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ELIZABETHAE II REGINAE

A.D. 1972

No. 50 of 1972

An Act to provide for the licensing and control of commercial and private agents; to repeal the Bailiffs and Inquiry Agents Licensing Act, 1945; and for other purposes.

[Assented to 27th April, 1972]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PART I

PRELIMINARY

1. This Act may be cited as the "Commercial and Private Agents Act, 1972". Short title.

2. This Act shall come into operation on a day to be fixed by proclamation. Commencement.

3. This Act is arranged as follows:—

Arrangement
of Act.

PART I—PRELIMINARY

PART II—THE COMMERCIAL AND PRIVATE AGENTS
BOARD AND THE REGISTRAR

PART III—LICENSING OF AGENTS

PART IV—PROVISIONS SPECIFICALLY APPLICABLE
TO COMMERCIAL AGENTS

PART V—PROVISIONS APPLICABLE TO AGENTS
GENERALLYPART VI—INVESTIGATIONS, INQUIRIES AND
APPEALS

PART VII—GENERAL PROVISIONS

**Repeal and
transitional
provision.**

4. (1) The Bailiffs and Inquiry Agents Licensing Act, 1945, is repealed.

(2) A person who was, immediately before the commencement of this Act licensed under the repealed Act, is not, for a period of six months after the commencement of this Act, or the remainder of the term for which the licence was granted, whichever is the lesser, required to be licensed under this Act.

(3) A person is not, for a period of six months after the commencement of this Act required to be licensed under this Act for the purpose of performing any action for which a licence was not required under the repealed Act.

Interpretation.

5. In this Act, unless the contrary intention appears—

“accountant” means a person who holds prescribed qualifications in accountancy:

“agent” means any person who is required to hold a licence under this Act:

“the Board” means the Commercial and Private Agents Board constituted under this Act:

“commercial agent” means a person who, for monetary or other consideration, performs any of the following functions:—

(a) ascertaining the whereabouts of, or repossessing any goods or chattels that are the subject of a hire purchase agreement or bill of sale;

(b) collecting, or requesting the payment of, debts;

(c) executing any legal process for the enforcement of any judgment or order of a court;

or

(d) executing any distress for the recovery of rates, taxes or moneys,

on behalf of any other person:

“commercial sub-agent” means a person in the employment of, or acting for or by arrangement with, a commercial agent who for monetary or other consideration performs for that agent any of the functions of a commercial agent:

“document” includes book, record, register, account, paper and card:

“harassment” means any act or conduct that tends to intimidate, embarrass, ridicule or shame any person, and without limiting the generality of the foregoing, includes—

- (a) any act or omission (including the positioning of a vehicle) from which it might reasonably be inferred by a person visiting or passing any premises that an occupant of the premises is being visited, or under surveillance by, an agent;
- (b) unduly frequent visiting of premises or communication with the occupants of premises;
- (c) any suggestion made to, or intended to be communicated to, a debtor that if he fails to pay any debt action may be taken that would embarrass or shame him, or prejudice him in his employment:

“inquiry agent” means a person who, for monetary or other consideration, performs any of the following functions:—

- (a) obtaining or providing information as to the personal character or actions of any person, or as to the business or occupation of any person;
 - (b) obtaining evidence for the purpose of any legal proceedings;
- or
- (c) searching for missing persons,
- on behalf of any other person:

“licence” means a licence under this Act:

“loss assessor” means a person who, for payment or other consideration, performs any of the following functions:—

- (a) the investigation of any loss or injury arising from the use of a motor vehicle or any personal injury arising out of, or in the course of, the employment of the person by whom the injury was sustained;
 - (b) the assessment of any pecuniary compensation or damages likely to be awarded in respect of any such loss or injury;
- or
- (c) the making, commencing, resisting, negotiating, compromising, or settling, of any claim in respect of any such loss or injury:

“officer” in relation to a corporation, means any director, manager, or secretary of the corporation:

“order” includes decision, direction or declaration:

“process server” means a person who, for monetary or other consideration, performs the function of serving any writ, summons or other legal process on behalf of any other person:

“the register” means the register of agents required to be kept under this Act:

“registered address” means the address for the time being entered in the register in respect of a commercial or private agent as the address to which all communications with, and notices to, that person may be sent:

“Registrar” means the person for the time being holding, or acting in, the office of Registrar of Commercial and Private Agents under this Act:

“security agent” means a person who, for monetary or other consideration, performs the function of guarding property or keeping property under surveillance:

“security guard” means a person in the employment of, or acting for or by arrangement with, a security agent who for monetary or other consideration performs for the security agent the function of guarding property or keeping property under surveillance.

