



BERMUDA

PUBLIC CARRIAGE ACT 1949

1949 : 32

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26 Commencement *[omitted]*

### SCHEDULE

Modification of Motor Car Insurance (Third Party Risks) Act 1943 as applied to public carriages

*[preamble and words of enactment omitted]*

Interpretation; application; saving

1 (1) In this Act, and in any regulations made thereunder—

“the Board” means the Public Service Vehicles Licensing Board established under the Motor Car Act 1951 ;

“carriage” means any animal-drawn vehicle constructed for the conveyance of passengers;

“the Department” means the Transport Control Department established under the Motor Car Act 1951 ;

“the Minister” means the Minister of Transport;

“public carriage” means a carriage which plies for hire, or is available for hire, or which is being used for the conveyance of passengers for hire or reward;

“public carriage licence” means a licence issued under this Act to use a carriage as a public carriage;

“road” includes any road or roadway and also any wharf, open space or other place over which the general public have a right of way.

(2) Except where otherwise expressly provided, nothing in this Act or in any regulations made thereunder shall apply in relation to the use or driving of a carriage elsewhere than on a road.

(3) Nothing in this Act shall have effect so as to derogate from any provision of the Care and Protection of Animals Act 1975 .

Functions of Minister

2 The Minister shall exercise a general supervision and control over all matters concerning the use of public carriages and the operation of public carriage services in Bermuda.

Minister may make regulations

3 The Minister may make regulations for administering this Act and for giving effect to its purposes; and without prejudice to the generality of the power conferred upon the Minister by the foregoing provisions of this section, the Minister may make regulations—

(a) with respect to the licensing and registration of public carriages;

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- (b) for providing for the licensing of public carriage drivers and for prescribing conditions and tests in connection with the issue of public carriage drivers' licences;
- (c) for prescribing methods and tests in connection with the examination of public carriages for any of the purposes of this Act;
- (d) for prescribing the equipment of public carriages and the manner in which such equipment is to be used;
- (e) for prescribing identification plates and their position and dimensions;
- (f) for regulating or restricting the colour of public carriages and the display on public carriages of signs, letters or advertising matter;
- (g) for prescribing the conditions under which public carriages may ply for hire or be made available for hire;
- (h) for prescribing the fares that may be charged for the carriage of passengers and their luggage in public carriages and for prescribing the charges that may be made for the hire of public carriages;
- (i) with respect to the safe custody and re-delivery or disposal of any property accidentally left in a public carriage and for fixing the charges to be made in respect thereof;
- (j) for prescribing badges and uniforms to be worn by public carriage drivers, for regulating their conduct and for prescribing their obligations as carriers;
- (k) for regulating the conduct of persons carried as passengers in public carriages;
- (l) for regulating the procedure to be observed in connection with matters that fall to be decided by the Board under this Act;
- (m) with respect to the forms to be used for any of the purposes of this Act;
- (n) with respect to any other matter or thing (other than fees) which by or under this Act may be or is to be prescribed.

### Parliamentary scrutiny of regulations

4 (1) The affirmative resolution procedure shall apply to regulations made under this section 3(h).

(2) The negative resolution procedure shall apply to regulations made under this Act, other than those to which subsection (1) applies.

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Public Service Vehicles Licensing Board may grant permit to operate public carriage service

5 (1) No person shall use, or cause or allow any other person to use, a carriage as a public carriage unless he holds a valid permit granted to him by the Board and authorizing him to operate a public carriage service:

Provided that nothing in the foregoing provisions of this subsection shall have effect so as to prevent the driving of a public carriage by any person employed by, or driving on behalf of, a person who holds a valid permit as aforesaid.

(2) With respect to permits authorizing persons to operate a public carriage service the following provisions shall have effect, that is to say—

- (a) an application for the grant of a permit shall be made to the Board in the prescribed manner and shall contain the prescribed particulars;
- (b) the Board shall consider every such application and may in their discretion either grant or refuse to grant a permit;
- (c) if at any time the Board are satisfied that the holder of a permit is not operating a public carriage service in an efficient manner, then the Board, subject to paragraph (d), may by notice in writing to the holder of the permit suspend the permit for a period of two months; and where a permit is so suspended by the Board then, subject to subsection (3), the permit shall be of no effect during the period of suspension and on the expiration of the period of suspension the Board may by notice in writing to the holder revoke the permit.

For the purposes of this paragraph, the operation of a public carriage service in an efficient manner shall be deemed to include the maintenance of the public carriages with which the service is operated in a decent and comfortable condition, having regard to such matters as paint-work, upholstery, cleanliness and good external and internal appearance; and the Board, in determining whether or not a person is operating a public carriage service in an efficient manner, may also take into consideration the behaviour (in matters concerning the operation of the public carriage service) of persons engaged or employed in the operation of the service;

- (d) before suspending any permit the Board shall give the holder of the permit an opportunity to be heard by the Board;
- (e) without prejudice to any other provision of this Act relating to the examination of public carriages, the Board may require the holder of a permit to make available for inspection by any person designated by the Board all or any of the carriages used by the holder of the permit as public carriages;
- (f) hearings by the Board of applications for permits shall be open to the public.

