall undertake the obligation to defend in the name and on behalf of the insured, whether or not any insurer denies liability under its contract, the insured or any insurer may apply to the Supreme Court and the court shall give such directions as may appear proper with respect to the performance of the obligation.

Defence where more than one contract

(2) On an application under subsection (1), the only parties entitled to notice thereof and to be heard thereon are the insured and his insurers, and no material or evidence used or taken upon such an application is admissible upon the trial of an action brought against the insured for loss or damage to persons or property arising out of the use or operation of the automobile in respect of which the insurance is provided.

Hearing, notice, attendance & procedures at

(3) An order under subsection (1) does not affect the rights and obligations of the insurers with respect to payment of any indemnity under their respective policies.

Effect of order

(4) Where indemnity is provided to the insured under two or more contracts and one or more of them are excess insurance, the insurers shall, as between themselves, contribute to the payment of expenses, costs, and reimbursement for which provision is made in section 228 in

Contribution where one or more contracts are excess insurance



accordance with their respective liabilities for damages awarded against the insured. R.S.P.E.I. 1974, Cap. I-5, s.236.

Application of insurance money under motor vehicle liability policy

**240.** (1) Any person who has a claim against the insured, for which indemnity is provided by a contract evidenced by a motor vehicle liability policy, notwithstanding that that person is not a party to the contract, may, upon recovering a judgment therefor in any province or territory of Canada against the insured, have the insurance money payable under the contract applied in or towards satisfaction of his judgment and of any other judgments or claims against the insured covered by the contract and may, on behalf of himself and all persons having such judgments or claims, maintain an action against the insurer to have the insurance money so applied.

Limitation of action

(2) No action shall be brought against an insurer under subsection (1) after the expiration of one year from the final determination of the action against the insured, including appeals if any.

Other creditors excluded

(3) A creditor of the insured is not entitled to share in the insurance money payable under any contract unless his claim is one for which indemnity is provided by that contract.

Insurer absolutely liable

(4) The right of a person who is entitled under subsection (1) to have insurance money applied upon his judgment or claim is not prejudiced by

- (a) an assignment, waiver, surrender, cancellation, or discharge of the contract, or of any interest therein or of the proceeds thereof, made by the insurer after the happening of the event giving rise to a claim under the contract;
- (b) any act or default of the insured before or after that event in contravention of this Part or of the terms of the contract; or
- (c) any contravention of the *Criminal Code* (Canada) R.S.C. 1985, Chap. C-46 or statute of any province or territory of Canada, or of any state or the District of Columbia of the United States of America by the owner or driver of the automobile,

and nothing mentioned in clauses (a), (b) and (c) is available to the insurer as a defence in an action brought under subsection (1).

Section applicable to purported policy

(5) It is not a defence to an action under this section that an instrument issued as a motor vehicle liability policy by a person engaged in the business of an insurer, and alleged by a party to the action to be such a policy, is not a motor vehicle liability policy, and this section applies, with the necessary changes, to the instrument.

Contribution among insurers

(6) The insurer may require any other insurers liable to indemnify the insured in whole or in part in respect of judgments or claims to which reference is made in subsection (1) to be made parties to the action and

contribute according to their respective liabilities, whether that is rateably or by way of first loss or excess insurance, as the case may be; and the insured shall, on demand, furnish the insurer with particulars of all other insurance covering the subject matter of the contract.

(7) Where any person has recovered a judgment against the insured and is entitled to bring action under subsection (1) and the insurer admits liability to pay the insurance money under the contract, if the insurer considers that

Payment into court  
by insurer

(a) there are or may be other claimants; or

(b) there is no person capable of giving and willing to give or authorized to give it a valid discharge for payment,

the insurer may apply to the court without notice to any other person for an order for payment of the money into court, and the court may, upon such notice, if any, as it thinks necessary, make an order accordingly.

(8) The receipt of the proper officer of the court is sufficient discharge to the insurer for the insurance money paid into court under subsection (7), and the insurance money shall be dealt with as the court may order upon application of any person interested therein.

Discharge of  
insurer, & dealing  
with money while  
held by the court

(9) Notwithstanding anything contained therein to the contrary, every contract evidenced by a motor vehicle liability policy shall, for the purposes of this section, be deemed to provide all the types of coverage mentioned in section 233, but the insurer is not liable to a claimant with respect to such coverage in excess of the limits mentioned in section 234.

Policy deemed to  
provide all types of  
coverage in section  
233

(10) Where one or more contracts provide for coverage of a type mentioned in section 230 or 231, then the insurer may

Defences available  
to insurer

(a) with respect to that type of coverage; and

(b) as against a claimant,

avail itself of any defence that it is entitled to set up against the insured, notwithstanding subsection (4).

(11) Where one or more contracts provide for coverage in excess of the limits mentioned in section 234, then the insurer may

Defences where  
coverage in excess  
of limits

(a) with respect to the coverage in excess of those limits, or, in the case of an automobile operated in the business of carrying passengers for compensation or hire and insured for that purpose, with respect to the coverage in excess of the minimum limits required by or pursuant to any other Act, if greater; and

(b) as against a claimant,

avail itself of any defence that it is entitled to set up against the insured, notwithstanding subsection (4).

Insured's liability to reimburse insurer (12) The insured shall reimburse the insurer, upon demand, in the amount that the insurer has paid by reason of this section and that it would not otherwise be liable to pay.

Insurer may be made third party to action against insured (13) Where an insurer denies liability under a contract evidenced by a motor vehicle liability policy, it shall, upon application to the court, be made a third party in any action to which the insured is a party and in which a claim is made against the insured by any party to the action in which it is or might be asserted that indemnity is provided by the contract, whether or not the insured enters an appearance or defence in the action.

Rights of insurer as third party (14) Upon being made a third party the insurer may  
 (a) contest the liability of the insured to any party claiming against the insured;  
 (b) contest the amount of any claim made against the insured;  
 (c) deliver any pleadings with respect to the claim of any party claiming against the insured;  
 (d) have production and discovery from any party adverse in interest; and  
 (e) examine and cross-examine witnesses at the trial,  
 to the same extent as if it were a defendant in the action.

*Idem* (15) An insurer may avail itself of subsection (14) notwithstanding that another insurer is defending in the name, and on behalf, of the insured an action to which its insured is a party. R.S.P.E.I. 1974, Cap. I-5, s.237;1975, c.49, s.4; 1980, c.29, s.4; 1982, c.12, s.3.

Insured to give notice of action **241.** (1) Every insured against whom an action is commenced for damages occasioned by an automobile shall give notice thereof in writing to the insurer within five days after service of notice or process in the action.

Insured to disclose insurance (2) Every insured against whom an action is commenced for damages occasioned by an automobile shall, upon recovery of a judgment against the insured, disclose to a judgment creditor entitled to the benefit of any motor vehicle liability policy particulars of such contract within ten days after written demand therefor. R.S.P.E.I. 1974, Cap. I-5, s.238.

#### PHYSICAL DAMAGE COVER

Stipulations in physical damage cover **242.** Subject to subsection 216(1), the insurer may provide in a contract such exclusions and limitations with respect to loss of, or damage to, or the loss of use of the automobile as it considers necessary. R.S.P.E.I. 1974, Cap. I-5, s.239.

**243.** (1) A contract, or part of a contract, providing insurance against loss of or damage to an automobile and the loss of use thereof may contain a clause to the effect that, in the event of loss, the insurer shall pay only

Partial payment of loss clause

(a) an agreed portion of any loss that may be sustained; or

(b) the amount of the loss after deduction of a sum specified in the policy,

and in either case not exceeding the amount of the insurance.

(2) Where a clause is inserted in accordance with subsection (1) there shall be printed or stamped upon the face of the policy in conspicuous type the words: "This policy contains a partial payment of loss clause." R.S.P.E.I. 1974, Cap. I-5, s.240.

Stamped notice *re* partial payment

**244.** (1) Where a claim is made under any contract other than a contract evidenced by a motor vehicle liability policy, the insurer shall, notwithstanding any agreement, adjust the amount of the claim with the insured named in the contract as well as with any person having an interest indicated in the contract.

Claims not based on a policy to be adjusted with insured

(2) Where notice is given or proof of loss is made by a person other than the insured because the insured cannot be located, or neglects, or refuses, or is unable to give notice and make claim under statutory conditions 4 and 7 as set forth in section 220, the insurer may, notwithstanding subsection (1) but in any event not earlier than sixty days from delivery of the proof required under statutory condition clause 4(1)(c) adjust and pay the claim to the other person having an interest indicated in the contract. R.S.P.E.I. 1974, Cap. I-5, s.241.

Exception, payment of claim by insurer independently of insured

#### LIMITED ACCIDENT INSURANCES

**245.** (1) In this section

Definitions

(a) "insured automobile" means the automobile as defined or described under the contract;

insured automobile

(b) "person insured under the contract" means

person insured under the contract

(i) in respect of a claim for damage to the insured automobile, the owner of the automobile,

(ii) in respect of a claim for damage to the contents of the insured automobile, the owner of the contents,

(iii) in respect of a claim for bodily injuries or death,

(A) any person while driving, being carried in or upon or entering or getting on to or alighting from the insured automobile,

(B) the insured named in the contract and, if residing in the same dwelling premises as the insured named in the contract, his or her spouse and any dependent relative,

(I) while driving, being carried in or upon or entering or getting on to or alighting from an uninsured automobile, or  
 (II) who is struck by an uninsured or unidentified automobile, but does not include a person struck while driving, being carried in or upon or entering or getting on to or alighting from railway rolling stock that runs on rails,

(C) if the insured named in the contract is a corporation, unincorporated association or partnership, any director, officer, employee or partner of the insured named in the contract, for whose regular use the insured automobile is furnished and, if residing in the same dwelling place, his or her spouse and any dependent relative,

(I) while driving, being carried in or upon or entering or getting on to or alighting from an uninsured automobile, or  
 (II) who is struck by an uninsured or unidentified automobile, but does not include a person struck while driving, being carried in or upon or entering or getting on to or alighting from railway rolling stock that runs on rails,

if such director, officer, employee or partner or his or her spouse is not the owner of an automobile insured under a contract;

unidentified  
automobile

(c) “unidentified automobile” means an automobile with respect to which the identity of either the owner or driver cannot be ascertained;

uninsured  
automobile

(d) “uninsured automobile” means an automobile with respect to which neither the owner nor driver of it has applicable and collectible bodily injury liability and property damage liability insurance for its ownership, use or operation, but does not include an automobile owned or registered in the name of the insured or his or her spouse.

Uninsured motorist  
cover

(2) Every contract evidenced by a motor vehicle liability policy shall provide for payment by the insurer of all sums that

(a) a person insured under the contract is legally entitled to recover from the owner or driver of an uninsured automobile or unidentified automobile as damages for bodily injuries resulting from an accident involving an automobile;

(b) a person is legally entitled to recover from the owner or driver of an uninsured automobile or unidentified automobile as damages for bodily injury to or the death of a person insured under the contract resulting from an accident involving an automobile and;

(c) a person insured under the contract is legally entitled to recover from the identified owner or driver of an uninsured automobile as damages for accidental damage to the insured automobile or its

contents, or to both the insured automobile and its contents, resulting from an accident involving an automobile, subject to the terms, conditions, provisions, exclusions and limits prescribed by regulation.

(3) A dependent relative referred to in the definition “person insured under the contract” in subsection (1)

Qualifications of dependent relative

- (a) who is the owner of an automobile insured under a contract; or
- (b) who sustains bodily injuries or dies as the result of an accident while driving, being carried in or upon or entering or getting on to or alighting from his or her own uninsured automobile,

shall be deemed not to be a dependent relative for the purposes of this section.

(4) The Lieutenant Governor in Council may make regulations

Regulations

- (a) prescribing, amending or altering the terms, conditions, provisions, exclusions and limits with respect to payments under subsection (2);
- (b) deeming any term, condition, provision, exclusion, or limit as prescribed, amended or altered by a regulation made under clause (a) to be included in any motor vehicle liability policy made or renewed on or after the effective date of the regulation and in any motor vehicle liability policy that is subsisting on the effective date of the regulation;
- (c) requiring that terms, conditions, provisions, exclusions and limits as prescribed, amended or altered by a regulation made under clause (a) to be attached to or included in every motor vehicle liability policy as a schedule in or to the policy.

(5) Any payments made or available to a person under a contract of insurance referred to in subsection (2) constitute, to the extent of such payments, a release by the person or the person’s personal representative or any person claiming through or under the person or by virtue of the Fatal Accidents Act, of any claim that the person may have under subsection (2), but nothing in this subsection precludes an insurer from demanding, as a condition precedent to payment, a release to the extent of the payment from the person insured or the person’s personal representative or any other person.

Release of other claims

(6) A release within the meaning of subsection (5) shall not enure to the benefit of any person against whom the insurer has a right to subrogation under this Act.(7) This section applies to all contracts evidenced by motor vehicle liability policies made or renewed on or after the commencement of this subsection, and all contracts evidenced by motor vehicle liability policies that were subsisting on the commencement of this subsection shall be deemed to provide for

Release not to affect insurer’s subrogation rights

payments referred to in subsection (2) in respect of an accident arising out of the use or operation of an automobile occurring on or after the commencement of this subsection. 1994,c.27,s.7.

Application

**245.1** (1) Sections 245.2 to 245.993 apply only to matters arising out of accidents involving an automobile occurring on or after the commencement of this subsection.

*Idem*

(2) Sections 245.2 to 245.993 apply only to a claim for damages by a person who is not insured under a contract within the meaning of section 245 and who has other insurance that is inadequate, with respect to the damages claimed, and subject to subsection (4), no person other than one who is not insured under a contract within the meaning of section 245 and who has no other insurance, or who has other insurance that is inadequate, with respect to the damages claimed, shall apply to the Facility Association for payment of damages in accordance with sections 245.2 to 245.993.

Coverage excluded when driving own automobile

(3) Notwithstanding any other provision of this Act, no person shall apply to the Facility Association under section 245.2 or 245.3 for payment of damages in respect of damage to an automobile owned by or registered in the name of the person, notwithstanding that the person may have had no applicable and collectible insurance with respect of that automobile at the time of the accident in which the damage was incurred, if, at the time of the accident, the person was driving the automobile or had the care or control of it, whether it was in motion or not.

Options where doubt if insurer or Association liable

(4) Where a question arises between a person's insurer and the Facility Association as to whether a person is insured under a contract of insurance within the meaning of section 245 or has other insurance with respect to the damages claimed, the person may, at the person's option, make a claim for damages against the insurer or apply to the Facility Association for payment of damages in accordance with sections 245.2 to 245.993.

Liability of Association

(5) Where, in the circumstances described in subsection (4), a person elects to make a claim for damages against the person's insurer and liability is denied on the grounds that the person is not insured under a contract within the meaning of section 245 and has no other insurance with respect to the damages claimed, the person may proceed, in accordance with sections 245.2 to 245.993, to apply to the Facility Association for payment of damages.

Association rights of subrogation against insurer

(6) Where, in the circumstances described in subsection (4) or (5), a person elects to proceed, in accordance with section 245.2 to 245.993, to apply to the Facility Association for payment of damages and the Facility

Association makes a payment to the person in accordance with those sections, the Facility Association is subrogated to the extent of those payments to the rights of the person to whom the amount is paid and, where in the opinion of the Facility Association, the person is insured under a contract within the meaning of section 245 or has other insurance with respect to the damages claimed, the Facility Association may bring an action in its name or in the name of such person against the insurer to recover the amount of the payment.

(7) No payment made by the Facility Association in the circumstances described in subsection (6) bars the person to whom it is made from making a claim against the person's insurer for damages in excess of the amount of the payment by the Facility Association. 1994,c.27,s.7.

Excess, recovery  
from insurer

**245.2** (1) A person who would have a cause of action against an owner of an automobile or a driver of an automobile, other than an automobile owned by or under the care and control of the person, for damages for injuries to or the death of any person or damage to property, arising out of the operation, care or control of the automobile in the province, except a person entitled to make application under section 245.3, may make application in a form provided by the Facility Association for payment by the Facility Association of the damages in respect of such death, personal injury, or property damage.

Application to  
Association

(2) Upon receipt of an application under subsection (1), the Facility Association shall, by registered or certified mail, forward a notice of the application for payment by the Facility Association to the owner and the driver of the automobile against whom liability for the damages occasioned by the operation of the automobile is alleged, to their latest known addresses or to their latest addresses as recorded with the Registrar of Motor Vehicles.

Notice to owner and  
driver

(3) The Facility Association may, in respect of an application made under subsection (1), make payment, subject to the same conditions, limits, deductions and exclusions which would apply to an application by a judgment creditor in accordance with section 245.3 to 245.993, with the necessary modifications, of an amount that it considers proper in all the circumstances if

Payment by  
association

(a) the applicant executes a release under seal of all claims arising out of the automobile accident, subject to subsections 245.1 (6) and (7), that occasioned the damages to be paid by the Facility Association; and

(b) subject to clause (c), the owner and driver of the automobile against whom liability of the damages occasioned by the operation of the automobile is alleged, execute a consent to the payment of the sum for damages by the Facility Association and also execute under



seal an undertaking in a form provided by the Facility Association to repay to the Facility Association the amount to be paid by the Facility Association; or

(c) the person to whom a notice is sent in accordance with subsection (2) does not reply within thirty days of the date upon which the notice was sent either

(i) by mail, or

(ii) by attending in person at the place named in the notice,

and dispute liability to the person making application under subsection (1).

Association deemed to be judgment creditor

(4) Where an amount is paid out by the Facility Association under subsection (3) or (5), the Facility Association shall, to the extent of the amount paid out, be deemed to be a creditor of every person against whom liability for the damages occasioned by the operation of the automobile is alleged and who was given notice under subsection (2), and upon the filing with the Registrar of the Supreme Court of a certificate of the Facility Association in a form prescribed by regulation stating the amount paid out, judgment may be entered in that amount in the name of the Facility Association as a judgment of the Supreme Court and, without the consent of the Facility Association, no execution under a judgment obtained with respect to those damages shall be made by any person other than the Facility Association against the property of the judgment debtor until the judgment debt of the Facility Association is satisfied.

