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No. 194.

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5th Session, 8th Parliament, 63 Victoria, 1900

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BILL.

An Act to secure Uniform Conditions in  
Policies of Fire Insurance.

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First reading, July 13, 1900.

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MR. FITZPATRICK.

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OTTAWA

Printed by S. E. DAWSON  
Printer to the Queen's most Excellent Majesty  
1900

An Act to secure Uniform Conditions in Policies of  
Fire Insurance.

**H**ER Majesty, by and with the advice and consent of the  
Senate and House of Commons of Canada, enacts as  
follows :—

1. This Act may be cited as *The Fire Insurance Policy Act*, Short title.  
5 1900.

2. In this Act, unless the context otherwise requires, the  
expression "company" means and includes any corporation  
or any society or association, incorporated or unincorporated,  
or any partnership carrying on the business of fire insurance.

Interpreta-  
tion.  
"Company."

10 3. The provisions of this Act shall not apply to any com-  
pany incorporated by an Act of the Legislature of the late  
Province of Canada, or by an Act of the Legislature of any  
Province now forming part of Canada, which carries on the  
business of fire insurance wholly within the limits of that  
15 Province by the Legislature of which it was incorporated, and  
which is within the exclusive control of such Legislature.

Act not to  
apply to  
certain  
companies.

4. The conditions set forth in the form A in the schedule  
to this Act shall be deemed to be part of every contract of fire  
insurance hereafter entered into or renewed, or otherwise in  
20 force in Canada with respect to any property therein, or in  
transit therefrom, or thereto, and shall be printed on every  
policy, with the heading "Uniform Conditions," and no  
other or different condition shall be made a part of such con-  
tract or policy, or endorsed thereon, or delivered therewith :  
25 Provided that a policy may, with the approval of the Superin-  
tendent of Insurance, also contain any provisions which the  
company is required by law or by its charter or Act of incor-  
poration to insert in its policies, and which are not inconsis-  
tent with the Uniform Conditions.

Conditions in  
schedule to be  
deemed part  
of policy.  
  
Proviso :  
other con-  
ditions.

30 5. Where, by reason of necessity, accident or mistake,  
the conditions of any contract of fire insurance on property in  
Canada as to the proof to be given to the insurance company  
after the occurrence of a fire have not been strictly complied  
with, or where, after a statement or proof of loss has been  
35 given in good faith by or on behalf of the assured, in pursu-  
ance of any proviso or condition of such contract, the company  
does not, within a reasonable time after receiving such state-  
ment or proof, notify the assured in writing that such statement  
or proof is objected to, and specify the particulars in which

Imperfect  
compliance  
with condi-  
tions not to  
discharge  
company.

it is alleged to be defective,—or where, for any other reason, the court or judge before whom a question relating to such insurance is tried or inquired into, considers it inequitable that the insurance should be deemed void or forfeited by reason of imperfect compliance with such conditions,—no objection to the sufficiency of such statement or proof or amended or supplemental statement or proof (as the case may be) shall be allowed as a discharge of the liability of the company on such contract of insurance, wherever entered into. 5

If negligence of assured causes expense to company.

2. If in any action or proceeding upon a contract of fire insurance, the assured, being plaintiff in such action or proceeding, has, in the opinion of the court or judge, wilfully neglected or unreasonably refused to furnish necessary information respecting the property for which the insurance money is claimed, and if, as a consequence of such neglect or refusal, the company has been at expense in obtaining information or evidence, the court or judge may, in disposing of costs, take into consideration the expense so incurred by the company. 10 15

Appeal.

3. A decision of a court or judge under this section shall be subject to review or appeal to the same extent as a decision by such court or judge in other cases. 20

Agent of company.