(3) Where a permit to operate a public carriage service is suspended by the Board in accordance with subsection (2)(c) and (d) the holder of the permit may at any time before the expiration of the period of the suspension apply to a court of summary jurisdiction for

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the removal of the suspension; and with respect to any such application and the determination thereof by the court the following provisions shall have effect—

- (a) the application shall be in writing and the applicant shall state therein the grounds on which he applies for the removal of the suspension; and when the applicant lodges the application with the court he shall deposit with the court the sum of twelve dollars;
- (b) the applicant on lodging the application with the court shall deliver a copy of the application to the Board; and thereupon the suspension shall be deemed to have been withdrawn pending the determination by the court of the application;
- (c) the court after receiving the application shall cause the applicant and the Board to be notified of the day on which the court will hear the application;
- (d) the court, after hearing the evidence of the applicant and such evidence as any officer of the Department duly authorized by the Board may give or call on behalf of the Board, may either confirm the suspension or may order that the suspension be removed;
- (e) if the court confirms the suspension the sum of twelve dollars deposited by the applicant shall be forfeited to Her Majesty and shall be paid into the Consolidated Fund; but if the court orders that the suspension be removed the said sum shall be repaid to the applicant;
- (f) where the suspension is removed by order of the court the Board shall not again suspend the permit during a period of two months from the date of the order or from the date on which the period of suspension was due to expire, whichever is the later date; but, subject as aforesaid, the removal of the suspension shall not preclude the Board from again suspending the permit.

Board may issue public carriage licence

6 (1) Subject to this Act, the Board may in their discretion issue public carriage licences for the use of carriages as public carriages.

(2) No person shall use, or cause or allow any other person to use, a carriage as a public carriage unless a public carriage licence has been issued by the Board as is in force in respect of that carriage.

(3) Every public carriage licence shall be in force from the date on which it is expressed to come into force until the next succeeding 31st March.

*[section 6 amended by 1993:5 effective 1 April 1993]*

Examination of public carriages

7 (1) A public carriage licence shall not be issued in respect of a carriage unless the carriage, at a date within one month before the date on which the licence is to come into force, has been examined by an inspector within the meaning of the Motor Car Act 1951, or by a person designated by the Board for that purpose (hereinafter in this Act referred to

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as an “examiner”) and has been certified by the inspector or the examiner to be fit for use as a public carriage.

(2) If the Board has reason to suspect that a carriage in respect of which a public carriage licence has been issued has ceased to be fit for use as a public carriage, the Board may order the owner or the person in charge of the carriage to produce it for examination by an examiner or inspector at a specified time and place, and thereupon—

- (a) if the order is not obeyed, then, without prejudice to any proceedings that may be taken in respect of the disobedience, the Board may in their discretion order that the carriage shall not be used as a public carriage until the order is obeyed;
- (b) if on examination the carriage is found to be unfit for use as a public carriage the Board may order that the carriage shall not be used until the examiner or inspector is satisfied that all necessary repairs, adjustments or alterations have been made.

(3) In determining whether a carriage is fit or unfit for use as a public carriage, the appearance and general condition of the carriage, as well as matters affecting its structural and mechanical fitness or safety, shall be taken into consideration, and a carriage shall be deemed to be unfit for use as a public carriage if its paintwork, hood, upholstery and other parts and the harness intended to be used therewith are not in reasonably good order and condition.

*[Section 7 amended by 2008:44 s.15 effective 23 December 2008]*

### Licence duties

8 Licence duties in respect of public carriage licences shall be payable annually at the rate of ten dollars a year.

*[Section 8 amended by 1993:5 effective 1 April 1993]*

### Registration

9 The Board shall keep a register (hereinafter in this Act referred to as “the register”) of all carriages in respect of which public carriage licences have been issued, and of the owners of all such carriages.

### Identification marks

10 (1) The Board shall assign a separate identification mark to every carriage registered in the register and shall enter in the register and in public carriage licences the marks so assigned.

(2) No person shall use, or cause or allow any other person to use, a carriage as a public carriage unless the identification mark assigned to the carriage is fixed on the carriage in the prescribed manner.

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### Board may cancel registration

11 The Board may cancel the registration in the register of any carriage if the Board are satisfied that the carriage—

- (a) has been destroyed; or
- (b) has been rendered permanently unserviceable; or
- (c) has been permanently removed from Bermuda; or
- (d) has not been licensed as a public carriage for twelve months.

### Change of ownership

12 (1) On any change of ownership of a carriage in respect of which a public carriage licence is in force, the new owner shall within one month of assuming ownership deliver the public carriage licence to the Board and shall inform the Board in writing, in such form as the Board may require, of his name and address and of the date of the change of possession of the carriage.

(2) The Board shall make the necessary changes in the register and in the public carriage licence if it is still in force, and shall deliver the licence as altered to the new owner.

### Driving without driver's licence

13 No person shall drive a carriage while it is being used as a public carriage unless he holds a valid public carriage driver's licence, and no person shall cause or allow another person to drive a carriage while the carriage is being used as a public carriage unless that other person holds such a licence.

