

1986 BILL 19

Fourth Session, 20th Legislature, 35 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 19

INSURANCE AMENDMENT ACT, 1986

THE MINISTER OF CONSUMER AND CORPORATE AFFAIRS

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

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INSURANCE AMENDMENT ACT, 1986

(Assented to _____, 1986)

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

1 *The Insurance Act is amended by this Act.*

2 *Section 1 is amended by adding the following after clause (e.1):*

(e.11) "compensation association" means a body corporate or unincorporated association designated by a regulation under section 22(a.11) as a compensation association;

3 *The following is added after section 21:*

21.1 The Minister may enter into agreements with compensation associations relating to a plan for the compensation by compensation associations of policyholders of and eligible claimants on insolvent insurers.

4 *Section 22 is amended*

(a) *in clause (a.1) by striking out "and examination" and substituting " , examination and qualifications";*

(b) *by adding the following after clause (a.1):*

(a.11) designating as compensation associations bodies corporate or unincorporated associations, or both, whose purposes are to provide compensation to policyholders of and eligible claimants on insolvent insurers;

(a.12) designating a compensation association for 1 or more classes of insurance referred to in section 29.1(1);

(a.13) designating additional classes of insurance for the purposes of section 29.1(1)(l);

(a.14) designating insurers as being adequately covered by a plan of compensation other than that provided by reason of membership in a compensation association;

(a.15) prescribing ratios and prescribing, or providing for methods of determining, percentages and amounts, for the purposes of section 34.2, whether generally or for particular classes of insurance;

Explanatory Notes

- 1 This Bill will amend chapter I-5 of the Revised Statutes of Alberta 1980.
- 2 Definition of “compensation association”.
- 3 . Agreements with compensation associations.
- 4 Section 22 presently reads in part:
 - 22 *The Lieutenant Governor in Council may make regulations*
 - (a) *prescribing fees payable under this Act;*
 - (a.1) *respecting the experience, training, education and examination of an applicant required for the issuance of a certificate of authority or an adjuster's certificate;*

(a.16) defining any expressions used in section 34.2 for the purposes of that section;

(a.17) prescribing a maximum proportion of risks that may be reinsured with insurers that are not registered under the *Canadian and British Insurance Companies Act* (Canada) or the *Foreign Insurance Companies Act* (Canada) or are not incorporated by or under the laws of Canada, Alberta or another province, and varying the proportions for different classes of insurance;

5 *Section 26 is amended by striking out “Nothing” and substituting “Subject to the regulations, nothing”.*

6 *The following is added after section 29:*

29.1(1) Where a compensation association has been designated by the regulations for any of the following classes of insurance:

- (a) automobile insurance,
- (b) boiler and machinery insurance,
- (c) fire insurance,
- (d) inland transportation insurance,
- (e) livestock insurance,
- (f) public liability insurance,
- (g) plate glass insurance,
- (h) property damage insurance,
- (i) sprinkler leakage insurance,
- (j) theft insurance,
- (k) weather insurance, or
- (l) any other class of insurance designated by the regulations,

then, subject to subsection (2), every insurer, while licensed to carry on that class of insurance and for 183 days after ceasing to be so licensed, is a member of that compensation association.

(2) Subsection (1) does not apply to an insurer

- (a) that is designated by a regulation under section 22(a.14), or
- (b) whose business is limited to that of reinsurance.

(3) Every member of a compensation association is bound by the by-laws and memorandum of operation of the compensation association.

(4) A member of a compensation association shall pay to the compensation association all assessments and levies made against the member by the compensation association.

5 Section 26 presently reads:

26 Nothing in this Act prevents a licensed insurer that has lawfully effected a contract of insurance in Alberta from reinsuring the risk or any portion thereof with any insurer transacting business outside Alberta and not licensed under this Act.

6 Compensation associations.

(5) Where a member fails to pay the assessment or levy within 30 days of the mailing of the notice of the assessment or levy to the member,

(a) the compensation association may claim the amount of the assessment or levy, with interest, as a debt due from the member, and

(b) the Minister, on the recommendation of the Superintendent, may cancel the member's licence.