6. Every policy of insurance subject to the provisions of this Act shall have conspicuously printed thereon the name and address of an agent in Canada, who shall represent the company for all purposes of this Act, and in default thereof any officer, agent or representative of the company who assumes on behalf of the company to enter into any written agreement relating to any matter connected with the insurance shall be deemed *prima facie* to be agent of the company for such purpose. 25 30

Warranty by assured.

7. When an application for insurance, subscribed by the applicant in person, or his agent, contains the warning in the form B in the schedule to this Act, printed immediately after the questions and answers in the application, in ink of a different colour from that in the body of the application, and with the word 'Warning' printed in type not smaller than double pica, and where the policy of insurance is based upon the said application and has annexed thereto, printed or written or partly printed and partly written in ink of a different colour from that in the body of the policy, a copy of the said warning, together with such questions, answers and provisions as the company desires to have warranted, to the extent in the warning contained, then such warranty shall be binding upon the insured, and no question as to its materiality in case of loss shall be raised as between the insurer and the insured, and the company shall not be bound by any representation not contained in the application. 35 40 45

Commencement of Act.

9. This Act shall take effect on the first day of September, one thousand nine hundred.

## SCHEDULE.

## A.

## UNIFORM CONDITIONS.

1. If any person insures his buildings or goods and causes the same to be described otherwise than as they really are to the prejudice of the Company, or misrepresents or omits to communicate any circumstance which is material to be made known to the Company in order to enable it to judge of the risk it undertakes, this policy shall be void.

2. After application for insurance it shall be deemed that any policy sent to the assured is intended to be in accordance with the terms of the application, unless the Company points out, in writing, the particulars wherein the policy differs from the application.

3. Any change material to the risk and within the control or knowledge of the assured, shall avoid the policy, unless the change is promptly notified in writing to the Company, and the Company when so notified may return the premium for the unexpired period and cancel the policy, or may demand in writing an additional premium which the assured shall, if he desires the continuance of the policy, forthwith pay to the Company; and if he neglects to make such payment forthwith after receiving such demand, the policy shall be no longer in force.

4. This policy, unless otherwise provided by agreement endorsed hereon, or added hereto, shall be void if any change other than by the death, succession or marriage of an insured take place in the interest, title or possession of the subject of insurance (except change of occupants without increase of hazard), whether by legal process, or judgment, or by voluntary act of the insured, or otherwise, or if this policy be assigned before a loss.

5. When property insured is only partially damaged, no abandonment of the same will be allowed, unless by the consent of the Company; and in case of removal of property to escape conflagration the Company will contribute to the loss and expenses attending such act of salvage proportionately to the respective interests of the Company or companies and the assured.

6. Money, books of account, securities for money, evidences of debt or title, are not insured.

7. Plate, bullion, jewellery, medals, paintings, sculptures, casts, curiosities, scientific and musical instruments, works of art, articles of vertu, frescoes, models, patterns, moulds, dies, plans and drawings, store and office furniture or fixtures, tools; are not insured unless mentioned in the policy, nor beyond the actual value destroyed by fire.

8. The Company is not liable for loss if there is any prior insurance, whether valid or not, in any other company, unless this Company's assent thereto appears herein or is endorsed hereon, nor if any subsequent insurance is effected in any other company, unless and until this Company assents thereto or unless this Company does not dissent in writing within two weeks after receiving written notice of such subsequent insur-

ance or of the intention or desire to effect the same, or does not dissent in writing after that time and before the subsequent or further insurance is effected.

9. In the event of any other insurance on the property herein described having been assented to as aforesaid, then this Company shall, if such other insurance whether valid or not remains in force on the happening of any loss or damage, only be liable for the payment of a rateable proportion of such loss or damage, without reference to the dates of the different policies.

10.—(a). The Company is not liable for the losses following, that is to say :

(1.) For the loss of property owned by any other person than the assured, unless the interest of such other person is stated in or upon the policy, and liability is specifically assumed hereon.

