

REPUBLIC OF SOUTH AFRICA

INSURANCE AMENDMENT BILL

(As introduced)

(MINISTER OF FINANCE)

[B 34—97]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP VERSEKERING

(Soos ingedien)

(MINISTER VAN FINANSIES)

[W 34—97]

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GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.
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BILL

To amend the Insurance Act, 1943, so as to preclude any agent, broker or other person who is not a registered insurer, from receiving on behalf of an insurer any premiums relating to short-term insurance business unless expressly authorized thereto in writing by the insurer concerned; to limit, to one per policy, the number of those that may be so authorized to receive such premiums from an insured who is a natural person; to provide that the security to be furnished by any such agent, broker or person for any such premiums received on behalf of an insurer, be increased; to provide for the protection of policyholders' interests also in the case where they pay their premiums to any such agent, broker or other person who has failed to furnish such security; and to provide for incidental matters.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 20bis of Act 27 of 1943, as inserted by section 17 of Act 10 of 1965, substituted by section 13 of Act 54 of 1989 and amended by section 5 of Act 104 of 1993

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1. Section 20bis of the Insurance Act, 1943, is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) (a) Subject to the provisions of [subsections (2), (3) and (4) no registered insurer shall authorize or permit an] this section—

(i) an agent, broker or other person, not being a registered insurer [to retain or deal with], may not receive any moneys in respect of premiums [received other than in terms of subsection (3)] relating to short-term insurance business on behalf of [such] an insurer [and relating to short-term insurance business carried on by such insurer] who carries on such business in the Republic, unless the insurer, expressly and in writing, has authorized such agent, broker or other person in that regard and the agent, broker or other person has furnished security in accordance with the

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- provisions of subsection (2): Provided that **[the provisions of this section are not applicable to a reinsurer or to premiums received in respect of a reinsurance policy]** no insurer may authorize more than one agent, broker or other person to receive any such moneys in respect of the same policy if it is a policy constituting personal lines business; 5
- (ii) no insurer may permit an agent, broker or other person authorized in terms of subparagraph (i), to retain or deal with any such moneys otherwise than in accordance with subsection (3). 10
- (b) The provisions of paragraph (a) shall not apply to a reinsurer or to premiums received in respect of a reinsurance policy. 10
- (c) For the purposes of paragraph (a), ‘personal lines business’ means short-term insurance business in the case where the insured is a natural person.”; 15
- (b) in subsection (2)— 15
- (i) by the substitution for the expression “20 per cent”, wherever it occurs in paragraph (b), of the expression “30 per cent”; and
- (ii) by the substitution for subparagraph (ii) of paragraph (c) of the following subparagraph: 20
- “(ii) accompanied by a report which, in the case of an agent, broker or other person registered as a company under the Companies Act, 1973 (Act No. 61 of 1973), has been prepared, in the form prescribed by regulation, by an auditor registered under the Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991), [and] or, in the case of any other agent, broker or person, has been so prepared by a person who qualifies as an accounting officer of a close corporation as contemplated in section 60 of the Close Corporations Act, 1984 (Act No. 69 of 1984), and who may not be in the service of the undertaking, but who shall act by special instruction in an independent capacity.”; and 25 30
- (c) by the substitution for subsection (5) of the following subsection: 35
- “(5) Payment of a premium, by a policyholder in terms of his insurance policy, to an agent, broker or other person **[referred to]** authorized in terms of subsection (1) shall be deemed to be payment in terms of such policy, whether such agent, broker or other person has furnished security in compliance with subsection (2), or not.”. 35

Short title and commencement

2. This Act will be called the Insurance Amendment Act, 1997, and will come into operation on a date to be determined by the President by proclamation in the *Gazette*. 40

MEMORANDUM ON THE OBJECTS OF THE INSURANCE AMENDMENT BILL, 1997

1. The legislative proposals contained in the Insurance Amendment Bill, 1997 (“the Bill”) are confined to the amendment of section 20*bis* of the Insurance Act, 1943 (Act No. 27 of 1943 — “the Act”), which prescribes the requirements for the retention of or dealing with short-term insurance premiums by insurance intermediaries, namely agents, brokers and other persons not being registered insurers. The purpose of the Bill is to remedy certain shortcomings in regard to those requirements, as mentioned hereunder.