**Application
of Act.**

6. (1) This Act shall not apply to:—

- (a) a member of the police force of this State;
- (b) any person while acting in the performance of his functions as an officer of the Public Service of this State or as an employee of the Crown or any instrumentality of the Crown;
- (c) any legal practitioner while acting in the ordinary course of his profession or any clerk of a legal practitioner while acting in the ordinary course of his employment as such;
- (d) any accountant while acting in the ordinary course of his profession;
- (e) a person licensed under the Land Agents Act, or the Business Agents Act, while acting in the ordinary course of the business conducted in pursuance of the licence;
- (f) any sheriff, deputy sheriff, sheriff’s officer, bailiff or other officer of any court while acting in the performance of his functions as such;

- (g) a trustee company, a building society, or friendly society, a person carrying on the business of insurance, insurance broking or banking, while acting in the ordinary course of business as such, or an employee of any such company, society or person while acting in the ordinary course of his employment;
- (h) any person employed under a contract of service by a person who is not an agent while acting in the ordinary course of that employment;
- (i) any person who performs only clerical or secretarial functions on behalf of an agent.

(2) The Governor may, by proclamation, exempt any persons, or persons of any specified class, from the provisions of this Act to such extent as may be specified in the proclamation, and the operation of this Act shall be modified accordingly.

(3) The Governor may, by subsequent proclamation, vary or revoke a proclamation under this section.

PART II

PART II

THE COMMERCIAL AND PRIVATE AGENTS BOARD AND
THE REGISTRAR

7. (1) There shall be a board entitled the "Commercial and Private Agents Board". Establishment of board.

(2) The Board shall consist of five members appointed by the Governor, of whom—

- (a) one, who shall be the chairman, shall be a legal practitioner of at least seven years standing nominated by the Minister;
 - (b) two shall be persons nominated by the Minister who are, in the opinion of the Minister, properly qualified for membership of the Board;
 - (c) one shall be a person nominated by the Fire and Accident Underwriters Association of South Australia;
- and

(d) one shall be a person nominated by the Commissioner of Police.

(3) Where the Fire and Accident Underwriters Association of South Australia, or the Commissioner of Police, has been requested by the Minister by instrument in writing to nominate a person for appointment as a member of the Board, and fails within one month, or such longer period as may be allowed by the Minister, to make a nomination in accordance with the request, the Minister may nominate a suitable person for appointment to the Board in lieu of a nominee of the Fire and Accident Underwriters Association of South Australia, or the Commissioner of Police, as the case may require.

Terms and
conditions of
office.

8. (1) Subject to this Act, a member of the Board shall be appointed for such term of office, not exceeding three years as the Governor may determine and specifies in the instrument of his appointment, and, upon the expiration of his term of office, shall be eligible for re-appointment.

(2) If a member of the Board is unable, or fails, for any reason to act in his capacity as a member of the Board, the Governor may appoint a suitable person to be a deputy of the member, and such a person, while so acting, shall be deemed to be a member of the Board, and shall have all the powers, authorities, duties and obligations of the member of whom he has been appointed a deputy.

(3) The Governor may remove a member of the Board from office for—

(a) mental or physical incapacity;

(b) neglect of duty;

(c) dishonourable conduct;

or

(d) any other cause considered sufficient by the Governor.

(4) The office of a member of the Board shall become vacant if—

(a) he dies;

(b) his term of office expires;

(c) he resigns by written notice addressed to the Minister;

or

(d) he is removed from office by the Governor pursuant to subsection (3) of this section.

(5) Upon the office of a member of the Board becoming vacant, a person shall be appointed, in accordance with this Act, to the vacant office, but where the office of a member of the Board becomes vacant before the expiration of the term for which he was appointed, a person appointed in his place shall be appointed only for the balance of the term of his predecessor.

