

South Australia

Motor Vehicles (Third Party Insurance) Amendment Act 2011

An Act to amend the *Motor Vehicles Act 1959*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Motor Vehicles (Third Party Insurance) Amendment Act 2011*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Motor Vehicles Act 1959*

4—Amendment of section 99—Interpretation

- (1) Section 99(3)—delete "as arising" and substitute:

arising

- (2) Section 99(3)—after "only if it is a" insert:

direct

- (3) Section 99(3a)—delete "as arising" and substitute:

arising

- (4) Section 99(4)—delete "as arising" and substitute:

arising

5—Amendment of section 116—Claim against nominal defendant where vehicle uninsured

- (1) Section 116(7)(c)(iii)—delete ".15 grams" and substitute:

.1 grams

- (2) Section 116—after subsection (7) insert:

(7aa) If—

- (a) a sum is properly paid by the nominal defendant to satisfy a claim made or judgment obtained in respect of death or bodily injury caused by or arising out of the use of an uninsured motor vehicle; and
- (b) the driver of the uninsured vehicle was wholly or partly liable for the death or bodily injury; and
- (c) the driver of the uninsured vehicle committed an offence against section 43 of the *Road Traffic Act 1961*,

the nominal defendant may, by action in a court of competent jurisdiction, recover that sum, or such part of that sum as the court thinks just and reasonable in the circumstances, together with costs from the driver or a person liable in respect of the acts or omissions of the driver.

- (3) Section 116(7a)—after paragraph (b) insert:

or

- (c) whether the driver of the uninsured vehicle is guilty of an offence against section 43 of the *Road Traffic Act 1961*,

- (4) Section 116(7a)—delete "subsection (7)" and substitute:
this section
- (5) Section 116—after subsection (7a) insert:
(7ab) For the purposes of this section, a person will be taken to have committed an offence against section 43 of the *Road Traffic Act 1961* if, and only if, the person has been found guilty of the offence.
- (6) Section 116(7d)—after paragraph (b) insert:
or
(c) committed an offence against section 43 of the *Road Traffic Act 1961*.
- (7) Section 116—after subsection (7d) insert:
(7e) A court before which an action is brought for recovery from a person of a sum paid by the nominal defendant to satisfy a claim made or judgment obtained must, if the court is to determine the amount that it is just and reasonable in the circumstances for the nominal defendant to recover from the person, take into account—
(a) the extent to which the person contributed to or is otherwise responsible for the liability to which the claim or judgment relates; and
(b) any other matter that the court considers relevant.

6—Amendment of section 118B—Interpretation of certain provisions where claim made or action brought against nominal defendant

Section 118B(2)(b) and (c)—delete paragraphs (b) and (c) and substitute:

- (b) sections 124 and 124AA;

7—Amendment of section 124—Duty to cooperate with insurer

- (1) Section 124(1)—after paragraph (c) insert:
(ca) the name, date of birth and address of the driver of the motor vehicle at the time of the accident; and
- (2) Section 124(3)—after paragraph (b) insert:
or
(c) if the defendant has not given notice of a particular detail as required by subsection (1)—that the defendant, having made reasonable inquiries, complied with the requirements of subsection (1) to the best of the defendant's knowledge, information and belief.
- (3) Section 124(3a), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$5 000.
- (4) Section 124(6a)—delete "upon an insured person"

8—Insertion of section 124AA

After section 124 insert:

124AA—Limitation of liability in respect of foreign awards

- (1) This section applies in relation to actions brought before a court of another country or state (except a state or territory of the Commonwealth).
- (2) Any limitation on liability for damages for death or bodily injury arising out of the use of a motor vehicle that is relevant to the operation of this Part and the degree of liability under the policy of insurance under Schedule 4 (including, but not limited to, the *Civil Liability Act 1936*) is a substantive law of the State and is intended to apply in relation to any action that arises out of the occurrence of the death or bodily injury—
 - (a) irrespective of where the death or bodily injury occurred; and
 - (b) despite the fact that the court before which the action is brought would not (but for this subsection) apply, or take into account, the law of this State.
- (3) If—
 - (a) an action is brought in respect of death or bodily injury arising out of the use of an insured motor vehicle in a court that is not a court of the State; and
 - (b) despite subsection (2), the court awards an amount to a person that is in excess of the amount (if any) that would have been awarded in a similar action before a court of the State; and
 - (c) the insurer is liable to pay the amount awarded,the following provisions apply:
 - (d) the insurer is entitled to recover the excess from, or set off the excess against any payment to be made to, the person to whom the amount is awarded (the *judgment creditor*);
 - (e) the insured person's liability to the judgment creditor is fully discharged on payment by the insurer to the judgment creditor of—
 - (i) the amount awarded; or
 - (ii) the amount awarded less the amount of the excess.
- (4) In the course of proceedings under subsection (3)(d), a court may—
 - (a) receive in evidence any transcript of evidence in proceedings before the court by which the amount was awarded and draw any conclusion of fact from the evidence it considers proper; or
 - (b) adopt any of the court's findings of fact.

