

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

The circumstances under which a person may insure the life or health of another are not currently addressed in Florida statutes. However, the requirements have been established by Florida courts.¹ The bill permits a person to insure the life or health of another only if benefits are payable to the person insured under the policy, the insured's personal representatives, or someone with a sufficient interest, known as an insurable interest, in the insured. The concept of insurable interest, previously undefined with respect to life, health, and disability policies, is clarified through an exhaustive listing of relationships that create an insurable interest in the person to be insured. In addition to the insurable interest requirement, the person to be insured must consent to issuance the policy,² with limited exceptions.

The bill addresses whether, under Florida law, trusts and trustees have an insurable interest in the life of the trust grantor. Whether a trustee of an irrevocable life insurance trust, a common estate planning technique, has an insurable interest in the life of the trust grantor has been a source of uncertainty among estate planners and life insurance professionals. To avoid this uncertainty, some estate planning professionals have taken the position that the only safe way to implement an irrevocable life insurance trust is for the grantor first to obtain the policy on his/her own life and then transfer the policy to the trust. However, such arrangement could significantly compromise the tax benefits sought from a life insurance trust as the grantor would have to live for at least three years after the transfer of the policy to exclude the proceeds from the grantor's estate for federal estate tax purposes. Pursuant to the bill, trusts and trustees have an insurable interest in the life of the trust grantor (and closely related persons) under life insurance policies owned by the trust when proceeds from the policies are primarily for the benefit of trust beneficiaries who have an insurable interest in life of the person insured.

The bill also provides that when benefits are paid under a policy that was improperly issued for lack of an insurable interest, the person insured under the policy or the insured's personal representatives may bring an action to recover the benefits to the person to whom they were paid.

The bill does not apply to policies not issued for delivery in Florida or that are not issued in Florida.

Insurable Interest

A person with legal capacity may insure his/her life or health for the benefit of someone else. However, when a person seeks to insure someone else, benefits under the policy must be payable to the person to be insured, the insured's personal representatives, or a person with a sufficient interest, known as an insurable interest, in the insured. If benefits are not payable to the insured or a person with an insurable interest in the insured, the transaction is considered to be a wagering contract. In such circumstances, the beneficiary does not have an interest in the continued life or health of the insured, but has a financial incentive to harm or murder the insured to collect the proceeds of the insurance policy. Wagering contracts are prohibited under common law, are generally void ab initio, and are

¹ See, for example, *Knott v. State ex. Rel. Guar. Income Life Ins. Co.*, 136 Fla, 184, 186 So. 788, 790 (1939); *Life Insurance Company of Georgia v. Lopez*, 443 So. 2d 947 (Fla. 1983).

² *Lopez v. Life Insurance Company of America*, 406 So. 2d 1155 (Fla. 4th DCA 1981).

against public policy of the State of Florida. The insurable interest required by the bill must be present when coverage begins, but may subsequently cease to exist without affecting the continued validity of the policy. The bill is intended to clarify and codify existing law. The bill does not appear to affect viatical settlement transactions; transactions under which the owner of a life insurance policy sells the policy to another for less than the expected death benefit under the policy.

The bill lists relationships that create an insurable interest in the person to be insured under life, health, and disability insurance policies. Specifically, individuals have an insurable interest in close family members with whom they enjoy loving relationships and in persons whose continued good health or subsequent demise creates, respectively, an expectation of substantial gain or loss. Business entities have an insurable interest in owners of the business and key employees. Parties to a contract for the purchase or sale of a business entity have an insurable interest in the lives of other parties to the contract solely for purposes of the contract. Guardians or other fiduciaries have an insurable interest in the lives of persons for whom they hold property in a fiduciary capacity, and in the lives of any other persons in whose life such person has an insurable interest so long as the life insurance proceeds are primarily for the benefit of persons having an insurable interest in the life of the insured. Charitable organizations have an insurable interest in the life of any person who consents in writing to the organization's ownership or purchase of insurance on that person and employee benefit and retirement plans have an insurable interest in the life of any plan participant who consents in writing to issuance of a policy insuring that participant. Further, trusts and trustees have an insurable interest in the life of the trust grantor, an individual closely related by blood or law to the grantor, or an individual in whom the grantor has an insurable interest under life insurance policies owned by the trust when the life insurance proceeds are primarily for the benefit of trust beneficiaries having an insurable interest in the life of the person insured. The latter issue has been a source of uncertainty among estate planning and life insurance professionals seeking to establish valid irrevocable life insurance trusts for their clients.

In addition to the insurable interest requirement, the person to be insured must consent to issuance of the policy. Consent of the insured is not required for a person with an insurable interest to insure the life of a minor younger than 15 years of age or for any person upon whom a minor younger than 15 years of age is dependent for support and maintenance to insure the life of the minor. Additionally, consent of the insured is not required with respect to policies of group life insurance or group or blanket accident, health or disability insurance.

When benefits are paid under a policy that is issued without the requisite insurable interest, the person insured under the policy or the insured's personal representatives may bring an action to recover benefits from the person to whom they were paid.

C. SECTION DIRECTORY:

Section 1: Amends 627.404, F.S., relating to insurable interest; personal insurance.

Section 2: Specifies that the amendments to 627.404, F.S., are intended to clarify existing law.

Section 3: Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Clarifying requirements for issuance of personal insurance policies may cause insurers issuing policies in Florida to re-evaluate their underwriting procedures for many existing and future policies.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision does not apply because this bill does not: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided in this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Real Property, Probate and Trust Law Section of the Florida Bar supports this bill because it clarifies when trusts and trustees have an insurable interest in the life of the trust grantor.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 6, 2008, the Committee on Insurance adopted one amendment which:

- Clarifies the concept of insurable interest by deleting internally inconsistent and ambiguous language.
- Permits businesses to insure any key person, not only those whose death or disability would cause the business to incur "substantial pecuniary loss," with the person's written consent, and prohibits businesses from retaliating against those who do not consent.

- Clarifies conditions under which guardians, trustees, and other fiduciaries have an insurable interest in beneficiaries of life insurance policies.

On March 27, 2008, the Jobs & Entrepreneurship Council adopted one amendment. The amendment generally requires the person to be insured to consent to issuance of the insurance policy, but permits a person with an insurable interest in a minor younger than 15 years of age or a person upon whom a minor of such age is dependent for support and maintenance to effectuate a policy of insurance on the minor.