9. (1) Three members of the Board shall constitute a quorum of the Board, and no business shall be transacted at a meeting unless a quorum is present. Quorum, etc

(2) A decision carried by a majority of the votes cast by the members present at a meeting of the Board, shall be a decision of the Board.

(3) The chairman shall preside at a meeting of the Board and, in addition to a deliberative vote, shall, in the event of an equality of votes, have a second or casting vote.

(4) In the absence of the chairman from a meeting of the Board, the members present shall elect one of their number to be chairman for that meeting and a member so elected shall perform and discharge the functions and obligations of the chairman at that meeting.

(5) Subject to this Act, the business of the Board shall be conducted in such manner as the Board determines.

10. (1) An act or proceeding by the Board shall not be invalid by reason only of a vacancy in its membership, and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of a member, any such act or proceeding shall be as valid and effectual as if the member had been duly nominated or appointed. Validity of acts of Board and immunity of its members

(2) No liability shall attach to a member of the Board for any act or omission by him, or by the Board, in good faith and in the exercise or purported exercise of his or its powers or functions, or in the discharge, or purported discharge of his or its duties under this Act.

11. The members of the Board shall be entitled to receive such allowances and expenses as may be determined by the Governor. Allowances and expenses.

12. With the approval of the Minister, the Board may employ legal practitioners and other persons to assist it in the performance and discharge of its functions and duties. Board may employ legal assistance.

PART II

The Registrar.

13. (1) There shall be a Registrar of Commercial and Private Agents.

(2) The Registrar shall be appointed subject to and in accordance with the Public Service Act.

(3) The office of the Registrar may be held in conjunction with any other office in the public service of the State.

PART III

PART III

LICENSING OF AGENTS

Licences and
obligation to
be licensed.

14. (1) Licences shall be granted under separate categories for—

- (a) commercial agents;
- (b) commercial sub-agents;
- (c) inquiry agents;
- (d) loss assessors;
- (e) process servers;
- (f) security agents;
- and
- (g) security guards.

(2) No person shall act as, or hold himself out as being, or perform, or hold himself out as willing to perform, any of the functions of—

- (a) a commercial agent;
- (b) a commercial sub-agent;
- (c) an inquiry agent;
- (d) a loss assessor;
- (e) a process server;
- (f) a security agent;
- or
- (g) a security guard,

unless he is licensed under the appropriate category pursuant to this Act.

Penalty: Five hundred dollars, or imprisonment for six months, or both.

(3) For the purposes of this section a person acts as, or holds himself out as being, or performs or holds himself out as willing to perform any of the functions of, an agent whether he does so personally or through the agency or instrumentality of other persons.

15. (1) An application for a licence must be made in writing and in the prescribed manner and form and must contain the prescribed information. Application.

(2) The information contained in the application must be verified by a statutory declaration made by the applicant, or where the applicant is a corporation, by an officer of the corporation.

(3) The applicant must furnish the Board with such further information, verified, if the Board so requires, by statutory declaration, as the Board may require.

(4) An application for a commercial agent's licence must be accompanied by a bond in conformity with this Part.

16. (1) Subject to this Act, a person (not being a corporation) is entitled to hold a licence of a particular category if he has proved to the satisfaction of the Board that— Entitlement to be granted a licence.

(a) he is over the age of eighteen years;

(b) he is resident in this State;

(c) he is a fit and proper person to hold a licence of that category.

and

(d) he has attained or complied with any standards or requirements of education practical skill or experience prescribed by regulation in relation to a licence of that category.

(2) Subject to this Act, a corporation is entitled to hold a licence of a particular category if it has proved to the satisfaction of the Board that—

(a) the officers of the corporation;

and

(b) any other person who in the opinion of the Board substantially controls or could substantially control the affairs of the corporation,

are fit and proper persons to manage, direct or control the affairs of a corporation holding a licence of that category.

(3) Where due application has been made for a licence and the applicant is entitled to hold the licence in accordance with this section, the Board shall grant to the applicant the appropriate licence

PART III**Renewal of licence.**

17. (1) A licence shall, subject to this Act, remain in force until the thirtieth day of June next ensuing after the grant of the licence, and may from time to time be renewed for successive periods of one year expiring on the thirtieth day of June.

