

1987 BILL 6

Second Session, 21st Legislature, 36 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 6

INSURANCE AMENDMENT ACT, 1987

THE MINISTER OF CONSUMER AND
CORPORATE AFFAIRS

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 6

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INSURANCE AMENDMENT ACT, 1987

(Assented to _____, 1987)

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*

(a) *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;

(b) *by repealing clause (t) and substituting the following:*

(t) “provincial company” means an insurance company incorporated by a special Act of the Legislature;

3 *The following is added after section 21:*

21.1(1) The Minister may enter into agreements with compensation associations relating to a plan for the compensation by compensation associations of policy-holders of and eligible claimants on insolvent insurers.

(2) An agreement under subsection (1) may exempt a specifically named insurer from membership in the compensation association that is a party to the agreement.

4 *Section 22 is amended 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 policy-holders of and eligible claimants on insolvent insurers;

(a.12) prescribing classes of insurance for the purposes of section 29.1(1);

(a.13) designating a compensation association for 1 or more such classes of insurance;

(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;

Explanatory Notes

- 1 This Bill will amend chapter I-5 of the Revised Statutes of Alberta 1980.
- 2 Section 1 presently reads in part:
 - 1 *In this Act, except where inconsistent with the interpretation sections of any Part,*
 - (1) *"provincial company" means a company incorporated by or under an Act of the Legislature or an order made under section 541(11);*
- 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.15) 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 *Section 28(g) is amended by adding “or operating as underwriting members of the Canadian Insurance Exchange or any other plan approved by the Minister” after “Lloyd’s”.*

7 *The following is added after section 29:*

29.1(1) Where a compensation association has been designated by the regulations under section 22 for any of the classes of insurance prescribed by those 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),
- (b) whose business is limited to that of reinsurance, or
- (c) that is exempted from membership by an agreement under section 21.1.

(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) Where a member fails to pay an 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.

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 Section 28(g) presently reads:

28 On application and payment of the prescribed fees and on proof of compliance with this Act the Superintendent may issue a licence to undertake contracts of insurance and carry on business in Alberta to any insurer coming within one of the following classes:

(g) underwriters or syndicates of underwriters operating on the plan known as Lloyd's.

7 Compensation associations.

8 *Section 34 is amended*

(a) *in subsection (1) by striking out “After January 1, 1974, a licence shall not be granted initially” and substituting “A licence shall not be granted, and, where a licence was initially granted on or after January 1, 1974, the licence shall not be renewed,”;*

(b) *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 proved satisfactorily 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 on or 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.

(4) Notwithstanding subsections (1) to (3), the Minister may increase all or any of the relevant amounts specified or referred to in subsection (1), (2) or (3), and the increase may differ in relation to different classes of insurance or different insurers.

(5) Where the Minister increases any amount pursuant to 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 increase, and shall not apply the increase unless the notice was given at least 3 months before the date when the current term of the licence being renewed expired.

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

10 *The following is added after section 34.1:*

34.2(1) An insurer licensed under this Act shall 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

8 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.

9 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.

10 Adequacy of provisions.

unearned premiums, unpaid claims and claims adjustment expenses as of the end of the year covered by the annual statement,

(2) Subsection (1) does not apply to

- (a) a Canadian registered company,
- (b) an insurer referred to in section 29.1(2), or
- (c) an insurer licensed to carry on only life insurance or accident and sickness insurance, or both.

11 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 giving the insurer reasonable time and opportunity to be heard by him and making such further inquiry as he considers appropriate, agrees with the Superintendent’s finding 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.

12 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 Superintendent may, according to his discretion, either suspend or cancel the licence held by the insurer under this Act.

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

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

11 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.

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

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

14 Section 136 is amended by renumbering subsection (1) as subsection (1.1) and by adding the following before subsection (1.1):

136(1) No person or group of persons may be incorporated as an insurance company otherwise than by a special Act of the Legislature.

15 Section 184(c) is amended by striking out “the insurer’s unimpaired paid-up capital stock” and substituting “in the case of a joint stock company, the insurer’s unimpaired capital stock and, in the case of an insurer incorporated without capital stock, the excess of its assets over its liabilities”.

16 The following is added after section 203(9):

(10) This section does not apply to contracts of automobile insurance.

17 Section 295 is amended by adding the following after subsection (10):

(11) The Superintendent may at any time approve an amendment to the form of anything that was previously approved by him under this section and, where he does so, he shall have a copy of the amendment published in The Alberta Gazette.

(12) Ninety days after the publication of the amendment in The Alberta Gazette or at such later date as is specified in the Gazette notice and notwithstanding anything in this Act and any contract that is then in force,

(a) the amendment shall be deemed to be incorporated into the previously approved form and into any such contract that incorporated that form, and

(b) the amendment otherwise becomes effective.

(13) Notwithstanding subsection (12), the amendment also applies to contracts entered into or renewed after the date referred to in that subsection.

18 This Act comes into force on Proclamation.

14 Requirement of special Act for incorporation.

15 Section 184(c) presently reads:

184 The Superintendent may make a special report to the Minister with respect to any insurer when the Superintendent is satisfied, on the basis of an examination and inspection of that insurer's affairs, or on the basis of any other source of information available to him, that

(c) the insurer's unimpaired paid-up capital stock is less than the amount applicable to that insurer under section 34,

16 Exemption from terms of contracts provision.

17 Application of amendments to existing forms and contracts.

18 Coming into force.