

Legislative Council—No 85

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South Australia

Stamp Duties (Insurance) Amendment Bill 2010

A BILL FOR

An Act to amend the *Stamp Duties Act 1923*.

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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 *Stamp Duties (Insurance) Amendment Act 2010*.

2—Commencement

- 5 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 *Stamp Duties Act 1923*

4—Substitution of Part 3 Division 3

Part 3 Division 3—delete the Division and substitute:

Division 3—Insurance

Subdivision 1—Interpretation

32—Interpretation

(1) In this Act—

company includes corporation and society (whether incorporated or unincorporated);

firm includes an association of underwriters carrying on marine insurance business through a managing underwriter solely;

general insurer means an insurer who carries on insurance business in respect of insurance that is not life insurance;

insurance includes assurance;

insurance business means—

- (a) the granting or issuing of life, personal accident, fire, fidelity, guarantee, livestock, plate glass, marine or other insurance; or
- (b) the acceptance, either directly or indirectly, of any premium, renewal premium or consideration for, or in respect of, the granting or issuing or keeping alive or in force of life, personal accident, fire, fidelity, guarantee, livestock, plate glass, marine or other insurance; or
- (c) the receiving of a letter or declaration of interest attaching to a policy of insurance issued in this State or elsewhere; or
- (d) the carrying out, by means of insurance effected out of this State, of a contract or undertaking to effect insurance, whether formal or informal and whether express or implied;

insurer means a company, person or firm that carries on insurance business;

life insurance means insurance of a contingency that is dependent on the duration of human life, but does not include personal accident insurance;

life insurer means an insurer who carries on insurance business in respect of life insurance;

personal accident insurance means—

- (a) insurance covering personal accident or workers compensation; or

(b) insurance under a policy complying with Part 4 of the *Motor Vehicles Act 1959*; or

(c) insurance in respect of trauma or a disabling or incapacitating injury, sickness, condition or disease;

5 **policy** includes an instrument in the nature of a policy, an open policy, an insurance cover or an instrument in any manner covering insurance;

premium means an amount paid or payable for insurance and includes—

10 (a) an amount charged to a policy holder to reimburse, offset or defray the insurer's liability for GST in respect of the insurance; and

(b) a levy charged to a policy holder; and

(c) an instalment of premium; and

15 (d) a part of a premium;

registered means registered under this Division.

(2) If a provision of this Division refers to a premium paid, payable, received, charged or credited in relation to life insurance, or in relation to insurance of another kind, the reference is to be taken to be a reference to the premium to the extent that it was or is paid, payable, received, charged or credited in relation to insurance of the kind referred to in the provision.

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Subdivision 2—Registration and payment of duty

33—Registration

25 (1) An insurer who carries on insurance business in the State must be registered under this Division.

Maximum penalty: \$10 000.

(2) An application for registration under this Division must be made to the Commissioner in the approved form.

30 (3) The Commissioner must register an insurer who applies in the approved form for registration under this Division.

(4) A registered insurer who is no longer required to be registered may cancel the registration by notice to the Commissioner in the approved form.

35 (5) For the purposes of this section, an insurer carries on insurance business in the State if the insurer grants or issues in the State—

(a) life insurance or personal accident insurance for a person whose principal place of residence is in the State at the time that the policy providing the insurance is issued; or

40 (b) general insurance for an insurance risk within the State,

(whether the head office or principal place of business of the insurer is in the State or elsewhere).

34—Lodgement of statement and payment of duty—general insurance

- 5 (1) A general insurer who is, or is required to be, registered is liable under this section to pay duty in respect of each premium relating to insurance of any kind (other than life insurance) paid to the insurer and must, for that purpose, on or before the 15th day of each month—
- 10 (a) lodge with the Commissioner a statement in the approved form setting out the total amount of—
- (i) all such premiums received by the insurer in the previous month; and
- 15 (ii) any such premiums credited to an account of the insurer (but not received by the insurer) in the previous month that the insurer chooses to include; and
- (b) pay to the Commissioner duty equivalent to 11% of that amount.
- 20 (2) If a premium that is credited to an account of the insurer but not actually received by the insurer is included in the statement lodged under subsection (1) for the month in which the premium is credited, the insurer need not include the premium in the statement lodged for the month in which the premium is received by the insurer.
- 25 (3) Subject to subsection (4), if a premium that is credited to an account of the insurer but not actually received by the insurer is not included in the statement lodged under subsection (1) for the month in which the premium is credited, the following provisions apply:
- 30 (a) if the premium is received by the insurer during the period of 12 months commencing on the day on which the premium was credited to the account of the insurer—the insurer must include the premium in the statement lodged for the month in which the premium is received by the insurer;
- 35 (b) if the premium is not received by the insurer within the 12 month period referred to in paragraph (a)—
- (i) the premium will be taken for the purposes of this section to have been received by the insurer in the first complete month following the end of that period; and
- 40 (ii) the insurer must include the premium in the statement lodged for that month.
- (4) Subsection (3)(b) does not apply in relation to a premium that is not received by the insurer because the policy in relation to which the premium was credited is cancelled.