Interim payments

(5) The Facility Association may make interim payments to claimants claiming damages for personal injury where the responsible persons do not dispute their liability after a notice is sent to them in accordance with subsection (2). 1994,c.27,s.7.

Judgment, payment by Association

**245.3** Subject to section 245.8, where a person obtains in any court in the province a judgment

(a) against an owner of an automobile or a driver of an automobile, other than an automobile owned by or under the care or control of the person, for damages for injuries to or the death of any person or damage to property, arising out of the operation, care or control of an automobile in the province; or

(b) against a Party Unknown, as contemplated by section 245.91, for damages for injury to or the death of any person arising out of the operation, care or control of an automobile in the province,

upon the determination of all proceedings, including appeals, the person may apply to the Facility Association for payment of the amounts in respect of the judgment to which the person is entitled in accordance with section 245.2 to 245.993. 1994,c.27,s.7.

**245.4** The Facility Association shall pay out to the person the amount of the judgment including the costs included in the judgment, or that part of the judgment including the costs to which the person is entitled, if

Conditions for  
payment of  
judgment by  
Association

(a) the person makes an affidavit

(i) as to what amount the person has recovered or is or was entitled to recover from any source, for or in respect of any injury, death or damage to a person or property arising out of the operation, care or control of the automobile by the owner or driver of it against whom the judgment was obtained wither or not, in the action damages were claimed for or in respect of the injury, death or damage and as to what compensation or services or benefits with a pecuniary value the person has recovered or received or is or was entitled to recover or receive for or in respect of the injury, death or damage,

(ii) that the application is not made by or on behalf of an insurer in respect of any amount paid or payable by the insurer by reason of the existence of a contract of insurance and that, subject to subsection 245.1(4), not part of the amount sought to be paid by the Facility Association is sought in lieu of making a claim or receiving a payment that is or was payable by reason of the existence of a contract of insurance and that no part of the amount sought will be paid to an insurer to reimburse or otherwise indemnify an insurer in respect of any amount paid or payable by the insurer by reason of the existence of a contract of insurance; and

(b) the solicitor for the person makes an affidavit

(i) that the judgment is a judgment as described in section 245.3,

(ii) giving particulars of the amount of damages for or in respect of injury or death, damage to property and the costs, included in the judgment,

(iii) that in so far as the solicitor was advised by any person and learned of any facts during the litigation

(A) the solicitor, subject to subsection 245.1(4), has commenced action against all persons against whom the person might reasonably be considered as having a cause of action for or in respect of the injury, death or damage to person or property as described in clause (a)(i),

(B) the application is not made by or on behalf of an insurer in respect of any amount paid or payable by the insurer by reason of the existence of a contract of insurance and that, subject to subsection 245.1(4), no part of the amount sought to be paid by the Facility Association is sought in lieu of making a claim or receiving a payment which is or was payable by reason of the existence of a contract of insurance and that no part of the

amount sought will be paid to an insurer to reimburse or otherwise indemnify an insurer in respect of any amount paid or payable by the insurer by reason of the existence of a contract of insurance, and

(C) that except as disclosed in the applicant's affidavit, the person is and was not entitled to recover, from any source, nor to receive compensation or services or benefits with a pecuniary value, for or in respect of any injury, death or damage to person or property as described in clause (a)(i),

(iv) that the action was defended throughout to judgment or that there was a default or a consent or agreement by or on behalf of the defendant and that the solicitor complied with section 245.8; and

(c) the affidavits together with

(i) a copy of the statement of claim,

(ii) a certified copy of the judgment,

(iii) the assignment of judgment, and

(iv) where applicable, the solicitor's taxed bill of costs,

are forwarded to the Facility Association. 1994,c.27,s.7.

Grounds for  
refusing payment

**245.5** (1) Where, on an application to the Facility Association,

(a) all the documents required under section 245.4 are not forwarded;

(b) any mater required to be in an affidavit is omitted;

(c) the amount requested to be paid by the Facility Association is, in its opinion, greater than the amount to which the applicant is entitled under sections 245.2 to 245.993; or

(d) for any reason, the Facility Association wishes to application for payment to go before a judge of the Supreme Court for an order for payment by the Facility Association,

the Facility Association shall, within a reasonable period of time, advise the person of its objections to the application for payment and, subject to subsection (2), advise the person that the person must obtain an order of a judge of the Supreme Court for payment by the Facility Association.

Objection remedied

(2) The Facility Association shall advise the person to remedy any objection it may have against payment and if the objection is remedied to the satisfaction of the Facility Association, it shall then make payment as hereinbefore provided. 1994,c.27,s.7.

Order

**245.6** When a person is advised that payment shall not be made except by order of a judge of the Supreme Court, the person may apply to a judge of the Supreme Court by way of notice of application, upon notice to the Facility Association, for an order directing payment by the Facility

Association of the amount in respect of the judgment to which the person is entitled under sections 245.2 to 245.993. 1994,c.27,s.7.

**245.7** (1) The judge may make an order directed to the Facility Association requiring it, subject to sections 245.2 to 245.993, to pay the amount in respect of the judgment to which the judgment creditor is entitled in accordance with those sections, if the applicant, in an by the application, satisfies the judge

Requirements for  
issue of order

(a) that the applicant has obtained a judgment as set out in section 245.3 stating whether against an owner, a driver or a Party Unknown, the amount of the judgment, and the amount owing on the judgment at the date of the application;

(b) that, subject to subsection 245.1(4), the applicant has commenced action against all persons against whom the applicant might reasonably be considered as having a cause of action for or in respect of any injury, death or damage to person or property arising out of the operation, care or control of the automobile by the owner or driver against whom the judgment was obtained;

(c) that the applicant has prosecuted every action in good faith to judgment or dismissal;

(d) that, with respect to the amount to be paid, the applicant has not recovered and is and was not entitled to recover, from any source, any amount for or in respect of the injury, death or damage to person or property described in clause (b);

(e) that, with respect to the amount to be paid, the applicant has not received and is and was not entitled to receive from any source any compensation or services or benefits with a pecuniary value for or in respect of the injury, death or damage to person or property described in clause (b);

(f) that the application is not made by or on behalf of an insurer in respect of any amount paid or payable by the insurer by reason of the existence of a contract of insurance, and that, subject to subsection 245.1(4), no part of the amount sought to be paid out by the Facility Association is sought in lieu of making a claim or receiving a payment that is or was payable by reason of the existence of a contract of insurance and that no part of the amount sought will be paid to an insurer to reimburse or otherwise indemnify an insurer in respect of any amount paid or payable by the insurer by reason of the existence of a contract of insurance;

(g) that the amount sought to be paid out by the Facility Association does not exceed the maximum amount payable under section 245.98.

(2) The Facility Association may appear and be heard on the application and may show cause why the order should not be made. 1994,c.27,s.7.

Association may  
appear

Notice to  
Association of  
failure to appear  
etc.

**245.8** (1) Where an action is commenced and the defendant  
(a) fails to file and serve a statement of defence;  
(b) fails to appear in person or by counsel at an examination for  
discovery, trial or appeal or notifies the plaintiff that such failure is  
likely; or

(c) consents or agrees to the entering of judgment,  
no order may be made under section 245.7, and no money is required to  
be paid by the Facility Association in respect of a judgment obtained on  
such proceedings, unless before taking any further step in the  
proceedings, the plaintiff gives written notice, in the form prescribed by  
regulation, to the Facility Association of such failure, notification,  
consent or agreement and affords it reasonable time to investigate the  
circumstances of the claim and an opportunity to take such action as it  
considers advisable under subsection (2).

Association may act  
in place of  
defendant

(2) Where the Facility Association receives notice under subsection  
(1), it may, if it considers it advisable, on behalf and in the name of the  
defendant, take any step to enforce the defendant's right to compensation  
or indemnity in respect of or arising out of the claim that is available to  
the defendant, and take any step in the proceedings, including a consent  
to judgment in such amount as it may consider proper in the  
circumstances and all acts done in accordance with this subsection shall  
be deemed to be the acts of the defendant. 1994,c.27,s.7.

Assignment of  
judgment

**245.9** (1) No money is required to be paid by the Facility Association in  
compliance with an order made under section 245.7 until the judgment of  
the applicant or the portion of the judgment for which the Facility  
Association is liable or the applicant's interest in the judgment is  
assigned to the Facility Association.

Effect

(2) Upon filing a copy of the assignment of judgment, certified by the  
Facility Association to be a true copy, with the Registrar, or clerk, as the  
case may be, of the court in which the judgment was obtained, the  
Facility Association shall, to the extent of the amount of the assignment,  
be deemed to be the judgment creditor.

Execution

(3) Where execution is issued in the name of the judgment creditor and  
a copy of the assignment of judgment, certified in accordance with  
subsection (2), is filed with the sheriff having the order of seizure and  
sale, subsection (2) shall apply with the necessary modifications.  
1994,c.27,s.7.

Unidentified driver,  
order to proceed  
against

**245.91** Where injury to or the death of any person arises out of the  
operation, care or control of an automobile in the province but the  
identity of the automobile, the owner and the driver of it cannot be  
established, any person who would have a cause of action against the

owner or driver in respect of such injury or death may, upon notice to the Facility Association, apply to a judge of the Supreme Court for an order permitting the person to bring an action in the Supreme Court against a nominal defendant to be designated as a Party Unknown. 1994,c.27,s.7.

**245.92** The judge may make an order permitting the applicant to bring an action against a Party Unknown if satisfied Party Unknown,  
conditions for order

- (a) that there are reasonable grounds for bringing the action;
- (b) that all reasonable efforts have been made to ascertain the identity of the automobile involved and of the owner and driver of it;
- (c) that the identity of the automobile involved and of the owner and driver of it cannot be established; and
- (d) that the application is not made by or on behalf of an insurer in respect of any amount paid or payable by reason of the existence of a contract of insurance, and that, subject to subsection 245.1(4), no part of the amount sought to be recovered in the intended action is sought in lieu of making a claim or receiving a payment that is or was payable by reason of the existence of a contract of insurance, and that no part of the amount so sought will be paid to an insurer to reimburse or otherwise indemnify the insurer in respect of any amount paid or payable by it by reason of the existence of a contract of insurance. 1994,c.27,s.7.

**245.93** (1) In any action brought against a Party Unknown under sections 245.91 and 245.92, the Facility Association has all the rights of a defendant in the action, but nothing in this section imposes any liability on the Facility Association. Association has  
rights of defendant

(2) In any such action the Facility Association may plead the general issue and give the special matter in evidence. Pleadings

**245.94** (1) Where an action for damages for injury to or the death of any person, arising out of the operation, care or control of an automobile in the province has been dismissed and the judge in dismissing the action states in writing that the injury or death arose out of the operation, care or control of an automobile Limitation period  
for applying for  
order

- (a) the identity of which and of the owner and driver of which is not established; or
- (b) at a time when such automobile was, without the consent of the owner, in the possession of some person other than the owner and the identity of the driver is not established,

sections 245.91 and 245.92 shall be available for a period of three months from the date of such dismissal, notwithstanding any Act limiting the time within which an action may be brought.

Exception	(2) Where, in accordance with subsection (1), an application is made under section 245.91, clause 245.92(c) does not apply.
Party Unknown added as party	<b>245.95</b> (1) Where an action for damages for injury to or the death of any person arising out of the operation, care or control of an automobile in the province is commenced and the defendant by the pleadings alleges that the plaintiff's damage was caused by a Party Unknown, the plaintiff may make application to add the Party Unknown as a defendant and section 245.92 shall apply with the necessary modifications.
Saving	(2) This section does not limit or restrict any right to add or join any person as a party to an action in accordance with the practice of the court in which the action is pending. 1994,c.27,s.7.
Action by Association against owner or driver	<b>245.96</b> (1) Where judgment has been obtained against a Party Unknown, the Facility Association may at any time bring action against any person for a declaratory judgment, declaring that person to have been, at the time of the accident, the owner or driver of the automobile in respect of the operation, care or control of which the judgment was obtained, and the court may give judgment accordingly.
<i>Idem</i>	(2) An action under subsection (1) may be brought in the Supreme Court.
Effect of declaratory judgment	(3) When a declaratory judgment has been rendered under this section (a) the person declared in the judgment to be the owner or driver shall be deemed to have been the defendant in the action in which judgment was obtained against the Party Unknown and the judgment against the Party Unknown shall be deemed to be a judgment against such person; and (b) the Facility Association shall be deemed to have obtained a judgment against such person for the amount of all moneys paid by it in respect of the judgment against the Party Unknown and shall accordingly have all the rights of a judgment creditor, including the right to recover any money that would have been payable in respect of the death or injury under any contract of insurance that was in force at the time of the accident, notwithstanding any Act limiting the time within which an action may be brought.
Identity not established	(4) Where the injury or death arose out of the operation, care or control of the automobile at a time when the automobile was, without the owner's consent, in the possession of some person other than the owner, such action shall be disposed of in the same manner as though the identity of the owner had not been established. 1994,c.27,s.7.
Maximum recovery and set off	<b>245.98</b> (1) The Facility Association is not required to pay

(a) any amount in respect of a judgment in favour of a person who ordinarily resides outside of Prince Edward Island, unless such person resides in a jurisdiction that provides substantially the same benefits to persons who ordinarily reside in Prince Edward Island, but no payment shall include an amount that would not be payable by the law of the jurisdiction in which such person resides;

(b) more than \$200,000, exclusive of costs, for injury to or the death of one or more persons or damage to property resulting from any one accident occurring on or after the commencement of this section except that payments with respect to damages for damage to property shall be limited to claims for damages in excess of \$200,

but, subject to subsection (2) and the regulations, where the judgment creditor recovers or is or was entitled to recover, from any source, for or in respect of any injury, death or damage to person or property arising out of the operation, care or control of the automobile by the owner or driver against whom the judgment was obtained whether or not in the action damages were claimed for or in respect of the injury, death or damage or where the judgment creditor receives or is or was entitled to receive, from any source, compensation or services or benefits with a pecuniary value for or in respect of the injury, death or damage, the amount so recovered or received and the amount that the judgment creditor is or was entitled to recover or receive and the amount of compensation and pecuniary value of any services or benefits with a pecuniary value for or in respect of the injury, death or damage, the amount so recovered or received and the amount that the judgment creditor is or was entitled to recover or receive and the amount of compensation and pecuniary value of any services or benefits received or that the judgment creditor is or was entitled to receive shall be deducted from the amount of damages included in the judgment and only the amount of damages included in the judgment after such deductions, or the maximum amount payable under clause (b), whichever is less, is required to be paid by the Facility Association.

(2) In computing the amount payable by the Facility Association, no reduction shall be made

Computation of  
amount payable

(a) with respect to any amount recovered or the recoverable by the judgment creditor under a contract of life insurance, where the amount is payable in respect of the death of the person;

(b) with respect to any compensation or the pecuniary value of any services or benefits which the judgment creditor received, or is or was entitled to receive under the Welfare Assistance Act, the Health Services Payment Act, or the Hospital and Diagnostic Services Insurance Act;

(c) with respect to



- (i) any amount recovered by the judgment creditor, or which the judgment creditor is entitled to recover, from such sources as may be prescribed by regulation, or
- (ii) any amount of compensation, or the pecuniary value of any benefits or services, received by the judgment creditor, or which the judgment creditor is entitled to receive, from such sources as may be prescribed by regulation or where the compensation, benefits or services are of a kind prescribed by regulation.

Residence	(3) In this section “residence” shall be determined as of the date of the accident as a result of which the damages are claimed. 1994,c.27,s.7.
Costs	<b>245.99</b> (1) Subject to section 245.2, no costs, other than costs taxed on party and party basis, are required to be paid by the Facility Association.
<i>Idem</i>	(2) Where an action has been maintained in part by an insurer and a part only of the amount of the judgment in the action is payable by the Facility Association, there shall not be paid by the Facility Association more than that part of the party and party costs of the action that bears the same ratio to the whole of such costs as the part of the judgment payable by the Facility Association bears to the total amount of the judgment.
Procedure	<b>245.991</b> The practice and procedure of the Supreme Court or the court in which the application or action is brought, including the right of appeal and the practice and procedure relating to appeals, apply to any application or action under sections 245.2 to 245.993.
Government and agencies excluded	<b>245.992</b> No application for the payment of damages shall be made to the Facility Association by or on behalf of the Governments of Canada, the United States of America, a province, a state or any political subdivision or corporation or agency of such Governments.
Deemed consent	<b>245.993</b> For the purposes of sections 245.2 to 245.992 all owners and drivers whose liability results in payment by the Facility Association shall be deemed to be <i>sui juris</i> and all actions taken by the Facility Association in the settlement of claims and actions on their behalf shall be deemed to be taken upon their instructions and with their full consent. 1994,c.27,s.7.
Regulations	<b>245.994</b> The Lieutenant Governor in Council may make regulations <ul style="list-style-type: none"> <li>(a) generally respecting forms to be used for the purposes of section 245.2 to 245.993 and prescribing forms required to be prescribed;</li> <li>(b) prescribing sources for the purposes of clause 245.98(2)(c)(i);</li> <li>(c) prescribing, for the purposes of clause 245.98(2)(c)(ii), sources of compensation, benefits and services, and kinds of compensation, benefits, and services.</li> </ul>

**246.** (1) Every contract evidenced by a motor vehicle liability policy issued or renewed on or after January 1, 1984, shall provide the medical and rehabilitation benefits set forth in subsection 1 of Schedule B subject to the limits, terms and conditions set forth in Schedule B.

Uninsured motorist cover

(2) Where an insurer makes a payment under a contract of insurance to which reference is made in subsection (1) that payment constitutes, to the extent of payment, a release by the insured person or his personal representatives of any claim that the insured person or his personal representatives, or any person claiming through or under him or by virtue of the *Fatal Accidents Act*, may have against the insurer and any other person who may be liable to the insured person or his personal representatives, if that other person is insured under a contract of the same type as is specified in subsection (1); but nothing in this subsection precludes an insurer from demanding, as a condition precedent to payment, a release to the extent of payment from the person insured or his personal representatives or any other person. R.S.P.E.I. 1974, Cap. I-5, s.243; 1983, c.22, s.1.

