

ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER M105

MOTOR VEHICLES INSURANCE (THIRD PARTY RISKS) ACT

Showing the Law as at 15 December 2010

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition revises and consolidates—
Act 4/2006, in force 27 March 2006
Act 7/2010, in force 1 November 2010

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MOTOR VEHICLES INSURANCE (THIRD PARTY RISKS) ACT

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MOTOR VEHICLES INSURANCE (THIRD PARTY RISKS) ACT

Interpretation

1. (1) In this Act—

"Accountant General" means the officer for the time being performing the duties of Accountant General of Anguilla;

"driver", where a separate person acts as steersman of a motor vehicle, includes that person as well as any other person engaged in the driving of the vehicle, and the expression "drive" shall be construed accordingly;

"insurer" has the meaning assigned to that word by section 1 of the Insurance Act;

"invalid carriage" means a mechanically propelled vehicle the weight of which unladen does not exceed 5 hundredweight and which is specially designed and constructed, and not merely adapted, for the use of persons suffering from some physical defect or disability and is used solely by such persons;

"local authority" means any authority which the Governor in Council shall by order published in the *Gazette* declare to be a local authority for the purposes of this Act;

"motor vehicle" means any mechanically propelled vehicle intended or adapted for use on roads;

"owner", in relation to a vehicle which is the subject of a hiring agreement or hire purchase agreement, means the person in possession of the vehicle under the agreement;

"policy of insurance" includes a covering note issued for a period not exceeding 90 days pending the issue or renewal of a policy of insurance;

(Act 4/2006, s. 1)

"public road" means any street, road or open space to which the public are granted access, and any bridge over which a road passes, and includes any privately owned street, road or open space to which the public is granted access either generally or conditionally.

(2) An order referred to in the definition of "local authority" is a regulation.

Motor vehicles to be insured against third party risks

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

(2) If a person acts in contravention of this section, he is liable on summary conviction to a fine of $9,600 or to imprisonment for a term of 3 months or to both, and a person convicted of an offence under this section shall (unless the Court for special reasons thinks fit to order otherwise and without prejudice to the power of the Court to order a longer period of disqualification) be

disqualified from holding or obtaining a driver's licence under the Vehicles and Road Traffic Act for a period of 12 months from the date of the conviction. A person disqualified by virtue of a conviction under this section or of an order made thereunder from holding or obtaining a driver's licence shall, for the purposes of the Vehicles and Road Traffic Act, be deemed to be disqualified by virtue of a conviction under the provisions of that Act.

(3) This section shall not apply to a motor vehicle owned by the Government of Anguilla or by the Government of the United Kingdom or by any local authority in Anguilla whilst the vehicle is being used for the purpose of the Government or local authority owning the vehicle, or to invalid carriages.

Requirements in respect of policies

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

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

(b) insures such person, persons or classes of persons, as may be specified in the policy of insurance in respect of any liability which may be incurred by him or them in respect of the death of or bodily injury to any person, or damage to property caused by or arising out of the use of the motor vehicle on a public road, but such a policy shall not be required to cover—

(i) liability in respect of the death arising out of and in the course of his employment of a person in the employment of a person insured by the policy, or of bodily injury sustained by such a person arising out of and in the course of his employment,

(ii) liability in respect of the loss of or damage to the property of any person arising out of and in the course of the employment of such person in the employment of a person insured by the policy,

(iii) any contractual liability, or

(iv) liability in respect of the first $250 of any claim by any one person; and

(c) covers—

(i) in respect of death or bodily injury, a total liability of not less than $250,000 in respect of any one claim by any one person,

(ii) in respect of death or bodily injury, a total liability of not less than $1,000,000 in respect of the total claims arising from any one accident, and

(iii) in respect of damage to property, a total liability of not less than $250,000 in respect of the total claims arising from any one accident.

