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c 124 The Insurance Amendment Act, 1973

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

1. Subsection 1 of section 14 of The Insurance Act, being chapters.14(1), amended 224 of the Revised Statutes of Ontario, 1970, is amended by striking out "that comes within the terms of sections 97 and 146" in the fifth line.

2. Paragraph 1 of subsection 1 of section 25 of the said Act, as amended by s.25 (1), par. 1, amended is amended by adding at the end thereof "and such contract made outside Ontario shall be deemed to include the benefits set forth in Schedule E".

3. Subsection 2 of section 28 of the said Act, as amended by s.28 (2), amended the Statutes of Ontario, 1971, chapter 84, section 3, is further amended by striking out "subscribed and allotted capital stock" in the eleventh line and inserting in lieu thereof "paid up capital and surplus".

4. Section 30 of the said Act, as amended by the Statutes of Ontario, 1972, chapter 66, section 3, is further amended by adding thereto the following subsection:

   (3) When the Superintendent considers it necessary to conduct an examination of the affairs of an applicant for a licence, the applicant shall pay the costs of the examination upon receiving a statement thereof certified by the Superintendent.

5. The said Act is amended by adding thereto the following section:

   30a. Every licensed insurer shall file in the office of the Superintendent certified copies of every amendment, revision, or consolidation of its Act or other instrument of incorporation or association and of its constitution, by-laws and
regulations verified in a manner satisfactory to the Superintendent within thirty days after the passing or adoption of the amendment, revision or consolidation.

6. Section 32 of the said Act is amended by adding thereto the following subsection:

(2) The Minister may refuse to license an insurer where the name of the insurer is,

(a) the same as or similar to the name of another insurer and the assumption or use of the name in Ontario would be likely to deceive or mislead the public; or

(b) if the name of the insurer is objectionable on any public grounds.

7. Subsection 1 of section 32a of the said Act, as enacted by the Statutes of Ontario, 1972, chapter 66, section 4, is repealed and the following substituted therefor:

(1) Every licensed insurer that has its head office outside Ontario shall file with the Superintendent an executed copy of a power of attorney from the insurer to a chief agent resident in Ontario.

8. Subsection 7 of section 84 of the said Act, as amended by the Statutes of Ontario, 1971, chapter 84, section 4, is further amended by striking out "insured" in the amendment of 1971 and inserting in lieu thereof "insurer".

9.-(1) Subsection 1 of section 85 of the said Act is amended by inserting after "a" where it occurs the second time in the fourth line "provision in a".

(2) Clause b of subsection 8 of the said section 85 is repealed and the following substituted therefor:

(b) prescribing the form, content, time of filing and delivery of information folders and the persons to whom information folders shall be delivered.

10. The said Act is further amended by adding thereto the following section:

86a.-(1) The directors of an insurer incorporated and licensed under the laws of Ontario to transact the business of life insurance as a joint stock insurance company may from time to time set apart such portion of the net profits
as they consider safe and proper for distribution as dividends or bonuses to shareholders and holders of participating policies ascertaining the part thereof that has been derived from participating policies and distinguishing that part from the profits derived from other sources.

(2) Notwithstanding anything to the contrary in any letters patent of incorporation or contract, the holders of participating policies are entitled to share in that portion of the profits that has been distinguished as having been derived from participating policies (including a share of the profits arising from the sale of securities in the proportion of the mean participating fund to the mean total funds) to the extent of at least 90 per cent thereof in any year.

(3) In fixing or arriving at the amount of divisible profits, there may be included interest on the amount of the unimpaired paid up capital stock and on any other sum or sums from time to time standing to the credit of the shareholders after deducting any amounts expended in the establishment, prosecution or extension of the company's business or applied to making good any impairment of capital, and such interest may be allowed or credited to the shareholders at the average net rate of interest earned in the preceding year or other period under consideration upon the mean total funds of the company, but the shareholders are to be charged with a fair proportion of all losses incurred upon investments or other losses of a similar character in the proportion of the mean shareholders' funds to the mean total funds.

(4) This section does not interfere with the rights of the participating policyholders of an insurer referred to in subsection 1 to share in the profits realized from the non-participating branch of its business in any case to which the policyholders are so entitled.

11. Subsections 1 and 3 of section 94 of the said Act are repealed and the following substituted therefor:

(1) Unless otherwise provided, every person who, knowingly,

(a) furnishes false information in any application under this Act or in any statement, return or answer required to be furnished under this Act or the regulations;

(b) fails to comply with any order, direction or other requirement made under this Act; or
(c) contravenes any provision of this Act or the regulations,

and every director or officer of an insurer who knowingly concurs in such furnishing, failure or contravention is guilty of an offence and on summary conviction is liable to a fine of not more than $2,000 or to imprisonment for a term of not more than one year, or to both.

(1a) Where an insurer is convicted of an offence under subsection 1, the maximum penalty that may be imposed upon the insurer is $25,000 and not as provided therein.