Release by claimant

**247.** (1) Every contract evidenced by a motor vehicle liability policy issued or renewed on or after January 1, 1984, shall provide

(a) the death and loss of income benefits set forth in subsection 2 of Schedule B; and

(b) the supplemental benefits respecting accidents occurring in Quebec set forth in subsection 2A of Schedule B,

in the terms, conditions, provisions and exclusions and subject to the limits set forth in Schedule B.

Accident and supplementary benefits

(2) Where an insurer makes a payment under a contract of insurance to which subsection (1) refers, that payment constitutes to the extent of payment, a release by the insured person or his personal representatives of any claim that the insured person or his personal representatives, or any person claiming through or under him or by virtue of the *Fatal Accidents Act*, may have against the insurer and any other person who may be liable to the insured person or his personal representatives, if that other person is insured under a contract of the same type as if specified in subsection (1); but nothing in this subsection precludes an insurer from demanding, as a condition precedent to payment, a release to the extent of the payment from the person insured or his personal representatives or any other person. R.S.P.E.I. 1974, Cap. I-5, s.244; 1983, c.22, s.2.

Release of claim by claimant, payment by insurer

**248.** (1) Where a person is injured or killed in an accident in the province involving an automobile, that person or his personal representative may serve

Person killed or injured in accident, demand for particulars of insurance

(a) a demand by registered mail on the owner of the automobile; or

	<p>(b) a demand by registered mail on the insurer of the owner of the automobile,          requiring the owner or insurer, as the case may be, to state in writing to the person making the demand whether or not that owner has insurance of the types mentioned in sections 246 and 247, or either of them, and, where the demand is made under clause (a) requiring the owner, if he has such insurance, to state the name of the insurer.</p>
Offence for failure to comply with demand	<p>(2) Where the owner or insurer does not, within ten days after receiving a demand made under subsection (1), comply with the demand, he is guilty of an offence. R.S.P.E.I. 1974, Cap. I-5, s.245.</p>
Rights of unnamed insured	<p><b>249.</b> Any person insured by but not named in a contract to which section 245, 246, or 247 applies may recover under the contract, in the same manner and to the same extent as if named therein as the insured, and for that purpose shall be deemed to be a party to the contract and to have given consideration therefor. R.S.P.E.I. 1974, Cap. I-5, s.246.</p>
Insurer admits liability, payment into Court	<p><b>250.</b> (1) Where an insurer admits liability for insurance money payable under sections 245, 246 and 247, or any of them, and it appears that</p> <ul style="list-style-type: none"> <li>(a) there are adverse claimants;</li> <li>(b) the whereabouts of an insured person entitled is unknown; or</li> <li>(c) there is no person capable of giving and authorized to give a valid discharge therefor, who is willing to do so,</li> </ul> <p>the insurer may, at any time following thirty days after the date upon which the insurance money becomes payable, apply to the court without notice for an order for payment of the money into court, and the court may upon such notice, if any, as it thinks necessary make an order accordingly.</p>
Discharge of insurer	<p>(2) The receipt of the proper officer of the court is sufficient discharge to the insurer for insurance money paid into court and those moneys shall be dealt with as the court orders. R.S.P.E.I. 1974, Cap. I-5, s.247.</p>
Limitation of action	<p><b>251.</b> Every action or proceeding against an insurer under a contract with respect to insurance provided under sections 245, 246 and 247 or any of them shall be commenced within the limitation period specified in the contract but, in no event, shall this be less than one year after the happening of the accident. R.S.P.E.I. 1974, Cap. I-5, s.248.</p>
Demand on claimant for insurance particulars	<p><b>252.</b> (1) Where any person makes a claim for damages with respect to bodily injury or death sustained by the person or any other person while driving, being carried in or upon, or entering, or getting onto, or alighting from, or being struck by an automobile he shall, if required by the person against whom the claim is made, or by someone acting on his behalf, furnish to, or for that person, full particulars of all insurance</p>

available to the claimant under contracts falling within the scope of sections 246 and 247, or either of them, and of any payments made, or to be made, of insurance moneys thereunder.

(2) Where a claimant is entitled to the benefit of insurance as provided in Schedule B, this, to the extent of payments made or available to the claimant thereunder, constitutes a release by the claimant of any claim against the person liable to the claimant or the insurer of the person liable to the claimant. R.S.P.E.I. 1974, Cap. I-5, s.249; 1983, c.22, s.3.

Release by claimant  
of benefits under  
Schedule B

**253.** The Lieutenant Governor in Council may by order published in the Gazette amend any of the terms, conditions, provisions, exclusions and limits set out in Schedule B. 1983, c.22, s.4.

Order

#### OTHER INSURANCE

**254.** (1) Subject to section 238, insurance under a contract evidenced by a valid owner's policy of the kind mentioned in clause 1(o.1), is, as respects liability arising from or occurring in connection with, the ownership, use or operation of an automobile owned by the insured named in the contract and within the description or definition thereof in the policy, a first loss insurance and insurance attaching under any other valid motor vehicle liability policy is excess insurance only.

Other insurance

(2) Subject to sections 238, 246 and 247 and to subsection (1), if the insured named in a contract has or places any other valid insurance, whether against liability for the ownership, use or operation of, or against loss of, or damage to, an automobile or otherwise, of his interest in the subject matter of the contract, or any part thereof, the insurer is liable only for its rateable proportion of any liability or expense or loss or damage.

Insurer liable only  
for rateable  
proportion

(3) "Rateable proportion" used in subsection (2) means

- (a) if there are two insurers liable and each has the same policy limits, each of the insurers shall be liable to share equally in any liability, expense, loss or damage;
- (b) if there are two insurers liable with different policy limits, the insurers shall be liable to share equally up to the limit of the smaller policy limit; and
- (c) if there are more than two insurers liable, clauses (a) and (b) apply with the necessary changes. R.S.P.E.I. 1974, Cap. I-5, s.251.

Rateable  
proportion, defined

#### DAMAGES

**254.1** (1) In this section

Definitions

accident	(a) “accident” means an accident arising out of the use or operation of an automobile;
minor personal injury	(b) “minor personal injury” means an injury that does not result in (i) permanent serious disfigurement, or (ii) permanent serious impairment of an important bodily function caused by continuing injury that is physical in nature;
plaintiff	(c) “plaintiff” means a plaintiff in an action for damages arising out of an accident;
serious impairment	(d) “serious impairment” means an impairment that causes substantial interference with a person’s ability to perform his or her usual daily activities or his or her regular employment.
Maximum recoverable amount	(2) In an action for damages arising out of an accident, the amount recoverable as damages for the non-pecuniary loss of the plaintiff for minor personal injury shall not exceed \$2,500.
Application	(3) This section does not apply to an action for damages in respect of an accident occurring prior to April 1, 2004. 2003,c.1,s.3.

#### SUBROGATION

Subrogation, insurer’s right to	<b>255.</b> (1) An insurer who makes any payment or assumes liability therefor under a contract is subrogated to all rights of recovery of the insured against any person and may bring action in the name of the insured to enforce those rights.
Pro-rating recovery between insurer and insured	(2) Where the net amount recovered whether by action or on settlement is, after deduction of the costs of the recovery, not sufficient to provide complete indemnity for the loss or damage suffered, the amount remaining shall be divided between the insurer and the insured in the proportion in which the loss or damage has been borne by them.
Action when section 243 applies	(3) Where the interest of an insured in any recovery is limited to the amount provided under a clause in the contract to which section 243 applies, the insurer shall have control of the action.
Application to Supreme Court if insured & insurer disagree	(4) Where the interest of an insured in any recovery exceeds that referred to in subsection (3) and the insured and the insurer cannot agree as to (a) the solicitors to be instructed to bring the action in the name of the insured; (b) the conduct and carriage of the action or any matters pertaining thereto; (c) any offer of settlement or the apportionment thereof whether action has been commenced or not;

(d) the acceptance of any money paid into court or the appointment thereof;

(e) the apportionment of costs; or

(f) the launching or prosecution of an appeal,

either party may apply to the Supreme Court for the determination of the matters in question and the court shall make such order as it considers reasonable having regard to the interests of the insured and the insurer in any recovery in the action or proposed action or in any offer of settlement.

(5) On an application under subsection (4), the only parties entitled to notice and to be heard thereon are the insured and the insurer, and no material or evidence used or taken upon the application is admissible under the trial of an action brought by or against the insured or the insurer.

Parties entitled to notice & to be heard

(6) A settlement or release given before or after action is brought does not bar the rights of the insured or the insurer, as the case may be, unless they have concurred therein. R.S.P.E.I. 1974, Cap. I-5, s.252.

Settlement or release given before action, effect

**256.** (1) Where a person entitled to benefits provided by insurance under section 246 or section 247,

Liability of insurer to pay benefits

(a) is an occupant of a motor vehicle involved in an accident, the insurer of the owner of the motor vehicle is, in the first instance, liable for payment of the benefits provided by the insurance; or

(b) is a pedestrian and is struck by a motor vehicle involved in accident, the insurer of the owner of the motor vehicle is, in the first instance, liable for payment of the benefits provided by the insurance.

(2) Nothing in this section affects the operation of subsection 246(2) or section 247. R.S.P.E.I. 1974, Cap. I-5, s.253.

Application of section

#### PENALTIES

**257.** Every insurer or person who fails to comply with or violates any provision of this Part is guilty of an offence against this Act. R.S.P.E.I. 1974, Cap. I-5, s.255.

Failure to comply, offence

#### AGREEMENT CONCERNING ACCIDENT CLAIMS

**258.** The Attorney General with the approval of the Lieutenant Governor in Council, may enter into an agreement with the Government of Quebec or an agency thereof respecting automobile accident claims in each of the jurisdictions so as to assure residents of Prince Edward Island adequate

Authority to enter agreement with Quebec on accident claims

coverage in the case of automobile accidents occurring in the Province of Quebec. 1983, c.22, s.6; 1993, c.29, s.4; 1997,c.20,s.3; 2000,c.5,s.3.

## RATES

Definitions	<b>258.1</b> (1) In this section and sections 258.2 to 258.9
Commission	(a) “Commission” means the Island Regulatory and Appeals Commission established under the <i>Island Regulatory and Appeals Commission Act</i> R.S.P.E.I. 1988, Cap. I-11;
discriminatory	(b) “discriminatory” means, in respect of rates, rates that are based on a risk classification system that <ul style="list-style-type: none"> <li>(i) is not just and reasonable in the circumstances,</li> <li>(ii) is not reasonably predictive of the risk, or</li> <li>(iii) does not distinguish fairly between risks;</li> </ul>
insurer	(c) “insurer” includes the Facility Association;
rates	(d) “rates” means rates, surcharges, premiums or any other amount payable by an insured for automobile insurance;
risk classification system	(e) “risk classification system” means the elements used for the purpose of classifying risks in the determination of rates for a coverage or category of automobile insurance, including the variables, criteria, rules and procedures used for that purpose.
Application	(2) This section and sections 258.2 to 258.9 apply to every insurer carrying on the business of automobile insurance in the province. 2003,c.1,s.4.
Supervision by Commission	<b>258.2</b> (1) The Commission has the general supervision of the rates an insurer charges or proposes to charge for automobile insurance.
Application of Act	(2) The provisions of the <i>Island Regulatory and Appeals Commission Act</i> R.S.P.E.I. 1988, Cap. I-11 extend and apply to the Commission in the exercise of its powers, and in the performance of its duties, under this Act.
Assessment and forms	(3) For greater certainty, the Commission may <ul style="list-style-type: none"> <li>(a) levy an assessment on insurers under section 15 of the <i>Island Regulatory and Appeals Commission Act</i> R.S.P.E.I. 1988, Cap. I-11; and</li> <li>(b) prescribe forms for the purpose of obtaining information authorized to be obtained under this Act. 2003,c.1,s.4.</li> </ul>
Requirement to file rates	<b>258.3</b> (1) Every insurer shall file with the Commission the rates it proposes to charge for automobile insurance at least once every 12 months from the date of its last filing.

(2) When an insurer files its rates under subsection (1), it shall

- (a) provide to the Commission the risk classification system used by the insurer to determine its rates and any other information required by the Commission; and
- (b) specify the date on which it proposes to begin to charge those rates.

Information, date specification

(3) The date specified under clause (2)(b) shall be no less than sixty days after the insurer files the rates in accordance with subsection (1).

Date specification period

(4) Subject to subsections (3) and (5), an insurer may charge the rates it files in accordance with subsection (1) as of the date specified under clause (2)(b).

Permitted rates

(5) Where, before the date specified under clause (2)(b), the Commission notifies the insurer that it intends to investigate the rates filed by the insurer under subsection (1), the insurer may not charge those rates unless

Notice of investigation

- (a) the Commission notifies the insurer that the insurer may do so; or
- (b) the rates are the same rates as those currently being charged by the insurer. 2003,c.1,s.4.

**258.4** (1) On and after the day this section comes into force, no insurer shall charge rates other than those rates the insurer

Prohibited rates

- (a) is permitted to charge under subsection 258.3(4) or (5); or
- (b) is required to charge by an order made under subsection 258.6(2).

(2) Notwithstanding subsection (1), until April 1, 2004

Transitional

- (a) an insurer, other than the Facility Association, may continue to charge the rates that it is charging on the day this section comes into force; and
- (b) the Facility Association may continue to charge the rates that were last approved by the Superintendent before the day this section comes into force.

(3) Every insurer providing automobile insurance in the province on the day this section comes into force shall file its rates under section 258.3 by January 15, 2004.

Initial filing

(4) When an insurer files rates in accordance with subsection (3), the date which the insurer shall specify for the purposes of clause 258.3(2)(b) is April 1, 2004.

Date specification

(5) Where the rates charged by an insurer on and after April 1, 2004 are less than the rates charged by the insurer before that date, the insurer shall, not later than June 30, 2004, reimburse, on a pro rata basis, an

Rebates



insured in respect of any excess premium paid by the insured to the insurer on the remainder of a contract that is in effect on April 1, 2004.

Credits for renewal	(6) Where a contract that is in effect on April 1, 2004 expires on or before June 30, 2004, the insurer may credit the amount of the reimbursement, calculated pursuant to subsection (5), to the insured on the premium to be paid for renewal of the contract, but the insured is entitled to the reimbursement if the insured does not renew the contract with that insurer.
Instalments	(7) Where an insured is paying the insurer in instalments for a contract that is in effect on April 1, 2004, the insurer may credit the amount of the reimbursement, calculated pursuant to subsection (5), to the insured on the remaining instalments to be paid.
Restriction on additional premiums	(8) Where the rates charged by an insurer on and after April 1, 2004 are greater than the rates charged by the insurer before that date, the insurer shall not charge an insured any additional premium on a contract that is in effect on April 1, 2004. 2003,c.1,s.4.
Information	<b>258.5</b> The Commission may at any time require an insurer to provide information relating to rates filed by the insurer under subsection 258.3(1). 2003,c.1,s.4.
Investigation	<b>258.6</b> (1) Where at any time the Commission considers that the rates charged or proposed to be charged by an insurer may be excessive, inadequate or discriminatory, the Commission may investigate those rates.
Orders	(2) Where, after making an investigation under this section, the Commission determines that the rates charged or proposed to be charged by an insurer are excessive, inadequate or discriminatory, the Commission may, by order, require the insurer to make any change or changes to its rates, or to charge the rates, the Commission considers proper. 2003,c.1,s.4.
Copies of orders and decisions	<b>258.7</b> The Commission shall, after making an investigation under section 258.6, forward to the Superintendent a copy of all orders made by the Commission under subsection 258.6(2). 2003,c.1,s.4.
Offences and penalties	<b>258.8</b> (1) Every insurer or person who contravenes section 219.1 or a provision of section 258.3 or 258.4 or a provision of a regulation made under section 258.9 is guilty of an offence and is liable on summary conviction to a fine of not more than \$50,000 or to imprisonment for a term of not more than one year, or to both.

(2) Where an insurer contravenes section 219.1 or a provision of section 258.3 or 258.4 or a provision of a regulation made under section 258.9, every director or officer of the insurer who directed, authorized, assented to or acquiesced or participated in the contravention is guilty of an offence against this Act and is liable on summary conviction to a fine of not more than \$50,000 or to imprisonment for a term of not more than one year, or to both, whether or not the insurer has been prosecuted, or convicted of an offence, for the contravention. 2003,c.1,s.4.

Directors and officers

**258.9** The Lieutenant Governor in Council may, after consultation with the Commission, make regulations

Regulations

(a) prescribing a risk classification system or elements of a risk classification system that must be used by insurers or a class of insurers in classifying risks for a coverage or category of automobile insurance;

(b) prescribing elements of a risk classification system that insurers or a class of insurers are prohibited from using in classifying risks for a coverage or category of automobile insurance;

(c) requiring insurers or a class of insurers to use a prescribed risk classification system or the prescribed elements of a risk classification system in classifying risks for a coverage or category of automobile insurance; and

(d) prohibiting insurers or a class of insurers from using prescribed elements of a risk classification system in classifying risks for a coverage or category of automobile insurance. 2003,c.1,s.4.

## PART VIII LIVESTOCK INSURANCE

**259.** (1) This Part shall apply to livestock insurance and to any insurer carrying on the business of livestock insurance in the province.

Application of Part VIII

(2) Every insurer licensed for the transaction of livestock insurance may, within the limits and subject to the conditions prescribed by its license, insure against loss of livestock, by fire, lightning, accident, disease or other means, except that of design on the part of the insured, or by the invasion of any enemy or by insurrection. R.S.P.E.I. 1974, Cap. I-5, s.256.

Insurance against loss of livestock

**260.** The statutory conditions set out in Part IV, except where inapplicable to the nature of the risk, apply to livestock insurance contracts. R.S.P.E.I. 1974, Cap. I-5, s.257.

Statutory conditions applicable

**261.** (1) A contract of insurance shall not exceed the term of three years.

Term of contract

Renewal of one year, or shorter contracts

(2) A contract made for one year or any shorter period may be renewed, from time to time, at the discretion of the insurer, by renewal receipt instead of by policy, on the assured paying the required premium; and all payments for renewals shall be made at or before the end of the period for which the policy was granted or renewed, otherwise the policy shall be void. R.S.P.E.I. 1974, Cap. I-5, s.258.

