



ANNO QUADRAGESIMO OCTAVO ET QUADRAGESIMO
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VICTORIÆ REGINÆ.

A.D. 1885.

No. 350.

An Act to amend the "Life Assurance Companies Act,
1882."

[Assented to, December 11th, 1885.]

WHEREAS it is expedient to amend the "Life Assurance Companies Act, 1882," for the purpose of more fully protecting, as against the creditors of persons assured, the property and interest of such persons, and their personal representatives, in and under policies of assurance issued by life companies in respect of the lives of such persons—Be it therefore Enacted by the Governor of the Province of South Australia, by and with the advice and consent of the Legislative Council and House of Assembly of the said province, in this present Parliament assembled, as follows:

Preamble.

1. This Act may be cited as the "Life Assurance Companies Act Amendment Act, 1885." Short title.

2. This Act, so far as is consistent with the tenor thereof, shall be construed as one with the "Life Assurance Companies Act, 1882," in this Act referred to as "the principal Act." Incorporation with the "Life Assurance Companies Act, 1882."

3. In this Act, unless the context otherwise requires, the word "Company" shall have the meaning given to it in section 3 of the principal Act— Interpretation.

"Policy" means any contract for assurance, endowment, or annuity, made *bonâ fide* with the person intended to be thereby assured, and on the life of such person:

"Assured" means the person in whose name, and on whose life, a policy is granted:

"Insolvency"

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“Insolvency” includes as well the case of the assured, being adjudicated insolvent, as the case of the assured making any deed of assignment, under the Insolvent Acts for the time being in force in the province:

“Protected” or “protection” means protected or protection from seizure or execution under process of any Court of this province, and from all liability to vest in the trustee or assignee in insolvency, or to pass to the trustee or assignee under any deed of assignment for the benefit of creditors, and from all liability to become assets in the hands of personal representatives for the payment of debts:

The term “moneys payable,” used in reference to any policy, means every sum payable by the Company issuing such policy under or by virtue thereof, and includes as well the amount originally assured, and every sum payable by way of bonus, profit, or dividend, as every sum payable upon the surrender of such policy as the surrender value thereof:

The term “moneys protected” means such portion of the moneys payable under the policies made on the life of the assured as is by this Act protected.

Interest of assured and personal representatives not to be available for payment of creditors within certain limits.

4. The property and interest of the assured in respect of any policy, or policies, and in the moneys payable thereunder, shall not, to the extent or limits provided in Schedule A to this Act, be liable to be seized or taken in execution under process of any Court; and, in the event of the insolvency of the assured, shall not to such extent or limit vest in the trustee or assignee of his estate; and on the death of the assured, the property and interest of his personal representatives, under or by virtue of such policy or policies, and in the moneys payable thereunder, shall not, to the like extent or limit, be assets for the payment of the debts of such person, but the same shall be protected to the extent or limit specified in the said Schedule A, subject, nevertheless, to the proviso contained in the next succeeding section of this Act.

Upon the happening of certain events, a trust to arise in respect of the moneys protected in favor of certain persons.

5. Upon the happening of any event (such as the insolvency of the assured, or his death, leaving liabilities in excess of assets, exclusive of any moneys payable under any existing policy or any other event) upon the happening whereof the moneys protected would, but for this Act, be liable to be seized or taken in execution, or to become assets for the payment of debts, there shall forthwith arise, in respect of the moneys protected, a trust in favor of one or more of the persons capable, under the provisions of Schedule B to this Act, of being the object or objects of such trust: Provided, that if at the time of the happening of any such event as aforesaid there shall not be any person so capable of being an object of trust, no trust shall arise, and no protection shall be afforded in respect of any moneys payable under any policy issued on the life of the assured.

If there are no persons capable of being objects of trust, no protection to be afforded.

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6. The assured may by his last will, or any codicil thereto, or should the event creating the trust happen during his lifetime, may, at any time, before, or at the time of, or within seven days after the happening of such event, by any deed, memorandum, or writing under his hand appoint from among the persons mentioned in the said Schedule B, such one or more of such persons as he shall choose to be the object or objects of the particular trust which shall so have arisen, and the moneys protected shall thereupon vest for the benefit of the objects so appointed, and in such shares or proportions as the assured shall in such deed, memorandum, writing, will, or codicil, mention.