(2.) For loss caused by invasion, insurrection, riot, civil commotion, military or usurped power, or by order of any civil authority ; nor for loss occasioned by ordinance or law regulating construction or repair of buildings, or by interruption of business, manufacturing processes or otherwise ; or by theft, or by neglect of the insured to use all reasonable means to save and preserve the property at and after a fire, or when the property is endangered by fire in neighbouring premises.

(3.) When the insurance is upon buildings or their contents for loss caused by the want of good and substantial brick or stone chimneys ; or by ashes or embers being deposited with the knowledge and consent of the assured, in wooden vessels, or by stoves or stove-pipes being, to the knowledge of the assured, in an unsafe condition, or improperly secured.

10—(b.) This policy, unless otherwise provided by agreement endorsed hereon or added hereto shall be void.

(1.) If the interest of the insured be other than unconditional and sole ownership, or if the subject of insurance be a building on ground not owned by the insured in fee simple, or other freehold tenure, or (where warning has been given as provided in section 7 of the *Fire Insurance Policy Act, 1900*) which becomes encumbered by any charge, lien, execution, mortgage or other hypothecary claim, or if the subject of insurance be personal property and become encumbered by a chattel mortgage or hypothecary claim, or if, with the knowledge of the insured, foreclosure proceedings be commenced, or notice given of sale of any property covered by this policy by virtue of any mortgage or trust deed.

(2.) Or if the subject of insurance be a manufacturing establishment, and cease to be operated for more than thirty consecutive days.

(3.) Or if a building herein described, whether intended for occupancy by owner or tenant be or become vacant or unoccupied, and so remain for thirty days.

(4.) Or if the goods are destroyed or damaged while undergoing any process in or by which the application of fire heat is necessary.

(5.) Or where loss or damage occurs to buildings or to their contents while the buildings are being repaired by carpenters, joiners, plasterers, or other workmen, and in consequence thereof ; but in dwelling houses fifteen days are allowed in each year for incidental repairs without such permission.

(6.) Or if illuminating gas or vapour be generated in the described building (or adjacent thereto) for use therein, or if (any usage or custom of trade or manufacture to the contrary notwithstanding) there be kept, used, or allowed on the above described premises, acetyline gas, natural gas, calcium carbide, benzine, benzole, ether, gasoline, naphtha, fire works, greek fire, dynamite, nitro-glycerine, gunpowder (exceeding twenty-five pounds in quantity), phosphorus, or other like inflammable or explosive substances, or petroleum or any of its products of greater inflammability than kerosene oil of the Canadian standard (which last may be used for lights and kept for sale according to law, but in quantities not exceeding five barrels, provided it be drawn and lamps filled by daylight, or at a distance not less than ten feet from artificial light).

(7.) Or if a building or any part thereof fall, except as a result of fire.

11. The Company will make good loss caused by the explosion of coal gas in a building not forming part of gas works, and loss by fire caused by any other explosion, or caused by lightning, but liability for direct damage by lightning may be assumed by specific agreement hereon.

12. Proof of loss must be made by the assured, although the loss be payable to a third party.

13. Any person entitled to make a claim under this policy is to observe the following directions:—

(a.) He is forthwith after loss to give notice in writing to the Company.

(b.) He is to deliver as soon afterwards as practicable to the Company, as particular an account of the loss as the nature of the case permits, stating the quantity, cost and cash value of each subject matter of insurance and the amount of loss thereon.

(c.)—He is also to furnish therewith a statutory declaration, declaring;

That the said account is just and true;

When and how the fire originated, so far as the declarant knows or believes;

The interest of the assured and of all others in the property;

All liens and encumbrances on the subject of insurance;

All other insurance, whether valid or not, covering any of the said property;

A copy of all the descriptions and schedules in all policies, and all changes in the title, use, occupation, location, possession or exposures of said property, since the issue of this policy;

By whom, and for what purpose any building herein described, and the several parts thereof, were occupied at the time of the fire;

That the fire was not caused through his wilful act or neglect, procurement, means or contrivance.