(2) An application for the renewal of a licence must be made in the prescribed form and must be accompanied by such statutory declarations and other documents as may be prescribed or as the Board may require.

(3) The application must be delivered to the Registrar not earlier than the first day of April and not later than the last day of May preceding the expiry of the licence but the Board may, if it thinks fit, determine an application notwithstanding that it is delivered out of time.

(4) Where the holder of a licence duly applies for the renewal of the licence, and pays the prescribed fee, the licence shall be renewed for a term of one year in accordance with this section.

Business may be carried on by unlicensed person.

18. (1) Where a person carrying on business in pursuance of a licence dies, an unlicensed person may, with the consent of the Board and subject to any conditions imposed by the Board, continue to carry on the business until the business is sold or the expiration of six months, whichever first occurs, and while the unlicensed person is carrying on business in accordance with the conditions imposed by the Board he shall for the purposes of this Act be deemed to be the holder of a licence.

(2) The holder of a licence under this Act may at any time, with the consent of the Board, surrender his licence and the licence shall thereupon cease to have any effect.

Fidelity bond.

19. (1) A commercial agents licence shall not be granted unless a bond conforming with the provisions of this section is lodged with the Board, accompanied by such security for the satisfaction of the bond as the Board may require.

(2) The bond shall be in the prescribed form and—

(a) where the applicant, or the holder of the licence, is a corporation, in the sum of fifteen thousand dollars;

(b) where the applicant, or the holder of the licence, is a person other than a corporation, who proposes to carry on, or carries on, the business of a commercial agent in partnership with another person, in the sum of four thousand dollars;

and

(c) in any other case, in the sum of six thousand dollars.

(3) The sum recoverable under the fidelity bond is not a penalty, but is liquidated damages, and shall accordingly be recoverable in full as a debt due jointly and severally by the licensee, and the surety or sureties, to the Crown unless performance of every condition of the bond is proved.

(4) Every sum so recovered shall be paid into the general revenue and without further appropriation than this Act, be applied by the Minister—

- (a) in payment of any costs and expenses;
- (b) in compensating any person for any loss sustained by reason of any breach of any condition of the bond;
- and
- (c) in refunding to the surety or sureties any remaining balance.

(5) If at any time during the currency of a licence the board determines that the bond is not adequately secured by sureties or other security, the holder of the licence shall, until an appropriate security is delivered to the Registrar, be deemed to be unlicensed.

(6) Where the holder of a commercial agent's licence, who has entered into a bond under paragraph (b) of subsection (1) of this section, ceases to carry on business in pursuance of the licence in partnership with another person, he must within one month enter into a bond in the prescribed form in the sum of six thousand dollars.

(7) A commercial agent's licence shall be of no force or effect for the duration of any period for which the holder of the licence is in default under the provisions of subsection (6) of this section.

20. (1) Where a corporation holds a licence of a particular category the business of the corporation conducted in pursuance of that licence must be managed by a natural person who is resident in this State and—

Corporation must employ licensed person as manager.

- (a) holds a licence of the same category as that of the corporation;
- or
- (b) where the corporation is licensed as a commercial agent, holds a commercial agent's licence or a commercial sub-agent's licence.

(2) Where the business of a corporation is not managed as required by subsection (1) of this section, the corporation must, within fourteen days, or such longer period as may be allowed by the Board, appoint a manager resident in this State to manage, in accordance with that subsection, the business of the corporation conducted in pursuance of the licence.

(3) The licence of a corporation shall be of no force or effect for the duration of any period for which the corporation is in default under the provisions of subsection (2) of this section.

21. A licence shall not be transferable.

Licence not to be transferable.

22. A person may simultaneously hold a number of licences of differing categories.

More than one licence may be held by the one person.

PART IV

PART IV

PROVISIONS SPECIFICALLY APPLICABLE TO
COMMERCIAL AGENTS

Trust account. 23. (1) All moneys received for or on behalf of any person by a commercial agent shall be held by that commercial agent exclusively for that person, and until paid to, or as directed by, that person, shall be paid into a trust account in a bank in this State in the name of the commercial agent, and retained therein.

Penalty: Five hundred dollars or imprisonment for six months, or both.

