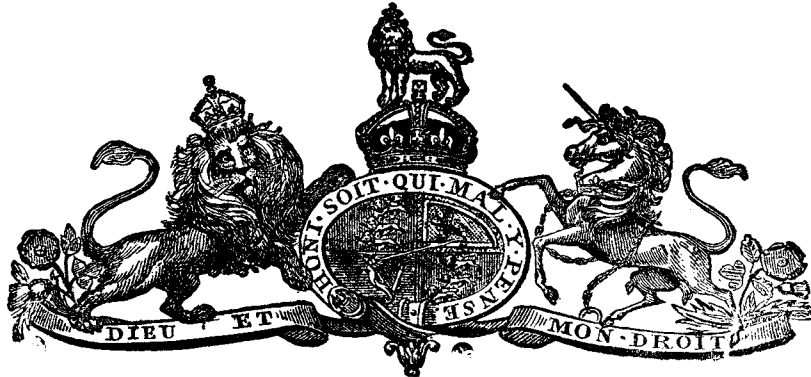


1375

TASMANIA.



1935.

ANNO VICESIMO SEXTO

GEORGII V. REGIS.

No. 83.

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A.D.
1935.

AN ACT to further amend the *Traffic Act 1925* and to make provision for the Protection of Third Parties against Risks arising from the use of Motor-Vehicles. [16 *January*, 1936.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows :—

1 This Act may be cited as the *Traffic Act 1935* and shall come into force on a day to be fixed by proclamation.

Short title and commencement.

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2 The *Traffic Act* 1925 is hereby further amended by adding after the end of Part VI. thereof the following new Part VII:—

“ PART VII.

“ INSURANCE AGAINST ACCIDENT.

Interpretation.

“ **62** In this Part, unless a contrary intention appears—

‘ Accident ’ means any occurrence caused by or arising out of the use of a motor-vehicle whereby the death of or bodily injury to any person results :

(10 Geo. V. No. 63, s.45.)

‘ Authorised insurer ’ means an insurance company lawfully carrying on the business of accident insurance in Tasmania and includes the Tasmanian Government Insurance General Manager :

‘ Policy of insurance ’ includes a ‘ cover note ’ :

‘ Committee ’ means the Premiums Committee referred to in section seventy-four.

Insurance of motor-vehicles.

20 and 21 Geo. V., c. 43, part II. (Eng.)

“ **63**—(1) Notwithstanding anything in this Act or in any regulations made thereunder, it shall not be lawful for any person to use, or to cause or permit any other person to use, a motor-vehicle unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, such a policy of insurance as complies with the requirements of this Act.

Penalty : Fifty pounds or three months’ imprisonment.

Agency presumed.

Cf. Vic., 1934. N.Z., 1928, No. 52, s. 3.

“ (2) For the purposes of this Part and of every policy of insurance thereunder, every person other than the owner who is at any time in charge of a motor-vehicle, with the authority or acquiescence of the owner, shall be deemed to be the agent of the owner, and to be acting within the scope of his authority in relation to such motor-vehicle.

Limitation.

“ (3) Proceedings for an offence under this section may be commenced within a period which exceeds neither three months from the date on which it came to the knowledge of the Commissioner that the offence had been committed nor one year from the date of the commission of the offence.

Burden of proof.

“ (4) In any prosecution for an offence under this section, the onus of proving that any particular insurance has been effected in accordance with this Act in respect of any motor-vehicle shall lie upon the defendant.

Essentials of policy. (Eng.)

“ **64**—(1) In order to comply with the requirements of this Part, a policy of insurance must be a policy which—

i. Is issued by an authorised insurer :

ii. Insures such person, persons, or classes of persons as may be specified therein in respect of any liability which may be incurred by him or them in respect of an accident.

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“(2) The liability of the insurer in respect of any accident shall— A.D. 1935.

