



ANNO TRICESIMO QUINTO

ELIZABETHAE II REGINAE

A.D. 1986

No. 127 of 1986

An Act to amend the Motor Vehicles Act, 1959.

[Assented to 24 December 1986]

The Parliament of South Australia enacts as follows:

Short title.

1. (1) This Act may be cited as the "Motor Vehicles Act Amendment Act (No. 4), 1986".

(2) The Motor Vehicles Act, 1959, is in this Act referred to as "the principal Act".

Commencement.

2. This Act shall come into operation on a day to be fixed by proclamation.

Amendment of s. 99—
Preliminary.

3. Section 99 of the principal Act is amended by inserting after subsection (2) the following subsection:

(3) For the purposes of this Part and the fourth schedule, death or bodily injury shall not be regarded as being caused by or as arising out of the use of a motor vehicle if it is not a consequence of—

(a) the driving of the vehicle;

(b) the parking of the vehicle;

or

(c) the vehicle running out of control.

Repeal of s 123 and substitution of new section.

4. Section 123 of the principal Act is repealed and the following section is substituted:

Right of insurer against unauthorized driver of vehicle.

123. Where a person without lawful excuse drives a motor vehicle without first obtaining the consent of its owner, the insurer may, by action in a court of competent jurisdiction, recover from the person any money paid or costs incurred by the insurer in respect of a claim for death or bodily injury caused by his or her driving.

5. Section 124a of the principal Act is repealed and the following sections are substituted:

Repeal of s. 124a
and substitution
of new sections.

124a. (1) Where an insured person incurs a liability against which he or she is insured under this Part and the insured person has contravened or failed to comply with a term of the policy of insurance—

Recovery by the
insurer.

(a) by driving a motor vehicle while so much under the influence of intoxicating liquor or a drug as to be incapable of exercising effective control of the vehicle;

or

(b) by driving a motor vehicle while there is present in his or her blood a concentration of .15 grams or more of alcohol in a hundred millilitres of blood,

the insurer may, by action in a court of competent jurisdiction, recover from the insured person any money paid or costs incurred by the insurer in respect of that liability.

(2) Where an insured person incurs a liability against which he or she is insured under this Part and the insured person has, to the prejudice of the insurer—

(a) contravened or failed to comply with a term of the policy of insurance other than one referred to in subsection (1);

or

(b) contravened or failed to comply with—

(i) a requirement of section 124;

or

(ii) a provision of section 126,

the insurer may, by action in a court of competent jurisdiction, recover from the insured person so much of the money paid or costs incurred by the insurer in respect of that liability as the court thinks just and reasonable in the circumstances.

124ab. (1) Where an insured person incurs a liability against which he or she is insured under this Part and the liability arises out of an accident which was to the extent of more than 25 per cent the fault of the insured person, the insurer may recover from the insured person as a debt—

Recovery of an
excess in certain
cases.

(a) where the money paid and costs incurred by the insurer in respect of the liability does not exceed \$200—the amount of that money paid and costs incurred;

and

(b) where the money paid and costs incurred by the insurer exceed \$200—\$200.

(2) The insurer is not entitled to recover an amount under subsection (1) if the insurer exercises any other right of recovery against the insured person under this Part.

Repeal of s. 127
and substitution
of new section.

6. Section 127 of the principal Act is repealed and the following section is substituted:

Medical
examination of
claimants.

127. (1) In this section—

“claimant” means a person who has made a claim, or on whose behalf a claim has been made, for bodily injury caused by or arising out of the use of a motor vehicle.

(2) A claimant shall—

(a) submit himself or herself to any medical examination by a legally qualified medical practitioner nominated by the insurer that the insurer may require;

(b) within 21 days of consulting a legally qualified medical practitioner in relation to the injury to which the claim relates, or such longer period as may be reasonable in the circumstances of the case or as the insurer may allow, inform the insurer, by notice in writing, of—

(i) the name of the medical practitioner:

and

(ii) the day on which the consultation occurred;

and

(c) within 21 days of receiving (either personally or through a legal practitioner engaged by the claimant) a written report from a legally qualified medical practitioner consulted by the claimant in relation to the injury, or such longer period as may be reasonable in the circumstances of the case, send a copy of that report to the insurer.

(3) A claimant shall not be required to submit to a medical examination under subsection (2) (a) more frequently than is permitted by the regulations.

(4) The cost of a medical examination under subsection (2) (a) shall be borne by the insurer.

(5) If a claimant fails to comply with subsection (2) (a)—

(a) the claimant is not entitled, until he or she complies with the subsection, to commence proceedings or to continue proceedings that have been commenced in respect of the injury;

(b) if proceedings have been commenced, the court may award costs against the claimant;

and

(c) the claimant is not entitled to damages or compensation for any period during which the failure continues.

(6) If a claimant fails to comply with subsection (2) (b) or (c) and proceedings have been commenced before a court—

(a) the court may award costs against the claimant;

and

(b) the court may take that failure into account in assessing an award of compensation in favour of the claimant.

(7) In deciding on an award of costs under subsection (6) (a) or a reduction in an award of compensation under subsection (6) (b), the court may take into account—

(a) the effect that the non-compliance with subsection (2) (b) or (c) has had on the proper conduct of the case by any other party to the action;

and

(b) the effect that that non-compliance may have had on the possibility of settling the case before trial.

(8) Where a written report is obtained by the insurer on the findings made, or the opinions formed, by a legally qualified medical practitioner on the examination of a claimant under subsection (2) (a), the insurer shall, within 21 days of receiving the report, send a copy of the report to the claimant (or a legal practitioner engaged by the claimant).

7. The fourth schedule to the principal Act is amended by inserting after clause 2 (a) (i) the following subparagraph:

Amendment of
fourth schedule.

(ia) while there is present in his or her blood a concentration of .15 grams or more of alcohol in a hundred millilitres of blood;

8. The amendments made by this Act do not affect a cause of action, right or liability that arose before the commencement of this Act.

Transitional
provision.

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

D. B. DUNSTAN, Governor