(d.)—He is, in support of his claim, if required, and if practicable, to produce books of account, bills, warehouse receipts and stock lists, and to furnish invoices and other vouchers or certified copies thereof if originals be lost, and shall furnish, if required, verified plans and specifications of any buildings, fixtures, or machinery destroyed or damaged at such reasonable place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to

be made, and shall exhibit for examination as often as required to any person designated by this Company, all that remains of any property herein described, and shall submit to examination under oath by any Justice of the Peace, Police Magistrate or Notary Public, named by this Company, and subscribe to his deposition.

(e.)—He is to produce, if required, a certificate under the hand of a Justice of the Peace, Police Magistrate, Notary Public, Commissioner for taking affidavits, or Municipal Clerk, residing in the vicinity in which the fire happened and not concerned in the loss or related to the assured or sufferers, stating that he has examined the circumstances attending the fire, loss or damage alleged, that he is acquainted with the character and circumstances of the assured or claimant, and that he verily believes that the assured has, by misfortune, and without fraud or evil practice, sustained loss and damage on the subject assured.

(f.)—After any loss or damage to insured property the Company shall have the immediate right of entry by its agent or representative, and access sufficient to survey and examine the property and make an estimate of the loss or damage, but the Company shall not be entitled to the disposition, control, occupation or possession of the insured property, or of the remains or salvage thereof, unless the Company undertakes re-instatement or accepts abandonment of the property.

(g.)—After any loss or damage to insured property, the insured shall, as soon as practicable, secure the insured property from further damage, and separate as far as reasonably may be, the damaged from the undamaged property, and notify the Company when such separation has been made, and thereupon the Company shall be entitled to entry and access sufficient to make an appraisalment or particular estimate of the loss or damage.

14. The above proofs of loss may be made by the agent of the assured in case of the absence or inability of the assured himself to make the same, such absence or inability being satisfactorily accounted for.

15. Any fraud or false statement in a statutory declaration in relation to any of the above particulars, shall vitiate the claim.

16. In the event of disagreement as to the amount of loss, whether total or partial, the same shall be ascertained by two competent and disinterested appraisers, the insured and this Company each selecting one, and the two so chosen shall first select a competent and disinterested umpire. The appraisers together shall then estimate and appraise the loss in detail (so far as the case permits), stating separately sound value and damage, and failing to agree shall submit their differences to the umpire, and the award in writing of any two shall determine the amount of such loss. The parties thereto shall pay the appraiser respectively selected by them, and shall bear equally the expenses of the appraisal and umpire. In case of the refusal or neglect of either party to appoint an appraiser, or of the two so appointed to appoint an umpire, such appointment may be obtained in manner following namely: either party may apply, upon two days' notice, to the other to appoint such appraiser or umpire, as the case may be, to the



County Judge of the county or district wherein the loss has occurred, if there be such County Judge, and if there be no such judge, the application may be made to any judge of a Superior Court having jurisdiction in such county or district.

17. This Company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to such actual cash value with proper deduction for depreciation however caused, and shall in no event exceed what it would then cost the insured to repair or replace the same with material of like kind and quality. The loss shall not be payable until sixty days after the notice, ascertainment, estimate, and satisfactory proof of the loss herein required, have been received by this Company, including an award by the appraisers when appraisal has been required.

18. The Company, instead of making payment, may repair, rebuild, or replace within a reasonable time, the property damaged or lost, with other of like kind and quality, giving notice of their intention within fifteen days after receipt of the proofs herein required, and it shall be optional with the Company to take all or any part of the articles saved at such ascertained or appraised value.

(a.) This Company shall not be held to have waived any provision or condition of this policy, or any forfeiture thereof, by any requirement, act or proceeding on its part relating to any of the matters set out in conditions 13 and 16 hereof.