(6) The debt due under subsection (5) does not cease to be due on the termination of the member's membership.

7 *Section 34 is amended*

(a) *in subsection (1),*

(i) *by striking out "After January 1, 1974, a licence shall not be granted initially" and substituting "A licence shall not be granted or renewed";*

(ii) *in clause (a) by adding "or such greater amount as the Minister determines" after "\$2 000 000";*

(iii) *in clause (b) by adding "or such greater amount as the Minister determines," after "\$1 000 000";*

(b) *in subsection (2),*

(i) *in clause (a) by adding "or such greater amount as the Minister determines," after "\$500 000";*

(ii) *in clause (b) by adding "or such greater amount as the Minister determines," after "\$100 000";*

(c) *by adding the following after subsection (2):*

(3) A licence shall not be granted or renewed to a company incorporated without capital stock unless it is satisfactorily proved to the Superintendent that the assets of the company exceed its liabilities by an amount that is not less than

(a) the relevant amount specified in subsection (1) for the combined paid-up capital and surplus, in the case of a company initially granted a licence after January 1, 1974, or

(b) the relevant amount specified in subsection (2) for the unimpaired paid-up capital stock, in the case of a company initially granted a licence before January 1, 1974,

or such greater amount as the Minister determines.

(4) Determinations by the Minister as to increased amounts under subsection (1), (2) or (3) may differ in relation to different classes of insurance or different insurers.

(5) Where the Minister makes a determination referred to in subsection (4) that will or may affect a licensed company when it applies for the renewal of its licence, the Superintendent shall give that company notice in writing of the determination, and shall not apply the determination unless the

7 Section 34 presently reads:

34(1) After January 1, 1974, a licence shall not be granted initially to a joint stock company, other than a Canadian registered company,

(a) to undertake life insurance unless the company has a paid-up capital and surplus of not less than \$2 000 000, of which not less than \$1 000 000 is paid-up capital and not less than \$500 000 is unimpaired surplus, or

(b) to undertake any class of insurance other than life insurance unless the company has a paid-up capital and surplus of not less than \$1 000 000 of which not less than \$500 000 is paid-up capital and not less than \$250 000 is unimpaired surplus.

(2) If a joint stock company, other than a Canadian registered company, was licensed prior to January 1, 1974,

(a) its licence to undertake life insurance shall not be renewed unless the paid-up capital stock of the company is not less than \$500 000 and is unimpaired;

(b) its licence to undertake any class of insurance other than life insurance shall not be renewed unless the paid-up capital stock of the company is not less than \$100 000 and is unimpaired.

notice was given at least 3 months before the date when the current term of the licence being renewed expired.

8 *Section 34.1(12) is amended by striking out “and is not” and substituting “or is not”.*

9 *The following is added after section 34.1:*

34.2(1) An insurer licensed under this Act shall

(a) maintain the ratios

(i) if incorporated with capital stock,

(A) of gross written premiums to paid-up capital and surplus, and

(B) of net written premiums to paid-up capital and surplus,

or

(ii) if incorporated without capital stock,

(A) of gross written premiums to surplus, and

(B) of net written premiums to surplus,

that are prescribed by the regulations, and

(b) submit, with the annual statement required by section 99, an opinion by an actuary or by another person with experience and training acceptable to the Superintendent on the adequacy of provisions made for unearned premiums, unpaid claims and claims adjustment expenses as of the end of the year covered by the annual statement.

(2) An insurer licensed under this Act shall not permit

(a) the amounts due from its agents to exceed the relevant percentage of its paid-up capital and surplus, or, in the case of an insurer incorporated without capital stock, the relevant percentage of its surplus, that is prescribed by the regulations, or

(b) the amounts due from its affiliates, excluding any amounts due to an extra-provincial company from affiliates that are insurers duly licensed in any Canadian jurisdiction, to exceed the relevant amount prescribed by the regulations.

