

1967 Bill 90

Fifth Session, 15th Legislature, 15 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 90

An Act to amend The Alberta Insurance Act (No. 2)

THE PROVINCIAL SECRETARY

First Reading

Second Reading

Third Reading

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An Act to amend The Alberta Insurance Act (No. 2)

(Assented to _____, 1967)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. *The Alberta Insurance Act* is hereby amended.

2. The following section is added after section 38:

38a. (1) If the Superintendent, on the examination of an application for a licence by an insurance company incorporated before or after the commencement of this section by a special Act of the Legislature, finds that

(a) the directors of the company are not the same persons or are not substantially the same persons as the provisional directors named in the special Act, or

(b) the original promoters of the company no longer control the company,

he shall so report to the Minister.

(2) If the Minister, after consideration of the report and after a reasonable time has been given to the company to be heard by him, and upon such further inquiry and investigation as he thinks proper to make, reports to the Lieutenant Governor in Council that he concurs in the Superintendent's report, then, notwithstanding section 11, the Lieutenant Governor in Council may direct the Superintendent to refuse to issue a licence to the company.

3. The following section is added after section 100a:

100b. (1) In this section,

(a) "company" means a provincial company licensed for the transaction of life insurance under this Act;

(b) "securities" means bonds, debentures, evidences of indebtedness, securities, obligations, certificates and shares enumerated in clauses (a) to (l) of subsection (2) of section 91;

(c) "segregated fund" means a separate and distinct fund maintained pursuant to subsection (2).

Explanatory Notes

- 1.** This Bill amends chapter 159 of the Revised Statutes.
- 2.** The new section 38a is designed to prevent trafficking in insurance company charters.
- 3.** The new section 100b will permit a provincial life insurance company to maintain separate funds in respect of certain life insurance policies containing a variable feature, i.e., where all or part of the company's liability is related to the market value of a specified group of assets. This follows similar legislation applicable to insurance companies incorporated by Parliament and by some of the other provinces. Section 91 (8) limits investment in common shares to 15 per cent of the total book value of the company's assets. See also clause 7 of this Bill.

(2) Where a company issues life insurance policies under which all or part of its liabilities thereunder, and the reserves therefor to be included in its annual statement pursuant to section 100, vary in amount depending upon the market value of a specified group of assets, the company shall maintain in respect of those policies one or more separate and distinct funds with separate assets for each fund.

(3) A company, if authorized by its by-laws, may create or add to segregated funds by transfers of money or securities or both from the shareholders' fund, but as to all segregated funds of the company the amounts of such transfers, taking the value of any securities so transferred at their market value at the date of transfer, shall not exceed in the aggregate the lesser of

(a) \$100,000, or

(b) 5 per cent of the amount by which the company's assets exceed its liabilities,

and moneys and securities so transferred shall not be included in the assets of the company for the purposes of section 42 while they remain in the segregated fund.

(4) A segregated fund shall at all times consist of money or securities or both.

(5) A segregated fund is available only to meet the liabilities arising under the policies in respect of which the segregated fund is maintained, except that moneys or securities in the segregated fund may, at the discretion of the directors but subject to the approval of the Superintendent, be withdrawn from the segregated fund and returned to the shareholders' fund but the amount of money and the market value of any securities when so withdrawn shall not exceed in the aggregate the proportionate interest of the shareholders in the segregated fund.

(6) The percentage limit specified in subsection (8) of section 91 does not apply to common shares in the segregated funds of a company and in the application of that limit to the company as a whole the common shares in its segregated funds shall not be taken into account.

4. Section 131 is amended by striking out subsection (20).

5. The following heading and section is added after section 153:

Proxies and Proxy Solicitation

153a. (1) Subject to subsection (2), Division (7A) of Part VI of *The Companies Act* applies, with the necessary changes, to an insurance company incorporated by special Act of the Legislature and licensed under this Act.

(2) For the purposes of subsection (1) a reference in Division (7A) of Part VI of *The Companies Act* to a

4. The content of the present subsection (20) of section 131 is included in the new Division (7a) of Part VI of The Companies Act, which, by clause 5 of this Bill, will also apply to Alberta insurance companies. Section 131 (20) presently reads:

(20) Every proxy representing a shareholder shall himself be a shareholder and entitled to vote, and an instrument of proxy is not valid unless executed within three months of the date of the meeting at which it is to be used, and unless it is filed with the secretary of the company at least ten days before the meeting, and it shall be used only at the meeting or any adjournment thereof, and may be revoked at any time prior to the meeting.