19. The insurance may be terminated by the Company by giving notice to that effect; in the case of personal service of the notice, five days' notice, excluding Sunday, shall be given. Notice may be given by any company by registered letter addressed to the assured at his last post office address notified to the Company, and when no address notified, then to the post office of the agency from which the application was received, and when such notice is by letter, then seven days from the arrival at any post office in Canada shall be deemed good notice. And the policy shall cease after such notice aforesaid, and the expiration of the five or seven days, as the case may be. If the policy shall be cancelled, as hereinbefore provided, or become void, or cease, the premium having been actually paid, the unearned portion shall be returned on surrender of this policy or last renewal, this Company retaining the customary short rate, except that when this policy is cancelled by this Company by giving notice, it shall retain only the *pro rata* premium.

(a.) The insurance, if for cash, may also be terminated by the assured by giving written notice to that effect to the Company or its authorized agent, in which case the Company may retain the customary short rate for the time the insurance has been in force and shall repay to the assured the balance of the premium paid.

20. No action or proceeding against the Company for the recovery of any claim under or by virtue of this policy shall be brought until after a full compliance has been made by the assured with all the foregoing requirements, nor unless commenced within one year next after the loss or damage occurs.

21. This policy may by a renewal, be continued under the original stipulations, in consideration of premium for the re-

newed term, provided that an increase of hazard must be made known to this Company at the time of renewal, or this policy shall be void.

22. If, with the consent of this Company, an interest under this policy shall exist in favour of a mortgagee or of any person having an interest in the subject of insurance other than the interest of the insured as described herein, the conditions hereinbefore contained shall apply in the manner expressed in any subrogation clause or other provision or condition of insurance relating to such interest as shall be written upon, attached, or appended hereto.

23. The extent of the application of the insurance under this policy, or of the contribution to be made by this Company in case of loss under co-insurance, distribution, or clauses of similar effect or purpose, may be provided for by agreement or condition written hereon, or attached or appended hereto. In all cases where there is other insurance subject to the conditions of average or co-insurance or any special advantages not concurrent with the insurance by this policy, this policy shall be subject to the same special advantages and the conditions of average or co-insurance in like manner.

24. If this company shall claim that the fire was caused by the act or neglect of any person or corporation, this Company shall, on payment of the loss, be subrogated to the extent of such payment to all right of recovery by the insured for the loss resulting therefrom, and such right shall be assigned to this Company by the insured on receiving such payment.

25. This policy is made and accepted subject to the foregoing stipulations and conditions, together with such other provisions and agreements as may be indorsed hereon, or added hereto, pursuant to any of the above conditions, and no officer, agent or other representative of this Company shall have power to waive any provision or condition of this policy, except such as by the terms of this policy may be the subject of agreement endorsed hereon, or added hereto, and as to such provisions and conditions, no officer, agent or representative shall have such power or be deemed or held to have waived such provisions or conditions unless such waiver (if any) shall be written hereon or attached hereto, nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the insured unless so written or attached. In any matter relating to this insurance no person, except the agent or agents whose names are printed hereon, shall be deemed the agent of this Company, unless duly authorised in writing, subject, however, to the provisions of section 6 of the *Fire Insurance Policy Act of 1900*.

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## B.

### WARNING.

The person soliciting the application for this insurance has no power or authority other than to receive and forward to the company applications for insurance, to receive the premium for the insurance, and to deliver an interim receipt

binding the company according to the terms and provisions therein expressed. If such person soliciting insurance inserts in the application the answers to the questions therein contained, or any provisions relating to user or protection of the insured property, he shall for such purpose be deemed the agent of the applicant solely, and not the agent of the company, and the company shall not be bound by any representations made to or by such person and not contained in the application.

Mortgages and other encumbrances on property insured are deemed material to be made known to the company.

The applicant will be taken to have warranted that the answers made to the questions in the application are reasonably full and substantially true and accurate, and that the provisions relating to user or protection of the property will be substantially complied with.