(2) The account shall be established under the designation "trust account" and that designation shall appear in the description of that account in the books and records of the commercial agent, and on cheques drawn on that account.

(3) The commercial agent shall not remove the moneys from the trust account except for the purpose of paying them to, or in accordance with the directions of, the person on whose behalf they were received, or except in accordance with the order of a court of competent jurisdiction.

Penalty: Five hundred dollars, or six months imprisonment, or both.

(4) The moneys shall not be liable to be attached, or taken in execution, under the order or process of any court at the instance of any creditor, other than the person on whose behalf the moneys were received by the commercial agent.

(5) This section shall not be construed as preventing the removal of moneys from the trust account to satisfy a lawful claim or lien that the commercial agent has upon those moneys.

Records to be kept.

24. (1) A commercial agent shall keep or cause to be kept fully and correctly prescribed records and other prescribed documents in relation to the functions performed by him in his capacity as an agent.

(2) Where—

(a) a commercial agent fails to keep, or to cause to be kept, any record or other document as required under subsection (1) of this section;

or

- (b) the agent destroys, falsifies, or mutilates any such record or other document, or causes or permits any such record or other document to be destroyed, falsified or mutilated within the period of five years after it was made, or to be removed from his possession during that period,

the agent shall be guilty of an offence against this Act and liable to a penalty not exceeding five hundred dollars or imprisonment for six months.

25. (1) All prescribed records and other prescribed documents of a commercial agent, or a person who has ceased to be a commercial agent, shall at all reasonable times be open to inspection by the Registrar, by any member of the police force, or by a person duly authorized in writing by the Minister to inspect those records and other documents.

Inspection of records.

(2) The Registrar, the member of the police force, or the person so authorized, may require the commercial agent, or, where the agent is a corporation, the person who manages the business of the corporation conducted in pursuance of the licence, or in the absence of that person, any person having apparent control of the business—

- (a) to produce for inspection all or any prescribed records and other prescribed documents;

and

- (b) to furnish such other documents in his custody or control as may be reasonably required for the purpose of ascertaining whether there has been any contravention of, or failure to comply with, this Act or any other Act or law in connection with the trust moneys.

(3) The Registrar, the member of the police force, or the person so authorized, may make any notes concerning, or take any copies or extracts from, any records or other documents subject to inspection.

(4) A person who—

- (a) wilfully delays or obstructs any inspection under this section;

- (b) wilfully mutilates or destroys, or in any way alters any record or other document to delay or obstruct any inspection under this section;

or

- (c) on demand refuses or fails to comply with a requirement duly made of him under this section,

shall be guilty of an offence under this Act and liable to a penalty not exceeding five hundred dollars or imprisonment for six months.

PART IV

Prohibition of dealing in trust moneys.

26. (1) The Board may, by order in writing served upon a banker or other person having the custody or control of trust moneys affected by the provisions of this Part, restrict or prohibit any dealing in, or disposition of, those moneys.

(2) A person who acts in contravention of an order under subsection (1) of this section shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars or imprisonment for six months.

Repossession of motor vehicles to be reported.

27. A commercial agent who takes possession of a motor vehicle that is subject to a hire purchase agreement or a bill of sale—

(a) shall as soon as practicable after taking possession of the motor vehicle, inform an officer of police on duty at a police station nearest to the place where he took possession of the vehicle;

and

(b) within twenty-four hours after taking possession of the motor vehicle, deliver or send by post to the officer in charge of the police station nearest to the commercial agent's registered address, written particulars in duplicate of the motor vehicle, including particulars of the registered number of the vehicle.

Sub-agents not to be employed unless licensed.

28. No commercial agent shall employ as a commercial sub-agent a person who is not duly licensed as such.

Penalty: Five hundred dollars.

Place of business.

29. A commercial agent shall not invite the public, or any debtor from whom he is seeking to recover a debt, to deal with him at any place other than the place of his registered address or any other place approved by the Board.

Recovery of moneys from debtors.

30. (1) A commercial agent, or a commercial sub-agent acting on his behalf, shall not ask or demand (whether directly or indirectly) from any debtor any payment in addition to the amount of the debt other than the fee, or part of the fee, that the commercial agent has charged or agreed to charge, the creditor in respect of the commercial agent's services in recovering or attempting to recover the debt.