(3) Subsections (1) and (2) do not apply to

(a) a Canadian registered company,

8 Section 34.1(12) presently reads:

(12) If the reinsurer is not registered under the Canadian and British Insurance Companies Act (Canada) or the Foreign Insurance Companies Act (Canada) and is not incorporated by or under the laws of Canada, Alberta or another province, the aggregate amount referred to in subsection (3) may be reduced

(a) in respect of a policy, group of policies or a claim in Canada reinsured with that reinsurer, only to the extent that security is maintained in Canada, and

(b) in respect of any other policy, group of policies or a claim reinsured with that reinsurer, only to the extent that security is maintained,

in respect of the potential obligations of the reinsurer in an amount, of a nature and under arrangements satisfactory to the Superintendent.

9 Solvency requirements.

- (b) an insurer referred to in section 29.1(2), or
 - (c) a life insurance company.
- (4) The Superintendent may in writing exempt any insurer from all or any requirements of subsections (1) and (2) or the regulations made in relation thereto for a period not exceeding 1 year.
- (5) The exemption under subsection (4)
- (a) may be made subject to such conditions as the Superintendent imposes,
 - (b) may be made retroactive to such date as the Superintendent specifies, and
 - (c) is exempt from the *Regulations Act*.
- (6) In subsection (2)(b), “affiliates” means affiliates within the meaning of the *Business Corporations Act*.

10 *Section 43 is amended*

(a) in subsection (2) by striking out “paid-up capital required under” and substituting “the paid-up capital and surplus, the paid-up capital stock or the excess of assets over liabilities required by”;

(b) by repealing subsection (3) and substituting the following:

(3) If the Minister, after considering the matter and after giving the insurer a reasonable time and opportunity to be heard by him and making such further inquiry as he considers appropriate, agrees with the Superintendent’s opinion under subsection (1), the Minister may do either or both of the following:

- (a) make the insurer’s licence subject to such limitations or conditions as he considers appropriate;
- (b) prescribe a period within which the insurer must correct any failure or deficiency set out in the report of the Superintendent under subsection (1) or (2) or both.

(3.1) If the insurer does not comply with any limitations or conditions imposed under subsection (3)(a) or does not make good any failure or deficiency referred to in and within the period prescribed under subsection (3)(b) or any extension of that period subsequently given by the Minister, the Minister shall report to the Lieutenant Governor in Council that he concurs with the Superintendent’s report and the Lieutenant Governor in Council may suspend or cancel the licence of the insurer and prohibit the insurer from carrying on business in Alberta.

11 *Section 45 is amended by renumbering it as section 45(1) and adding the following after subsection (1):*

(2) On the suspension or cancellation of the licence of an insurer by the government of a jurisdiction other than Alberta, the

10 Section 43 presently reads:

43(1) If the Superintendent, on examination or from annual statements or on other evidence, finds that

(a) the assets of any insurer are insufficient to justify the continuance of the insurer in business or to provide proper security to persons effecting insurance with the insurer in Alberta, or

(b) the insurer has failed to comply with any provision of law, or with the Act or instruments of incorporation or association of the insurer,

he shall so report to the Minister.

(2) If it appears

(a) in the case of an insurer undertaking contracts of life insurance that its policy reserves, and

(b) in the case of any other insurer that its unearned premiums,

respecting contracts made in Alberta that are outstanding, together with any other liabilities in Alberta and, where applicable, the amount of paid-up capital required under section 34, exceed its assets in Alberta, including the deposit in the hands of the Minister, the assets of the insurer shall be deemed insufficient to justify the continuance of the insurer in business within the meaning of subsection (1), and the Superintendent shall so report to the Minister.

(3) If the Minister, after consideration of a report made under this section and after a reasonable time has been given to the insurer to be heard by him, and on any further inquiry and investigation he thinks proper to make, reports to the Lieutenant Governor in Council that he concurs in the report of the Superintendent, the Lieutenant Governor in Council may suspend or cancel the licence of the insurer and prohibit the insurer from doing any further business or soliciting or undertaking in Alberta any insurance.

(4) Until the suspension or prohibition is removed by the Lieutenant Governor in Council it is unlawful for the insurer to undertake insurance in Alberta or carry on business in Alberta.