Assured may appoint *cestui que trust* from certain classes, and apportion the moneys protected.

7. And in default of such appointment, or in so far as any such appointment shall not extend, the trust shall be in favor of such of the persons mentioned in the said Schedule B, and in such shares as would under the Statutes of Distribution and Act No. 324 of 1884, have been entitled to receive the same, and in which the same would have been distributed if the assured had died intestate, leaving a surplus of effects of the like value.

In default of such appointment, who are to be objects of the trust.

8. And the assured may by the same or any other deed, memorandum, will, or codicil under his hand, appoint a trustee or trustees of the moneys protected, and from time to time appoint a new trustee or new trustees thereof, and may make provision for the appointment of a new trustee or new trustees, and for the investment of the moneys protected. In default of any such appointment of a trustee, or until a trustee or trustees shall be appointed, the moneys protected shall be deemed to vest in the assured as aforesaid, or in his or her personal representatives in trust for the objects aforesaid.

Assured may appoint a trustee or trustees, and make provision for investment of the moneys protected.

9. If at any time there shall be no trustee, or it shall be expedient to appoint a new trustee or new trustees, a trustee or trustees, or a new trustee or new trustees may be appointed by any court having jurisdiction under the provisions of the "Trustee Act, 1855," or the Acts amending or extending the same.

Court may appoint trustee in certain cases.

10. The receipt of a trustee or trustees duly appointed, or in default of any such appointment, or in default of notice to the Company, the receipt of the assured or his legal personal representative shall be a discharge to such Company for the moneys thereby acknowledged to have been paid by such Company in respect of the moneys protected under any policy or policies issued by such Company.

Receipt of trustees or assured or personal representatives of assured to be a discharge to Company.

11. Immediately upon the happening of any such event as is mentioned in the fifth section of this Act, the person whose policy or policies shall be liable to be affected thereby, or his legal personal representative, or the trustee for the time being, shall forthwith give notice in writing thereof, and of the appointment of

Notice of protection and appointment of trustee to be given to Company.

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any such trustee as aforesaid to every Company which shall have issued or contracted to issue a policy or policies upon the life of such person; and after receipt of such notice the Company shall not pay over any moneys payable in respect of any such policy unless and until the moneys protected in respect thereof shall have been paid, or, with the approval of the trustee, otherwise provided for.

Trustees to have discretionary power to continue, surrender, or assign policies of the assured.

12. Every trustee appointed pursuant to this Act in respect of any policy or policies or any moneys protected, shall at all times after his appointment, and for so long as he shall continue such trustee or trustees, have discretionary power to permit any such policy or policies to continue in force during the life of the assured, for so long and upon such proper terms or covenants as to the payment of the premiums or other sums of money payable in order to keep the same in force as he shall think fit, or as he shall arrange with his *cestuis que* trust, or any of them, or with the creditors or any one or more of the creditors of the assured; or to surrender any such policy or policies to the Company or respective Companies which shall have issued the same for the full surrender value or surrender values thereof respectively; or to assign any such policy or policies to third parties for the best valuable consideration which can reasonably be obtained therefor: And all moneys coming to the hands of any such trustee or trustees by reason of any such assignment as aforesaid shall, to the limits provided in the said Schedule A, be deemed to be moneys protected

Moneys arising from assignment of policies by trustee to be deemed moneys protected.

Date appearing on face of policy or receipt to be *prima facie* evidence of date of signature or execution.

13. The date appearing upon any policy or premium receipt, and purporting to be the date of the signature or execution thereof, shall, for the purposes of this Act, be *prima facie* evidence of the due signature and execution of such policy or receipt on such date.

If more than one policy, equally chargeable with moneys protected, trustee to elect and notify Companies concerned.

