

Laws of His Majesty's Province of Upper Canada, passed in the year 1836. Toronto: Robert Stanton, 1836.

6 William IV – Chapter 18 (Session 1)

An Act to authorise the establishment of Mutual Insurance Companies in the several Districts of this Province. Passed 20th April, 1836.

Whereas divers loyal subjects of His Majesty, being inhabitants of this Province, have by their petition represented the great advantages that would arise from the introduction into this Province of the principle of Mutual Insurance against losses by Fire, and have prayed the interference of the Legislature to enable them to bring the said principle into effective operation: And whereas, it hath been made apparent that the said representation is well founded and it is expedient that the prayer of the petitioners be granted: Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled, "*An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, entitled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,*" and by the authority of the same, That it shall and may be lawful at any time for any ten freeholders in any District in this Province to call a meeting of the freeholders of such District for the purpose of considering whether it be expedient to establish in such District a Fire Insurance Company on the principle of Mutual Insurance: Provided always, that such meeting shall be called by an advertisement mentioning the time, place, and object of such meeting, published and inserted during three weeks immediately preceding such meeting in all the public newspapers published in the District in which the meeting is to be holden, if any is published therein, and in case no newspaper should be published in said District the meeting may be convened by advertisement posted up in some public place in three or more Townships in said District.

II. And be it further enacted by the authority aforesaid, That if at such meeting there shall not be fewer than thirty freeholders present, and a majority of them shall determine that it is expedient to establish such Company, they may elect three persons from among the freeholders of the District then present to open and keep a book in which all freeholders in the District may sign their names, and enter the sums for which they shall be respectively bound to effect insurance with the Company.

III. Provided always, and be it further enacted by the authority aforesaid, That the lands, tenements, and hereditaments which it shall be lawful for the said Companies respectively to hold shall be only such as shall be requisite for its accommodation in relation to the convenient transaction of its business, or such as shall have been bona fide mortgaged to it by way of security, or conveyed to it in satisfaction of debts previously contracted in the course of its dealings, or purchased at sales upon judgments which shall have been obtained

for such debts, and further the said Company shall not directly or indirectly deal or trade in buying or selling any goods, wares, merchandize, or commodities whatsoever.

IV. And be it further enacted by the authority aforesaid, That whenever the number of persons duly qualified who shall have signed their names in the said subscription book shall be forty or more, and the sums for which they shall have bound themselves to effect insurance shall amount together to ten thousand pounds Currency, or upwards, such persons and all other persons who may thereafter become members of the said Company by effecting insurances therein in the manner hereinafter provided, shall be and are hereby ordained, constituted and declared to be a body corporate and politic, in fact, by and under the name and style of "The Mutual Fire Insurance Company," and their legal addition shall be of the District by name for which the Company shall have been established, and by that name may mutually insure their respective dwelling-houses, stores, shops, and other buildings, household furniture, and merchandize against loss or damage by fire, whether the same shall happen by accident, lightning, or by any other means, excepting that of design in the assured, or by the invasion of an enemy or insurrection, and by that name they and their successors shall and may have continued succession, and be capable of contracting and being contracted with, of suing and being sued, pleading and being impleaded, answering and being answered unto in all Courts and places whatsoever; and they and their successors may and shall have a common seal, and may change and alter the same at their will and pleasure; and also that they and their successors, by their corporate name aforesaid, shall be capable of purchasing, having, and holding to them and their successors any estate, real, personal or mixed, to and for the use of the said Company, and of letting, conveying, and otherwise departing therewith, for the benefit and on account of the said Company, from time to time, as they shall deem necessary and expedient.

V. Provided always, and be it further enacted by the authority aforesaid, That there shall not be more than one such Company in any one District, and that whenever any such Company shall be established in and for any District, no other such Company shall be established in and for the same under the authority of this Act, but the Company so first established shall alone have the right of insuring property lying within such District, under the authority of this Act; but nothing herein contained shall be construed to prevent any person from causing any such property to be insured by any person or Company by whom it may lawfully have been insured if this Act had not been passed: And provided further, that nothing herein contained shall prevent any such Company, after it shall have been lawfully incorporated under the provisions of this Act, from insuring any property, movable or immovable, lying within the District for which it is established, although the owner of such property be not a freeholder in such District, nor to prevent any person so insured from becoming a member of the Company.