(3) Every person who,

(a) undertakes insurance or carries on business as an insurer in Ontario;

(b) acts on behalf of an insurer in Ontario; or

(c) does or performs any one or more of the acts constituting the business of insurance,

in relation to any class of insurance without being licensed for that class, is guilty of an offence and on summary conviction is liable to a fine of not more than $25,000.

12.—(1) Subsections 1 and 2 of section 95 of the said Act are repealed.

(2) Clause a of subsection 3 of the said section 95 is repealed and the following substituted therefor:

(a) requiring the payment of fees for licences and renewals of licences and in respect of any function performed by the Superintendent under this Act and prescribing the amounts thereof.

(3) Subsection 3 of the said section 95, as amended by the Statutes of Ontario, 1971, chapter 84, section 5, is further amended by adding thereto the following clause:

(da) governing the advertising of insurance contracts or any class thereof including prescribing and regulating the form and content of advertisements and requiring their filing.

13.—(1) Subsection 4 of section 140 of the said Act is amended by striking out "subsection 1" in the second line and inserting in lieu thereof "subsections 1 and 5".
(2) Subsection 5 of the said section 140, as amended by the amended Statutes of Ontario, 1971, chapter 84, section 8, is further amended by inserting at the commencement thereof "Subject to subsection 4".

14. Clause a of section 216 of the said Act is repealed.

15. The said Act is further amended by adding thereto the following section:

245a. Where a contract of accident insurance or sickness insurance issued after the 2nd day of November, 1973 includes a provision that a benefit is payable to an insured on account of his disability and the provision is conditional on the confinement of the insured, the condition does not bind the insured.

16. The said Act is further amended by adding thereto the following section:

246a.—(1) Where a contract of group accident and sickness insurance, or a benefit provision therein, is terminated, the insurer continues to be liable to pay to or in respect of any group person insured under the contract benefits under the contract relating to,

(a) loss of income because of disability; or

(b) death; or

(c) dismemberment,

arising from an accident or sickness that occurred before the termination of the contract or benefit provision as though the contract or benefit provision had remained in full force and effect; but the insurer is not liable to pay a benefit for loss of income because of disability in respect of the recurrence of disability arising from an accident or sickness that occurred before the termination of the contract or benefit provision if the recurrence occurs after the termination of the contract or benefit provision and after a period of ninety days, or such longer period as is provided in the contract, during which the group person insured was not disabled.

(2) Where a contract of group accident and sickness insurance (herein referred to as the "replacing contract") is entered into within thirty-one days of the termination of another contract of group accident and sickness insurance
(herein referred to as the "other contract") and insures the same group or a part of the group insured under the other contract.

(a) the replacing contract shall provide or shall be deemed to provide that any person who was insured under the other contract at the time of its termination is insured under the replacing contract from and after the termination of the other contract if,

(i) the insurance on that person under the other contract terminated solely by reason of the termination of the other contract, and

(ii) the person is a member of a class eligible for insurance under the replacing contract;

(b) every person who was insured under the other contract and who is insured under the replacing contract is entitled to receive credit for satisfaction of any deductible earned before the effective date of the replacing contract; and

(c) no person who was insured under the other contract shall be excluded from eligibility under the replacing contract solely because of not being actively at work on the effective date of the replacing contract.

s. 295 (5), amended

17. Subsection 5 of section 295 of the said Act, as amended by the Statutes of Ontario, 1972, chapter 1, section 42, is further amended by striking out "and a copy thereof so certified by the Superintendent shall be filed by him in the office of the Minister" in the tenth, eleventh and twelfth lines and in the amendment of 1972.

s. 321 (1) (c), amended

18. Clause c of subsection 1 of section 321 of the said Act is amended by striking out "$300" in the second line and inserting in lieu thereof "$800".

s. 340, re-enacted

19. Section 340 of the said Act is repealed and the following substituted therefor:

340. The attorney for a licensed exchange shall, on or before the 1st day of March in each year, pay to the Treasurer of Ontario an annual tax in respect of all premiums or deposits collected by the exchange of an amount equal to and calculated in the same manner as under section 143 of The Corporations Tax Act, 1972 if such premiums or deposits
had been received by a licensed insurer, and payment thereof shall accompany the annual statement filed with the Superintendent.

20. Section 355 of the said Act is amended by adding thereto the following subsection:

(2) An agent or broker who acts in negotiating or renewing or continuing a contract of insurance with a licensed insurer, and who receives any money or substitute for money for payment to a person in respect of the contract of insurance shall be deemed to hold such money in trust for the person entitled thereto, and, if he fails to pay the money over to such person within fifteen days after written demand made upon him therefor, less his commission and any deductions to which he is entitled, such failure is prima facie evidence that he has used or applied the money for a purpose other than paying it over to the person entitled.

21. Schedule A to the said Act, as amended by the Statutes of Ontario, 1972, chapter 66, section 16, is repealed.

22. —(1) This Act, except sections 14 and 21, comes into force on the day it receives Royal Assent.

(2) Sections 14 and 21 come into force on a day to be named by the Lieutenant Governor by his proclamation.

23. This Act may be cited as The Insurance Amendment Act, 1973. Short title