### Issue of driver's licence

14 (1) A public carriage driver's licence shall not be issued by the Board to an applicant therefor unless he satisfies the Board—

- (a) that he has attained the age of eighteen years;
- (b) that he is of good character;
- (c) that he has no physical or mental disability which is likely to prevent him from driving a carriage in a safe and proper manner;
- (d) that he is not precluded under any Act from driving or being in charge of a horse;
- (e) that on a driving examination under the supervision of an examiner he has been found to be competent to drive a public carriage.

(2) Subject as aforesaid, the Board shall issue a public carriage driver's licence to an applicant who pays a fee of sixty cents.

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### Duration of licence

15 A public carriage driver's licence shall (unless suspended or cancelled) remain in force for three years following the date of the issue of the licence.

*[Section 15 amended by 1994:13 effective 23 March 1994]*

### Further test of competence to drive

15A (1) If at any time it appears to the Board that a person holding a public carriage driver's licence has become incompetent to drive a public carriage, the Board may require that person to submit himself to a further driving examination for the purpose of testing his competence to drive.

(2) Where on any such examination the person is found to be incompetent the Board may cancel his public carriage driver's licence.

### Suspension or cancellation on medical grounds

16 If at any time it is made to appear to the Board that a person holding a public carriage driver's licence is suffering from any physical or mental disability which is likely to prevent him from driving a carriage in a safe and proper manner, the Board may by order suspend the licence and in such case shall inform the holder of the licence of the reason therefor; and unless there is produced to the Board within four weeks from the date of such order a certificate, in such form as the Board may require, given by a registered medical practitioner that he has since the date of the order examined the holder of the licence and has as a result of that examination found that the holder of the licence has neither a disability as aforesaid nor any other disability which is likely to prevent him from driving a carriage in a safe and proper manner, the Board shall order the licence to be produced to them and shall cancel it.

### Suspension by court

- 17 (1) Where a person holding a public carriage driver's licence—
- (a) is convicted of any offence relating to the driving of a vehicle involving danger to persons in the vehicle or to other road users; or
  - (b) is convicted of any offence involving dishonesty; or
  - (c) having been convicted of any offence against the person, is sentenced to imprisonment otherwise than in default of payment of a fine; or
  - (d) is alleged to have behaved in an offensive manner, while in charge of a public carriage and whether in a public place or not, to or in the hearing or view of any person who at the time of or immediately before the alleged offensive behaviour was or was intending to be a passenger in the carriage or was making reasonable enquiries of the person in charge of the carriage, or was negotiating for the hire of the carriage,

a court of summary jurisdiction, on the complaint (in such form as the court may allow) of an officer of the Department duly authorized by the Board in that behalf, shall have the like power to have the person holding the public carriage driver's licence (hereinafter in this

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section referred to as “the defendant”) brought before the court, and shall have the like power with respect to compelling the attendance of witnesses and otherwise with respect to witnesses, as the court would have if the complaint were an information alleging the commission of an offence triable before the court.

(2) In any such proceedings as aforesaid the court, after hearing evidence by or on behalf of the complainant and such evidence as the defendant may give or call on his behalf, may, if it thinks fit, order that the public carriage driver’s licence issued to the defendant shall be suspended and that he be disqualified for driving a carriage while the carriage is used as a public carriage; and on the making of such an order the defendant shall produce the licence before the court within such time as the court may direct and the court shall cause the substance of the order to be noted in the licence and shall forthwith inform the Board accordingly.

(3) A person whose public carriage driver’s licence has been so suspended by order of the court may, at any time after the expiration of three months from the date of the order, apply to the court for the revocation of the order; and on any such application the court, after hearing an officer of the Department authorized by the Board in that behalf, and after taking into consideration the conduct of the applicant subsequent to the making of the order and the other circumstances of the case, may, if it thinks fit, revoke the order; and on such a revocation the court shall cause the revocation to be noted in the licence and shall forthwith inform the Board accordingly.

(4) Where an order is so revoked by the court, then—

- (a) the licence shall be as valid for the driving of a public carriage as it was before the order was made; and
- (b) the person concerned shall no longer be disqualified for driving a public carriage:

Provided that nothing in this subsection shall be construed so as to derogate from any power of the Board, on the expiration of the period for which the licence was issued, to refuse to issue a new licence valid for the driving of a public carriage.

Lost licence

18 The Board, on proof to their satisfaction that a public carriage licence, or (as the case may be) a public carriage driver’s licence, has been lost or destroyed, shall issue, on payment of a fee of thirty cents, a duplicate of the licence to the person entitled thereto:

Provided that—

- (a) if any such licence has been lost and is subsequently found, the holder of the duplicate of the licence shall forthwith deliver up to the Board the duplicate, and no person shall knowingly retain or have in his possession both an original and a duplicate of any such licence;
- (b) any note entered upon the original of any such licence shall be entered upon the duplicate thereof and if any note is entered upon a duplicate, that note shall be entered upon the original when the duplicate is delivered up to the Board.

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### Board to keep record of licences

19 The Board shall keep a record of all public carriage drivers' licences issued by them and of all notes entered thereon as to suspensions, cancellations or any other matter.

### Licences to be carried

20 A person while driving a carriage while it is being used as a public carriage shall carry both his public carriage driver's licence and the public carriage licence relating to the carriage and shall produce them or either of them when so required by a police officer; and shall also give his name and address when so required by a police officer.