- (5) For the purposes of subsection (1)—
- (a) a reference to a premium does not include an amount in respect of stamp duty received or charged in respect of a premium; and
 - (b) the amount of a premium—
 - (i) refunded during the month to which the statement relates (whether the premium was received during that month or earlier); or
 - (ii) paid for an insurance risk outside the State (other than a personal accident insurance risk); or
 - (iii) paid for personal accident insurance in respect of a person whose principal place of residence was not in the State at the time the policy providing the insurance was issued,is not to be taken into account.
- (6) To avoid doubt, the duty payable under subsection (1) is payable in respect of a premium relating to insurance of any kind (other than life insurance), irrespective of whether the premium is payable under a policy in relation to which premiums are also payable for life insurance.

35—Lodgement of statement and payment of duty—life insurance

- (1) A life insurer who is, or is required to be, registered is liable under this section to pay duty in respect of each premium relating to life insurance paid to the insurer and must, for that purpose, on or before 31 January of each year—
- (a) lodge with the Commissioner a statement in the approved form setting out the total amount of—
 - (i) all such premiums received by the insurer in the preceding calendar year; and
 - (ii) any such premiums credited to an account of the insurer (but not received by the insurer) in the previous calendar year that the insurer chooses to include; and
 - (b) pay to the Commissioner duty equivalent to 1.5% of that amount.
- (2) If a premium that is credited to an account of the insurer but not actually received by the insurer is included in the statement lodged under subsection (1) for the year in which the premium is credited, the insurer need not include the premium in the statement lodged for the year in which the premium is received by the insurer.

(3) Subject to subsection (4), if—

(a) a premium that is credited to an account of the insurer but not received by the insurer is not included in the statement lodged under subsection (1) for the year in which the premium is credited; and

(b) the premium is not received by the insurer in the following calendar year,

the premium will be taken, for the purposes of this section, to have been received by the insurer in that following calendar year and is therefore to be included in the statement for that year.

(4) Subsection (3) does not apply in relation to a premium that is not received by the insurer because the policy in relation to which the premium was credited is cancelled.

(5) For the purposes of subsection (1)—

(a) a reference to a premium—

(i) does not include an amount in respect of stamp duty received or charged in respect of a premium; and

(ii) is a reference to a net premium, and any commission or discount is not to be taken into account; and

(b) the amount of a premium paid for life insurance in respect of a person whose principal place of residence was not in the State at the time the policy providing the insurance was issued is not to be taken into account; and

(c) the amount of a premium refunded during the year to which the statement relates (whether the premium was received during that year or earlier) is not to be taken into account; and

(d) an amount that is paid from an account established for investment to an account established for insurance of a risk under a policy providing life insurance will be taken to be a premium received under that policy for insurance of that risk.

(6) To avoid doubt, the duty payable under subsection (1) is payable in respect of a premium relating to life insurance, irrespective of whether the premium is payable under a policy in relation to which premiums are also payable for insurance that is not life insurance.

Subdivision 3—Exempt insurance

36—Certain premiums exempt from duty

The following premiums are exempt from duty under this Division:

(a) a premium received or charged in respect of reinsurance;

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- (b) a premium received or charged under a private guarantee fidelity insurance scheme promoted amongst and sustained solely for the benefit of the officers and servants of a particular public department, company, person or firm and not extended, either directly or indirectly, beyond such officers and servants;
- 10
- (c) a premium received or charged under a scheme referred to in paragraph (b) promoted amongst and sustained solely for the benefit of the officers and members of a friendly society or branch thereof and not extended, either directly or indirectly, beyond such officers and members;
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- (d) a premium received or charged for life insurance in respect of investment and not in respect of a risk insured by the policy under which the premium is paid;
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- (e) a premium received or charged in respect of a life or personal accident insurance risk where the principal place of residence of the insured person is in the Northern Territory and the policy under which the premium is paid is registered in a registry kept in the Northern Territory pursuant to the *Life Insurance Act 1995* of the Commonwealth;
- 25
- (f) a premium received or charged under a policy of workers compensation insurance where the premium is referable to insurance against liability to pay workers compensation in respect of workers under the age of 25 years;
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- (g) a premium received or charged under a policy of insurance by a body registered under Part 4-3 of the *Private Health Insurance Act 2007* of the Commonwealth where the premium is referable to insurance against medical, dental or hospital expenses;
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- (h) a premium received or charged in respect of life insurance providing for the payment of an annuity to the person insured;
- (i) a premium received or charged in respect of the insurance of the hull of a marine craft used primarily for commercial purposes or in respect of the insurance of goods carried by railway, road, air or sea or of the freight on such goods.