(2) Where any payment is made (whether or not with an admission of liability) by an insurer under or in consequence of a policy, in respect of the death of, or bodily injury to any person, arising out of the use of a motor vehicle on a public road, and the person who has so died or been bodily

injured, has to the knowledge of the insurer or such owner as the case may be, received treatment at a hospital, whether as an in-patient or as an out-patient, in respect of the injury so arising, there shall also be paid by the insurer or such owner to such hospital, the expenses reasonably incurred by the hospital in affording such treatment, after deducting from such expenses any money charged and paid to the hospital for such treatment but the amount to be paid by the insurer or such owner shall not exceed $10,000 for each person so treated as an in-patient, or $2,000 for each person so treated as an out-patient.

(3) Notwithstanding anything contained in any enactment, a person issuing a policy of insurance for the purposes of this Act 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 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 different forms and different particulars may be prescribed in relation to different cases or circumstances.

(5) For the purposes of subsection (2), "expenses reasonably incurred" means—

(a) in relation to a person who receives treatment at a hospital as an in-patient, an amount for each day the person is in the hospital representing the average daily cost, for each in-patient, of the maintenance of the hospital and the staff thereof and the maintenance and treatment of the in-patients therein; and

(b) in relation to a person who receives treatment at a hospital as an out-patient, the reasonable expenses actually incurred.

(Act 4/2006, s. 2)

Requirements in respect of securities

4. (1) In order to comply with the requirements of this Act, a security must—

(a) be given by an insurer; and

(b) consist of an undertaking by the insurer to make good, subject to any conditions specified therein, and up to an amount not less than $250,000 in respect of each motor vehicle, any failure by the owner of the motor vehicle or such other person or classes of persons as may be duly specified in the security duly to discharge any such liability as is required to be covered by a policy of insurance under section 3 which may be incurred by him or them.

(Act 4/2006, s. 4)

(2) A security shall be of no effect for the purposes of this Act unless and until there is issued by the person giving the security in favour of the person to whom it is given a certificate (in this Act referred to as a "certificate of security") in the prescribed form and containing such particulars of any conditions subject to which the security is issued and of any other matters as may be prescribed, and different forms and different particulars may be prescribed in relation to different cases or circumstances.

(3) In lieu of the security mentioned in this section, a deposit may be made by the owner of the motor vehicle or by the person who stands security for him of the sum of $250,000 or approved securities to the like amount in the hands of the Accountant General to make good any liability as is specified in this Act.

(Act 4/2006, s. 4)

(4) A deposit by the owner of a vehicle or by a person who stands surety for him under subsection (3) shall be held by the Accountant General in a deposit account.

(Act 7/2010, s. 26)

Certain conditions in policies or securities to be of no effect

5. Any condition in a policy or security issued or given for the purposes of this Act providing that no liability shall arise under the policy or security 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 or security shall be of no effect in connection with such claims as are mentioned in section 3(1)(b) and (c), but nothing in this section shall be taken to render void any provision in a policy or security requiring the person insured or secured to repay to the insurer or the giver of the security any sums which the latter may have become liable to pay under the policy or security and which have been applied to the satisfaction of the claims of third parties.

(Am. in L.R. 15/12/2006)

Duty of insurers to satisfy judgments against persons insured in respect of third party risks

6. (1) If after a certificate of insurance has been issued under section 3(4) in favour of 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 3(1)(b) and (c) (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 the provisions of 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.

(Am. in L.R. 15/12/2006)

(2) No sum shall be payable by an insurer under the foregoing provisions of this section—

(a) in respect of any judgment, unless before or within 7 days after the commencement of the proceedings in which the judgment was given, the insurer had notice of the bringing of the proceedings;

(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 loss 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—

(Act 4/2006, s. 5)

(i) before the happening of the event the certificate was surrendered to the insurer, or the person in whose favour the certificate was issued made a statutory declaration stating that the certificate had been lost or destroyed,

(ii) after the happening of the event, but before the expiration of a period of 14 days from the taking effect of the cancellation of the policy, the certificate was surrendered to the insurer, or the person in whose favour the certificate was issued made such a declaration as aforesaid, or

(iii) either before or after the happening of the event, but within the period of 14 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 3 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 it 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, but 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 7 days after the commencement of that action he has given notice thereof to the person who is the plaintiff in the proceedings specifying the non-disclosure or false representation on which he proposes to rely and any person to whom notice of such 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 the provisions of 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, the expression "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 the expression "liability covered by the terms of the policy" means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel, or has avoided or cancelled, the policy.