### Motor Car Insurance (Third Party Risks) Act 1943 to apply to public carriages

20A The Motor Car Insurance (Third-Party Risks) Act 1943 shall apply to public carriages as if they were motor cars, subject to the modifications set out in the Schedule and the Motor Car Insurance (Third-Party Risks) Act 1943 shall for that purpose be read as one with this Act.

*[The text of the Motor Car Insurance (Third-Party Risks) Act 1943 as modified is set out in the Schedule to this Act]*

### Fraud

21 Any person—

- (a) who, in or in connection with an application for a public carriage licence, or public carriage driver's licence, or in connection with the issue of any permit or in giving any information lawfully demanded or required under this Act or any regulation made thereunder, makes any statement which he knows or has reasonable cause to believe is in any material respect false or misleading; or
- (b) who, being disqualified for obtaining or holding, or having been refused, any such licence or permit as aforesaid, applies for or obtains any such licence or permit while he is so disqualified or who, without disclosing such refusal, or being a person whose public carriage driver's licence has been suspended or cancelled, applies for or obtains another licence without giving particulars of the suspension or cancellation; or
- (c) who fraudulently imitates, alters or uses or fraudulently lends or allows to be used by any other person, any identification mark, public carriage licence, public carriage driver's licence or permit issued under this Act,

commits an offence against this Act:

Punishment on summary conviction: imprisonment for 6 months or a fine of \$840 or both such imprisonment and fine; and any licence or permit wrongfully so obtained or dealt with by him shall be of no effect.

### Contraventions

22 Any person who contravenes or fails to comply with any provision of this Act or any regulation made thereunder, or who fails to comply with any order, demand, requirement

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or direction lawfully issued, made or given under this Act or any such regulation, commits an offence against this Act:

Provided that where a person engaged or employed in the administration of this Act omits to perform any duty imposed upon him as such, the omission shall not constitute an offence against this Act.

### Responsibility of driver and owner for offences

23 (1) If, with respect to the use of a carriage as a public carriage, there is proved to be a contravention of any provision of this Act or of any regulation made thereunder, or of any order, demand, requirement or direction lawfully issued, made or given under this Act or any such regulation, then—

(a) the driver of the carriage shall be deemed to be guilty of the contravention:

Provided that it shall be a defence for the driver to prove that the contravention was not due to any act, omission, neglect or default on his part;

(b) the owner of the carriage shall also be deemed to be guilty of the contravention:

Provided that it shall be a defence for the owner to prove that the contravention occurred without his consent and was not due to any act or omission on his part and that he had taken reasonable precautions to prevent the contravention.

(2) In this section “contravention”, in relation to any provision, order, demand, requirement or direction, includes a failure to comply with that provision, order, demand, requirement or direction.

### Prosecution of offences

24 Offences against this Act or against any regulations made hereunder shall be prosecuted before a court of summary jurisdiction.

### General punishment

25 Where a person commits an offence under this Act for which no specific punishment is provided:

Punishment on summary conviction: a fine of \$336 for each offence or, in respect of a second or subsequent offence, imprisonment for 2 months or a fine of \$672.

### Commencement

26 *[omitted]*

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SCHEDULE

MODIFICATION OF MOTOR CAR INSURANCE (THIRD PARTY  
RISKS) ACT 1943 AS APPLIED TO PUBLIC CARRIAGES

MOTOR CAR INSURANCE (THIRD-PARTY RISKS) ACT 1943

Id  
1943 : 39

[Assent Date: 5 August 1943]

*[preamble and words of enactment omitted]*

Interpretation

1 In this Act—

“driver”, where a separate person acts as steersman of a public carriage, includes that person as well as any other person engaged in the driving of the vehicle; and “drive” shall be construed accordingly;

“insurer” means any assurance company or underwriter authorized by the Governor under section 2, to undertake insurance business for the purposes of this Act;

“owner”, in relation to a public carriage which is the subject of a hiring agreement or hire purchase agreement, means the person in possession of the public carriage under that agreement;

“highway” and “estate road” have the meanings respectively assigned to those expressions in section 2 of the Motor Car Act 1951 ;

“insurance business” means insurance business for the purposes of this Act.

Governor may authorize insurers

2 (1) Subject to the Bermuda Immigration and Protection Act 1956 , any person may apply to the Governor for authority to undertake insurance business, and in considering any such application the Governor shall have regard to the financial standing of the applicant, and for this purpose may require the production of such documents of financial statements as he may consider relevant.

(2) Where the Governor is satisfied that the applicant is a fit and proper person, he may authorize the applicant to undertake insurance business upon such terms and conditions as he may consider appropriate.

(3) The Governor shall have the power at any time to require an insurer to produce any documents and answer any questions which may be relevant, and if at any time the Governor is satisfied that the insurer is no longer a fit and proper person to undertake insurance business he may revoke the authority granted to him:

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Provided that such revocation shall not affect the liability of the insurer in respect of any policy of insurance in force at the time of such revocation.

(4) Any person who undertakes insurance business, except under the authority of the Governor, commits an offence against this Act:

Punishment on conviction on indictment: imprisonment for 2 years or a fine of \$16,800 or both such imprisonment and fine.