- i. Be limited to two thousand pounds in respect of any claim made by or in respect of any passenger, and to twenty thousand pounds in respect of all claims made by or in respect of passengers, and such limits shall be inclusive of all costs in relation to any such claim or claims :
- ii. Be limited to two thousand pounds in respect of any claim made by or in respect of any person other than a passenger:
- iii. Not extend to indemnify the owner in respect of any claim based on the death of, or injury suffered by, any person who at the time of the accident was—
 - (a) Living with the owner as a member of his family :
 - (b) Driving, or being conveyed in, or entering or alighting from, the motor-vehicle mentioned in the policy of insurance, or about to enter the same or alight therefrom, unless such vehicle was then being used in the business of carrying passengers for hire and such claim is made by or in respect of a passenger for hire.

“(3) Notwithstanding anything in any enactment, 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. Liability of insurer.

“(4) The insurer shall deliver to the person by whom the policy is effected a certificate, in this Act referred to as a ‘certificate of insurance,’ in the prescribed form and containing such particulars of any conditions subject to which the policy is issued, and of such other matters as may be prescribed, and different forms and different particulars may be prescribed in relation to different cases or circumstances. Certificate of insurance.

“65 Any condition in a policy issued 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 event giving rise to a claim under the policy, shall be of no effect in connection with any such liability as is mentioned in paragraph ii. of subsection (1) of section sixty-four. 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 latter may have become liable to pay under the policy and which have been applied to the satisfaction of the claims of third parties. Conditions against liability invalidated. (Eng.)

“66—(1) No motor-vehicle shall be registered nor shall any licence or transfer of a licence or any permit or general identification mark be issued in respect thereof under this Act or the regulations thereunder, unless the person applying to register the same, or applying for such licence, transfer, permit, or identification mark, shall No registration without insurance.

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produce to the Registrar or, in the case of a public-vehicle, the Commissioner, a certificate of insurance with respect to such motor-vehicle, or with respect to the whole of the motor-vehicles in respect of which the licence, transfer, permit, or identification mark is intended to be used, for the whole of the period during which such registration, licence, transfer, permit, or identification mark shall be expressed to be effective and current.

“(2) Upon payment of a prescribed fee, any person may search at the office of the Registrar or the Commissioner to ascertain the existence or contents of any certificate of insurance.

Information to
Police.
(Eng.)

“67 It shall be the duty of the owner and of the driver of a motor-vehicle to give such information as he may be required by or on behalf of a police officer to give for the purpose of determining whether the vehicle was or was not being driven in contravention of section sixty-three to this Act, and, if such owner or driver fails to do so, he shall be guilty of an offence.

Penalty: Ten pounds.

Application of
insurance moneys.

“68—(1) The moneys secured by a policy of insurance under this Act shall be applied by the insurer in the settlement, to the extent of the owner's liability therefor, of all claims thereunder when determined either by agreement as hereinafter provided or by any competent tribunal, together with all costs and expenses of or incidental thereto which have been properly incurred.

“(2) Where several claims are pending at the same time, they shall have priority according to the respective dates of the accidents upon which the same are based.

“(3) Payment by the insurer of any claim, without notice of the existence of any other claim, shall be a discharge to the insurer to the extent of such payment, and the priority, if any, of a claim of which the insurer had no notice, shall be excluded thereby.

“(4) Provided that the insurer may, out of the moneys payable under a policy of insurance, settle any claim owing by the claimant in respect of expenses incurred as a result of the accident in question.

Duties of owner
to company.

“69—(1) Upon the happening of any accident, or upon the accident coming to his knowledge, the owner of the motor-vehicle affected thereby shall give notice forthwith to the insurer concerned, and such notice shall set forth—

- i. The fact of such accident :
- ii. The time and place at which the same occurred :
- iii. Full particulars as to the circumstances thereof, so far as the same are known to, or can be ascertained by, the owner :
and
- iv. The name and address of any person killed or injured therein or of any witness to the accident if the same are known to the owner.