Penalty: Five hundred dollars.

(2) In this section—

“creditor” means any person on behalf of whom a commercial agent is acting, or has been engaged to act, in recovering or attempting to recover a debt:

“debt” includes any interest, costs or other charges for which a debtor is legally liable to a creditor:

“debtor” means a person from whom a commercial agent has recovered or is attempting to recover a debt on behalf of a creditor.

PART V

PART V

PROVISIONS APPLICABLE TO AGENTS GENERALLY

31. (1) A licence does not confer upon an agent any power or authority to act in contravention of, or in disregard of, any law or any rights or privileges guaranteed or arising under, or protected by, any law.

Licence not to confer additional authority.

(2) An agent who in any way suggests or implies that by virtue of his licence he may exercise any power or authority that is in fact not conferred by the licence shall be guilty of an offence against this Act and liable to a penalty of five hundred dollars or imprisonment for three months.

32. An agent shall not carry on business as such in a name other than the name in which he is licensed or a business name registered by the agent in accordance with the provisions of the Business Names Act, 1963.

Name in which agent carries on business.

Penalty: Two hundred dollars.

33. An agent shall not, by any false, misleading or deceptive statement, representation or promise, or by any wilful concealment of a material fact, induce, or attempt to induce, any person to enter into an agreement or contract in connection with his business as an agent.

Misrepresentation.

Penalty: Five hundred dollars or imprisonment for three months.

34. An agent shall not publish, or cause to be published, any advertisement relating to his business (other than an advertisement relating solely to the recruiting of staff) unless the advertisement specifies the name of the agent appearing in the licence, and the registered address of the agent.

Publication of advertisements.

Penalty: Five hundred dollars.

PART V

Notice to be displayed.

35. An agent (other than a commercial sub-agent or a security guard) shall maintain in a conspicuous position in each place from which he carries on business, a notice clearly showing—

- (a) the name of the agent (and in the case of a corporation, the name of the agent who manages the business conducted in pursuance of the licence);
- (b) the category of the licence that the agent holds;
- and
- (c) such other matters as may be prescribed.

Penalty: Five hundred dollars.

Excessive charges may be reduced by the Board.

36. (1) Where an agent claims payment of any amount from any person in respect of services rendered by him as an agent, the person liable to make that payment may apply to the Board for a review of the agent's charges.

(2) The Board in considering any such application, may, by order, reduce the agent's charges to such amount as it considers reasonable.

(3) Where an order has been made under subsection (2) of this section, the agent shall not be entitled to recover an amount in excess of the amount to which his charges have been reduced by the Board.

Licence to be produced upon demand.

37. An agent shall, on demand, produce his licence for inspection—

- (a) to the Registrar, or to a member of the police force;
- or
- (b) to any person with whom he has dealings as an agent.

Penalty: Two hundred dollars.

Registered address.

38. (1) Service of any notice, communication, process or document upon an agent may be effected by sending or delivering the notice, communication, process or document to the registered address of the agent.

(2) The Registrar may alter the registered address of an agent upon receipt of an instrument in writing signed by the agent requesting that the registered address be changed to an address (which must be an address in this State) specified in the notice.

PART VI**PART VI****INVESTIGATIONS, INQUIRIES AND APPEALS**

39. (1) The Registrar may of his own motion, and shall at the direction of the Board, make any investigation that he or the Board considers necessary or expedient for the purpose of determining any application, or other matter before the Board. Registrar's powers of investigation.

(2) The Registrar shall make a written report upon every such investigation to the Board.

40. (1) The Commissioner of Police shall at the request of the Registrar cause his officers to make an investigation and report relating to any matter being investigated by the Registrar or the Board. Investigations by the Commissioner of Police.

(2) The report shall be forwarded to the Registrar.

41. (1) The Board may, upon the application of any person made in the prescribed manner, or of its own motion, inquire into the conduct of any person licensed under this Act. Inquiries.