9—Amendment of section 124A—Recovery by insurer

- (1) Section 124A(1)(b)—delete ".15 grams" and substitute:
.1 grams
- (2) Section 124A(1a)—after paragraph (b) insert:
or
(c) whether the insured person is guilty of an offence against section 43 of the *Road Traffic Act 1961*,
- (3) Section 124A(1a)—delete "subsection (1)" and substitute:
this section
- (4) Section 124A(1a)—redesignate subsection (1a) as amended by this section as subsection (2a) and relocate the subsection so that it follows subsection (2)
- (5) Section 124A(2)—before paragraph (a) insert:
(aa) contravened or failed to comply with a term of the policy of insurance by committing an offence against section 43 of the *Road Traffic Act 1961*; or
- (6) Section 124A(2)(a)—delete "a term" and substitute:
any other term
- (7) Section 124A—before subsection (3) insert:
(2b) For the purposes of this section, a person will be taken to have committed an offence against section 43 of the *Road Traffic Act 1961* if, and only if, the person has been found guilty of the offence.
- (8) Section 124A—after subsection (3) insert:
(4) A court before which an action is brought for recovery from a person of a sum paid by an insurer to satisfy a liability incurred by an insured person must, if the court is to determine the amount that it is just and reasonable in the circumstances for the insurer to recover from the person, take into account—
 - (a) the extent to which the person contributed to or is otherwise responsible for the liability incurred; and
 - (b) any other matter that the court considers relevant.

10—Amendment of section 124AB—Recovery of excess in certain cases

- (1) Section 124AB(1)(a) and (b)—delete paragraphs (a) and (b) and substitute:
 - (a) if the money paid and costs incurred by the insurer in respect of the liability do not exceed the prescribed amount—
 - (i) the amount of that money paid and costs incurred; or

- (ii) if the amount to be recovered from the insured person is received within 1 month following a first request for payment—95% of the amount of that money paid and costs incurred; and
 - (b) if the money paid and costs incurred by the insurer exceed the prescribed amount—
 - (i) the prescribed amount; or
 - (ii) if the amount to be recovered from the insured person is received within 1 month following a first request for payment—95% of the prescribed amount.
- (2) Section 124AB—after subsection (2) insert:
 - (3) For the purposes of this section, the *prescribed amount* is \$460.
 - (4) The amount prescribed by subsection (3) will be indexed so that it is adjusted on 1 January of each year, beginning on 1 January 2012, by multiplying the stated amount by a proportion obtained by dividing the CPI for the September quarter of the immediately preceding year by the CPI for the September quarter 2010 (with the amount so adjusted being rounded up to the nearest multiple of \$10).
 - (5) A reference in this section to the prescribed amount in connection with costs incurred and money paid by the insurer in respect of a liability arising out of an accident is a reference to the prescribed amount for the year in which the accident occurred (having regard to any adjustment made to the prescribed amount as required under subsection (4)).

11—Amendment of section 127—Medical examination of claimants

Section 127(5)(c)—delete "or compensation" and substitute:

, compensation, interest or costs

12—Amendment of Schedule 4—Policy of insurance

- (1) Schedule 4 clause 1—delete ", or arising out of the use of," and substitute:

or arising out of the use of
- (2) Schedule 4 clause 2(c)—delete ".15 grams" and substitute:

.1 grams
- (3) Schedule 4 clause 2—after paragraph (f) insert:

or

 - (g) if the person is the driver of the vehicle when it is involved in an accident in which a person is killed or injured—commit an offence against section 43 of the *Road Traffic Act 1961*.

Schedule 1—Transitional provisions

1—Transitional provisions

- (1) Subject to this clause, an amendment made to the *Motor Vehicles Act 1959* by this Act does not affect a cause of action, right or liability that arose before the commencement of the amendment.
- (2) Section 124AA(3) of the *Motor Vehicles Act 1959*, inserted by section 8 of this Act, applies in relation to any action commenced after the day on which the Bill for this Act was first introduced in the Parliament.