Owner of public carriage must hold insurance

3 (1) Subject to this Act, it shall not be lawful for any person to use, or to cause or permit any other person to use, a public carriage on a highway or on an estate road unless there is in force in relation to the use of the public carriage by that person or that other person, as the case may be, such a policy of insurance in respect of third-party risks as complies with the requirements of this Act.

For the purposes of this subsection—

(i) a person who causes or permits another person to have the control and use of a public carriage shall be deemed to permit the use to which the public carriage is put by that other person; and

(ii) *[omit — does not apply]*

(2) Any person who contravenes subsection (1) commits an offence against this Act:

Punishment on summary conviction: imprisonment for 12 months or a fine of \$5,040 or both such imprisonment and fine.

(3) Notwithstanding any enactment prescribing a time within which proceedings may be brought before a court of summary jurisdiction, proceedings for an offence under this section may be brought—

(a) within a period of six months from the date of the commission of the alleged offence; or

(b) within a period which exceeds neither three months from the date on which it came to the knowledge of the prosecutor that the offence had been committed nor one year from the date of the commission of the offence, whichever period is the longer.

(4) This section shall not apply in relation to a public carriage used in the service of Her Majesty's Forces, the United States Forces or the Government of Bermuda.

Requirements in respect of policies

4 (1) In order to comply with the requirements of this Act, a policy of insurance must be a policy—

(a) which is issued by a person who is an insurer; and

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- (b) which insures such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death or of bodily injury to any person or damage to the property of any person caused by or arising out of the use of the public carriage on a highway or on an estate road:

Provided that such a policy shall not be required to cover—

- (i) *[deleted by 1987:53]*
- (ii) liability in respect of any sum in excess of \$375,000 arising out of the death or bodily injury to any person being carried in or upon or entering or getting into or alighting from a public carriage;
- (iii) liability in respect of any sum in excess of \$375,000 arising out of any one claim by any one person;
- (iv) liability in respect of any sum in excess of \$750,000 arising out of the total claims for any one accident for each vehicle concerned; and
- (v) *[omit—does not apply]*

(2) Where any payment is made by an insurer under a policy issued under this Act in respect of the death of, or bodily injury to, any person arising out of the use of a public carriage on a highway or an estate road and the person who has so died or been bodily injured has to the knowledge of the insurer received treatment in a hospital in respect of the fatal or other bodily injury so arising, there shall also be paid by the insurer to such hospital the expenses reasonably incurred by the hospital in affording such treatment.

(3) Notwithstanding anything in any statutory provision, rule of law or the common law, a person issuing a policy of insurance under this section shall be liable to indemnify the persons or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of those persons or classes of persons.

(4) A policy shall be of no effect for the purposes of this Act unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate (in this Act referred to as a “certificate of insurance”) in duplicate in the prescribed form and containing such particulars of any conditions subject to which the policy is issued and of any other matters as may be prescribed and issued and of any other matters as may be prescribed in relation to different cases or circumstances.

(5) In this Act “policy of insurance” means a policy issued for not less than six months, and includes a single covering note issued for a period not exceeding ninety days in respect of any public carriage, but does not include any extension of a covering note or any subsequent covering note issued in respect of the same public carriage during any period of six consecutive months.

Certain conditions of no effect

5 Any condition in a policy issued or given for the purposes of this Act, providing that no liability shall arise under the policy, or that any liability so arising shall cease, in the event of some specified thing being done or omitted to be done after the happening of the

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event giving rise to a claim under the policy shall be of no effect in connection with such claims as are mentioned in section 4(1)(b):

Provided that nothing in this section shall be taken to render void any provision in a policy requiring the person insured to repay to the insurer any sums which the insurer may have become liable to pay under the policy and which have been applied to the satisfaction of the claims of third parties.

Insurer must satisfy judgment against insured

6 (1) If, after a certificate of insurance has been delivered under section 4(4) to the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under section 4(1)(b) (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer shall, subject to this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under subsection (1)—

- (a) in respect of any judgment, unless before or within seven days after the commencement of the proceedings in which the judgment was given, the insurer had notice of the bringing of the proceedings; or
- (b) in respect of any judgment, so long as execution thereon is stayed pending an appeal; or
- (c) in connection with any liability, if before the happening of the event which was the cause of the death or bodily injury or damage to property giving rise to the liability, the policy was cancelled by mutual consent or by virtue of any provision contained therein, and either—
  - (i) before the happening of such event the certificate was surrendered to the insurer, or the person to whom the certificate was delivered made a written declaration before a Justice of the Peace stating that the certificate had been lost or destroyed; or
  - (ii) after the happening of such event but before the expiration of a period of fourteen days from the taking effect of the cancellation of the policy, the certificate was surrendered to the insurer, or the person to whom the certificate was delivered made such a written declaration before a Justice of the Peace as aforesaid; or
  - (iii) either before or after the happening of such event, but within such period of fourteen days the insurer has commenced proceedings under this Act in respect of the failure to surrender the certificate.