(2) If after conducting an inquiry under subsection (1) of this section the Board is satisfied that proper cause exists for disciplinary action, the Board may do one or more of the following—

- (a) reprimand the person in relation to whom the inquiry was held;
 - (b) impose a fine not exceeding one hundred dollars on that person;
- and
- (c) cancel the licence and, in addition, disqualify the person who held the licence either temporarily or permanently, or, until the fulfilment of a condition imposed by the Board, or until the further order of the Board from holding a licence under this Act.

(3) There shall be proper cause for disciplinary action if—

- (a) the licence was improperly obtained;
- (b) the agent or any person acting with the authority, or upon the instructions, of the agent has been guilty of conduct that constitutes in the opinion of the Board unfair or improper harassment;
- (c) the agent or any person acting with the authority, or upon the instructions, of the agent—

PART VI

(i) has been convicted, or is guilty of any offence against this Act, or any offence involving dishonesty;

or

(ii) is guilty of any fraudulent, dishonest or discreditable conduct, or any neglect of duty;

(d) the agent is an undischarged bankrupt, or is bound by any subsisting composition or deed or scheme of arrangement with or for the benefit of his creditors or, in the case of a corporation, has insufficient funds for the payment of its creditors;

or

(e) any other cause exists (whether like or unlike those specifically referred to in this subsection) that the Board considers sufficient.

Procedure in relation to inquiry.

42. (1) The Board shall give to the agent whose conduct is the subject of an inquiry under this Part, and to any person upon whose application an inquiry is to be held, not less than seven days' notice of the time and place at which it intends to conduct the inquiry and shall afford any such person a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses and to make submissions to the Board.

(2) If a person to whom notice has been given pursuant to subsection (1) of this section does not attend at the time and place fixed by the notice, the Board may hold the inquiry in his absence

(3) The procedure at an inquiry shall be determined by the Board.

(4) Where the conduct of any agent becomes the subject of any inquiry conducted by the Board under this Part, the agent may be represented by counsel at the inquiry.

Powers of Board.

43. (1) For the purposes of an inquiry under this Part, the Board may—

(a) by summons signed on behalf of the Board by a member of the Board, require the attendance before the Board of any person whom the Board thinks fit to call before it;

(b) by summons signed on behalf of the Board by a member of the Board, require the production of any books, papers or documents;

- (c) inspect any books, papers or documents produced before it, and retain them for such reasonable period as it thinks fit, and make copies of any of them or of any of their contents;
- (d) require any person to make an oath or affirmation that he will truly answer all questions put to him by the Board relevant to any matter being inquired into by the Board, which oath or affirmation may be administered by any member of the Board;

or

- (e) require any person appearing before the Board including the person whose conduct is the subject of the inquiry (whether he has been summoned to appear or not) to answer any relevant questions put to him by any member of the Board or by any other person appearing before the Board.

(2) Subject to subsection (3) of this section, if any person—

- (a) who has been served with a summons to attend before the Board neglects or fails to attend in obedience to the summons;
- (b) who has been served with a summons to produce any books, papers or documents, neglects or fails to comply with the notice;
- (c) misbehaves himself before the Board, wilfully insults the Board or any member thereof, or interrupts the proceedings of the Board;

or

- (d) refuses to be sworn or to affirm, or to answer any relevant question, when required to do so by the Board,

he shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

(3) A person shall not be obliged to answer a question put to him by the Board if the answer to that question would tend to incriminate him or to produce any books, papers or documents if their contents would tend to incriminate him.

(4) In the course of an inquiry the Board may receive in evidence, and act upon—

- (a) any transcript of evidence in proceedings before a court;

or

- (b) any findings or judgment of a court,

that may be relevant to the proceedings.

PART VI**Costs.**

44. (1) The Board may, upon the determination of an inquiry under this Part, make such orders as to costs as the Board thinks just and reasonable.

(2) Where the Board makes an order for the payment of a fine or costs against a person licensed under this Act and the fine or costs is or are not paid within the time fixed by the Board, the Board may suspend the licence or registration of that person until the fine or costs is or are paid, or for such period as the Board thinks fit.

(3) Where the Board has ordered the payment of a fine or costs, the fine or costs shall be recoverable summarily.

Appeal.

45. (1) A right of appeal to the Supreme Court shall lie against any order of the Board made in the exercise or purported exercise of any of its powers or functions under this Act.