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“(2) The owner, immediately upon any claim being made upon him in respect of an accident, shall give notice thereof to the insurer concerned, and supply such particulars as the insurer may require. A.D. 1935.

“(3) The owner shall not, without the consent in writing of the insurer concerned—

- i. Enter upon, or incur any expense in, any litigation :
- ii. Make any offer or promise of payment or settlement :
- iii. Make any payment or settlement : or
- iv. Make any admission of liability—

in respect of any claim in respect of which he is insured with such insurer, but this provision shall not prevent any person truthfully answering any question reasonably asked of him.

Penalty : Ten pounds.

“**70**—(1) All claims to which this Part applies shall be made against the owner of the motor-vehicle in respect of which they arise. Making and settlement of claims.

“(2) The insurer concerned may take over the negotiations in respect of any such claim and may take charge of any legal proceedings against the owner in respect thereof, and at any stage of such negotiations or proceedings may pay, compromise, or settle any claim in relation thereto.

“(3) The owner or his agent shall sign and execute all such warrants, authorities, and documents as may be necessary to give effect to the provisions of this section, and, in default of his so doing, the court in which any proceedings in respect of a claim are pending may order that the same may be signed or executed by the insurer on behalf of such owner.

“(4) Settlement of any claim determined by agreement made with the insurer, or with his consent in writing, may be enforced by the claimant by action in any court of competent jurisdiction.

“(5) Judgment against an owner in respect of any such claim may be enforced against the insurer in such manner as may be prescribed.

“**71** No claim made as provided by this Part by or in respect of a passenger for hire in any motor-vehicle shall be debarred or affected by any contract made by such passenger purporting to modify or exclude any liability in respect of accident on the part of the owner or any other person. Passengers not to contract out of Act.

“**72**—(1) Any authorised insurer may apply to a police magistrate to suspend the driver's licence held by the owner of a motor-vehicle insured with such insurer, or held by any other person who drives or has driven such motor-vehicle. Insurer may apply for suspension of licence.

“(2) Every such application shall be made upon complaint under the provisions of the *Justices Procedure Act 1919*, charging such owner or other person with unduly endangering the safety of the public in relation to such motor-vehicle.

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A.D. 1935.

“(3) Upon the hearing of any such complaint the magistrate, if satisfied that such charge has been sustained, may suspend such licence in accordance with the provisions of the *Traffic Act* 1925 and the *Traffic Act (No. 2)* 1930, or any amendment thereof, and may disqualify such owner as therein provided from obtaining a renewal thereof.

Trial by court.

“73 In every case where an action for damages in respect of any accident is brought in any court, such action shall be heard before the court without a jury.

Premiums
Committee.
(Cf. Vic.)

“74—(1) If at any time after the expiration of one year from the commencement of this Part it shall appear expedient so to do, the Governor may appoint a Premiums Committee with such membership and powers as are hereinafter set forth.

“(2) The Committee shall consist of a Chairman sitting with two assessors, as follows, namely :—

- i. A police magistrate or an actuary or a public accountant shall be appointed Chairman, and his decision shall be conclusive as being the decision of the Committee :
- ii. One of the assessors shall be appointed as representing persons carrying on the business of accident insurance in Tasmania :
- iii. One of the assessors shall be appointed as representing owners of motor-vehicles.

“(3) The members referred to in paragraphs ii. and iii. of the last preceding subsection shall be appointed as prescribed, and shall hold office for a term of three years from the date of their appointment : Provided that, if any such member shall for any good cause be temporarily unable to act upon the Committee, the Minister may in like manner appoint a substitute to act for the time being in place of such member.

“(4) If any of such lastmentioned members—

- i. Dies or resigns his office in writing under his hand addressed to the Governor : or
- ii. Is removed by the Governor—

his office shall thereupon become vacant and the Governor may, subject to this Act, appoint a person to take the place of the member whose office has become vacant.