(3) No sum shall be payable by an insurer under the foregoing provisions of this section if, in an action commenced before, or within three months after, the commencement of the proceedings in which the judgment was given, he has obtained a declaration that,

apart from any provision contained in the policy, he is entitled to avoid the policy on the ground that it was obtained by the non-disclosure of a material fact, or by a representation of fact which was false in some material particular, or, if he has avoided the policy on that ground, that he was entitled so to do apart from any provision contained in it:

Provided that an insurer who has obtained such a declaration as aforesaid in an action, shall not thereby become entitled to the benefit of this subsection as respects any judgment obtained in proceedings commenced before the commencement of that action, unless before or within seven days after the commencement of that action he has given notice thereof to the person who is the plaintiff in the said proceedings specifying the non-disclosure or false representation on which he proposes to rely, and any person to whom notice of such an action is so given shall be entitled, if he thinks fit, to be made a party thereto.

(4) If the amount which an insurer becomes liable under this section to pay in respect of a liability of a person insured by a policy exceeds the amount for which he would, apart from this section, be liable under the policy in respect of that liability, he shall be entitled to recover the excess from that person.

(5) In this section—

- (a) “material” means of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk, and, if so, at what premium and on what conditions; and
- (b) “liability covered by the terms of the policy” means a liability which is covered by the policy or which would be covered but for the fact that the insurer is entitled to avoid or cancel, or has avoided or cancelled, the policy.
- (c) “judgment” does not include a judgment of a foreign court, or the judgment of a court having jurisdiction in Bermuda enforcing or giving effect to a judgment of a foreign court;
- (d) “judgment of a foreign court” means the judgment of any court which does not have jurisdiction in Bermuda in civil causes.

(6) In this Act references to a certificate of insurance in any provision relating to the surrender, or the loss or destruction of a certificate of insurance shall in relation to policies under which more than one certificate is issued, be construed as references to all the certificates, and shall, where any copy has been issued of any certificate, be construed as including a reference to that copy.

#### Bankruptcy of insured

7 Where a certificate of insurance has been delivered under section 4(4) to the person by whom a policy has been effected, the happening in relation to any person insured by the policy of any such event as is mentioned in section 12(1) or (2) shall, notwithstanding anything in this Act, not affect any such liability of that person as is required to be covered by a policy under section 4(1)(b), but nothing in this section shall affect any rights against the insurer conferred by this Act on the person to whom the liability was incurred.

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### Certain restrictions on scope of policies of no effect

8 Where a certificate of insurance has been delivered under section 4(4) to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any of the following matters—

- (a) the identity, age or physical or mental condition of persons driving the public carriage; or
- (b) the condition of the public carriage; or
- (c) the number of persons that the public carriage carries; or
- (d) *[omit — does not apply]*
- (e) the times at which or the areas within which the public carriage is used; or
- (f) the identity of the owner, or the specifications, or value of that public carriage; or
- (g) the carrying on the public carriage of any particular equipment or apparatus; or
- (h) the carrying on the public carriage of any particular means of identification required to be carried by or under the Public Carriage Act 1949;
- (i) *[omit — does not apply]*
- (j) the driving of the public carriage by the insured, or by any other person with the knowledge and consent of the insured, while the insured or that other person is not permitted by law to drive that public carriage,

shall, as respects such liabilities as are required to be covered by a policy under section 4(1)(b), be of no effect:

Provided that nothing in this section shall require an insurer to pay any sum in respect of the liability of any person otherwise than in or towards the discharge of that liability, and any sum paid by an insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this section shall be recoverable by the insurer from that person.

### Person against whom claim made must give information as to insurance

9 (1) Any person against whom a claim is made in respect of any such liability as is required to be covered by a policy under section 4(1)(b) shall, on demand by or on behalf of the person making the claim, state whether or not he was insured in respect of that liability by any policy having effect for the purposes of this Act, or would have been so insured if the insurer had not avoided or cancelled the policy, and, if he was or would have been so insured, give such particulars with respect to that policy as were specified in the certificate of insurance delivered in respect thereof under section 4(4).

(2) Any person who, without reasonable excuse—

- (a) fails to comply with the foregoing provisions of this section; or

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- (b) wilfully makes any false statement in reply to any such demand as aforesaid,

commits an offence against this Act.

Certificate must be surrendered on cancellation of policy

10 (1) Where a certificate of insurance has been delivered under section 4(4) to the person by whom a policy has been effected and the policy is cancelled by mutual consent or by virtue of any provision in the policy, then the following provisions shall have effect—

- (a) both the insurer and the person to whom the certificate was delivered shall, prior to the taking effect of the cancellation, report the cancellation to the Member for the time being responsible for transport, transport control and related matters;
- (b) the person to whom the certificate was delivered shall, within seven days from the taking effect of the cancellation, surrender the certificate to the insurer, or, if it has been lost or destroyed, make and sign a written declaration to that effect before a Justice of the Peace and transmit the declaration to the insurer.

(2) Any person—

- (a) who fails to comply with subsection (1); or
- (b) who makes a declaration thereunder which he knows to be false,

commits an offence against this Act.

Rights against insured survive his death

11 (1) The rights of any person in respect of any liability incurred by an insured person shall, in the event of the death of the insured person, and notwithstanding any statutory provision, rule of law or the common law to the contrary, be preserved to and be enforceable by such person against the personal representatives of the insured person in the same manner and to the same extent as such rights would have been enforceable against the insured person if he had survived and section 4(3) shall apply accordingly.

