

No. 4464.

An Act to amend the Law relating to Insurance.

[23rd December, 1936.]

BE it enacted by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say) :—

1. This Act may be cited as the *Instruments (Insurance Contracts) Act 1936* and shall be read and construed as one with Part III. of the *Instruments Act 1928* which Act and the Act amending the same and this Act may be cited together as the Instruments Acts.

Short title construction and citation.
Nos. 3706, 3998, 4370, 4428.

2. (1) No contract of insurance (other than a contract of life insurance) shall be avoided by reason only of any incorrect statement made by the proponent in any proposal or other document on the faith of which such contract was entered into revived or renewed by the insurer unless the statement so made was fraudulently untrue or material in relation to the risk of the insurer under the contract.

Insurance contracts (other than life insurance contracts) not to be avoided by incorrect statements of proponent unless fraudulently untrue, or material.

(2) (a) No contract of life insurance shall be avoided by reason only of any incorrect statement made by the proponent or insured in any proposal or other document on the faith of which such contract was entered into revived or renewed by the insurer unless the statement so made was fraudulently untrue or material in relation to the risk of the insurer under the contract.

Life insurance contracts not to be avoided by incorrect statements of proponent or insured unless fraudulently untrue or material.

(b) Nothing in the foregoing provisions of this sub-section—

Saving.

(i) shall operate so as to deprive any insured of any right or benefit under a contract of life insurance which but for such provisions he would have had; or

(ii) shall affect the provisions of section four hundred and seventy-five of the *Companies Act 1928*.

No. 3659 s. 475.

3. If

Maintenance of proceedings under insurance contracts not to be barred by failure of insured to give required notice owing to accident mistake or other reasonable cause.

3. If by reason of accident mistake or other reasonable cause any insured fails to give any notice or make any claim in the manner and within the time required by the contract of insurance such failure shall not be a bar to the maintenance of any proceedings (whether legal proceedings or arbitration proceedings) upon the contract by the insured unless the court or the arbitrator or umpire (as the case may be) considers that the insurer has been so prejudiced by such failure that it would be inequitable if such failure were not a bar to the maintenance of such proceedings.

Provisions with respect to arbitration in insurance contracts to be deemed submissions to arbitration within the meaning of No. 3637.

4. (1) Where any provision in any contract of insurance makes provision with respect to the settlement of disputes by arbitration that provision shall be deemed to be a submission within the meaning of the *Arbitration Act 1928* in which a contrary intention referred to in section four of that Act is not expressed, and the provisions of that Act shall notwithstanding anything in the contract apply accordingly.

Submission to arbitration not condition precedent to institution of legal proceedings by insured.

(2) The submission to arbitration of any claim by an insured upon a contract of insurance shall not be a condition precedent to the institution of proceedings in any court of competent jurisdiction by the insurer upon the contract of insurance.

Act to apply to all contracts of insurance and take effect notwithstanding anything in any agreement.

5. The provisions of this Act shall—

- (a) apply with respect to every contract of insurance whether made before or after the commencement of this Act ; and
- (b) take effect notwithstanding anything in any contract of insurance or other agreement whether made before or after the commencement of this Act :

Saving.

Provided that the provisions of this Act shall not apply with respect to any contract of insurance so far as relates to any claim which arose out of any event which occurred before the commencement of this Act.