(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, etc., of insured persons not to affect certain claims by third parties

7. Where a certificate of insurance has been issued under section 3(4) in favour of 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 1(1) or (2) of the Third Parties (Rights against Insurers) Act, 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 3(1)(b) and (c), 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.

(Am. in L.R. 15/12/2006)

Avoidance of restrictions on scope of policies covering third party risks

8. Where a certificate of insurance has been issued under section 3(4) in favour of 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 age or physical or mental condition of persons driving the vehicle;

(b) the condition of the vehicle;

(c) the number of persons that the vehicle carries;

(d) the weight or physical characteristics of the goods that the vehicle carries;

(e) the times at which or the areas within which the vehicle is used;

(f) the horsepower or value of the vehicle;

(g) the carrying on the vehicle of any particular apparatus; or

(h) the carrying on the vehicle of any particular means of identification other than any means of identification required to be carried by or under the Vehicles and Road Traffic Act;

shall, as respect such liabilities as are required to be covered by a policy under section 3(1)(b) and (c), be of no effect, but 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 which is covered by the policy by virtue only of this section shall be recoverable by the insurer from that person.

(Am. in L.R. 15/12/2006)

Duty to give information to third parties

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 3(1)(b) and (c) 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 issued in respect thereof under section 3(4).

(Am. in L.R. 15/12/2006)

(2) If without reasonable excuse any person fails to comply with the provisions of this section, or wilfully makes any false statement in reply to any such demand as aforesaid, he is guilty of an offence against this Act, and is liable, on summary conviction to a fine of $4,000 or to imprisonment for a term of 3 months.

Duty to surrender certificate on cancellation of policy

10. Where a certificate of insurance has been issued under section 3(4) in favour of 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, the person in whose favour the certificate was issued shall, within 7 days from the taking effect of the cancellation, surrender the certificate to the insurer, or if it has been lost or destroyed, make a statutory declaration to that effect, and if he fails so to do, he is guilty of an offence against this Act and is liable on summary conviction to a fine of $4,000 or to imprisonment for a term of 3 months.

(Am. in L.R. 15/12/2006)

Application of sections 6 to 10 to securities

11. The provisions of sections 6 to 10 shall apply in relation to securities having effect for the purposes of this Act as they apply in relation to policies of insurance, and in relation to any such security as aforesaid, references in those sections to being insured, to a certificate of insurance, to an insurer, and to persons insured, shall be construed respectively as references to the having in force of the security, to the certificate of security, to the giver of the security and to the persons whose liability is covered by the security.

Saving as to preservation of rights in case of death of an insured

12. The rights of any person in respect of any liability incurred by an insured shall, in the event of the death of the insured, be preserved to and be enforceable by such person against the personal representatives of the insured in the same manner and to the same extent as such rights would have been enforceable against the insured if he had survived and the provisions of section 3(3) shall apply accordingly. In this section, the word "insured" means a person who is insured under a contract of insurance against liabilities to third parties or in respect of whom security or a deposit in lieu thereof is given in accordance with the provisions of this Act.

(Am. in L.R. 15/12/2006)

Requirements as to production of certificate of insurance or of security

13. (1) Any person driving a motor vehicle on a public 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 motor vehicle and produce his certificate and, if he fails so to do, he is guilty of an offence against this Act and is liable on summary conviction to a fine of $4,000 or to imprisonment for a term of 3 months, but, if the driver of a motor vehicle within 5 days after the date on which the production of his certificate was so required produces the certificate in person at such police station as may have been specified by 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 to the police officer.

(2) It shall be the duty of the owner of a motor vehicle to give such information as he may be required by or on behalf of any police officer not below the rank of sergeant to give as to the identity of the driver of the motor vehicle on any occasion when the driver was required under subsection (1) to produce the certificate, and if the owner fails to do so, he is guilty of an offence against this Act, and is liable on summary conviction to a fine of $4,000 or to imprisonment for a term of 3 months.