(2) The appeal must be instituted within one month of the making of the order appealed against but the Supreme Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the appeal should be so instituted.

(3) The Supreme Court may, on the hearing of the appeal, do one or more of the following, according to the nature of the case—

(a) affirm, vary or quash the order appealed against, or substitute, or make in addition, any order that should have been made in the first instance;

(b) remit the subject matter of the appeal to the Board for further hearing or consideration;

(c) make any further or other order as to costs or any other matter that the case requires.

(4) The Board shall, if so required by any person against whom an order has been made, state in writing the reasons for its order.

(5) If the reasons of the Board are not given in writing at the time of making an order and the appellant then requested the Board to state its reasons in writing, the time for instituting the appeal shall run from the time when the appellant receives the written statement of those reasons.

Operation of order may be suspended.

46. (1) Where an order has been made by the Board and the Board or the Supreme Court is satisfied that an appeal against the order has been instituted, it may suspend the operation of the order until the determination of the appeal.

(2) Where the Board has suspended the operation of an order under subsection (1) of this section the Board may terminate the suspension, and where the Supreme Court has done so, the Supreme Court may terminate the suspension.

PART VII

PART VII

GENERAL PROVISIONS

47. No person shall be entitled to sue for, or recover, any fee, commission or other consideration for any service performed by him as an agent unless at the time of performing that service he was duly licensed under this Act.

Agent not entitled to fees, etc., unless licensed.

48. (1) Subject to subsection (2) of this section a loss assessor shall not settle or compromise or attempt to settle or compromise any claim in respect of loss or injury arising out of the use of a motor vehicle or injury arising out of, or in the course of employment, after proceedings have been instituted in any court in respect of that loss or injury.

Limitations upon functions of loss assessor.

Penalty: Five hundred dollars.

(2) This section does not apply unless the process by which the proceedings are instituted has been served upon the defendant to those proceedings.

(3) It shall be a defence to a prosecution for an offence under subsection (1) of this section that the defendant did not know, and could not by the exercise of reasonable diligence have discovered, that proceedings had been instituted in a court in respect of the loss or injury.

49. (1) In any legal proceedings, a document purporting to be a licence granted under this Act, shall be accepted as such a licence in the absence of contrary evidence.

Evidentiary provision.

(2) An allegation in a complaint that a person was or was not licensed at any time mentioned in the complaint shall, in the absence of contrary evidence, be accepted as proved.

(3) An apparently genuine document purporting to be signed by the Registrar stating that any person named in the document is or is not, or was or was not at any specified time, the holder of a licence under this Act shall be accepted as proof of that fact in the absence of contrary evidence.

50. Where a corporation is guilty of an offence under this Act, every person concerned in the management or control of the corporation who knowingly causes, authorizes or permits the commission of the offence shall be guilty of an offence and liable to any penalty prescribed to the principal offence.

Criminal liability of corporations, etc.

PART VII**Regulations.**

51. The Governor may make such regulations as are contemplated by this Act, or as he deems necessary or expedient for the purposes of this Act, and without limiting the generality of the foregoing, those regulations may—

- (a) prescribe any form for the purposes of this Act;
- (b) prescribe and provide for the recovery of fees for the purposes of this Act;
- (c) provide for applications for licences under this Act to be advertised, and provide for objections to be made to such applications, and prescribe the manner in which and the grounds upon which, such objections may be made;
- (d) provide for records to be kept, and returns to be made to the Board, by agents or any category of agents, and provide for the inspection of those records;
- (e) prescribe the forms, terms and conditions of fidelity bonds;
- (f) provide for an annual audit of the trust accounts of every commercial agent, and the manner in which and the persons or class of persons by whom the audit is to be conducted, and provide for a report of the result of the audit to be made to the Board;
- (g) require that such books, papers, and accounts, and other documents as may be specified in the regulations be produced for the inspection of the auditor;
- (h) make such other provision as may be necessary or desirable to ensure that all such trust accounts are properly kept and audited;
- (i) prescribe various maximum rates of commission and charges for services of various kinds defined in the regulations;
- (j) prescribe penalties (recoverable summarily) not exceeding two hundred dollars for contravention of, or non-compliance with, any regulation.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

J. M. NAPIER, Governor's Deputy