#### PART IX WEATHER INSURANCE

Application of Part IX

**262.** This Part applies to weather insurance and to any insurer carrying on the business of weather insurance in the province. R.S.P.E.I. 1974, Cap. I-5, s.259.

Insurance against atmospheric disturbances etc.

**263.** Every insurer licensed for the transaction of weather insurance may, within the limit and subject to the conditions prescribed by its license, insure against such atmospheric disturbances, discharges or conditions as the contract of insurance specifies. R.S.P.E.I. 1974, Cap. I-5, s.260.

Statutory conditions applicable

**264.** The statutory conditions set out in Part IV, except where inapplicable to the nature of the risk, apply to weather insurance contracts, together with the following conditions:

- (a) the insurance may be terminated by the insurer by giving seven days notice to that effect; and
- (b) the insurer is not liable for loss or damage occurring to buildings or structures or to their respective contents where they have been weakened by alterations made subsequently to the contract, unless permission to make such alterations was previously granted in writing signed by the insurer or its authorized agent. R.S.P.E.I. 1974, Cap. I-5, s.261.

Term of contract

**265.** A contract of weather insurance shall not exceed the term of three years. R.S.P.E.I. 1974, Cap. I-5, s.262.

Amount payable on premium notes taken by insurer

**266.** On every premium note taken by the insurer, there shall be payable at the commencement of each year of insurance a cash payment amounting to at least one-fifth of one per cent of the sum insured or proportionally when the cash payment is paid in advance for a longer term; and the premium note is, as to the balance thereof, subject to assessment by the insurers, but when the amount of insurance in force exceeds \$3,000,000 and the total assets of the insurer do not fall below two per cent of the total of such amount, the Superintendent may authorize the reduction of the cash payment to one-eighth of one per cent of the sum insured per year, or proportionally for a longer term. R.S.P.E.I. 1974, Cap. I-5, s.263.

PART X  
FRATERNAL SOCIETIES

**267.** In this Part

- (a) “actuary” means a Fellow of the Actuarial Society of America, or of the Institute of Actuaries of Great Britain or of the Faculty of Actuaries in Scotland, or of the American Institute of Actuaries;
- (b) “rates of contribution” means the regular net premium, dues, rates, or contributions receivable from the members for the purpose of the payment at maturity of the society’s certificates or contracts of insurance. R.S.P.E.I. 1974, Cap. I-5, s.264.

Definitions

actuary

rates of contribution

APPLICATION OF PART

**268.** Except as otherwise provided, this Part applies to all fraternal societies duly licensed and carrying on the business of life insurance in the province, and to clubs, societies or associations, incorporated or unincorporated, which receive either as trustees or otherwise, contributions or moneys from its members out of which gratuities or benefits are paid, directly or indirectly, upon a death of its members or any of them; but this Part does not apply to any such clubs, societies or associations incorporated under the laws of the province prior to January 1, 1933. R.S.P.E.I. 1974, Cap. I-5, s.265.

Application of  
Part X

LICENSING OF SOCIETY

**269.** No fraternal society shall be licensed

- (a) if it undertakes insurance contracts with persons other than its own members;
- (b) if it insures or indemnifies against contingencies other than sickness, accident, disability, or death or funeral expenses;
- (c) if it undertakes old age or endowment insurance other than as authorized in this Part, or annuities upon lives;
- (d) if it has on its books less than seventy-five members in good standing;
- (e) if it is in effect the property of its officers or of any other person or persons or is conducted as a mercantile or business enterprise, or for the purpose of mercantile profit, or if its funds are under the control of persons or officers appointed for a period exceeding four years;
- (f) in the case of a society which has not been authorized to carry on business in the province before October 1, 1933, unless it files with the Superintendent a declaration of its actuary of its ability to carry out its contracts; or

Licensing of  
fraternal societies,  
those not eligible to  
be licensed

(g) which undertakes contracts of insurance but is not formed exclusively for that purpose and which does not for the purpose of such contracts keep distinct and separate funds, securities, books and vouchers. R.S.P.E.I. 1974, Cap. I-5, s.266.

Application of  
clause 269(c)

**270.** Clause 269(c) does not apply to

(a) contracts guaranteeing the fidelity of officers, servants or employees of the branches or subdivisions of the corporation;

(b) a society which before October 1, 1933, was in good faith transacting exclusively with its members endowment insurance in the province, and which has continued so to do up to the date of application for license;

(c) in so far as it relates to annuities upon lives, a society, the membership of which is limited by its constitution or laws to municipal or government employees undertaking annuities on lives in the nature of old age pensions. R.S.P.E.I. 1974, Cap. I-5, s.267.

Entitled to license if  
head office in  
province

**271.** A society incorporated under the laws of the province is not entitled to a license unless its head office is located and maintained in the province and the secretary and treasurer are actual residents of the province. R.S.P.E.I. 1974, Cap. I-5, s.268.

Central governing  
body, dealt with as  
the society

**272.** (1) Where two or more lodges or branches of a society, though separately incorporated, are under the financial or administrative control of a central governing body in the province, or a duly authorized provincial representative of the society, the governing body if incorporated or the provincial representative of the society, may, if the Superintendent thinks proper, be dealt with as the society.

*Idem*

(2) In the case of a society incorporated elsewhere than in the province, the central governing or controlling body in the province incorporated by virtue of the law of the province may, if the Superintendent thinks proper, be dealt with as the society. R.S.P.E.I. 1974, Cap. I-5, s.269.

#### CONSTITUTION AND RULES

Filing copies of  
constitution & rules

**273.** (1) Every society shall with its application for license file in the office of the Superintendent, certified copies in duplicate of those articles of its constitution and rules which contain material terms not set out in a form of contract adopted for use by it, and of every amendment, revision or consolidation thereof, within thirty days after the passing thereof.

(2) The Superintendent may, within thirty days after the date of such filing, take exception to any amendment or revision if in his opinion, the amendment or revision or any part thereof is

- (a) contrary to the provisions of this Act;
- (b) actuarially unsound;
- (c) oppressive to or discriminatory in application against any class of the membership of the society; or
- (d) unjust or unreasonable.

Objection by Superintendent to amendments or revisions of constitution & bylaws

(3) If the Superintendent takes exception to any such amendment or revision he shall forthwith notify the society thereof in writing, giving the reasons therefor, and the society or any member or person affected by the decision of the Superintendent may, within ten days, appeal therefrom to the Lieutenant Governor in Council, who may approve of such amendment or revision.

Notice to society of objection

(4) The constitution and rules and any amendment, revision or consolidation thereof not excepted to, or if excepted to, which has been further amended, in accordance with the Superintendent's direction, or approved by the Lieutenant Governor in Council, shall be certified by the Superintendent to be duly passed by the society, and filed, and thereupon shall be deemed to be the rules in force on and after the date of the certificate, until a subsequent amendment, revision or consolidation is in like manner certified and filed and so as occasion requires, and shall be binding and obligatory upon all members of the society and upon everyone entitled to any benefit under any membership in or certificate of the society.

Constitution & bylaws, where accepted

(5) The failure of the Superintendent to take exception to any rule of the society or amendment or revision and his certifying and filing thereof do not make valid any provisions of such rule which is inconsistent with the provisions of this Act. R.S.P.E.I. 1974, Cap. I-5, s.270.

Failure to take exception, effect on validity

**274.** Where, because of a provision in any of its rules, a society otherwise entitled ought not, in the opinion of the Superintendent, to be licensed, it is not entitled to a license until it has repealed or amended such rules in accordance with the direction of the Superintendent, or they have on appeal been approved by the Lieutenant Governor in Council. R.S.P.E.I. 1974, Cap. I-5, s.271.

Amendment of rules under direction

**275.** (1) A copy of all rules of a society relating to its insurance contracts and to the management and application of its insurance funds shall be delivered by the society to any person requiring the same on payment of twenty-five cents.

Copy of society rules, available for a fee

Offence to give wrong rules (2) If an officer or agent of a society, with intent to mislead or defraud, gives to any person a copy of rules other than the rules then in force on the pretence that the same are the rules then in force, he is guilty of an offence. R.S.P.E.I. 1974, Cap. I-5, s.272.

Payments in equal consecutive monthly instalments without interest **276.** (1) Where, by the constitution and rules of a society, provision is made for the payment of an ascertained or ascertainable sum to a member in the event of his becoming totally disabled, or of his reaching a stated age, or upon the concurrence of both events, whether such provision is combined with other life insurance or not, the society may with the approval of the Superintendent, so amend its constitution and rules as to provide for the payment of such sum in equal consecutive annual instalments without interest, the payment of the instalments to be completed within a period not exceeding ten years from the happening of the event, but no person who has become or becomes so entitled shall receive payment unless at the maturity of each instalment such person continues to be a member and has paid all his dues and assessments.

Death occurs before final payment of instalment (2) If the member dies after becoming totally disabled or reaching the stated age, but before the payment of all instalments, the instalments unpaid shall form part of the insurance money or benefits payable upon the death of the member.

Unmatured contracts, no liability or claim against society, where (3) No unmatured contract of insurance creates any claim or liability against the society while a going society, or against the estate of the society in a winding-up or liquidation, but in a winding-up or liquidation the insured or beneficiary for value under the unmatured contract is entitled to share in the surplus assets of the society. R.S.P.E.I. 1974, Cap. I-5, s.273.

#### MEMBER'S RIGHTS AND LIABILITY

Liabilities of member limited **277.** (1) The liabilities of a member under his contract are at any date limited to the assessments, fees and dues which became payable within the preceding twelve months and of which at such date notice had been given in accordance with the constitution and rules of the society.

Withdrawal from society (2) A member may at any time withdraw from the society by delivering to it or sending by registered post, notice in writing of his intention to withdraw and paying or tendering the assessments, fees and dues payable within the preceding twelve months.

Release from further liability (3) Upon his withdrawal, the member shall be released from all further accruing liability under his contract.

Rules to prevail (4) This section is subject to any rules to the contrary certified by and filed with the Superintendent. R.S.P.E.I. 1974, Cap. I-5, s.274.

**278.** (1) No forfeiture, or suspension shall be incurred by reason of any default in paying a contribution or assessment, except such as are payable in fixed sums at fixed dates, until after notice to the member stating the amount due by him, and in that case of default of payment within a reasonable time not less than thirty days, to the proper officer to be named in the notice his interest or benefit will be forfeited or suspended, and default has been made by him in paying his contributions or assessment in accordance with the notice.

Default in payment of contribution: forfeiture or suspension

(2) "Fixed dates" in subsection (1) includes any numbered day, or any Monday, Tuesday, or as the case may be, numbered, alternate or recurring, of a stated month or months.

Fixed dates, defined

(3) Where under the constitution and rules of the society a defaulting member is entitled to be reinstated on payment of arrears, after a stated number of days default, this section does not prejudice the rights of such member. R.S.P.E.I. 1974, Cap. I-5, s.275.

Reinstatement, application of section

**279.** (1) Where it is stipulated that the benefit of the contract is suspended or reduced or forfeited for any other reason than for non-payment of money, such condition is not valid unless it is held to be just and reasonable under the circumstances of the case.

Benefit of contract suspended etc. for other reasons

(2) In any contract in which total abstinence from intoxicating liquors is made an express condition, such condition shall be deemed to be just and reasonable. R.S.P.E.I. 1974, Cap. I-5, s.276.

Abstinence from liquor just and reasonable

**280.** (1) Subject to subsection (2) any notice required to be given to a member for any purpose of this Act or of the rules of the society may be effectually given if written or printed notice is delivered, or sent by registered post to the member, or is left at his last known place of abode or of business or by publication in the official paper of the society.

Notice, how given

(2) A notice of the reduction of any benefit payable under a contract of insurance or of the increase of the premium payable thereunder shall be sent by registered post to the member at his last known place of abode or of business. R.S.P.E.I. 1974, Cap. I-5, s.277.

Notice of reduction of benefit, how given

#### REPORTS AND READJUSTMENT OF CONTRACTS

**281.** (1) In addition to the annual statement required to be filed under this Act, each society shall file with the Superintendent not later than May 1 in each year a valuation of its certificates or contracts of insurance in force at the preceding December 31, and such valuation shall be prepared having regard to the prospective liabilities of the society under its contracts and to the rates of contribution of members, in force at the date of valuation and shall be made and certified by an actuary appointed by

Valuation of certificates & contracts of insurance, annual filing



the society, and shall include a valuation balance sheet in such form and detail as the Superintendent prescribes.

Declaration of ability to pay contracts in full as they mature

(2) Where the valuation balance sheet shows that the society is in a position to provide for the payment of its contracts as they mature, without deduction or abatement and without increase in its existing rates of contribution, the society shall file with the Superintendent a declaration of the actuary to that effect.

Summary of valuation, mailed to each member

(3) A summary of the valuation certified by the actuary and a statement as to the financial condition of the society disclosed by such valuation shall be mailed to each insured member not later than June 1 in each year or by publication in the official paper of the society.

Publication of valuation not required, unless

(4) A society, the membership of which is limited by its constitution or laws to municipal or government employees, is not required to file the valuation or to publish the summary thereof unless and until required by the Superintendent in writing so to do. R.S.P.E.I. 1974, Cap. I-5, s.278.

Assets insufficient to pay contracts at maturity

**282.** (1) If it appears to the Superintendent from the statement and reports filed with him or from an examination or valuation, that the assets of a society applicable for the purpose are insufficient to provide for the payment of its contracts at maturity without deduction or abatement and without increase in its existing rates of contribution, he shall make a special report to the Minister as to the financial condition of the society.

Increase in rates of contribution or deduction in benefits payable by order of Minister

(2) If the Minister, after consideration of the report concurs in the opinion of the Superintendent, he shall require the society to make, within such time as he prescribes, but not exceeding four years, such increase in its rates of contribution or such reduction in the benefits payable under its contracts or such other changes as will enable the society to provide for the payment of its contracts at maturity.

Changes to be effected

(3) On receipt of such requirement the society shall, in accordance with its laws or constitution, put into effect such changes as are approved by the actuary appointed by the society for the purpose.

Meeting of society

(4) For the purpose of considering the request of the Minister, the governing executive authority of the society may call a special meeting of the supreme legislative body of the society upon such notice as it considers reasonable. R.S.P.E.I. 1974, Cap. I-5, s.279.

Reduce benefits payable or increase rates of contribution, by society

**283.** A society incorporated under the laws of the province may by amendment of its constitution and rules reduce the benefits payable under its contracts of insurance or some of them, or increase the rates of contribution payable by its members as a whole or some class or classes

thereof, or make such other changes as are necessary to comply with the requirements of the Minister, and such amendments when adopted by a majority of the votes duly cast by the members of the supreme legislative body of the society at a general meeting thereof are binding upon the members of the society and upon their beneficiaries and the legal personal representatives of any of them, and upon all persons deriving legal rights from any member or beneficiary. R.S.P.E.I. 1974, Cap. I-5, s.280.

**284.** (1) Where a society does not, within the time allowed, comply with the requirement of the Minister, the Superintendent shall report the default to the Minister, who shall thereupon appoint a readjustment committee of three persons, of whom at least one shall be an actuary, who shall forthwith investigate the assets, liabilities, rates of contribution and plans of insurance of the society and prepare a report containing such amendments to the society's constitution and rules reducing the benefits payable under its contracts or some of them or increasing the rates of contribution payable by its members as a whole or some class or classes thereof, or making such other changes as are deemed necessary to provide for the payment of all its contracts as they mature.

Readjustment committee, appointment & duties of

(2) The readjustment committee shall file its report in the office of the Superintendent and deliver to the society a certified copy thereof whereupon the amendments contained therein shall be and become part of the constitution and rules of the society and are valid and binding upon its members, their beneficiaries, the legal personal representative of any of them and all persons deriving legal right from any member or beneficiary.

Committee to file report, amendments to constitution effected

(3) The readjustment committee shall in the amendments fix a date not more than six months after the date of filing of the report when the reduction of benefits or increase in the rate of contribution, provided for by such amendments, comes into force.

Effective date of reduction or increase

(4) The society shall furnish the readjustment committee with any required information, and bear the expense of the investigation and report. R.S.P.E.I. 1974, Cap. I-5, s.281.

Information & expenses, society to provide

**285.** (1) If it appears to the Superintendent from the statements and reports filed with him or from an examination or valuation, that the assets of a society, the membership of which is limited to municipal or government employees, applicable for the purpose, are insufficient to provide for the payment of its contracts of insurance at maturity without deduction or abatement and without increase in its existing rates or contribution, he shall make a special report as to the financial condition

Society of municipal or government employees, assets insufficient, report to responsible officer

of the society to the Minister and to the head or responsible officer of the municipality or government of which the members are employees.

Synopsis of  
readjustment of  
rates or benefits in  
annual report

(2) The Superintendent shall not make any order or assume any responsibility for the readjustment of rates or benefits of the society but a synopsis of his special report shall be embodied in his annual report. R.S.P.E.I. 1974, Cap. I-5, s.282.

#### SPECIAL RATES AND BENEFITS

Reserve fund,  
creation of by  
society

**286.** (1) Where a society, unable to furnish the declaration of an actuary, adopts new rates of contribution which in the opinion of the actuary appointed by it, filed with the Superintendent, make reasonable provision for the payment in full at maturity of its contracts issued or to be issued to its members on such new rates, such society shall, after the payment of the matured contracts, create and from time to time maintain, out of the contributions of such members and interest thereon, a reserve fund not less than the amount which, with the rates of contributions to be collected from such members, is, in the opinion of the actuary, required to pay such contracts in full as they mature; and such fund shall be a separate fund of the society and shall not be liable for payment of the debts and obligations of the society under its contracts with those members who have not contributed under the new rates.

Issue of new  
certificates to  
members admitted  
before creation of  
fund

(2) The society may provide in its constitution and rules for the issue of new certificates to members admitted to the society prior to the establishment of such fund upon such terms and conditions as will, in the opinion of the actuary appointed by it, certified in writing to the Superintendent, enable the society to pay in full the contracts of insurance issued to such members as they mature and the provisions of subsection (1) of this section apply to such new certificates.