(2) In this section “insured person” means a person who is insured under a contract of insurance against liabilities to third parties in accordance with this Act.

Rights of third parties against insurer on bankruptcy of insured

12 (1) Where under any contract of insurance a person (hereinafter in this Act referred to as “the insured”) is insured against liabilities to third parties which he may incur, then—

- (a) in the event of the insured becoming bankrupt or making a composition or arrangement with his creditors; or
- (b) in the case of the insured being a company, in the event of a winding up order being made, or a resolution for a voluntary winding up being passed, with respect to the company, or of a receiver or manager of the company's

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business or undertaking being duly appointed, or of possession being taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in or subject to the charge,

if, either before or after the event, any such liability is incurred by the insured, his rights against the insurer under the contract in respect of the liability shall, notwithstanding anything in any Act or rule of law to the contrary, be transferred to and vest in the third party to whom the liability was so incurred.

(2) Where an order is made under the Bankruptcy Act 1876 for the administration of the estate of a deceased debtor according to the law of bankruptcy, then, if any debt provable in bankruptcy is owing by the deceased in respect of a liability against which he was insured under a contract of insurance as being a liability to a third party, the deceased debtor's rights against the insurer under the contract in respect of that liability shall, notwithstanding anything in the said Bankruptcy Act be transferred to vest in the person to whom the debt is owing.

(3) In so far as any contract of insurance made after 5 August 1943 in respect of any liability of the insured to third parties purports, whether directly or indirectly, to avoid the contract or to alter the rights of the parties thereunder upon the happening to the insured of any of the events specified in subsection (1)(a) or (b) or upon the making of the order referred to in subsection (2) (in respect of the estate of a deceased debtor), the contract shall be of no effect.

(4) Upon a transfer under subsection (1) or subsection (2), the insurer shall, subject to section 14, be under the same liability to the third party as he would have been under to the insured, but—

- (a) if the liability of the insurer to the insured exceeds the liability of the insured to the third party, nothing in this Act shall affect the rights of the insured against the insurer in respect of the excess; and
- (b) if the liability of the insurer to the insured is less than the liability of the insured to the third party, nothing in this Act shall affect the rights of the third party against the insured in respect of the balance.

(5) For the purposes of this Act "liabilities to third parties", in relation to a person insured under any contract of insurance, shall not include any liability of that person in the capacity of insurer under some other contract of insurance.

(6) This Act shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

### Duty to give information to third parties

13 (1) In the event of any person becoming bankrupt or making a composition or arrangement with his creditors or in the event of an order being made under the Bankruptcy Act 1876, in respect of the estate of any person, or in the event of a winding-up order being made, or a resolution for a voluntary winding up being passed, with respect to any company or of a receiver or manager of the company's business or undertaking being duly appointed or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the charge, it shall be the duty of

the bankrupt debtor, personal representative of the deceased debtor or company, and, as the case may be, of the trustee in bankruptcy, trustee, liquidator, receiver or manager, or person in possession of the property to give at the request of any person claiming that the bankrupt debtor, deceased debtor, or company is under a liability to him, such information as may reasonably be required by him for the purpose of ascertaining whether any rights have been transferred to and vested in him by this Act and for the purpose of enforcing such rights, if any, and any contract of insurance, in so far as it purports, whether directly or indirectly, to avoid the contract or to alter the rights of the parties thereunder upon the giving of any such information in the events aforesaid or otherwise to prohibit or prevent the giving thereof in the said events, shall be of no effect.

(2) If the information given to any person in pursuance of subsection (1) discloses reasonable ground for supposing that there have or may have been transferred to him under this Act rights against any particular insurer, that insurer shall be subject to the same duty as is imposed by subsection (1) on the persons therein mentioned.

(3) The duty to give information imposed by this section shall include a duty to allow all contracts of insurance, receipts for premiums, and other relevant documents in the possession or power of the person on whom the duty is so imposed to be inspected and copies thereof to be taken.

Statutory rights of third party not defeated by settlement between insured and insurer

14 Where the insured has become bankrupt or where, in the case of the insured being a company a winding-up order has been made or a resolution for a voluntary winding-up has been passed with respect to the company, no agreement made between the insurer and the insured after liability has been incurred to a third party and after the commencement of the bankruptcy or winding-up as the case may be, nor any waiver, assignment, or other disposition made by, or payment made to the insured after the commencement aforesaid shall be effective to defeat or affect the rights transferred to the third party under this Act, but those rights shall be the same as if no such agreement, waiver, assignment, disposition or payment had been made.

Production of certificate of insurance

15 (1) Any person driving a public carriage on a highway or on an estate road shall, on being so required by any police officer, give his name and address and the name and address of the owner of the public carriage and produce his certificate, and if he fails so to do he commits an offence against this Act:

Provided that, if the driver of a public carriage within five days after the day on which the production of his certificate was so required, produces the certificate in person at such police station as may have been specified to him at the time its production was required, he shall not be convicted under this subsection of the offence of failing to produce his certificate.

(2) It shall be the duty of the owner of a public carriage to give such information as he may be required by any police officer to give as to the identity of the driver of the public

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carriage on any occasion when the driver was required under subsection (1) to produce the certificate; and if the owner fails to do so, he commits an offence against this Act.