VI. And be it further enacted by the authority aforesaid, That all and every the person and persons who shall at any time become interested in the said Company by insuring therein, and also their respective heirs, executors, administrators and assigns, continuing to be insured therein, as hereinafter provided, shall be deemed and taken to be Members thereof

for and during the terms specified in their respective policies and no longer, and shall at all times be concluded and bound by the provisions of this Act.

VII. And be it further enacted by the authority aforesaid, That the property, affairs and concerns, of the said Company, shall be managed and conducted by a Board of Directors, to be chosen annually, on the first Monday in June, and to be composed of seven persons, one of whom shall be chosen President, and such persons shall hold their offices for one year; which said Board of Directors shall be Members of the said Company, and insurers therein to the amount of two hundred pounds, at least, for the time they hold office, and be elected at such place within the District, and at such time of the day, as a majority of the Board for the time being shall appoint; and public notice thereof shall be given in such of the Provincial newspapers printed and published within such District, and in such other manner as the Board of Directors for the time being shall order and direct, and at least thirty days previous to the time of holding the said election; and the said election shall be held and made by such of the members of the said Company as shall attend for that purpose in their own proper persons, or by proxy; and all elections for such Directors shall be by ballot; and the seven persons who shall have the greatest number of legal votes at any such election shall be the Directors; and if it shall happen at any such election that two or more members have an equal number of votes, in such manner that a greater number of persons than seven shall, by a plurality of votes, appear to be chosen Directors, then the said members of the said Company hereinbefore authorised to hold such election, shall proceed to elect by ballot until it is determined which of the said persons so having an equal number of votes shall be the Director or Directors so as to complete the whole number of seven; and the said Directors so chosen, as soon as may be after the said election, shall proceed in like manner to elect, by ballot, one of their own number to be President; and if any vacancy or vacancies shall at any time happen among the Directors, during the current year of their appointment, by death, resignation, or removal from the District, such vacancy or vacancies shall be filled up for the remainder of the year in which they may so happen, by a person or persons to be nominated by a majority of the remaining Directors, and as soon as may be after any such vacancy or vacancies shall have occurred.

VIII. And be it further enacted by the authority aforesaid, That each Member of the said Company shall be entitled to the number of votes proportioned to the amount by him or her insured, at least one month prior to the time of voting, according to the following rates, that is to say:—for any sum insured in the said Company amounting to one hundred pounds— one vote; four hundred pounds—two votes; nine hundred pounds—three votes; and one vote for every six hundred pounds above nine hundred.

IX. And be it further enacted by the authority aforesaid, That in case at any time it shall happen that an election of Directors shall not be made on any day when pursuant to this Act it ought to have been made, the said Corporation shall not for that cause be deemed to be dissolved, but it shall be lawful, on any subsequent day, to hold and make an election of Directors, in such manner as shall have been regulated by the By-laws and Ordinances of the said Corporation: Provided, that such election be held within ten months from the annual

day appointed for holding such election; and the Directors appointed at such subsequent day of election shall be invested with all and every such powers and authorities contained in this Act, as if they had been duly elected on the annual day of election appointed by this Act, and shall hold office for the remainder of the current year of such their election.

X. And be it further enacted by the authority aforesaid, That the said Board of Directors for the time being shall superintend the concerns of the said Company, and shall have the management of the funds and property thereof, and of all matters and things thereunto relating, and not otherwise provided for by the said Company, and shall have power from time to time to appoint a Secretary, Treasurer, and such other Officers, Agents and Assistants, as to them may seem necessary, and prescribe their duties, fix their compensation or allowances, take such security from them as they may deem necessary, or may be required by this Act, for the faithful performance of their respective duties, and remove them at pleasure and appoint others in stead, determine the rates of insurance, the sum to be insured on any building, and the sum to be deposited for the insurance thereof, and to order and direct the making and issuing of all policies of insurance, the providing of books and stationery, and other things needful for the Office of the said Company, and for carrying on the affairs thereof, and may draw upon the Treasurer for the payment of all losses which may have happened, and for expenses incurred in transacting the concerns of the said Company, and may hold their meetings monthly and oftener if necessary, for transacting the business of the said Company; and shall keep a record of their proceedings, and any Director disagreeing with the majority of the Board at any meeting may enter his dissent with his reasons therefor on record.