Annual valuation to  
show details of fund

(3) The annual valuation of the actuary of the society maintaining such a separate fund shall show clearly and separately and in such detail as the Superintendent requires, the financial position of the society in respect of the certificates of insurance included, and those not included, within the scope of the separate fund.

Merger of separate  
funds

(4) When a society that has been maintaining a separate fund files with the Superintendent a declaration of the actuary appointed by the society, the separate fund may, with the approval of the Superintendent, be merged with other similar funds of the society.

Common expense  
fund

(5) Nothing herein contained prevents a society that maintains such a separate fund, from maintaining a common expense fund. R.S.P.E.I. 1974, Cap. I-5, s.283.

**287.** A society, that files with the Superintendent the declaration of an actuary or a society that is maintaining a separate fund for its contracts, may provide in its constitution and rules for the issue of contracts of life insurance wherein the regular rates of contributions payable thereunder are limited to a period of twenty or more years, if such rates of contribution have been approved by an actuary and such certificates of insurance are subject to subsection 286(1), but such limitation of payments does not affect the right of the society to make an assessment or assessments in respect of such certificates in accordance with its constitution and rules either during or after the period of such limited payments. R.S.P.E.I. 1974, Cap. I-5, s.284.

Regular rates of contribution limited to 20 years or more

**288.** In the event of an epidemic or other unforeseen contingency impairing the funds of a society, the governing executive authority of the society may impose special assessments upon the members or upon such classes thereof and with such incidence as in its opinion is deemed necessary and equitable, and such special assessments are binding on the members of the society, notwithstanding anything to the contrary in its charter or constitution, or in any certificate of insurance issued by it. R.S.P.E.I. 1974, Cap. I-5, s.285.

Epidemic etc. impairs funds of society, special assessments

**289.** A society that files with the Superintendent the declaration of an actuary may, if its constitution so provides, and subject thereto,

Old age insurance contracts, endowment insurance contracts

- (a) issue to its members, old age insurance contracts providing for the payment of the money due on maturity thereof either at death or upon the insured attaining any age not less than sixty-five years;
- (b) in case the society has more than five thousand members in a life insurance department, issue to its members endowment insurance contracts providing for the payment of the insurance money to such members at the expiration of twenty or more years from the date of such contracts, or to the beneficiary or beneficiaries under any of such contracts in case of death of any of such members prior to the expiration of the endowment period; or
- (c) grant such surrender values or other equities as are approved by the actuary of the society and authorized by its constitution. R.S.P.E.I. 1974, Cap. I-5, s.286.

**290.** The governing executive authority of a society may make such additional levies from time to time upon members of the society as are necessary, in the opinion of the governing executive authority, properly to carry on the work of the society and prevent any deficit in its general or expense fund and such additional levies shall be binding on the members of the society notwithstanding anything to the contrary in its charter, or constitution or laws, or in any certificate of insurance issued by it. R.S.P.E.I. 1974, Cap. I-5, s.287.

Additional levies to carry out work of society & prevent deficit

- New or additional benefits, certificate of actuary
- 291.** Every society shall, before putting into effect any new or additional benefits or any new scale of rates of contribution under certificates of insurance, file with the Superintendent a certificate of an actuary approving of such benefits or rates of contribution. R.S.P.E.I. 1974, Cap. I-5, s.288.
- Surplus of assets to liabilities, application of
- 292.** A society whose valuation balance sheet shows a surplus of assets of more than five per cent over and above all net liabilities may apply such portion of such surplus as is approved by the actuary appointed by the society, in the manner prescribed by the constitution and rules of the society. R.S.P.E.I. 1974, Cap. I-5, s.289.

#### PART XI MUTUAL BENEFIT SOCIETIES

- Licensing of mutual benefit societies, none if
- 293.** (1) No mutual benefit society shall be licensed, or have its license renewed
- (a) if it has upon its books less than seventy-five members in good standing, subject to subsection (2);
  - (b) if it insures or indemnifies against contingencies other than sickness, disability or funeral expenses;
  - (c) if it contracts for sick benefits for an amount in excess of \$12 per week or for a funeral benefit in excess of \$400;
  - (d) if it undertakes insurance contracts with persons other than its own members;
  - (e) if it is in effect the property of its officers or of any other person, or is conducted as a mercantile or business enterprise, or for the purpose of mercantile profit, or if its funds are under the control of persons or officers appointed for life and not under that of the insured; or
  - (f) if it has charge of, or manages or distributes charity, gratuities or donations only.
- Renewal of license if less than 75 members
- (2) The Superintendent may, in his discretion, renew the license of any mutual benefit society notwithstanding that it has upon its books, at the time of application for such renewal, less than seventy-five members in good standing. R.S.P.E.I. 1974, Cap. I-5, s.290.
- Application of section
- 294.** Sections 272, 274 and 275 apply with appropriate changes, to societies licensed under this Part. R.S.P.E.I. 1974, Cap. I-5, s.291.

#### PART XII MUTUAL INSURANCE COMPANIES

- Application of Part XII
- 295.** (1) This Part applies to every mutual insurance company licensed under this Act, in this Part called "the insurer."

(2) Wherever the statutory conditions set out in Part IV are in conflict with the provisions of this Part, the provisions of this Part prevail with respect to mutual insurance companies. R.S.P.E.I. 1974, Cap. I-5, s.292. Statutory condition applicable

### CONTRACTS

**296.** The insurer may issue policies of insurance for any term not exceeding three years. R.S.P.E.I. 1974, Cap. I-5, s.293. Maximum term of insurance

**297.** (1) If not inconsistent with its Act of incorporation an insurer empowered to write insurance against loss by fire, explosion, lightning or windstorm may effect such insurance upon the cash premium plan, for a period not exceeding three years, on farm and other non-hazardous property, and for one year or less on any other class of property; but the amount of cash insurance in any one year shall be limited, so that the cash premiums received therefrom during that year shall not be in excess of one-half of the amount of the premium deposits on hand in cash or still payable in respect of premium notes on hand on December 31 of the previous year, according to the statement made and filed under this Act. Cash premium plan, insurance against loss by fire, explosion, lightning or windstorm

(2) Except as aforesaid, no insurer shall issue policies other than upon the mutual plan. R.S.P.E.I. 1974, Cap. I-5, s.294. Restriction on insurers

**298.** No policy of insurance shall be issued by an insurer until application has been made for insurance and approved of by the directors in the case of one undertaking fire insurance to the amount of \$50,000 at least. R.S.P.E.I. 1974, Cap. I-5, s.295. Issuance of policy only after application & approval

**299.** (1) The form, terms and conditions of the applications and policies of insurance of the insurer shall be determined by the board of directors in conformity with this Act and shall be approved by the Superintendent, and any policy may be renewed at the discretion of the directors by a renewal receipt instead of a new policy, on the insured paying the required premium or giving his premium note therefor. Form, terms & conditions of applications

(2) Every application and policy shall bear the words "Mutual Company \_ subject to proportional distribution of assets and losses" together with a statement of the company's total reserves as of December 31 preceding the date of the application or policy, printed or stamped in large type and in red ink at the head thereof. R.S.P.E.I. 1974, Cap. I-5, s.296. "Mutual Company subject to proportional distribution of assets and losses"

### RATES OF INSURANCE

**300.** The board of directors may, subject to this Act, and with the approval of the Superintendent, adopt a tariff of rates for insurance premiums or premium notes, as the case may be, and vary the same from Tariff of rates for insurance premiums or premium notes

time to time, and determine the sum to be insured on any property. R.S.P.E.I. 1974, Cap. I-5, s.297.

**Reinsurance of risk** **301.** The board may make arrangements with any insurer, whether licensed under this Part or not, for the reinsurance of a risk or any portion thereof, and may accept reinsurance of a risk, or any portion thereof, from any insurer on such conditions with respect to the rate and payment of premiums thereon as is agreed between them. R.S.P.E.I. 1974, Cap. I-5, s.298.

**Minimum rate chargeable for fire insurance** **302.** The minimum rate to be charged or taken by any insurer undertaking fire insurance, for insuring a first-class isolated non-hazardous property shall not be less than forty cents per \$100 insurance per year, and the minimum rate of insurance upon other property shall be increased relatively with the increased risk, according to the nature of such property, but any insurer which maintains its reserve fund to the minimum permitted by this Act, may, subject to the approval of the Superintendent, charge such rates as the board of directors decide. R.S.P.E.I. 1974, Cap. I-5, s.299.

#### CANCELLATION AND TRANSFER OF CONTRACTS

**Policy cancelled or avoided by insurer, liability of insured & insurer** **303.** If the policy is cancelled or avoided by the insurer, the liability of the insured on his premium note ceases from the date of the cancellation or avoidance on account of any loss that occurs to the insurer thereafter, but the insured is nevertheless liable to pay his proportion of the losses and expenses of the insurer to the time of cancellation or avoiding the policy, and, on payment of his proportion of all assessments then payable and to become payable in respect of losses and expenses, sustained up to that time, is entitled to a return of his premium note, and to such portion of the premium paid by him as has not been absorbed by the losses and expenses of the insurer up to such period and a condition to this effect shall be endorsed on the policy. R.S.P.E.I. 1974, Cap. I-5, s.300.

**Insured, properly alienated, & assignee has policy assigned to him, where** **304. (1)** If the insured property or any interest therein is alienated or partly alienated and the assignee has the policy transferred to him, the insurer, upon application, and upon the assignee giving a new premium note or other proper security to its satisfaction for such portion of the deposit or premium note as remains unpaid, and, within thirty days next after such alienation, may accept the assignment; thereupon the assignee shall be entitled to all the rights and privileges, and be subject to all the liabilities and conditions, to which the original party insured was entitled and subject.

**Where assignee a mortgagee** **(2)** Where the assignee is a mortgagee, the insurer may permit the policy to remain in force, and to be transferred to him by way of

additional security, without requiring any premium note from the assignee, or without his becoming in any manner personally liable for premiums or otherwise; but in such cases the premium note and liability of the mortgagor in respect thereof shall continue and be in no way affected by the assignment. R.S.P.E.I. 1974, Cap. I-5, s.301.

#### PREMIUM NOTES AND ASSESSMENTS

**305.** The insurer may accept premium notes for insurance and may issue policies thereon and such notes shall be assessed for the losses and expenses of the insurer in the manner hereinafter provided. R.S.P.E.I. 1974, Cap. I-5, s.302.

Premium notes,  
acceptance for  
insurance

**306.** No premium note, whether purporting to do so or not, creates any lien upon the lands on which the insured property is situated. R.S.P.E.I. 1974, Cap. I-5, s.303.

Premium notes not  
a lien

**307.** (1) The directors may demand and collect a portion of the premium in cash, and take a premium note for the remainder thereof; and if the amount so collected is more than sufficient to pay all losses and expenses during the continuance of the policy, then any surplus becomes part of the reserve fund.

Demand a  
collection of  
premium in cash

(2) The directors may make assessments upon premium notes before losses have happened or expenses been incurred and any surplus from any such assessments becomes part of the reserve fund. R.S.P.E.I. 1974, Cap. I-5, s.304.

Assessments upon  
premium notes,  
application of  
surplus

**308.** (1) All assessments on premium notes shall be made by the board of directors with the approval of the Superintendent and, subject to section 309, such assessments shall be made at such intervals and for such sums as the directors determine and the superintendent approves to be necessary to meet losses, expenses and reserve of the insured during the currency of the policies for which the notes were given and every insured shall pay the assessments from time to time payable by him to the insurer during the continuance of his policy.

Assessments, made  
by board of  
directors

(2) Notice of the assessments shall be mailed by the insurer to each member, directed to his post office address as given in his application, or in writing to the insurer, and to each encumbrancer of the property insured known to the insurer and the assessment becomes payable thirty days after the mailing of the notice.

Notice of  
assessments,  
mailing to members

(3) A notice of assessment shall be deemed sufficient if it embodies the number of the policy, the period over which the assessment extends, the amount of the assessment, and the time when and the place where payable. R.S.P.E.I. 1974, Cap. I-5, s.305.

Notice of  
assessment, when  
deemed sufficient



Payment, time for after receipt of assessment	<b>309.</b> (1) If the assessment, in respect of a policy, is not paid within thirty days after the mailing of the notice, the policy is null and void as to any claim for losses occurring during the time of such non-payment; but the policy becomes revived when the assessment is paid unless the secretary gives notice to the contrary to the party assessed.
Liability to pay assessment	(2) Nothing in this section relieves the insured from his liability to pay the assessment or any subsequent assessments, nor is he entitled to recover the amount of any loss or damage which happens to property insured under the policy while the assessment remains due and unpaid. R.S.P.E.I. 1974, Cap. I-5, s.306.
Amount of assessment	<b>310.</b> The assessment shall always be in proportion to the amount of the premium notes held by the insurer having regard to the branch or department to which the policies respectively appertain, but where an insurer alters its rate and still holds in respect of subsisting contracts premium notes at the prior rate, the insurer, as between the respective premium notes so differing in rate, may make and levy such differential assessments as will, in risks of the same amount and of the same class of hazard, equalize the cost of insurance to the makers of the respective premium notes. R.S.P.E.I. 1974, Cap. I-5, s.307.
Non-payment after 30 days from notice	<b>311.</b> If any member or person who has given a premium note neglects or refuses, for thirty days after notice of assessment has been mailed to him, to pay the assessment, the insurer may sue for and recover the same with costs of suit, and such proceeding shall not be a waiver of any forfeiture incurred by the non-payment. R.S.P.E.I. 1974, Cap. I-5, s.308.
Certificate stating assessment, evidence thereof	<b>312.</b> The certificate of the insurer, specifying an assessment and the amount due to the insurer on a premium note by reason thereof, shall be taken and received as evidence thereof in any court in the province. R.S.P.E.I. 1974, Cap. I-5, s.309.
Premium note, return of after expiration of term	<b>313.</b> Forty days after the expiration of the term of insurance, the premium note given for the insurance shall, on application therefor, be given to the signer thereof, if all losses and expenses, with which the note is chargeable, have been paid. R.S.P.E.I. 1974, Cap. I-5, s.310.

#### LOSSES UNDER CONTRACTS

Loss on property, retention of premium note	<b>314.</b> If there is any loss on property insured by the insurer, the directors may retain the amount of the premium note given for insurance thereof, until the time has expired for which insurance has been made, and at the expiration of such time the insured has the right to demand and receive the retained sum or such part thereof as remains after deducting assessments on the note. R.S.P.E.I. 1974, Cap. I-5, s.311.
---	--

**315.** No execution shall issue against the insurer upon any judgment until after the expiration of three months from the recovery thereof. R.S.P.E.I. 1974, Cap. I-5, s.313. Limitation period for execution

**316.** In the case of a proportional distribution of assets to satisfy indebtedness for losses under contracts issued by the insurer, the same percentage of payment shall be made to each member whether the payments are made at one time or in instalments. R.S.P.E.I. 1974, Cap. I-5, s.314. Percentage payment to each member

#### RESERVE AND GUARANTEE FUND

**317.** (1) The insurer shall form a reserve fund to consist of all money that remains on hand at the end of each year after payment of the expenses and losses; and for that purpose the board of directors shall levy an annual assessment, not exceeding twenty-five per cent, and not less than five per cent, on the premium notes held by the insurer until the reserve reaches the sum of \$500 for every \$100,000 of the first \$1,000,000 insurance in force, and \$3,000 for each additional one million dollars or part thereof in force, up to which minimum level it shall be maintained and for such purpose the insurer shall thereafter levy annually such adequate assessment as the Superintendent approves. Reserve fund, formation of, annual assessment

(2) The reserve fund may, from time to time, be applied by the directors to pay off such liabilities of the insurer as are not provided for out of the ordinary receipts for the same or any succeeding year. Application of fund to liabilities

(3) The reserve fund is the property of the insurer as a whole and no member has a right to claim any share or interest therein in respect of any payment contributed by him towards it; nor shall the fund be applied or dealt with by the insurer or the directors other than in paying its creditors, except on the order of the Lieutenant Governor in Council. R.S.P.E.I. 1974, Cap. I-5, s.315. Property interest in reserve fund, power to deal with fund

#### PART XIII COMPENSATION ASSOCIATIONS

**318.** (1) The Minister may, on behalf of the province, enter into an agreement with a compensation association established by insurers under a compensation plan for the indemnification of policyholders of, and eligible claimants against, an insolvent insurer. Agreement with compensation association

(2) An agreement under subsection (1) shall provide that an insurer licensed in the province Terms

(a) become a member of the association; and

(b) satisfy such solvency standards as the Superintendent may require. 1988, c.32, s.2.

PART XIV  
RECIPROCAL OR INTER-INSURANCE EXCHANGES

Definitions	<b>319. In this Part</b>
attorney	(a) “attorney” means a person authorized to act for subscribers;
subscribers	(b) “subscribers” means persons exchanging with each other reciprocal contracts of indemnity or inter-insurance. R.S.P.E.I. 1974, Cap. I-5, s.316.
Reciprocal contracts of indemnity or inter-insurance	<b>320.</b> Any person may exchange with other persons in the province and elsewhere reciprocal contracts of indemnity or inter-insurance for any class of insurance for which any insurance company may be licensed under this Act, except life insurance, accident insurance, sickness insurance, guarantee insurance and motor vehicle liability insurance. R.S.P.E.I. 1974, Cap. I-5, s.317.
Status of exchanges & contracts of	<b>321.</b> No exchange shall be deemed to be a company or an insurer within the meaning of this Act, nor shall the contracts of an exchange be deemed to be contracts of insurance to which the other parts of this Act apply. R.S.P.E.I. 1974, Cap. I-5, s.318.
Execution of contracts	<b>322.</b> (1) Reciprocal contracts of indemnity or inter-insurance may be executed on behalf of subscribers by any other person acting as attorney under a power of attorney, a copy of which has been duly filed as hereinafter provided.
Actions & proceedings, may be maintained, where	(2) Notwithstanding any condition or stipulation of any such power of attorney or of any such contract of indemnity or inter-insurance, any action or proceeding in respect of any such contract may be maintained in any court of competent jurisdiction in the province. R.S.P.E.I. 1974, Cap. I-5, s.319.
Declaration of persons constituting exchange, contents	<b>323.</b> The persons constituting the exchange shall, through their attorney, file with the Superintendent a declaration, verified by oath, setting forth (a) the name of the attorney and the name or designation under which the contracts are issued, which name or designation shall not be so similar to any other name or designation previously adopted by any exchange or by any licensed insurer as in the opinion of the Superintendent to be likely to result in confusion or deception; (b) the classes of insurance to be effected or exchanged under such contracts;

- (c) a copy of the form of the contract, agreement or policy under or by which such reciprocal contracts of indemnity or inter-insurance are to be effected or exchanged;
- (d) a copy of the form of power of attorney under which such contracts are to be effected or exchanged;
- (e) the location of the office from which such contracts are to be issued;
- (f) a financial statement in the form prescribed by the Superintendent;
- (g) evidence satisfactory to the Superintendent that it is the practice of the exchange to require its subscribers to maintain in the hands of the attorney, as a condition of membership in the exchange, a premium deposit reasonably sufficient for the risk assumed by the exchange;
- (h) evidence satisfactory to the Superintendent that the management of the affairs of the exchange is subject to the supervision of an advisory board or committee of the subscribers in accordance with the terms of the power of attorney. R.S.P.E.I. 1974, Cap. I-5, s.320.

