

REPUBLIC OF SOUTH AFRICA

INSURANCE AMENDMENT BILL

(As introduced in the National Assembly)

(MINISTER OF FINANCE)

[B 41—98]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP VERSEKERING

(Soos ingedien in die Nasionale Vergadering)

(MINISTER VAN FINANSIES)

[W 41—98]

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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.

BILL

To amend the Insurance Act, 1943, so as to prevent foreigners from conducting unauthorised insurance business in the Republic; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 27 of 1943, as amended by section 2 of Act 73 of 1951, section 39 of Act 24 of 1956, section 50 of Act 25 of 1956, section 1 of Act 79 of 1959, section 1 of Act 10 of 1965, section 1 of Act 41 of 1966, section 1 of Act 65 of 1968, section 1 of Act 39 of 1969, section 1 of Act 91 of 1972, section 1 of Act 101 of 1976, section 1 of Act 94 of 1977, section 1 of Act 80 of 1978, section 1 of Act 103 of 1979, section 1 of Act 99 of 1980, section 1 of Act 36 of 1981, section 1 of Act 86 of 1984, section 1 of Act 106 of 1985, section 7 of Act 44 of 1988, section 1 of Act 54 of 1989, section 29 of Act 97 of 1990, section 1 of Act 83 of 1992, section 1 of Act 104 of 1993, section 63 of Act 113 of 1993 and section 1 of Act 54 of 1996 5 10

1. Section 1 of the Insurance Act, 1943, is hereby amended—
 - (a) by the substitution for paragraph (c) of subsection (2) of the following paragraph:

“(c) a person shall, save in respect of business accepted by him by way of reinsurance, be deemed to be carrying on insurance business in the Republic if he is liable under a **[domestic]** policy falling within any class of long-term insurance business or related miscellaneous business—
 - (i) applied for in the Republic; or
 - (ii) entered into or altered because of inducement in the Republic by any person;”and
 - (b) by the deletion of paragraph (e) of subsection (2).

Short title

2. This Act is called the Insurance Amendment Act, 1998.

MEMORANDUM ON THE OBJECTS OF THE INSURANCE AMENDMENT BILL

PART I

The Bill proposes the amendment of the Insurance Act, 1943 (Act No. 27 of 1943). The amendments are explained below.

Amendment of section 1 of the Insurance Act, 1943

(a) *Current position*

In terms of section 1(2)(c) of the Insurance Act, 1943, a person is deemed to be carrying on an insurance business in the Republic if he or she is liable under a “domestic policy”, being a life policy. In terms of section 1(2)(e) a person is deemed to be carrying on an insurance business outside the Republic in all cases where the foregoing deeming provision does not apply.

(b) *New approach*

The reference to domestic policy is removed and replaced by a policy forming part of any class of long-term insurance business for which application was made or in relation to which an inducement took place in the Republic.

(c) *Reasons*

The current deeming provisions make it possible for foreign unregistered insurers to employ intermediaries in South Africa to canvass for business from South African residents. By issuing policies which are not “domestic policies” they are able to conduct business in the Republic effectively. Such insurers do not fall under the supervision of the Financial Services Board and do not comply with local regulatory requirements. This is undesirable and the proposed amendment will render such activities illegal.

PART II

Clause-by-clause analysis

2.1 Clause 1 proposes to amend section 1 (2)(c) and (e) of the Insurance Act, 1943, so as to prevent foreign persons from conducting unauthorised insurance business in the Republic.

2.2 Clause 2 contains the short title.

PART III

Consultation

The following parties were consulted:

- * Department of Finance
- * South African Revenue Services
- * Institute of Pension Consultants and Administrators
- * Bond Exchange of South Africa
- * Association of Unit Trusts
- * Old Mutual
- * South African Institute of Chartered Accountants
- * Council of South African Banks
- * Actuarial Society of South Africa
- * Johannesburg Stock Exchange
- * Institute of Retirement Funds
- * South African Futures Exchange
- * South African Reserve Bank

- * Institute of Life and Pension Advisers
- * Consulting Actuaries Society of South Africa
- * Life Offices' Association
- * Financial Intermediaries Federation of South Africa ("FIFSA") #
- * Consumer Institute of South Africa.

- # The following representative organisations are members of FIFSA:
- Life Underwriters Association of South Africa
 - South African Insurance Brokers Association; and
 - Insurance Brokers Council.

PART IV

Parliamentary Procedure

In the opinion of the Department of Finance and the State Law Advisers, the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996, since it contains no provision to which the procedures set out in section 74 or 76 of the Constitution apply.