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INSURABLE INTEREST AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ross I. Romero

House Sponsor: Kevin S. Garn

LONG TITLE

General Description:

This bill modifies the Insurance Code to address insurable interest requirements.

Highlighted Provisions:

This bill:

- ▶ addresses what constitutes an insurable interest;
- ▶ addresses when an insurable interest requirement is to be met;
- ▶ provides for how insurable interests of employers or trusts are to be treated;
- ▶ addresses scope of the provisions; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides revisor instructions.

Utah Code Sections Affected:

AMENDS:

31A-21-104, as last amended by Chapter 81, Laws of Utah 2003

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **31A-21-104** is amended to read:

31A-21-104. Insurable interest and consent.



28 (1) As used in this chapter:

28a **§→ (a) For purposes of this section, "exchange" means an exchange made pursuant to Section**
 28b **1035, Internal Revenue Code, as may be amended.**

29 ~~[(a)] (b) ←§~~ "Insurable interest" in a person means the following, including a circumstance
 30 described in Subsection (3):

31 (i) for persons closely related by blood or by law, a substantial interest engendered by
 32 love and affection; or

33 (ii) in the case of other persons, a lawful and substantial interest in having the life,
 34 health, and bodily safety of the person insured continue.

35 **§→ [(b)] (c) ←§** "Insurable interest" in property or liability means any lawful and substantial
 36 economic interest in the nonoccurrence of the event insured against.

37 **§→ [(c)] (d) ←§** "Viatical settlement" is as defined in Section 31A-36-102.

38 ~~[(1)]~~ (2) (a) An insurer may not knowingly provide insurance to a person who does not
 39 have or expect to have an insurable interest in the subject of the insurance.

40 (b) A person may not knowingly procure, directly, by assignment, or otherwise, an
 41 interest in the proceeds of an insurance policy unless that person has or expects to have an
 42 insurable interest in the subject of the insurance.

43 (c) In the case of life insurance, the insurable interest requirements of Subsections
 44 (2)(a) and (b):

45 (i) are satisfied if the requirements are met:

46 (A) at the effective date of the insurance policy; §→ [or] and ←§

47 (B) at the time of a later procurement §→, if any, ←§ of an interest in the proceeds of an
 47a insurance
 48 policy; and

49 (ii) do not need to be met at the time that proceeds of an insurance policy are payable if
 50 the requirements are met at §→ [a-time] the times ←§ specified in Subsection (2)(c)(i).

51 ~~[(c)]~~ (d) Except as provided in Subsections [(6), (7), and (8)] (7), (8), and (9), any
 52 insurance provided in violation of this Subsection [(1)] (2) is subject to Subsection [(5)] (6).

53 ~~[(2) As used in this chapter:]~~

54 ~~[(a) (i) "Insurable interest" in a person means:]~~

55 ~~[(A) for persons closely related by blood or by law, a substantial interest engendered by~~
 56 ~~love and affection; or]~~

57 ~~[(B) in the case of other persons, a lawful and substantial interest in having the life,~~
 58 ~~health, and bodily safety of the person insured continue.]~~