XI. And be it further enacted by the authority aforesaid, That the said Board of Directors for the time being shall have power to make and subscribe such by-laws, ordinances, rules and regulations, and to repeal, alter and amend any by-laws, rules, ordinances or regulations previously made as to them shall appear needful and proper touching the management and disposition of the affairs and property of the said Company, and touching the duty of the Officers, Agents, and Assistants of the said Company, and all such other matters and things as appertain to the business of the said Company, and not being contrary to the laws of this Province; and that five Directors shall constitute a quorum for the transaction of business, and the decision of a majority of the Directors present at any sitting of the Board, provided there be a sufficient number to constitute such quorum, shall be binding and conclusive, and be deemed and taken to be the act and deed of the whole Board; and upon all occasions where there shall be an equality of votes at any such sitting of the said Board, the President shall have a casting vote, and the said Board shall have power to convene at any time a general meeting of the Company upon any urgent occasion.

XII. And be it further enacted by the authority aforesaid, That every person who shall become a member of the said Company by effecting insurances therein, shall, before he receives his policy, deposit his promissory note payable to the said Company, for such a sum of money as shall be determined by the Board of Directors; a part of which said note not exceeding five per cent shall be immediately paid to the Treasurer for the purpose of

discharging the incidental expenses of the institution; and the remainder of the said deposit note shall be payable in part or the whole at any time when the Board shall deem the same requisite for the payment of losses or other expenses; and at the expiration of the term of insurance, the said note or such part of the same as shall remain unpaid after deducting all losses and expenses occurring during the said term, shall be relinquished and given up to the signer thereof.

XIII. And be it further enacted by the authority aforesaid, That every member of the said Company shall be and is hereby bound and obliged to pay his or her proportion of all losses and expenses happening or accruing in and to the said Company during the continuance of his or her policy of insurance, and all the right, title, interest, and estate at the time of insurance of the assured, of, in, or to the buildings insured by and with the said Company, to the lands on which the same shall stand, and to all other lands thereto adjacent, which shall be mentioned and declared liable in the policy of assurance, shall stand pledged to the said Company; and the said Company shall have full power to sell, demise or mortgage the same or any part thereof, to meet the liabilities of the assured, for his, her, or their proportion of any losses or expenses happening or accruing to the said Company during the continuance of his or her policy, which sale, demise, or mortgage shall be made in such manner as shall be specified in the policy of the assured.

XIV. And be it further enacted by the authority aforesaid, That in case of any loss or damage by fire happening to any member upon property insured in and with the said Company, the said Member shall give notice thereof in writing to the Board of Directors or some one of them, or to the Secretary of the Company within thirty days after such loss or damage shall have happened; and the Directors, upon a view of the same, or in such other way as they may deem proper, shall ascertain and determine the amount of such loss or damage; and if the party suffering shall not be satisfied with the determination of the Directors, the question shall then either be submitted to three disinterested persons as referees, one of whom shall be named by the Board, and one by the suffering party, and the two referees so named shall name the third, and the decision or award of a majority of them shall be binding; or the suffering party may bring an action against the said Company for the loss or damage sustained, and if upon the trial of the said action a greater sum shall be recovered than the amount determined upon by the Directors, the party suffering shall have judgment therefor against the said Company, with interest thereon from the time such loss or damage happened, and notice given thereof as aforesaid, with costs of suit; but if no more shall be recovered than the amount so previously determined by the Board, then the plaintiff or plaintiffs in such suit shall have judgment for such amount, and shall not be entitled to costs against the defendants, but the defendants shall be entitled to costs against the said plaintiff or plaintiffs, as in the case of a verdict for the defendant; Provided always, that no execution shall issue against the said Company upon any judgment until after the expiration of six months from the recovery thereof.