(3) Where, owing to the presence of a public carriage on a road, an accident occurs involving injury to another person or to an animal or to the property of any person, the driver of the public carriage does not at the time produce his certificate to a police officer or to some person who, having reasonable grounds for so doing, has required its production, the driver shall report the accident at a police station as soon as possible, and in any case within twenty-four hours of the occurrence of the accident, and there produce his certificate; and if he fails to do so, he commits an offence against this Act:

Provided that a person shall not be convicted under this subsection of the offence of failing to produce his certificate if, within five days after the occurrence of the accident, he produces the certificate in person at such police station as may be specified to him at the time the accident was reported.

(4) In this section "produce his certificate" means produce for examination the relevant certificate of insurance evidencing the fact that the public carriage was not being driven in contravention of section 3.

### Forgery of certificate of insurance

16 (1) Any person who, with intent to deceive—

- (a) forges within the meaning of the Criminal Code, or alters or uses or allows to be used by any other person, a certificate of insurance within the meaning of this Act; or
- (b) makes or has in his possession any document so closely resembling such a certificate as to be calculated to deceive,

commits an offence against this Act:

Punishment on conviction on indictment: imprisonment for 2 years.

(2) Any person who, for the purpose of obtaining the issue of a certificate of insurance under this Act, makes any false statement or withholds any material information, commits an offence against this Act:

Punishment on summary conviction: imprisonment for 6 months or a fine of \$840 or both such imprisonment and fine.

(3) Any person who issues a certificate of insurance which is to his knowledge false in any material particular, commits an offence against this Act:

Punishment on summary conviction: imprisonment for 12 months or a fine of \$1,680 or both such imprisonment and fine.

(4) If any police officer has reasonable cause to believe that any certificate of insurance produced to him in pursuance of this Act by the driver of a public carriage is a document in relation to which an offence under this section has been committed, he may seize the document; and when any document is seized under this section, the person from whom it was taken shall, unless previously charged with an offence under this section, be

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summoned before a court of summary jurisdiction to account for his possession of the said document, and the court shall make such order respecting the disposal of the said document and award such costs as the justice of the case may require.

### Giving name and address

17 If the driver of any public carriage who commits an offence under this Act or any regulations made thereunder, refuses to give his name and address or gives a false name or address he commits an offence against this Act; and it shall be the duty of the owner of the public carriage if required to give any information which it is within his power to give and which may lead to the identification and apprehension of the driver; and if the owner fails to do so he commits an offence against this Act.

### Offences

- 18 (1) (a) Any person who by an act or omission contravenes any of the provisions of this Act or of any regulations made thereunder commits an offence against this Act; and
- (b) where a person commits an offence under this Act for which no specific punishment is provided:

Punishment on summary conviction: imprisonment for 3 months or a fine of \$420 or both such imprisonment and fine.

(2) Where a person is, by virtue of any power contained in this Act or in any regulations made thereunder, required to do or to abstain from doing any act or thing and makes default in complying with any such requisition, a magistrate on conviction, in addition to any other punishment which he may impose, may order such person to comply with such requisition and may annex to any such order any condition as to time or mode of action or otherwise which he may think necessary to enforce compliance therewith.

(3) Every person who makes default in complying with any such order of a magistrate may, in the discretion of the court, be ordered to pay by way of a penalty a sum not exceeding \$21 for every day during which he is thereafter in default or to be imprisoned until he has remedied his default:

Provided that any such person shall not for such noncompliance be liable to the payment of any sums amounting in the aggregate to more than \$336 or to imprisonment for any periods amounting in the aggregate to more than 2 months in addition to any other fine or term of imprisonment to which he may otherwise be liable.

### Governor may make regulations

19 (1) The Governor may make regulations for prescribing anything which may be prescribed under this Act, and generally for the purpose of carrying this Act into effect, and in particular, but without prejudice to the generality of the foregoing provisions, may make regulations—

- (a) as to the forms of policies and any other forms to be used for the purposes of this Act;

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- (b) as to applications for, and issue of, certificates of insurance and any other documents which may be prescribed and as to the keeping of records and documents and the furnishing of particulars thereof or the giving of information with respect thereto to the Member for the time being responsible for transport, transport control and related matters;
- (c) as to the issue of copies of any such certificates or other documents which are lost or destroyed;
- (d) as to the custody, production, cancellation and surrender of any such certificates or other documents;
- (e) for providing that any provisions of this Act shall, in relation to motor cars brought into Bermuda by persons making only a temporary stay therein, have effect subject to such modifications and adaptations as may be prescribed.

(2) *[omitted]*/*covered by Interpretation Act 1951 section 35]*

(3) The affirmative resolution procedure shall apply to regulations made under this section.

20 *[repealed by 1977:35]*

*[Schedule amended by 2022 : 1 s. 3 effective 27 February 2022]*

[Assent Date: 4 June 1949]

[this Act was brought into operation on 6 September 1949 by notice published in Gazette No. 36 of 1949]

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*[Amended by:*

1949 : 85  
1952 : 5  
1952 : 11  
1968 : 222  
1971 : 83  
1973 : 45  
1977 : 35  
1981 : 6  
1982 : 24  
1988 : 59  
1993 : 5  
1994 : 13  
2008 : 44  
2022 : 1]