11 Section 45 presently reads:

45 If the Superintendent has reported as provided in section 43(1), the Minister or the Lieutenant Governor in Council may direct the issue of any modified, limited or conditional licence that is considered necessary

Superintendent may suspend or cancel, as the case may be, the licence held by the insurer under this Act.

12 *Section 99(2) is amended by adding the following after clause (c):*

(c.1) where required, be accompanied by the opinion referred to in section 34.2(1)(b),

13 *Section 512 is repealed and the following is substituted:*

512(1) On receipt of an application for a certificate of authority with the prescribed fee, the Superintendent may, if he is satisfied that the applicant meets the requirements of this Act and the regulations, issue to the applicant a certificate of authority authorizing the holder to carry on in Alberta the business of insurance in the class stipulated in his certificate.

(2) The Superintendent may include terms and conditions in the certificate and the holder shall comply with them.

14 *Section 531 is repealed and the following is substituted:*

531(1) An application for an adjuster's certificate must be in the form prescribed by the Superintendent.

(2) Where an applicant applies to act as an adjuster to represent persons insured under contracts of insurance, the Superintendent may require the applicant to furnish a performance bond, a surety bond or any other requirement that he considers necessary.

(3) On receipt of an application for an adjuster's certificate with the prescribed fee, the Superintendent may, if he is satisfied that the applicant meets the requirements of this Act and the regulations, issue to the applicant an adjuster's certificate authorizing the holder to act as an adjuster in Alberta in the class stipulated in his certificate.

(4) The Superintendent may include terms and conditions in the certificate and the holder shall comply with them.

15 *The Insurance Amendment Act, 1984 is amended by repealing sections 4, 5 and 7.*

for the protection of persons in Alberta who have effected or effect contracts of insurance with the insurer.

12 Requirement for annual statement to be accompanied by actuarial opinion.

13 Section 512 presently reads:

512(1) On receipt of an application for a certificate of authority and payment of the prescribed fee the Superintendent may, if he is satisfied that the applicant is a suitable person to receive a certificate of authority, issue to the applicant a certificate of authority authorizing the holder during the term thereof to carry on within Alberta the business of insurance in the class stipulated in his certificate.

(2) If the Superintendent, after due investigation, is of the opinion that an applicant is not for any reason a suitable person to receive a certificate of authority, he may in his discretion refuse a certificate of authority to the applicant.

14 Section 531 presently reads:

531(1) An adjuster's certificate may be issued to any person applying therefor on a form prescribed by the Superintendent and on payment of the prescribed fee.

(2) An application shall be approved by an insurer licensed under this Act and by the Superintendent.

15 Sections 4, 5 and 7 of chapter 23 of the Statutes of Alberta, 1984 presently read:

4 Section 512 is amended

(a) in subsection (1)

(i) by striking out "is a suitable person to receive a certificate of authority" and substituting "meets the requirements of the Act and the regulations";

(ii) by adding "and under the terms and conditions stipulated therein" after "in his certificate";

(b) in subsection (2) by striking out "is not for any reason a suitable person to receive a certificate of authority" and substituting "does not meet the requirements of this Act and the regulations".

5 Section 531 is repealed and the following substituted:

531(1) An application for an adjuster's certificate shall be in the form prescribed by the Superintendent and approved by an authorized officer of an insurer licensed under this Act.

16 This Act comes into force on Proclamation.

(2) On receipt of an application for an adjuster's certificate and payment of the prescribed fee, the Superintendent may, if he is satisfied that the applicant meets the requirements of this Act and the regulations, issue to the applicant an adjuster's certificate authorizing the holder during the term thereof to act as an adjuster within Alberta in the class stipulated in his certificate and under the terms and conditions stipulated therein.

(3) If the Superintendent, after due investigation, is of the opinion that an applicant does not meet the requirements of this Act and the regulations, he may in his discretion refuse a certificate to the applicant.

7 Sections 4 and 5 come into force on Proclamation.

16 Coming into force.