XV. And be it further enacted by the authority aforesaid, That the Directors shall, after receiving notice of any loss or damage by fire sustained by any member, and ascertaining

the same, or after the recovery of any judgment, as aforesaid, against the said Company for such loss or damage, settle and determine the sums to be paid by the several members thereof, as their respective proportion of such loss, and publish the same in such manner and form as they shall see fit, or as the by-laws shall have prescribed; and the sum to be paid by each member shall always be in proportion to the original amount of his deposit note or notes, and shall be paid to the Treasurer within thirty days next after the publication of said notice; and if any member shall for the space of thirty days after the publication of such notice, neglect or refuse to pay the sum assessed upon him, her, or them, as his, her, or their proportion of any loss or damage, as aforesaid, in such case the Directors may sue for and recover the whole amount of his, her, or their deposit note or notes, with costs of suit; and the money thus collected shall remain in the Treasury of the said Company, subject to the payment of such losses and expenses as shall or may thereafter accrue during the continuance of his, her or their policy; and the balance, if any remaining, shall be returned to the party from whom it was collected, on demand, after thirty days from the expiration of the term for which insurance was made.

XVI. And be it further enacted by the authority aforesaid, That if it shall ever so happen that the whole amount of deposit notes shall be insufficient to pay the loss occasioned by any one fire or fires, in such case the sufferers insured by the said Company shall receive towards making good their respective losses a proportionate dividend of the whole amount of such deposit notes, according to the sums by them respectively insured; and in addition thereto a sum to be assessed in such manner as shall be provided by any by-law of the said Company on all the members of the said Company, not exceeding one pound currency upon every one hundred pounds by them respectively insured; and the said members shall never be required to pay at any one time for any loss or damage occasioned by fire, more than one pound upon every one hundred pounds currency insured in the said Company, in addition to the amount of his, her, or their deposit notes; but any member upon payment of the whole of his or her deposit note, and surrendering his or her policy before any subsequent loss or expense has occurred, shall be discharged from the said Company.

XVII. And be it further enacted by the authority aforesaid, That the said Company may make insurance for any term not exceeding seven years, and any policy of insurance issued by the said Company, signed by the President, and countersigned by the Secretary, (but not otherwise,) shall be deemed valid and binding on the said Company, in all cases where the assured has a title in fee simple unincumbered to the building or buildings insured, and to the land covered by the same; but if the assured have a less estate therein, or if the premises be incumbered, the policy shall be void, unless the true title of the assured and the incumbrances on the premises be expressed therein and in the application therefor.

XVIII. And be it further enacted by the authority aforesaid, That the Directors shall settle and order the payment of all losses within three months after they shall have been notified, as aforesaid; but no allowance is to be made in any case for gilding, historical or landscape painting, stucco or carved work.

XIX. And be it further enacted by the authority aforesaid, That when any house or other building shall be alienated by sale or otherwise, the policy shall thereupon be void, and be surrendered to to the Directors of the said Company to be cancelled, and upon such surrender the assured shall be entitled to receive his, her, or their deposit note or notes, upon payment of his or their proportion of all losses and expenses that have accrued prior to such surrender: Provided always, that the grantee or alienee having the policy assigned to him, her, or them, may have the same ratified and confirmed to him, her, or them, for his, her, or their own proper use and benefit, upon application to the Directors, and with their consent within thirty days next after such alienation, on giving proper security to the satisfaction of the Directors for such portion of the deposit or premium note as shall remain unpaid; and by such ratification and confirmation the party causing the same, shall be entitled to all the rights and privileges and be subject to all the liabilities to which the original party insured was entitled and subjected under this Act.