59 ~~[(ii) Policyholders]~~ (e) A policy holder in a group insurance ~~[contracts do]~~ ~~§→~~ **[contract]**
59a **policy ←§**
60 does not need an insurable interest if a certificate ~~[holders]~~ holder or ~~[persons]~~ a person other
61 than the group ~~§→~~ ~~[policyholders who are]~~ **policyholder who is ←§** specified by the certificate
61a ~~[holders are the recipients]~~
62 holder is the recipient of the proceeds of the ~~[policies]~~ group insurance ~~§→~~ **[contract] policy ←§** .
63 (3) The following is a nonexhaustive list of insurable interests:
64 ~~[(iii)]~~ (a) Each person has an unlimited insurable interest in ~~[the]~~ that person's own life
65 and health.
66 ~~[(iv)]~~ (b) A shareholder, member, or partner has an insurable interest in the life of other
67 shareholders, members, or partners for purposes of insurance contracts that are an integral part
68 of a legitimate buy-sell agreement respecting shares, membership interests, or ~~[a]~~ partnership
69 ~~[interest]~~ interests in the business.
69a ~~§→~~ **(c) A trust has an insurable interest in the subject of the insurance to the extent that a**
69b **beneficiary of the trust has the insurable interest. ←§**
70 ~~[(v)]~~ ~~§→~~ ~~[(c)]~~ (d) ~~←§~~ (i) Subject to Subsection ~~[(9)]~~ (3) ~~§→~~ ~~[(c)]~~ (d) ~~←§~~ (v), an employer
70a or an employer
71 sponsored trust ~~[for the benefit of the employer's employees]:~~
72 (A) has an insurable interest in the lives of the employer's:
73 (I) directors;
74 (II) officers;
75 (III) managers;
76 (IV) nonmanagement employees; and
77 (V) retired employees; and
78 (B) may insure the lives listed in Subsection ~~[(2)(a)(v)(A)]~~ (3) ~~§→~~ ~~[(c)]~~ (d) ~~←§~~ (i)(A):
79 (I) on an individual or group basis; and
80 (II) with the written consent of the insured.
81 ~~[(b) "Insurable interest" in property or liability means any lawful and substantial~~
82 ~~economic interest in the nonoccurrence of the event insured against.]~~
83 ~~[(c) "Viatical settlement" is as defined in Section 31A-36-102.]~~
84 (ii) (A) A trustee of a trust established by an employer for the sole benefit of the
85 employer has the same insurable interest in the life and health of any person as does the
86 employer.
87 (B) Without limiting the general principle in Subsection (3) ~~§→~~ ~~[(c)]~~ (d) ~~←§~~ (ii)(A), a
87a trustee of a
88 trust established by an employer that provides life, health, disability, retirement, or similar
89 benefits ~~§→~~ **to an individual identified in Subsection (3)(d)(i)(A) ←§** has an insurable interest in
89a the ~~§→~~ **[lives] life ←§** of the ~~§→~~ **[following individuals if the individual is to] ←§**

90 ~~§~~ → [be provided life, health, disability, retirement, or similar benefits from the trust:
91 ~~— (f) an~~ ← ~~§~~ individual described in Subsection (3) ~~§~~ → ~~[(c)] (d) ← §~~ (i)(A) ~~§~~ → ~~;~~ or
92 ~~— (H) a dependent or beneficiary of an individual described in Subsection (3) §~~ → ~~[(c)] (d) ← §~~
92a ~~(i)(A)] for whom the benefits are provided ← §~~ .
93 (iii) (A) For the purpose of exchanging life insurance, the individuals described in
94 Subsection (3) ~~§~~ → ~~[(c)] (d) ← §~~ (i)(A) include an individual who was formerly included under
94a Subsection
95 (3) ~~§~~ → ~~[(c)] (d) ← §~~ (i)(A) if the life insurance to be exchanged:
96 (I) is purchased or acquired while the individual is a current director, officer, manager,
97 or employee; and
98 (II) is exchanged for life insurance in an amount that does not exceed the amount of the
99 insurance being exchanged.
100 (B) Written consent of an individual described in this Subsection (3) ~~§~~ → ~~[(c)] (d) ← §~~ (iii)
100a is not
101 required at the time of the exchange of the life insurance.
102 (C) This Subsection (3) ~~§~~ → ~~[(c)] (d) ← §~~ (iii) shall be interpreted in a manner consistent
102a with
103 Subsection (2)(c).
104 (iv) (A) If an employer or trustee establishes an insurable interest as provided in this
105 Subsection (3) ~~§~~ → ~~[(c)] (d) ← §~~ and all of the employer's business is acquired, purchased, merged
105a into, or
106 otherwise transferred to a subsequent employer, the insurable interest of the original employer
107 or trustee in an individual described in Subsection (3) ~~§~~ → ~~[(c)] (d) ← §~~ (i)(A) is automatically
107a transferred to:
108 (I) the subsequent employer; or
109 (II) the trustee of a trust established by the subsequent employer for the subsequent
110 employer's sole benefit.
111 (B) A subsequent employer or a trustee of a trust described in Subsection
112 (3) ~~§~~ → ~~[(c)] (d) ← §~~ (iv)(A)(II) may exchange life insurance that is purchased or acquired in an
112a individual
113 described in Subsection (3) ~~§~~ → ~~[(c)] (d) ← §~~ (i)(A) by the original employer or trustee without
113a establishing a
114 new insurable interest at the time of the exchange of the insurance.
115 (v) The extent of an employer's or employer sponsored trust's insurable interest for a
116 nonmanagement ~~§~~ → ~~[and] or ← §~~ retired employee under Subsection (3) ~~§~~ → ~~[(c)] (d) ← §~~ (i) is
116a limited to an amount
117 commensurate with the employer's unfunded liabilities ~~§~~ → ~~at the time insurance on the~~
117a ~~nonmanagement or retired employee is procured ← §~~ .