5. See clause 7 of the Bill to amend The Companies Act (Bill 87) which will add a new Division (7A) regarding proxies and proxy solicitation. The new section 153a will make that Division apply to Alberta-incorporated insurance companies. Generally, the new Division (7A) makes it mandatory that shareholders be furnished with proxy forms prior to a general meeting. It also requires any solicitation of proxies to be accompanied by specified information. These requirements are designed to enable the shareholder to better inform himself as to what business will be transacted at the shareholders' meeting and the voting powers he should give to his nominee, which will in turn give him a more direct participation in the affairs of the company. Similar provisions are found in Part 10 of the proposed Securities Act, 1967 (Bill 2) and sections 22 to 29 of the proposed Trust Companies Act, 1967 (Bill 60).

public company shall be deemed to be a reference to an insurance company incorporated under a special Act of the Legislature and licensed under this Act that in its by-laws

- (a) does not restrict the right to transfer any of its shares,
- (b) does not limit the number of its shareholders to 50 or less, persons who are joint registered owners of one or more shares in the company being counted as one shareholder, and
- (c) does not prohibit any invitation to the public to subscribe for any shares of the company.

6. The following heading and section are added before section 159:

Insider Trading

158a. (1) Subject to subsection (2), Division (2A) of Part VI of *The Companies Act* applies, with the necessary changes, to an insurance company incorporated by special Act of the Legislature and licensed under this Act, and to insiders of that company and associates and affiliates of insiders of that company.

(2) For the purposes of subsection (1) a reference in Division (2A) of Part VI of *The Companies Act* to a public company shall be deemed to be a reference to an insurance company incorporated under a special Act of the Legislature and licensed under this Act that in its by-laws

- (a) does not restrict the right to transfer any of its shares,
- (b) does not limit the number of its shareholders to 50 or less, persons who are joint registered owners of one or more shares in the company being counted as one shareholder, and
- (c) does not prohibit any invitation to the public to subscribe for any shares of the company.

7. Section 204 is amended by adding the following after subsection (1):

(1a) Every insurer that issues or proposes to issue life insurance policies under which all or part of its liabilities thereunder, and the reserves therefor to be included in its annual statement pursuant to section 100, vary in amount depending upon the market value of a specified group of assets shall, at least 30 days before offering to undertake any insurance of that kind, file with the Superintendent the form of the policy, the form of the application for the policy, the form of all endorsements and riders to be used in connection with the policy, and all advertising material to be issued or used by the insurer in connection with the sale of that kind of policy.

6. See clause 3 of the Bill to amend The Companies Act (Bill 87) which will add a new Division (2A) relating to "insider trading". The new section 158a will make that Division apply to Alberta-incorporated insurance companies. Generally, the new Division (2A) will require directors, senior officers and other "insiders" of a company to report their shareholdings to the Alberta Securities Commission. These reports will be open for public inspection.

An insider of a company who in trading in his shares uses confidential information which, when it becomes generally known, will likely affect the price of the shares, is liable for any direct loss suffered by the other shareholder who was the party to the trade. The insider would not be liable if the other shareholder had the same information or might reasonably have known of it at the time of the trade. The insider is also liable to the company itself for any profit made on the trade. See section 88e.

Similar insider trading provisions are also found in sections 70 to 76 of the proposed Trust Companies Act, 1967 (Bill 60).

7. See clause 3 of this Bill. Section 204 (1) empowers the Superintendent to require an insurer to furnish application forms, policy forms, advertising material, etc. to him. The Minister may direct the Superintendent to prohibit its use. The new subsection (1a) will make it compulsory that insurers issuing life policies of the kind referred to in the proposed section 100b to file the forms and material in all cases, without the necessity of being requested to do so by the Superintendent.

8. (1) This Act, except sections 4 to 6, comes into force on the day upon which it is assented to.

(2) Sections 4 to 6 come into force on July 1, 1967.