2. (a) At present an insurer is, in terms of section 20*bis* of the Act, under a duty, in general, not to permit any intermediary to collect premiums on its behalf unless the intermediary complies with the requirements of that section (relating, mainly, to the furnishing of security). However, that section contains no provision prohibiting the collection of such premiums by intermediaries who are not authorised to do so and who do not comply with those requirements.

(b) During the past few months the Registrar of Insurance has also received numerous complaints from various parties (policyholders, intermediaries and insurers) regarding irregularities concerning the process of collecting short-term insurance premiums. Those irregularities range from fraud to non-compliance with and circumvention of the provisions of section 20*bis* of the Act. One of the *species* of circumvention that is rife, arises from the established practice of intermediaries who are responsible for collecting premiums on behalf of insurers, appointing “sub-agents” for collecting the premiums, which invariably results in more than one intermediary handling the premiums in respect of one and the same short-term insurance policy. This relatively long chain for collecting premiums has not only created unnecessary and unjustifiable costs for the insured, but has also made it extremely difficult for insurers to effectively administer their receipt of income derived from premiums. In fact, it may be said to jeopardise the security aspect of a premium-flow system.

The frequent occurrence of some of those irregularities, especially during the past few months, has prompted the Registrar of Insurance and the broking and insurance industries to take steps on an urgent basis to safeguard the interests of policyholders. The proposed amendments are synchronised with various other proposals to amend existing legislation relating to the collection of premiums in an attempt to address some of the major causes of concern. (The ultimate solution, of course, would be to require the registration of all insurance intermediaries and that they be made subject to some form of supervision, which is envisaged in the consultative document issued on retail investment services by the Policy Board on Financial Services and Regulation.)

With a view to remedying the abovementioned state of affairs, the Bill, in clause 1(a), proposes, firstly, to prohibit any insurance intermediary from receiving premiums on behalf of an insurer unless the intermediary has been expressly authorised thereto in writing by the insured and has furnished the prescribed security. (Failure to comply with these requirements once they have become law, will also constitute an offence — see section 73*bis* of the Act.) Secondly, that clause limits the number of intermediaries who may be so authorised to receive short-term insurance premiums, to one per policy in any case where the insured is a natural person.

3. Recent claims against intermediaries’ guarantees (which in fact constitute the security furnished by them) have shown that, due to the practice of collecting premiums on a monthly basis, the amount of any such guarantee, based, basically, on 20 per cent of the total amount of the premiums received by the intermediary during the previous financial year, is inadequate to safeguard insurers’ premium income. Clause 1(b) of the Bill seeks to remedy that inadequacy by increasing that percentage to 30 per cent.

4. Clause 1(c) of the Bill proposes the adjustment of subsection (5) of section 20*bis* so as to protect short-term insurance policyholders who have paid their premiums to

intermediaries who, although authorized in writing by the insurer to receive such premiums, have not furnished the prescribed security.

The proposed amendment will have the effect that an insurer will not be able to deny its liability, in terms of the policy, on account of not having received any premium in respect of the policy from an intermediary who, although duly authorised to receive such premium, has not furnished the requisite security (i.e., guarantee). (After all, since the responsibility to ensure that the intermediary furnishes the requisite security, lies with the insurer and not with the insured, the latter should not be prejudiced where that responsibility is shirked.)

5. The proposed amendments were also made available to the following parties for their comments:

The South African Insurance Association (SAIA)

The Financial Intermediaries Federation of South Africa (FIFSA)

The Ombudsman for Short-term Insurance

The Advisory Committee on Short-term Insurance

6. The view is held, in conformity with legal advice received, that Parliament, in dealing with the Bill, should follow the procedure contemplated in, and act in accordance with, section 75 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).