**324.** Upon an exchange complying with this Part, the Superintendent may issue a license in accordance with the form in the Schedule if the Superintendent is satisfied that the exchange is financially viable, having regard to the credit worthiness of the subscribers, the number and diversity of risks to be insured through contracts of indemnity or insurance and such other requirements and criteria as may be set out in the regulations. R.S.P.E.I. 1974, Cap. I-5, s.321; 2003,c.1,s.5. License, issuance of

**325.** The Lieutenant Governor in Council may make regulations respecting the requirements and criteria the Superintendent shall consider to determine whether an exchange is financially viable. 2003,c.1,s.6. Regulations

**326.** Where the office from which the contracts are to be issued is not in the province, service upon the Superintendent of notice or process in any action or proceeding in the province in respect of contract of indemnity or inter-insurance effected by the exchange shall be deemed service upon the subscribers who are members of the exchange at the time of such service. R.S.P.E.I. 1974, Cap. I-5, s.323. Service on Superintendent is service upon subscribers, where

**327.** There shall be filed with the Superintendent by the attorney, as often as the Superintendent requires, a statement of the attorney under oath showing, in the case of fire insurance, the maximum amount of indemnity upon any single risk and a statement of the attorney, verified by oath, to the effect that he has examined the commercial rating of the subscribers of the exchange as shown by the reference book of a commercial agency, having at least five hundred subscribers, and that from such examination or other information in his possession it appears that no subscriber has assumed on any single fire insurance risk an Statement of attorney under oath

amount greater than ten per cent of the net worth of the subscribers.  
R.S.P.E.I. 1974, Cap. I-5, s.324.

Reserve fund **328.** (1) There shall at all times be maintained with such attorney, as a reserve fund, a sum in cash or approved securities equal to fifty per cent of the annual deposits or advance premiums collected or credited to the accounts of subscribers on contracts in force having one year or less to run, and proportionally on those for longer periods.

Guarantee fund (2) Except as hereinafter provided, there shall also be maintained as a guarantee fund or surplus, an additional sum, in excess of all liabilities, in cash or approved securities, amounting to not less than \$50,000.

Fire insurance exchange, principal office in province (3) In the case of a fire insurance exchange whose principal office is in the province, the guarantee fund or surplus referred to in subsection (2) shall not be less than \$25,000.

Automobile insurance exchange, principal office in province (4) In the case of an automobile insurance exchange whose principal office is in the province, the guarantee fund or surplus referred to in subsection (2) shall, during the first year of operation of the exchange, be maintained at an amount not less than \$10,000, and thereafter not less than \$25,000.

Deficiency to be made up (5) If at any time the amounts on hand are less than the foregoing requirements, the subscribers or the attorney shall forthwith make up the deficiency.

Other funds used to cover deficiency, terms & conditions of (6) Where funds other than those which accrued from premiums or deposits of subscribers are supplied to make up a deficiency as herein provided for, such funds shall be deposited and held for the benefit of subscribers under such terms and conditions as the Superintendent requires so long as a deficiency exists and may thereafter be returned to the depositor.

Approved securities, defined (7) In this section "approved securities" means securities the investment in which is authorized by section 329. R.S.P.E.I. 1974, Cap. I-5, s.325.

Investment of surplus funds in certain securities **329.** (1) If the principal office of the exchange is in the province, the surplus insurance funds and the reserve fund of the exchange shall be invested in the class of securities authorized by this Act, for the investment of the reserve funds of an insurer.

*Idem* (2) If the principal office of the exchange is outside the province it is a condition precedent to the issue of a license under this Act that evidence satisfactory to the Superintendent be filed with him showing that the class of security in which funds of the exchange are required by law to

be invested, and, are in fact invested, is within the limits of investment prescribed for the investment of the reserve funds of an insurance corporation by the jurisdiction in which the office of the exchange is situated. R.S.P.E.I. 1974, Cap. I-5, s.326.

**330.** (1) No exchange shall undertake any liability on a contract of indemnity, inter-insurance or insurance except on behalf of a subscriber. Restriction on exchanges

(2) No attorney or exchange shall effect reinsurance of any risks undertaken by the exchange in any other reciprocal or inter-insurance exchange. R.S.P.E.I. 1974, Cap. I-5, s.327. Re-insurance limited

**331.** (1) No person shall act as attorney, or for or on behalf of any attorney, in the exchange of reciprocal contracts of indemnity or inter-insurance, or in acts or transactions in connection therewith, unless and until a license has been issued and unless such license is in force. License for attorneys

(2) Any person who, in contravention of subsection (1) undertakes or effects or agrees or offers to undertake or effect any exchange of reciprocal contracts of indemnity or inter-insurance or any act or transaction in connection therewith, is guilty of an offence, and liable on summary conviction to a fine of not less than \$50 or more than \$500. R.S.P.E.I. 1974, Cap. I-5, s.328. Acting without license, offence

**332.** (1) Where a licensed exchange or attorney fails or refuses to comply with or contravenes any provision of this Act, the license of the exchange may be suspended or revoked by the Minister on the report of the Superintendent after due notice and opportunity for a hearing before the Superintendent has been given to the exchange or its attorney, but the suspension or revocation does not affect the validity of any reciprocal contracts of indemnity or inter-insurance effected prior thereto or the rights and obligations of subscribers under the contracts. Suspension or revocation of license of exchange

(2) Notice of such suspension or revocation shall be given by the Superintendent in at least two successive issues of the Gazette as soon as reasonable after such suspension or revocation. R.S.P.E.I. 1974, Cap. I-5, s.329. Notice of suspension or revocation

**333.** Notwithstanding anything in this Act any person may insure against fire any property situated in the province in any exchange not licensed under this Act, and any property so insured may be inspected and any loss incurred in respect thereof adjusted, provided such insurance is effected outside of the province and without any solicitation in the province directly or indirectly on the part of the attorney. R.S.P.E.I. 1974, Cap. I-5, s.330. Insurance against fire by exchange not licensed permitted

PART XV  
AMALGAMATION, TRANSFER AND RE-INSURANCE

Re-insurance, defined	<b>334.</b> In this Part “re-insurance” means an agreement whereby contracts made in the province by a licensed insurer or any class or group thereof are undertaken or re-insured by another insurer either by novation, transfer, assignment or as a result of amalgamation of the insurers. R.S.P.E.I. 1974, Cap. I-5, s.331.
Application of Part XV	<b>335.</b> Nothing in this Part affects contracts or re-insurance of individual risks made by insurers in the ordinary course of business. R.S.P.E.I. 1974, Cap. I-5, s.332.
Amalgamation of property & business of insurer	<b>336.</b> (1) An insurer incorporated and licensed under the laws of the province may amalgamate its property and business with those of any other insurer, or may transfer its contracts to or re-insure them with, or transfer its property and business or any part thereof to, any other insurer, and such insurers may enter into all contracts and agreements necessary to the amalgamation, transfer or re-insurance upon compliance with the conditions of this Part.
Re-insurance of contracts of other insurers	(2) Any insurer so incorporated and licensed may, in like manner, re-insure the contracts of any other insurer, or purchase and take over the business and property or any portion thereof of any other insurer. R.S.P.E.I. 1974, Cap. I-5, s.333.
Approval required for amalgamation, transfer, re-insurance or purchase	<b>337.</b> Every agreement respecting an amalgamation, transfer, re-insurance or purchase, shall be approved by the Lieutenant Governor in Council before coming into force; and the insurers, parties thereto, shall file with the Superintendent a petition for the purpose within sixty days from the date of execution of the agreement. R.S.P.E.I. 1974, Cap. I-5, s.334.
Life insurance insurers, notice and documents, service of on certain persons	<b>338.</b> (1) In the case of insurers undertaking life insurance, before such a petition is heard, notice thereof, together with the following documents: <ul style="list-style-type: none"> <li>(a) a statement of the nature and terms of the agreement for re-insurance;</li> <li>(b) an abstract containing the material facts embodied in the agreement under which such re-insurance is proposed to be effected; and</li> <li>(c) copies of the actuarial or other reports upon which such agreement is founded including a report by an independent actuary approved by the Superintendent,</li> </ul> shall be served on members and policyholders in the province of each insurer other than holders of industrial policies, but the Superintendent may dispense with service of the documents on the policyholders of the re-insuring insurer.

(2) The service shall be effected in each case by forwarding by registered mail the notice and documents directed to the registered or other known address of the member or policyholder, so as to reach him if delivered in due course of mail at least thirty days before the day appointed for the hearing of the petition.

Service, how effected

(3) In case a fraternal society is a party to such an agreement, the notice and documents shall be deemed to be served on its members if published in any official publication of the society at least thirty days before the day appointed for the hearing of the petition.

Fraternal society party to agreement, service

(4) The agreement shall be open to the inspection of the members and policyholders at the principal offices of the insurers within the province for a period of thirty days after service of such notice. R.S.P.E.I. 1974, Cap. I-5, s.335.

Inspection of agreement

**339.** Upon the filing of the petition, the insurers party to the agreement shall deposit with the Superintendent the following documents:

Upon filing petition, certain documents to be filed

- (a) a certified copy of the agreement for re-insurance;
- (b) a statement of the nature and terms of re-insurance;
- (c) certified copies of the statements of assets and liabilities of the insurers parties to the agreement;
- (d) certified copies of the actuarial or other reports upon which the agreement is founded;
- (e) a declaration under the hands of the president or principal officer and manager or secretary of each insurer verifying the copy of agreement and stating that to the best of their knowledge and belief every payment made or to be made to any person on account of the re-insurance is therein fully set forth and that no other payments beyond those set forth have been made or are to be made either in money, policies, bonds, valuable securities or other property by or with the knowledge of any of the parties to the re-insurance;
- (f) evidence of the service and publication of the notices required to be served or published, if any; and
- (g) such other information and reports as the Superintendent requires. R.S.P.E.I. 1974, Cap. I-5, s.336.

**340.** Upon receipt of the petition, the Superintendent shall fix a day for hearing the petition and notice of the hearing shall be given in the Gazette at least ten days before the date so fixed, and in case of insurers undertaking life insurance, thirty days before such date. R.S.P.E.I. 1974, Cap. I-5, s.337.

Hearing the petition

**341.** After hearing the directors, shareholders, members and policyholders and such other persons as he considers entitled to be heard upon the petition or giving them an opportunity to be so heard, the

After hearing recommendation to Lt. Gov. in C.



Superintendent may recommend that the agreement be approved by the Lieutenant Governor in Council. R.S.P.E.I. 1974, Cap. I-5, s.338.

No recommendation, where

**342.** No such agreement shall be recommended if it appears to the Superintendent that, upon the consummation of the re-insurance, impairment or deficiency will exist in the balance sheet of the continuing or re-insuring insurer when its liabilities (including its capital stock, if any), are calculated according to this Act. R.S.P.E.I. 1974, Cap. I-5, s.339.

Enforcement of contracts taken over, transferred or re-insured

**343.** Where an insurer enters into a contract or agreement for amalgamation, transfer or re-insurance with another insurer as provided in this Part and the contract or agreement is approved by the Lieutenant Governor in Council subject to the terms of that contract or agreement, any contract of insurance taken over, transferred or re-insured by the other insurer may be enforced against the other insurer as though that insurer had entered into the contract of insurance with the insured, but nothing in this section affects the liability of the original insurer under the contract of insurance. R.S.P.E.I. 1974, Cap. I-5, s.340.

Agreement between "continuing insurer" and "retiring insurer"

**344.** Where under an agreement between an insurer, in this section called the "continuing insurer", and another insurer, in this section called the "retiring insurer", in anticipation of the retiring insurer ceasing to do business in Prince Edward Island, the continuing insurer assumes liability under contracts of insurance specified in the agreement issued by the retiring insurer and the retiring insurer ceases to carry on business in Prince Edward Island, an insured or other person entitled to rights under those contracts may enforce the rights as though those contracts had been issued by the continuing insurer. R.S.P.E.I. 1974, Cap. I-5, s.341.

#### PART XVI AGENTS, BROKERS AND ADJUSTERS

License for agents

**345.** No person shall act, or offer or undertake to act, as insurance agent in this province without having first obtained a certificate of authority under this Act. R.S.P.E.I. 1974, Cap. I-5, s.342; 2003,c.1,s.7.

Application for certificate of authority

**346.** (1) Every applicant for a certificate of authority shall deliver to the Superintendent an application in the form and verified in the manner required by the Superintendent, setting out the applicant's name, his address, occupation and the names of insurers to be represented, the amount and value of insurance written by him during the preceding year and such other information as is required by the Superintendent.

Approval by at least one insurer

(2) The application shall be approved in writing by at least one of the insurers to be represented, certifying to the good business reputation of

the applicant and his qualifications for and knowledge of the business of insurance, and recommending the granting to him of a certificate of authority.

(3) The approval may be given by either the head or a branch office of the insurer, or by its manager, branch manager or general agent in the province or by its chief agent in Canada, as the Superintendent prescribes. R.S.P.E.I. 1974, Cap. I-5, s.343. How approval given

**347.** (1) Upon receipt of an application for a certificate of authority and payment of the prescribed fee, the Superintendent shall, if he is satisfied that the applicant is a suitable person to receive a certificate of authority and intends to hold himself out publicly and carry on business in good faith as an insurance agent, issue to the applicant a certificate of authority authorizing the holder, during the term of the certificate, to carry on within the province the business of insurance of the class stipulated in his certificate. Issuance of certificate of authority

(2) If for any reason the Superintendent is of the opinion that an applicant is not a suitable person to receive a certificate of authority he may refuse him a certificate. R.S.P.E.I. 1974, Cap. I-5, s.344. Refusal to grant certificate

**348.** Certificates so issued shall be of three classes:  
 (a) certificates covering life insurance or life, accident and sickness insurance when issued by the same insurer;  
 (b) certificates covering fire insurance; and  
 (c) certificates covering any other class of insurance. R.S.P.E.I. 1974, Cap. I-5, s.345. Classes of certificates

**349.** A certificate shall be in such form as the Superintendent may determine and shall  
 (a) specify the class of business to be carried on by the agent;  
 (b) remain in force for a period not exceeding two years;  
 (c) expire on such date as may be specified therein,  
 and may be renewed on application to the Superintendent and payment of the prescribed fee. 1997(2nd),c.66,s.3. Form of certificate

**350.** (1) A certificate of authority may be revoked or suspended by the Superintendent, if, after due investigation by him or his duly accredited representative, he determines that the holder of the certificate  
 (a) has been guilty of misrepresentation, fraud, deceit or dishonesty;  
 (b) has violated any of the provisions of this Act or any rule or regulation under this Act;  
 (c) has unreasonably failed to pay over to the insurer or agent entitled thereto any moneys collected by him and retained beyond the term stipulated in his agency contract or agreement; Revocation of certificate of authority

(d) has placed insurance with insurers other than those licensed in the province under this Act, without complying with the provisions herein contained relating to unlicensed insurance; or  
 (e) has demonstrated his incompetency or untrustworthiness to transact the business of insurance for which the certificate was granted.

Information given is privileged	(2) Any information, document, record, statement or thing required to be made or disclosed to the Superintendent during the investigation provided by this section, if made in good faith, is privileged and shall not be used as evidence in any action or proceeding instituted by or on behalf of any person to whom a certificate of authority has been issued under this Act. R.S.P.E.I. 1974, Cap. I-5, s.347.
Entitlement to new certificate after revocation	<b>351.</b> No person whose certificate has been revoked is entitled to a new certificate for one year after the revocation and then only at the discretion of the Superintendent. R.S.P.E.I. 1974, Cap. I-5, s.348.
Exemption from municipal fees	<b>352.</b> The holder of a certificate of authority is exempt from payment of any license fee imposed by a municipal corporation within the province for the transaction of the business of insurance. R.S.P.E.I. 1974, Cap. I-5, s.349.
No commission or compensation unless person holds certificate	<b>353.</b> (1) No insurer licensed under this Act, and no officer, agent or employee of the insurer, and no insurance agent authorized under this Act, shall directly or indirectly, pay or allow, or offer or agree to pay or allow, any commission or other compensation or anything of value to any person for acting or attempting or assuming to act as an insurance agent in respect of insurance in the province or for having or claiming or appearing to have any influence or control over the insured or prospect for insurance unless that person holds at the time a subsisting insurance agent's certificate of authority.
Exception	(2) Subsection (1) does not affect the payment or allowance by an agent or part of his commission to agents or brokers outside the province.
Uncertified agent not to take commission on any sales	(3) An agent who, at the time when he receives an application for insurance, does not hold a subsisting certificate of authority, shall not retain or deduct anything on account of commission from any payment made to him with such application, but shall remit to the insurer the full amount paid to him on account of premium.
Officer of fraternal society, solicitation by	(4) An officer or a salaried employee of the head office of a duly licensed fraternal society who does not receive commission, may, without a license, solicit insurance contracts on behalf of the society.