14. In the event of there being more than one policy equally chargeable with the moneys protected, or any part thereof, the trustee of such moneys shall forthwith elect which of such policies shall be charged therewith, and to what amount, and shall notify his election to the Companies concerned, and, if no such election shall be made within seven days after the trust shall have first arisen, then all such policies shall be charged *pro rata* with such moneys in proportion to the amount expressed to be assured by them respectively: And every Company which shall be chargeable with any moneys hereby protected shall, if required by the trustee or trustees of such money so to do, cancel the original policy or policies issued by such Company in favor of the assured, and issue substituted policies of equal standing in the books of such Company with the former policy or policies respectively, and amounting in the aggregate to the amount of such former policy or policies; and one or more of such substituted policies shall be for the sum or sums payable by such Company on account of any moneys protected in favor of such trustee or trustees, and the other or others of such policies for the residue of the amount of such former policy or policies

Trustee may require Company to cancel original and issue substituted policies, of like amount.

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policies in favor of such person or persons as shall for the time being be entitled to receive the same, or in favor of whomsoever such last-mentioned person or persons may appoint.

15. Nothing in this Act contained shall affect the eleventh section of the "Married Women's Property Act, 1883-4."

Section 11 of Married Women's Property Act, 1883-4, not affected.

16. The thirty-third section of the principal Act is hereby repealed.

Repeal.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

WILLIAM C. F. ROBINSON, Governor.

SCHEDULES.

SCHEDULE A.

Limits of Protection.

Rule 1.—The limits to which protection shall be afforded in respect of valid and existing policies in the name and on the life of any one person, shall be determined according to the age of such policies, irrespective of the number thereof, or the amount of the moneys payable thereunder, and of the fact that they may not all have been issued by one Company, as follows:—viz.,

If the only policy, or the oldest of the several policies, shall be of the age of—

Two years or more, the limit shall be £200 of the sum assured, in addition to the declared bonus.

Three years or more, the limit shall be £300 of the sum assured, in addition to the declared bonus.

Four years or more, the limit shall be £400 of the sum assured, in addition to the declared bonus.

Five years or more, the limit shall be £500 of the sum assured, in addition to the declared bonus.

Six years or more, the limit shall be £800 of the sum assured, in addition to the declared bonus.

Seven years or more, the limit shall be £1,000 of the sum assured, in addition to the declared bonus.

Rule 2.—The moneys protected in respect of the same assured shall in no case exceed two thousand pounds in the aggregate of the sum assured, in addition to the declared bonus, and the maximum amount in any case shall not exceed the amount limited by Rule 1, in respect of a policy of the same age as the oldest policy existing in the name of the assured.

Rule 3.—If two or more policies shall exist in favor of the same assured, either in the same or in different offices, and any one of such policies shall be of sufficient age and amount to admit of all the moneys protected in respect of such assured being paid therefrom, such one policy alone may, in the discretion of the trustee or trustees of the moneys protected, be charged with the full amount protected: But if there shall not be one policy of such sufficient age and amount, then each of the policies of such assured shall be chargeable according to age (the earlier policies being preferred to the later) to the amount limited in each case by the first rule, until the full amount of the moneys protected shall be attained, which full amount shall in no case exceed the maximum amount limited by the second rule. If two or more policies in the name of the same assured are of the same age, or so nearly so as to be protectable to the same limit under rule 1, protection shall be afforded in respect thereof only to the amount which would have been protected if there had been but one policy of such age for the aggregate amount assured by all such policies. When the full amount shall be so attained, protection shall not be afforded in respect of the other (if any) remaining policies on the life of the same assured.

Rule 4.—The age of a policy shall be taken to be the period elapsed between the time when the same policy, or the first premium receipt in respect thereof, was *bond fide* executed or signed and the time of the arising of the trust in respect of the moneys payable thereunder.

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SCHEDULE B.

Objects of the Trust.

All, and any one or more, of the persons hereunder mentioned, shall be capable of being objects of the trust in respect of any moneys protected; namely:—The wife, husband, child or children, grandchild or grandchildren, father, mother, brother or brothers, sister or sisters, grandfather or grandmother of the assured.