118 [~~3~~] (4) (a) Except as provided in Subsection [~~(4)~~] (5), an insurer may not knowingly
119 issue an individual life or accident and health insurance policy to a person other than the one
120 whose life or health is at risk unless that person[~~;~~who]:

121 (i) is 18 years of age or older ~~[and]~~;
122 (ii) ~~is~~ not under guardianship under Title 75, Chapter 5, Protection of Persons Under
123 Disability and Their Property~~[, has given]~~; and

124 (iii) gives written consent to the issuance of the policy.

125 (b) A person shall express consent:

126 (i) by signing an application for the insurance with knowledge of the nature of the
127 document; or

128 (ii) in any other reasonable way.

129 (c) Any insurance provided in violation of this Subsection ~~[(3)]~~ (4) is subject to
130 Subsection ~~[(5)]~~ (6).

131 ~~[(4)]~~ (5) (a) A life or accident and health insurance policy may be taken out without
132 consent in a circumstance described in this Subsection ~~[(4)]~~ (5)(a).

133 (i) A person may obtain insurance on a dependent who does not have legal capacity.

134 (ii) A creditor may, at the creditor's expense, obtain insurance on the debtor in an
135 amount reasonably related to the amount of the debt.

136 (iii) A person may obtain life and accident and health insurance on an immediate
137 family member who is living with or dependent on the person.

138 (iv) A person may obtain an accident and health insurance policy on others that would
139 merely indemnify the policyholder against expenses the person would be legally or morally
140 obligated to pay.

141 (v) The commissioner may adopt rules permitting issuance of insurance for a limited
142 term on the life or health of a person serving outside the continental United States who is in the
143 public service of the United States, if the policyholder is related within the second degree by
144 blood or by marriage to the person whose life or health is insured.

145 (b) Consent may be given by another in a circumstance described in this Subsection
146 ~~[(4)]~~ (5)(b).

147 (i) A parent, a person having legal custody of a minor, or a guardian of a person under
148 Title 75, Chapter 5, Protection of Persons Under Disability and Their Property, may consent to
149 the issuance of a policy on a dependent child or on a person under guardianship under Title 75,
150 Chapter 5, Protection of Persons Under Disability and Their Property.

151 (ii) A grandparent may consent to the issuance of life or accident and health insurance

152 on a grandchild.

153 (iii) A court of general jurisdiction may give consent to the issuance of a life or
154 accident and health insurance policy on an ex parte application showing facts the court
155 considers sufficient to justify the issuance of that insurance.

156 [~~(5)~~] (6) (a) An insurance policy is not invalid because ~~§~~ → [the policyholder lacks insurable
157 interest or because] :

157a **(i) the insurance policy is issued or procured in violation of Subsection (2); or**

157b **(ii) ←§** consent has not been given.