(5) Any member not an officer or salaried employee described in subsection (4) may, without a license, solicit insurance contracts on behalf of the society unless such member devotes or intends to devote more than one-half of his time to soliciting such contracts or has in the previous license year solicited and procured life insurance contracts on behalf of the society in an amount in excess of \$20,000.

Soliciting without a license

(6) Nothing in this Act shall be construed so as to prevent an insurer compensating a salaried employee of its head or branch office in respect of insurance issued by the employing insurer upon the life of the employee or so as to require that the employee shall be licensed as an agent to effect the insurance.

Compensation of employee of society

(7) No insurer or agent shall pay or allow or agree to pay or allow, directly or indirectly, any commission or compensation of any kind in lieu of commission to any agent in connection with any application or contract for insurance on the life of the agent or of any member of his immediate family until the agent has, within twelve calendar months, negotiated at least three contracts of insurance on the lives of persons other than those of the classes mentioned in this section and the first premiums thereon have been fully paid to the insurer.

Commission, payment to agent for sale to self & family

(8) Notwithstanding anything contained in this Act the Superintendent may issue a certificate of authority to a transportation company authorizing it, by its employees in the province to act as an agent for a licensed insurer with respect to accident insurance and such other classes of insurance as he may approve.

Transportation company, issuance of certificate of authority to

(9) The certificate is subject to such regulations as the Lieutenant Governor in Council may prescribe with respect to the form of the certificate, the terms and conditions under which it is issued, and the circumstances under which it may be suspended or cancelled. R.S.P.E.I. 1974, Cap. I-5, s.350.

Certificate subject to regulations

**354.** (1) Each agent, broker and adjuster, and any firm or corporation by, under or through which an agent, broker or adjuster carries on his business as an agent, broker or adjuster shall keep such a classification of its contracts, and such registers, books of account and financial statements, as are directed or authorized by the Superintendent.

Registers, financial statements etc. to be kept by agents, brokers and adjusters

(2) The Superintendent may at any time order an audit of the registers, books of account and financial statements of any agent, broker and adjuster, and of any firm or corporation by, under or through which the agent, broker or adjuster carries on business, for the purpose of determining whether such records, books of account and financial

Audit ordered by superintendent

statements are being kept in the manner prescribed by the Superintendent.

Conduct of audit (3) The superintendent may appoint an accountant authorized to act under the *Public Accounting and Auditing Act* R.S.P.E.I. 1988, Cap. P-28 to conduct the audit, and every person named in the order of the superintendent to conduct an audit referred to in subsection (2) and each of the employees, servants or agents of such named person shall assist the accountant in the performance of his duties.

Orders *re* maintenance of registers etc. (4) After completion of an audit the superintendent may give such orders as he may consider advisable respecting the proper and correct maintenance of such registers, books of account and financial statements. 1976, c.15, s.1.

#### BROKERS' LICENSES FOR BUSINESS WITH UNLICENSED INSURERS

Special insurance broker, license for **355.** (1) The Superintendent may, upon the payment of the prescribed fee, issue to any suitable person resident in the province, a license to act as a special insurance broker to negotiate, continue or renew contracts of fire insurance on property in the province with insurers not authorized to transact such business in the province.

Application, information to be contained in (2) The applicant for the license shall file with the Superintendent a written application under oath giving such information as is required of an insurance agent in applying for a certificate, and such further information as the Superintendent prescribes.

Issuance of license, term of (3) If the Superintendent is satisfied with the statement and information required, he shall issue the license, and it shall expire on December 31 next within one year of its issue, unless sooner suspended or revoked.

Renewal of license (4) The license may, in the discretion of the Superintendent, be renewed for each succeeding year upon payment of a fee of \$25 without requiring anew the detailed information required in the case of an original application.

Security, amount of (5) Every person shall, before receiving the license, execute and deliver to the Superintendent security to the satisfaction of the Superintendent in the sum of not less than \$5,000 that the licensee will faithfully comply with all the requirements of this or any other Act.

Suspension or revocation of license (6) The Superintendent, for cause shown similar to any of those entitling him to revoke the certificate of authority of an agent, may

suspend or revoke the license of an insurance broker. R.S.P.E.I. 1974, Cap. I-5, s.351.

**356.** (1) Where sufficient insurance on property in the province at reasonable rates of insurance in the form required by the insurer cannot be obtained by the insured from insurers licensed to do business in the province, a special insurance broker, duly licensed, may effect insurance with unlicensed insurers, but shall in the case of every contract so effected obtain from the insured a signed and dated statement describing the property insured, its location and the amount of insurance required, and stating that the insurance cannot be obtained in licensed companies and that the application for such insurance at the stated rate of premium was previously made to and refused by named companies licensed in the province.

Where business with unlicensed insurers permitted

(2) Such broker shall, within ten days after the placing of such insurance with unlicensed insurers, submit to the Superintendent a statement setting forth the name of the insured, the property insured and its location, the full names of the unlicensed insurers, and the amount of insurance placed with each and the rate and amount of premium paid to each.

Statement of broker after sale, particulars

(3) Every such broker shall keep a separate account of insurance effected by him under his license in books in the form prescribed by the Superintendent, which shall be open to inspection by the Superintendent or any of his officers.

Separate account, inspection of books

(4) Within ten days after the end of each month every such broker shall make to the Superintendent a return under oath in the form and manner by him prescribed, containing particulars of all insurance effected by him under this section during such month. R.S.P.E.I. 1974, Cap. I-5, s.352.

Particulars of insurance effected

**357.** On it being shown to the satisfaction of the Minister that all insurance effected by a licensed special insurance broker is no longer in force or have been re-insured, and that the taxes owing to the province have been paid, the broker is entitled to a release or cancellation of his security. R.S.P.E.I. 1974, Cap. I-5, s.353.

Release of cancellation of security

**358.** A special insurance broker shall accept applications for insurance with unlicensed insurers only from the insured or another licensed broker, and shall not receive any such application from, or pay or allow compensation or anything of value in respect of such application to, an agent or broker not licensed under this Act, and any contract of insurance with an unlicensed insurer made by or through any agent or broker not licensed under this section shall be deemed to be unlawfully made. R.S.P.E.I. 1974, Cap. I-5, s.354.

Business only through licensed broker

## ADJUSTERS' LICENSES

Licensing of adjusters	<b>359.</b> (1) Subject to section 362, upon payment of a prescribed fee, the Superintendent may issue to any person who has complied with the requirements of this Part, a license authorizing the person to act as an adjuster.
Partnership or corporation licenses	(2) A license issued to a partnership or corporation shall be issued in the name of the partnership or corporation.
Limitations on licenses	(3) The license is subject to the limitations and conditions the Superintendent prescribes.
Half year	(4) Repealed by 1997(2nd),c.66,s.4. R.S.P.E.I. 1974, Cap. I-5, s.355; 1997(2nd),c.66,s.4; 2003,c.1,s.9.
Form of license	<b>360.</b> A license shall be in such form as the Superintendent may determine and shall <ul style="list-style-type: none"> <li>(a) remain in force for a period not exceeding two years;</li> <li>(b) expire on such date as may be specified therein,</li> </ul> and may be renewed on application to the Superintendent and payment of the prescribed fee. 1997(2nd),c.66,s.5.
Form of application	<b>361.</b> An application for a license shall be in the form the Superintendent prescribes and it shall be made to the Superintendent. R.S.P.E.I. 1974, Cap. I-5, s.357.
Applicant referred to advisory board	<b>362.</b> (1) Where the applicant is applying for a license for the first time or where the applicant has not held a license in the province for two years immediately preceding the date of the application, the Superintendent may refer the applicant to an advisory board.
Composition of advisory board	(2) The advisory board shall be approved of by the Superintendent and shall consist of a representative of insurers, a representative of adjusters, and a representative of the Superintendent.
Examination of applicant <i>re</i> qualifications	(3) The advisory board shall conduct an examination of the applicant to determine whether he has the necessary qualifications to act as an adjuster and shall make its recommendations to the Superintendent.
Probationary license	(4) Before the advisory board conducts its examination, the Superintendent may, on payment of the fee mentioned in subsection 359(1), issue to the applicant a license on a probationary basis permitting the applicant to act as adjuster while under the supervision of a licensed adjuster whose name is filed with the Superintendent and who accepts full responsibility for the applicant.

- (5) If the Superintendent, after receiving the recommendation of the advisory board, is satisfied that the applicant has fulfilled all requirements, he may issue a license. R.S.P.E.I. 1974, Cap. I-5, s.358. Issuance of license
- 363.** (1) No person shall either on his own account or as a member or representative of a partnership or corporation, act or offer to undertake to act, as an adjuster unless he is the holder of a license that is in force. Prohibition from acting without license
- (2) Subject to subsection (3), no person shall, on behalf of himself or any other person, directly or indirectly, Offences
- (a) solicit the right to negotiate, or negotiate, or attempt to negotiate, for compensation, the settlement of a claim for loss or damage arising out of a motor vehicle accident resulting in bodily injury to or death of any person or damage to property on behalf of a claimant; or
- (b) hold himself out as an adjuster, investigator, consultant or otherwise as an advisor, on behalf of any person having a claim against an insured for which indemnity is provided by a motor vehicle liability policy.
- (3) Subsection (2) does not apply to a barrister or solicitor acting in the usual course of his profession. R.S.P.E.I. 1974, Cap. I-5, s.359. Exception *re* barristers
- 364.** The Superintendent may, for misconduct or violation of any of the provisions of this Act, suspend or revoke a license issued under this Part. R.S.P.E.I. 1974, Cap. I-5, s.360. Suspension or revocation of license
- 365.** Where a licensed insurance adjuster or a person who holds a license on a probationary basis ceases to act as adjuster either on his own account or as a member or representative of a partnership or corporation, he shall immediately notify the Superintendent in writing of such fact. R.S.P.E.I. 1974, Cap. I-5, s.361. Adjuster to notify Superintendent of changes
- 366.** A certificate purporting to be given by the Superintendent that on a day mentioned in the certificate Certificate of Superintendent admissible
- (a) a person mentioned therein was or was not licensed under this Part; (b) a person mentioned therein was originally issued a license; or
- (c) the license of any adjuster mentioned therein was renewed, suspended, revised or revoked,
- is admissible in evidence without proof of the signature or office of the person purporting to give the certificate and is *prima facie* proof of the facts stated in the certificate. R.S.P.E.I. 1974, Cap. I-5, s.362.
- 367.** (1) The Superintendent or any person authorized under his hand shall at all reasonable times have access to the books, records and documents of an adjuster that relate to insurance adjusting. Access to books, etc. to adjuster



Refusal to afford access (2) No person in charge, possession, custody or control of the books, records or documents referred to in subsection (1) shall refuse or neglect to afford access thereto as provided in this section. R.S.P.E.I. 1974, Cap. I-5, s.363.

Regulations **368.** The Lieutenant Governor in Council may make regulations respecting
 

- (a) repealed by 2003,c.1.s.10;
- (b) classes of adjusters;
- (c) qualifications of adjusters; and
- (d) licenses of adjusters and the terms, conditions and classifications thereof. R.S.P.E.I. 1974, Cap. I-5, s.364; 2004,c.1,s.10.

#### LICENSES OF DAMAGE APPRAISERS

Licensing of damage appraisers **368.1** (1) The Superintendent may, upon payment of the prescribed fee, issue to any person who complies with the requirements of this Act and any regulation made thereunder a license to act as a damage appraiser or a license to act as a student damage appraiser under the supervision of a licensed damage appraiser.

Application (2) The applicant for a license shall file with the Superintendent a written application under oath upon a form provided by the Superintendent in which the applicant shall state his name, age, residence and occupation for the five years next preceding the date of the application and such other information as the Superintendent requires, and the applicant shall furnish a statement as to his trustworthiness and competency signed by at least three reputable persons resident in the province.

Expiration (3) Every license issued under this section expires at such time as the regulations provide unless sooner revoked or suspended.

Renewal (4) A license may, in the discretion of the Superintendent and upon payment of the prescribed fee, be renewed for each succeeding year without requiring anew the detailed information required in the case of an original application.

Revocation or suspension (5) The Superintendent may, for cause shown and after a hearing, revoke the license, or may suspend it for a period not exceeding the unexpired term thereof, and may, for cause shown and after a hearing, revoke the license while so suspended, and he shall notify the licensee in writing of such revocation or suspension.

Regulations (6) The Lieutenant Governor in Council may make regulations
 

- (a) respecting requirements and qualifications pertaining to the issuance and renewal of licenses, including license fees;

- (b) providing for the examination of applicants for licenses and renewals of licenses;
- (c) prescribing the period of time for which licenses are effective;
- (d) prescribing rules of conduct pertaining to the appraisal of damage; (e) respecting accounts and records to be maintained by damage appraisers;
- (f) requiring damage appraisers to supply information and make returns to the Superintendent;
- (g) authorizing the Superintendent, or any person authorized by the Superintendent, to inspect the books, accounts, files or records of damage appraisers licensed under this section;
- (h) prescribing the circumstances under which a person acting as damage appraiser is excepted from the provisions of this section;
- (i) authorizing the establishment of an advisory board with whom the Superintendent may consult concerning the granting, renewal, suspension or revocation of a license under this section, and the constitution, functions and powers of such advisory board;
- (j) prescribing forms and providing for their use; and
- (k) generally, for the better administration of this section.

(7) A license issued under this section may, if so stated in the license, be effective from a date prior to the date of application. Effective date

(8) Any person who acts as a damage appraiser or student damage appraiser or represents himself as such and who does not hold a license under this section is guilty of an offence. 1991,c.17,s.6. Offence

#### AGENTS, BROKERS AND ADJUSTERS GENERALLY

**369.** Payments in cash in whole or in part to an agent of an insurer of the amount of a premium or assessment due in respect of a contract issued by the insurer, shall be deemed a payment to the insurer, notwithstanding any condition or stipulation to the contrary, but this provision does not apply to life insurance. R.S.P.E.I. 1974, Cap. I-5, s.365. Payments to agent of insurer

**370.** Any person who, not being duly licensed as an agent, broker or adjuster, represents or holds himself out to the public as being such an agent, broker or adjuster, or as being engaged in the insurance business, by means of advertisements, cards, circulars, letterheads, signs or other methods, or being duly licensed as such agent, broker or adjuster advertises as aforesaid or carries on such business in any other name than that stated in the license, is guilty of an offence. R.S.P.E.I. 1974, Cap. I-5, s.366. Offence to hold out if not licensed

List of persons having certificates of authority, publication	<b>371.</b> (1) The Superintendent may prepare, or cause to be prepared, published and distributed, annually or at more frequent intervals in the Gazette or elsewhere, a list of persons to whom certificates of authority have been issued under this Act.
Liability of agent for contracts unlawfully made	(2) An agent or broker is personally liable to the insured on all contracts of insurance unlawfully made by or through him directly or indirectly with any insurer not licensed to undertake insurance in the province, in the same manner as if the agent or broker were the insurer. R.S.P.E.I. 1974, Cap. I-5, s.367.
Premium held in trust, where	<b>372.</b> An agent or broker who acts in negotiating, or renewing or continuing a contract of insurance, other than life insurance, with a licensed insurer, and who receives any money or other consideration, as a premium for such a contract from the insured, shall be deemed to hold such premium in trust for the insurer, and, if he fails to pay it over to the insurer within fifteen days after written demand made upon him, less his commission and any deductions to which, by the written consent of the insurer, he is entitled, such failure shall be evidence that he has applied such premiums to his own use or to a use contrary to his trust. R.S.P.E.I. 1974, Cap. I-5, s.368.
Return listing agents	<b>373.</b> Every insurer and every agent shall make a return under oath to the Superintendent in such form and at such times as he requires, showing all persons duly authorized as its or his agents in the province, and of persons to whom it or he has paid or allowed or agreed to pay or allow directly or indirectly, compensation for placing or negotiating insurance on lives, property or interests in the province, or negotiating the continuance or renewal thereof or for attempting to do so. R.S.P.E.I. 1974, Cap. I-5, s.369.
Reasons for refusal or cancellation, etc. of license, by Superintendent	<b>374.</b> If the Superintendent refuses a certificate of authority to an agent or a license to a broker or adjuster, or in case the Superintendent suspends or revokes such a certificate or license, he shall, on demand, state in writing his reasons therefor, and any person who considers himself aggrieved by the decision of the Superintendent may appeal therefrom to the Lieutenant Governor in Council, and in case of an appeal the decision of the Superintendent suspending or revoking a certificate or license shall not take effect until after the hearing and disposition thereof by the Lieutenant Governor in Council. R.S.P.E.I. 1974, Cap. I-5, s.370.
Conditions & limitations on license or certificate	<b>375.</b> A certificate of authority may be issued to an insurance agent, or a license to a broker or adjuster, subject to such limitations and conditions as the Superintendent prescribes. R.S.P.E.I. 1974, Cap. I-5, s.371.

**376.** (1) Any person who, to the detriment of the insured, induces or attempts to induce, directly or indirectly, an insured to

- (a) rescind or lapse;
- (b) surrender for cash paid-up or extended insurance, or other valuable consideration; or
- (c) subject to substantial borrowing, whether in a single loan or over a period of time,

any contract of life insurance for the purpose of effecting another contract of life insurance is guilty of an offence.

Unethical practices  
*re* life insurance  
prohibited

(2) A person licensed as an agent for life insurance under this Act who, directly or indirectly,

- (a) makes a false and misleading statement or representation in the solicitation or negotiation of life insurance;
- (b) makes or delivers any incomplete comparison of any policy or contract of insurance with that of the same or any other insurer in the solicitation or negotiation of life insurance; or
- (c) coerces or attempts to coerce, directly or indirectly, a prospective buyer of life insurance through the influence of a professional or a business relationship or otherwise to give a preference that would not otherwise be given on the effecting of a life insurance contract,

is guilty of an offence. R.S.P.E.I. 1974, Cap. I-5, s.372; 1982, c.12, s.4.