Subdivision 4—General

37—Denoting of duty

40 The duty paid in connection with a statement lodged with the Commissioner under Subdivision 2 must be denoted on the statement.

38—Duty in respect of policies effected outside South Australia

- 5 (1) A company, person or firm that is not required to be registered under section 33 and that obtains, effects or renews, outside the State, a policy of insurance wholly or partly in respect of property in the State, or a risk, contingency or event occurring in the State, must, within 1 month of obtaining, effecting or renewing the policy—
- 10 (a) lodge with the Commissioner a statement in the approved form containing such particulars of the policy and other information as the Commissioner requires in the particular case; and
- (b) subject to subsection (2)—pay to the Commissioner duty equivalent to 11% of any premium paid to the insurer in respect of the policy.
- 15 (2) The Commissioner may allow a rebate of the duty payable on the proportion of a premium that is, in the Commissioner's opinion, properly attributable to the insurance of property outside the State or a risk, contingency or event occurring outside the State.
- (3) Duty paid in accordance with this section must be denoted on the statement lodged under subsection (1).
- 20 (4) A company, person or firm that does not lodge a statement as required under this section is nevertheless liable to pay duty to the Commissioner as if the company, person or firm had lodged the statement required under this section immediately before the end of the period allowed for such lodgement.
- 25 (5) Subsection (1) does not apply to—
- (a) a policy of insurance under which the only insurance provided is life insurance; or
- (b) a premium paid to an insurer in respect of life insurance.

39—Insurers not required to be registered

- 30 (1) The Commissioner may enter into an agreement with an insurer who is not required to register under this Division under which—
- (a) the Commissioner approves the insurer for the purposes of this section; and
- 35 (b) the insurer undertakes to pay duty as if the insurer were required to be registered and were in fact registered under this Division.
- (2) A party to an agreement under this section may, by notice in writing to the other party, terminate the agreement at any time.

(3) If an insurer is neither required to be registered under this Division nor approved under this section, a person who pays a premium to the insurer must, within 21 days after the end of the month in which the premium was paid—

5 (a) furnish a statement to the Commissioner in the approved form stating the amount of premium; and

(b) pay to the Commissioner—

(i) if the premium relates to life insurance—duty equivalent to 1.5% of the premium; and

10 (ii) if the premium relates to any other kind of insurance—11% of the premium.

(4) This section does not apply in relation to a levy paid under the *Workers Rehabilitation and Compensation Act 1986*.

40—Duty payable on acquisition of insurance business

15 If a company, person or firm acquires contractual rights and obligations of, or in connection with, the insurance business of some other company, person or firm, the acquiring company, person or firm is liable to pay to the Commissioner the amount of any unpaid duty in respect of premiums paid to the other company, person or firm after the end of the period in respect of which such duty was last paid by the other company, person or firm as if those premiums had been paid to the acquiring company, person or firm.

41—Refunds

25 The following are to be taken to be overpayments of tax for the purposes of Part 4 of the *Taxation Administration Act 1996*:

(a) duty paid in respect of an amount of premium that has been refunded;

30 (b) duty paid in respect of a premium credited to an account of an insurer but not received by the insurer at the time the duty is paid if the policy in respect of which the premium was credited is cancelled before the insurer receives the premium.

5—Amendment of Schedule 2—Stamp duties and exemptions

(1) Schedule 2 Part 1 clause 1—delete the clause

35 (2) Schedule 2 Part 1 clause 12—delete the clause

Schedule 1—Transitional provision

1—Transitional provision

- 5 (1) An insurer that is licensed under Part 3 Division 3 of the *Stamp Duties Act 1923* immediately before the repeal of that Division by section 4 of this Act will be taken to be registered for the purposes of Part 3 Division 3 of the Act as inserted by that section.
- (2) In this clause—
insurer has the same meaning as in the *Stamp Duties Act 1923* (as amended by this Act).