XX. And be it further enacted by the authority aforesaid, That if any alteration shall be made in any house or building by the proprietor thereof' after an insurance has been made thereon with the Company, whereby it may be exposed to greater risk or hazard from fire than it was at the time it was insured, then and in every such case the insurance made upon such house or building shall be void, unless an additional premium and deposit after such alteration may be settled with and paid to the Directors, but no alterations or repairs in buildings not increasing such risk or hazard shall in any wise affect insurance previously made thereon.

XXI. And be it further enacted by the authority aforesaid, That in case any building or buildings situated upon leased lands and insured by the Company be destroyed by fire, in such cases the Directors may retain the amount of the premium note given for insurance thereof until the time for which insurance was made shall have expired, and at the expiration thereof the assured shall have the right to demand and receive such part of said retained sum or sums as has not been expended in losses and assessments.

XXII. And be it further enacted by the authority aforesaid, That if insurance on any house or building shall be and subsist in said Company, and in any other office or from and by any other person or persons at the same time, the insurance made in and by said Company shall be deemed and become void, unless such double insurance subsist with the consent of the Directors, signified, by endorsement on the back of the policy signed by the President and Secretary.

XXIII. And be it further enacted by the authority aforesaid, That any ten members of the Corporation to be so formed as hereinbefore mentioned, may call the first meeting of any such Company at such time and place within the District, as they may determine upon for holding such meeting by advertising the same in such of the Provincial newspapers printed and published within the District as they shall think proper, giving at least thirty days notice of the time, place and design of such meeting for the purpose of choosing the first Board of Directors, of making and establishing by-laws, and of transacting any business necessary and

proper to carry into effect the provisions and intentions of this Act: Provided however, that no policy of insurance shall be issued by the Company until application shall be made for insurance on twelve thousand five hundred pounds at the least.

XXIV. And be it further enacted by the authority aforesaid, That each and every of the Directors of the said Company shall, before he enters upon the duties of his office, give a bond to the Treasurer of the District in which said Company is formed, in the sum of five hundred pounds currency, (or such further sum as may be fixed by any by-law or ordinance,) together with two good and sufficient sureties in the sum of two hundred and fifty pounds each, to the satisfaction of the said Treasurer, conditioned for the faithful discharge of the duties of his office, agreeable to the provisions of this Act, and the by-laws, regulations, ordinances, requirements and restrictions made or to be made in pursuance thereof; and on the complaint of any person who has been injured by the misconduct of any Director, it shall be the duty of the said Treasurer to institute a suit or action at law against such Director and his sureties upon the bond to be so given, as aforesaid, upon receiving security to indemnify the said Treasurer against costs, and to certify to the Court who is the prosecutor in any such cause, and the said Court may on motion of the defendants in such cause, order the prosecutor to find sureties to indemnify the defendants for their costs should he fail to prosecute or recover; and if the defendants shall plead performance of the condition of said bond the prosecutor may reply as many breaches respecting his interest as he shall think fit; and the Jury on trial of such issues as shall be put to them shall assess damages for such breaches as the prosecutor shall prove, and the Court shall enter up judgment for the whole penalty of the bond, and issue execution in favour of the prosecutor for such a sum as the Jury shall have found for damages and costs; and the judgment shall remain for the benefit of such other person or persons as may by scire facias thereon shew that they have been injured by any breaches of the condition of such bond; and if the prosecutor shall fail to recover in such suit the Court shall award costs to the defendants, and issue execution for the same against such prosecutor.

XXV. And be it further enacted by the authority aforesaid, That each and every of the Treasurers and Secretaries to any Company to be formed under the provisions of this Act shall, before they enter upon the duties of their respective offices, give bonds to the Company in the sum of five hundred pounds currency, with two good and sufficient securities in two hundred and fifty pounds each, to the satisfaction of the Board of Directors, conditioned for the faithful discharge of the duties of their respective offices, agreeable to the provisions of this Act, and of the by-laws, rules, and regulations of the Company made pursuant thereto.

XXVI. And be it further enacted by the authority aforesaid, That the Legislature of this Province may at any time hereafter make such additions to this Act or such alterations in any of its provisions as they may think proper should the public interest require it.