Misleading  
statements,  
comparisons or  
coercion prohibited

**377.** (1) No insurer, and no officer, employee or agent thereof, and no broker, shall, directly or indirectly,

- (a) make or attempt to make any agreement as to the premium to be paid for a policy other than as set out in the policy; or
- (b) pay, allow or give, or offer or agree to pay, allow or give any rebate of the whole or part of the premium stipulated by the policy, or any other consideration or thing of value intended to be in the nature of a rebate of premium, with or to any person insured or applying for insurance in respect of life, person or property in the province.

Prohibitions *re*  
premiums

(2) Every insurer and every other person who violates this section is guilty of an offence.

Offence

(3) Nothing in this section

- (a) affects any payment by way of dividend, bonus, profit or savings that is provided for by the policy; or
- (b) shall be construed so as to prevent an insurer compensating a salaried employee of its head or branch office in respect of insurance issued by the employing insurer upon the life of the employee or so as to require that the employee shall be licensed as an agent for life insurance under this Act to affect the insurance. R.S.P.E.I. 1974, Cap. I-5, s.373.

Application of  
section

**SCHEDULE A**

No. \_\_\_\_\_  
Term of License \_\_\_\_\_  
TO \_\_\_\_\_

SUPERINTENDENT OF INSURANCE  
PRINCE EDWARD ISLAND  
RECIPROCAL INSURANCE LICENSE

This is to certify that \_\_\_\_\_ being an exchange within the meaning of the *Insurance Act* has complied with the requirements of the said Act, and the subscribers of the said exchange are hereby licensed and authorized for and during the term beginning on the \_\_\_\_ day of \_\_\_\_\_ 20\_\_, and ending on the \_\_\_\_ day of \_\_\_\_\_ 20\_\_, to exchange reciprocal contracts of indemnity of inter-insurance (here state class of insurance).

Superintendent of Insurance

**SCHEDULE B**

MANDATORY MEDICAL AND REHABILITATION  
BENEFITS, AND ACCIDENT BENEFITS IN  
MOTOR VEHICLE LIABILITY POLICIES  
ACCIDENT BENEFITS SECTION

The insurer agrees to pay to or with respect to each insured person as defined in this Section who sustains bodily injury or death by an accident arising out of the use or operation of an automobile:

Subsection 1 - Medical, Rehabilitation and Funeral Expenses

1. All reasonable expenses incurred within four years from the date of the accident as a result of such injury for necessary medical, surgical, dental, chiropractic, hospital, professional nursing and ambulance service and for any other service within the meaning of basic health services or insured services under the *Health Services Payment Act* R.S.P.E.I. 1988, Cap. H-2 or the *Hospital and Diagnostic Services Insurance Act* R.S.P.E.I. 1988, Cap. H-8 and for such other services and supplies which are, in the opinion of the physician of the insured person's choice and that of the insurer's medical advisor, essential for the treatment, occupational retraining or rehabilitation of said person, to the limit of \$25,000 per person.

2. Funeral expenses incurred up to the amount of \$1,000 in respect of the death of any one person.

The insurer shall not be liable under this subsection for those portions of such expenses payable or recoverable under any medical, surgical, dental, or hospitalization plan or law or, except for similar insurance provided under another automobile insurance contract, under any other insurance contract or certificate issued to or for the benefit of, any insured person.

## Subsection 2 - Death Benefits and Loss of Income Payments

### Part I Death Benefits

A. Subject to the provisions of this Part, for death that ensues within 180 days of the accident or within 104 weeks of the accident if there has been continuous disability during that period, a payment - based on the status at the date of the accident of the deceased in a household where a spouse or dependants survive - of the following amounts:

Head of the household	\$10,000
Spouse of the head of the household	10,000
Dependant within the meaning of sub-subparagraph (b) of subparagraph (3) of paragraph B	2,000

In addition, with respect to death of the head of the household, where there are two or more survivors - spouse or dependants - the principal sum payable is increased \$1,000 for each survivor other than the first.

B. For the purposes of this Part,

(1) "spouse of the head of the household" means the spouse with the lesser income from employment in the twelve months preceding the date of the accident.

(2) "spouse" means either of a man and woman who

(a) re married to each other;

(b) are married to each other by a marriage that is voidable and has not been voided by a judgment of nullity; or

(c) have gone through a form of marriage with each other, in good faith, that is void and are cohabiting or have cohabited within the year preceding the occurrence giving rise to a claim,

and includes

(d) either of a man and woman not being married to each other who have cohabited

(i) continuously for a period of not less than five years, or

(ii) in a relationship of some permanence where there is a child born of whom they are the natural parents,

and have so cohabited within the year preceding the occurrence giving rise to a claim.

(3) “dependant” means

(a) the spouse of the head of the household who resides with the head of the household;

(b) a person

(i) under the age of 18 years who resides with and is principally dependent upon the head of the household or the spouse of the head of the household for financial support,

(ii) 18 years of age or over who, because of mental or physical infirmity, is principally dependent upon the head of the household or the spouse of the head of the household for financial support, or

(iii) 18 years of age or over who, because of full-time attendance at a school, college or university, is principally dependent upon the head of the household or the spouse of the head of the household for financial support; or

(c) a parent or relative

(i) of the head of the household, or

(ii) of the spouse of the head of the household,

residing in the same dwelling premises and principally dependent upon the head of the household or the spouse of the head of the household for financial support.

(4) The total amount payable shall be paid to a person who is the head of the household or the spouse of the head of the household, as the case may be, if that person survives the deceased by at least 30 days.

(5) The total amount payable with respect to death where no head of the household or spouse survives the deceased by at least 30 days shall be divided equally among the surviving dependants.

(6) No amount is payable on death, other than incurred funeral expenses, if no head of the household or dependant survives the deceased by at least 30 days.

#### Part II Loss of Income

Subject to the provisions of this Part, a weekly payment for the loss of income from employment for the period during which the insured person suffers substantial inability to perform the essential duties of his occupation or employment, provided,

(a) such person was employed at the date of the accident;

(b) within 30 days from the date of the accident and as a result of the accident the insured person suffers substantial inability to perform

the essential duties of his occupation or employment for a period of not less than seven days;

(c) no payments shall be made for any period in excess of 104 weeks except that if, at the end of the 104 week period, it has been established that such injury continuously prevents such person from engaging in any occupation or employment for which he is reasonably suited by education, training or experience, the insurer agrees to make such weekly payments for the duration of such inability to perform the essential duties.

**Amount of Weekly Payment -**

The amount of a weekly payment shall be the lesser of

- (a) \$140 per week; or
- (b) 80 per cent of the insured person's gross weekly income from employment, less any payments for loss of income from employment received by or available to such person under
  - (i) the laws of any jurisdiction,
  - (ii) wage or salary continuation plans available to the person by reason of his employment, and
  - (iii) subsection 2A,

but no deduction shall be made for any increase in such payment due to a cost of living adjustment subsequent to the insured person's substantial inability to perform the essential duties of his occupation or employment.

For the purpose of this Part,

(1) there shall be deducted from an insured person's gross weekly income any payments received by or available to him from part-time or other employment or occupation subsequent to the date of the accident;

(2) a principal unpaid housekeeper residing in the household not otherwise engaged in occupation or employment for wages or profit, if injured, shall be deemed disabled only if completely incapacitated and unable to perform any of his or her household duties and, while so incapacitated, shall receive a benefit at the rate of \$70 per week for not more than 12 weeks.

- (3) person shall be deemed to be employed,
- (a) if actively engaged in an occupation or employment for wages or profit at the date of the accident; or
  - (b) if 18 years of age or over and under the age of 65 years, so engaged for any six months out of the preceding 12 months.

(4) a person receiving a weekly payment who, within 30 days of resuming his occupation or employment is unable to continue such



occupation or employment as a result of such injury, is not precluded from receiving further weekly payments;

(5) where the payments for loss of income payable hereunder, together with payments for loss of income under another contract of insurance other than a contract of insurance relating to any wage or salary continuation plan available to an insured person by reason of his employment, exceed the actual loss of income of the insured person, the insurer is liable only for that proportion of the payments for loss of income stated in this policy that the actual loss of income of the person insured bears to the aggregate of the payments for loss of income payable under all such contracts.

Subsection 2A - Supplemental Benefits  
Respecting Accidents Occurring in Quebec

This subsection comes into force and is effective only in accordance with a written agreement between the Government of Prince Edward Island and the Government of Quebec or an agency thereof.

A. For the purposes of this subsection,

(a) “accident” means an event occurring in Quebec resulting in damage caused by an automobile, or by the use of an automobile, or by the load of an automobile, including damage caused by a trailer;

(b) “bodily injury” means physical, psychological or mental injury including death as well as damage to the clothing worn by the victim at the time of the accident;

(c) “resident of Prince Edward Island” means any person,  
(i) who is authorized by law to be or to remain in Canada and is living and ordinarily present in Prince Edward Island, and  
(ii) who meets the criteria prescribed in Division II of O.C. 374-78 made under the *Automobile Insurance Act (Quebec)*, which apply with necessary modifications,

but does not include a person,

(iii) who is merely touring, passing through or visiting Prince Edward Island, or

(iv) who is, at the time of an accident in Quebec, the owner or driver of, or a passenger in, an automobile registered in Quebec;

(d) “person insured in Quebec” means a resident of Prince Edward Island who is,

(i) any person while an occupant of the described automobile or of a newly acquired or temporary substitute automobile as defined in this policy,

- (ii) the insured and, if residing in the same dwelling premises as the insured, his or her spouse and any dependent relative of either while an occupant of any other automobile,
- (iii) any person, not the occupant of an automobile, who is struck by the described automobile or a newly acquired or temporary substitute automobile as defined in this policy,
- (iv) the named insured, if an individual, and his or her spouse and any dependent relative residing in the same dwelling premises as the named insured, not the occupant of an automobile who is struck by any other automobile,
- (v) any employee or partner of the insured, if the insured is a corporation, unincorporated association, or partnership, for whose regular use the described automobile is furnished, and his or her spouse and any dependent relative of either, residing in the same dwelling premises as such employee or partner, while an occupant of any other automobile,
- (vi) any employee or partner of the insured for whose regular use the described automobile is furnished, and his or her spouse and any dependent relative of either, residing in the same dwelling premises as such employee or partner, while not the occupant of an automobile who is struck by any other automobile, and
- (vii) any other person who is,
  - a. the occupant of an automobile, or
  - b. not being the occupant of an automobile, is struck by an automobile,  
driven by a person insured in Quebec as defined in sub-paragraphs (i) to (vi) of this subparagraph.

B. With respect to bodily injury, as a result of an accident, to a person insured in Quebec, the insurer agrees to make payments under this subsection in the same amount and form and subject to the same conditions as if such person were a resident of Quebec as defined in the *Automobile Insurance Act (Quebec)* and the regulations made under that Act, and entitled to payments under that Act and those regulations except as follows:

- (a) any reference in the *Automobile Insurance Act (Quebec)*, to the *Quebec Taxation Act (Quebec)*, to the *Workmen's Compensation Act (Quebec)*, to contributions to the *Quebec Pension Plan (Quebec)* and to the *Act to Provide for Financing of Health Programs (Quebec)* shall be replaced by reference to the *P.E.I. Income Tax Act*, the *P.E.I. Workers' Compensation Act* and to contributions to the *Canada Pension Plan* and the *P.E.I. Health Services Payment Act* and the *P.E.I. Hospital and Diagnostic Services Insurance Act* respectively;

(b) whenever the *Automobile Insurance Act* (Quebec) provides for the integration of indemnities payable under Quebec Pension Plan, the insurer responsible for providing equivalent indemnities to a resident of Prince Edward Island shall deduct from such indemnity any amount payable under the Canada Pension Plan,

Notwithstanding anything to the contrary, no exclusion or limitation existing in this Schedule B or in the general provisions, definitions and exclusions or in the statutory conditions of a contract of automobile insurance shall be applicable to a person insured in Quebec as defined in this subsection 2A.

Subsection 3 - Special Provision, Definitions,  
and Exclusions of this Section

**(1) “Insured Person” defined**

In this Section, the words “insured person” mean

- (a) any person while an occupant of the described automobile or of a newly acquired or temporary substitute automobile as defined in this policy;
- (b) the insured and, if residing in the same dwelling premises as the insured, his or her spouse and any dependent relative of either while an occupant of any other automobile; provided that,
  - (i) the insured is an individual or are husband and wife,
  - (ii) such person is not engaged in the business of selling, repairing, maintaining, servicing, storing, or parking automobiles at the time of the accident,
  - (iii) such other automobile is not owned or regularly or frequently used by the insured or by any person or persons residing in the same dwelling premises as the insured,
  - (iv) such other automobile is not owned, hired, or leased by an employer of the insured or by an employer of any person or persons residing in the same dwelling premises as the insured,
  - (v) such other automobile is not used for carrying passengers for compensation or hire or for commercial delivery;
- (c) in subsections 1 and 2 of this Section only, any person, not the occupant of an automobile or of railway rolling-stock that runs on rails, who is struck, in Canada, by the described automobile or a newly acquired or temporary substitute automobile as defined in the policy;
- (d) in subsections 1 and 2 of this Section only, the named insured, if an individual and his or her spouse and any dependent relative residing in the same dwelling premises as the named insured, not the

occupant of an automobile or of railway rolling-stock that runs on rails, who is struck by any other automobile; provided that,

(i) such person is not engaged in the business of selling, repairing, maintaining, servicing, storing, or parking automobiles at the time of the accident,

(ii) that automobile is not owned or regularly or frequently used by the insured or by any person or persons residing in the same dwelling premises as the named insured,

(iii) that automobile is not owned, hired, or leased by an employer of the insured or by an employer of any person or persons residing in the same dwelling premises as the named insured;

(e) if the insured is a corporation, unincorporated association, or partnership, any employee or partner of the insured for whose regular use the described automobile is furnished, and his or her spouse and any dependent relative of either, residing in the same dwelling premises as such employee or partner, while an occupant of any other automobile of the private passenger or station wagon type; and

(f) in subsections 1 and 2 of this Section only, any employee or partner of the insured, for whose regular use the described automobile is furnished, and his or her spouse and any dependent relative of either, residing in the same dwelling premises as such employee or partner, while not the occupant of an automobile or of railway rolling-stock that runs on rails, who is struck by any other automobile; provided that,

in respect of (e) and (f) above,

(i) neither such employee nor partner or his or her spouse is the owner of an automobile of the private passenger or station wagon type,

(ii) the described automobile is of the private passenger or station wagon type,

(iii) such person is not engaged in the business of selling, repairing, maintaining, servicing, storing, or parking automobiles at the time of the accident,

(iv) such other automobile is not owned or regularly or frequently used by the employee or partner, or by any person or persons residing in the same dwelling premises as such employee or partner,

(v) such other automobile is not owned, hired, or leased by the insured or by an employer of any person or persons residing in the same dwelling premises as such employee or partner of the insured,

in respect of (e) above only,

(vi) such other automobile is not used for carrying passengers for compensation or hire or for commercial delivery.

**(2) “Physician” defined**

In this Section “physician” means a legally qualified medical practitioner.

**(3) Exclusions**

(a) Except as provided in subsection 2A, the insurer shall not be liable under this Section for bodily injury to or death of any person

(i) resulting from the suicide of such person or attempt thereat, whether sane or insane, or

(ii) who is entitled to receive the benefits of any worker’s compensation law or plan, or

(iii) caused directly or indirectly by radioactive material;

(b) the insurer shall not be liable under subsection 1 or Part II of subsection 2 of this Section for bodily injury or death

(i) sustained by any person who, at the time of the accident, was driving or operating the automobile while in a condition for which he is convicted of an offence under section 253 of the Criminal Code (Canada) or under or in connection with circumstances for which he is convicted of an offence under section 254 of the Criminal Code (Canada); or

(ii) sustained by any person driving the automobile who is not for the time being either authorized by law or qualified to drive the automobile.

**(4) Notice and Proof of Claim**

The insured person or his agent, or the person otherwise entitled to make claim or his agent, shall,

(a) give written notice of claim to the insurer by delivery thereof or by sending it by registered mail to the chief agency or head office of the insurer in the province, within 30 days from the date of the accident or as soon as practicable thereafter;

(b) within 90 days from the date of the accident for which the claim is made, or as soon as practicable thereafter, furnish to the insurer such proof of claim as is reasonably possible in the circumstances of the happening of the accident and the loss occasioned thereby;

(c) if so required by the insurer, furnish a certificate as to the cause and nature of the accident for which the claim is made and as to the duration of the disability caused thereby from a physician.

**(5) Medical Reports**

The insurer has the right and the claimant shall afford to the insurer, an opportunity to examine the person of the insured person when and as often as it reasonably requires while the claim is pending, and also, in the case of the death of the insured person, to make an autopsy subject to the law relating to autopsies.

**(6) Release**

Notwithstanding any release provided for under the relevant sections of the *Insurance Act*, the insurer may demand, as a condition precedent to payment of any amount under this Section, a release in favour of the insured and the insurer from liability to the extent of such payment from the insured person or his personal representative or any other person.

**(7) When Moneys Payable**

(a) All amounts payable under this Section, other than benefits under Part II of subsection 2, shall be paid by the insurer within 30 days after it has received proof of claim. The initial benefits for loss of time under Part II of subsection 2 shall be paid within 30 days after it has received proof of claim, and payments shall be made thereafter within each 30 day period while the insurer remains liable for payments if the insured person, whenever required to do so, furnishes prior to payment proof of continuing disability.

(b) No person shall bring an action to recover the amount of a claim under this Section unless the requirements of provisions (3) and (4) of this subsection are complied with, nor until the amount of the loss has been ascertained as provided in this Section.

(c) Every action or proceeding against the insurer for the recovery of a claim under this Section shall be commenced within one year from the date on which the cause of action arose and not afterwards.

**(8) Limitation of Benefit Payable**

Where a person is entitled to benefits under more than one contract providing insurance of the type set forth in subsection 1, 2 or 2A, he or his personal representative or any person claiming through or under him or by virtue of the *Fatal Accidents Act* may recover only an amount equal to one benefit.

In so far as applicable the general provisions, definitions, exclusions and statutory conditions of the policy also apply.