“(5) Any person so appointed to take the place of a member whose office has become vacant shall hold office for the remainder of the term for which his predecessor was appointed.

“(6) Subject to any regulations made under this Act, the Committee may regulate its own proceedings.

“(7) It shall be the duty of the Committee if and whenever the Minister shall so require to recommend to the Governor the maximum rates of the insurance premiums and the rates of penal premiums, if any, to be prescribed in respect of motor-vehicles under this Part.

Traffic.

“(8) The Committee shall, when so directed by the Minister, make an investigation with respect to any return furnished to the Minister by any authorised insurer pursuant to any regulation or with respect to any other matter relevant to this Part, and for the purpose of such investigation the Committee shall have all the powers conferred by sections fourteen to twenty-two of the *Evidence Act* 1910 upon a Board appointed by the Governor in Council. A.D. 1935.

“**75**—(1) If, in accordance with the authority conferred by the last preceding section, differential maximum rates of insurance premiums are prescribed in respect of different classes of motor-vehicles, or having regard to the purposes for which such motor-vehicles may be used, it shall not be lawful for the owner of any such motor-vehicle to use it, or permit it to be used, unless the full amount of the appropriate insurance premium payable in respect thereof has been paid, but failure by an owner to comply with the requirements of this subsection shall not affect the policy of insurance. Differential rates. (Cf. N.Z., 1928, No. 52, s. 17.).

“(2) Every owner who uses any motor-vehicle, or permits any motor-vehicle to be used in contravention of the last preceding subsection, shall be liable to a penalty of not more than two pounds for every day on which it is so used, and shall also be liable to pay such penal rate of premium as may be prescribed.

“(3) If any liability under a policy of insurance arises at a time when an insurance premium less than the appropriate insurance premium has to the knowledge of the owner been paid, the authorised insurer shall be entitled to recover from the owner as a debt due to it an amount equal to the total amount paid by it in the settlement of claims in respect of the motor-vehicle, including costs, or, in the alternative, to recover such penal rate of premium as may be prescribed.

“(4) When after an insurance premium has been paid in respect of any motor-vehicle an additional premium or penal premium becomes payable in respect thereof, the owner shall forthwith pay or cause to be paid to the insurer such additional premium or penal premium.

“**76** Upon and after the making of any regulation prescribing premiums under this Part, no authorised insurer shall knowingly demand or receive in respect of any motor-vehicle or any policy issued in accordance with this Part any premium or sum of money other than the premium so prescribed as appropriate to such motor-vehicle and policy. Penalties.

Penalty: One hundred pounds.

“**77**—(1) The Governor—

1. On the recommendation of the Committee may make regulations for or with respect to prescribing the maximum rates of insurance premiums and the rates of penal premiums to be paid in respect of motor-vehicles under this Part: and Regulations.

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A.D. 1935.

II. May make regulations—

- (a) For or with respect to applications and notices under this Part :
- (b) Regulating the procedure to be adopted on the hearing of applications under this Part for the suspension or cancellation of licences to drive motor-vehicles :
- (c) Providing that any provisions of this Part shall, in relation to vehicles brought into this State by persons making only a temporary stay therein, have effect subject to such modifications and adaptations as may be prescribed :
- (d) Providing for the insurance to be effected in the case of the issue of temporary licences or permits in respect of motor-vehicles :
- (e) Providing for returns or information to be furnished by authorised insurers regarding any matter which the Governor shall deem expedient for the information of the Committee :
- (f) Providing the procedure and methods for settlement of claims under section sixty-eight :
- (g) Generally for the purposes of this Act and this Part

“(2) Regulations prescribing the maximum rates of insurance premiums payable under this Act may differentiate between different classes of motor-vehicles or having regard to the purposes for which they are used, or intended to be used, or to the fact that such motor-vehicles are used, or intended to be used, mainly in rural or in urban areas.”