(3) If in any case where, owing to the presence of a motor vehicle on a road, an accident occurs involving personal injury to another person, the driver of the motor vehicle 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 24 hours of the occurrence of the accident, and there produce his certificate, and, if he fails to do so, he is guilty of an offence against this Act and is liable on summary conviction to a fine of $4,000 or to imprisonment for a term of 3 months, but a person shall not be convicted under this subsection of the offence of failing to produce his certificate if within 5 days after the occurrence of the accident he produces the certificate in person at such police station as may be specified by him at the time the accident was reported.

(4) In this section, the expression "produce his certificate" means produce for examination the relevant certificate of insurance or certificate of security or such other evidence as may be prescribed that the motor vehicle is not or was not being driven in contravention of section 2.

Deposits

14. If any sum is deposited by any person under the provisions of section 4(3), no part of such sum shall so long as any liabilities, being such liabilities as are required to be covered by a policy of insurance under this Act, which have been incurred by him have not been discharged or otherwise provided for be applicable in discharge of any other liabilities incurred by him.

Unlawful user of certificates, etc.

15. (1) If, with intent to deceive, any person—

(a) uses or lends to or allows to be used by any other person, a certificate of insurance or certificate of security within the meaning of this Act; or

(b) has in his possession any document so closely resembling such a certificate as to be calculated to deceive;

he is guilty of an offence and is liable on conviction to imprisonment for 2 years.

(2) If any person for the purpose of obtaining the issue of a certificate of insurance or of a certificate of security under this Act makes any false statement or withholds any material information, he is liable on summary conviction to a fine of $9,600 or to imprisonment for a term of 6 months or to both.

(3) If any person issues a certificate of insurance or certificate of security which is to his knowledge false in any material particular he is liable on summary conviction to a fine of $20,000 or to imprisonment for a term of 6 months or to both.

(4) If any police officer has reasonable cause to believe that any certificate of insurance or certificate of security produced to him in pursuance of the provisions of this Act by the driver of a motor vehicle 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 summoned before the Magistrate's Court to account for his possession of the document, and the Magistrate shall make such order respecting the disposal of the document and award such costs as the justice of the case may require.

Registration of insurers

16. No person shall carry on the business of issuing policies of insurance or giving securities against liabilities to third parties in relation to the user of motor vehicles under the provisions of this

Act unless such person is registered as an insurer in the relevant class of insurance business carried on by him or is a member of an association of underwriters registered as an insurer in the class of insurance business carried on by him as provided by the Insurance Act, but, notwithstanding anything contained in this Act or any other law, where any document purporting to be a policy of insurance or a security against liabilities to third parties in relation to the user of motor vehicles has been issued by a person who is not an insurer or by a person whose registration as an insurer under the Insurance Act, has been cancelled whether before or after the issue of the document, such person shall be bound by any offer or undertaking made or given by him in such document to the same extent that he would be if the document were a policy or security which complied with the requirements of this Act, and sections 6, 7 and 9 shall have effect in relation to him as if he were an insurer.

Rules

17. (1) The Governor in Council may make rules 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 rules—

(a) as to the forms to be used for the purposes of this Act;

(b) as to applications for the issue of certificates of insurance and certificates of security and any other documents which may be prescribed and as to the keeping of records of documents and the furnishing of particulars thereof or the giving of information with respect thereto to the Commissioner of Police;

(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 vehicles brought into Anguilla by persons making only a temporary stay therein, have effect subject to such modifications and adaptations as may be prescribed;

(f) with respect to the payment of deposits under this Act and the investment thereof or dealing therewith, the deposit of stocks or other securities in lieu of money, the payment of the interest or dividends from time to time accruing due on any securities in which deposits are for the time being invested and the withdrawal and transfer of deposits.

(2) Rules made under this section may prescribe penalties not exceeding 6 months imprisonment or a fine of $4,000 for any breach thereof.

Citation

18. This Act may be cited as the Motor Vehicles Insurance (Third Party Risks) Act, Revised Statutes of Anguilla, Chapter M105.