158 (b) Notwithstanding Subsection [~~(5)~~] (6)(a), a court with appropriate jurisdiction may:

159 (i) order the proceeds to be paid to some person who is equitably entitled to the
160 proceeds, other than the one to whom the policy is designated to be payable; or

161 (ii) create a constructive trust in the proceeds or a part of the proceeds on behalf of
162 [~~such~~] a person who is equitably entitled to the proceeds, subject to all the valid terms and
163 conditions of the policy other than those relating to insurable interest or consent.

164 [~~(6)~~] (7) This section does not prevent any organization described under 26 U.S.C. Sec.
165 501(c)(3), (e), or (f), as amended, and the regulations made under this section, and which is
166 regulated under Title 13, Chapter 22, Charitable Solicitations Act, from soliciting and
167 procuring, by assignment or designation as beneficiary, a gift or assignment of an interest in
168 life insurance on the life of the donor or assignor or from enforcing payment of proceeds from
169 that interest.

170 [~~(7)~~] (8) An insurance policy transferred pursuant to Chapter 36, Viatical Settlements
171 Act, is not subject to Subsection [~~(5)~~] (6)(b) and nothing else in this section shall prevent:

172 (a) any policyholder of life insurance, whether or not the policyholder is also the
173 subject of the insurance, from entering into a viatical settlement;

174 (b) any person from soliciting a person to enter into a viatical settlement;

175 (c) a person from enforcing payment of proceeds from the interest obtained under a
176 viatical settlement; or

177 (d) a provider of viatical settlements, a purchaser of a viatical settlement, a financing
178 entity, a related provider trust, or a special purpose entity from executing any of the following
179 with respect to the death benefit or ownership of any portion of a viaticated policy as provided
180 for in Section 31A-36-109:

181 (i) an assignment;

182 (ii) a sale;

- 183 (iii) a transfer;
 184 (iv) a devise; or
 185 (v) a bequest.

186 ~~[(8)]~~ (9) Notwithstanding Subsection ~~[(1)]~~ (2), an insurer authorized under this title to
 187 issue a workers' compensation policy may issue a workers' compensation policy to a sole
 188 proprietorship, corporation, or partnership that elects not to include any owner, corporate
 189 officer, or partner as an employee under the policy even if at the time the policy is issued the
 190 sole proprietorship, corporation, or partnership has no employees.

191 ~~[(9) The extent of an employer's or employer sponsored trust's insurable interest for a~~
 192 ~~nonmanagement and retired employee under Subsection (2)(a)(v) is limited to an amount~~
 193 ~~commensurate with the employer's unfunded liabilities.]~~

194 (10) (a) The insurable interests described in this section:

195 (i) are not exclusive;

196 (ii) are cumulative of an insurable interest that is not expressly included in this section
 197 but exists in common law; and

198 (iii) ~~§~~ → [is] are ← ~~§~~ not in lieu of an insurable interest that is not expressly included in this
 198a section

199 but exists in common law.

200 (b) The inclusion of an insurable interest in this section may not be considered to be
 201 excluding another insurable interest that is similar to the insurable interest included in this
 202 section.

203 (c) (i) The recognition of an insurable interest in this section by this bill does not imply
 204 or create a presumption that the insurable interest did not exist before April 30, 2007.

205 (ii) An insurable interest shall be presumed with respect to a life insurance policy
 206 issued before April 30, 2007 to a person whose insurable interest is recognized in this section
 207 by this bill.

208 **Section 2. Revisor instructions.**

209 It is the intent of the Legislature that in preparing the Utah Code database for
 210 publication, the Office of Legislative Research and General Counsel shall replace the
 211 references in Subsection 31A-21-104(10)(c) from "this bill" to the bill's designated chapter
 212 number in the Laws of Utah.

Legislative Review Note

as of 1-29-07 11:14 AM

Office of Legislative Research and General Counsel

S.B. 77 - Insurable Interest Amendments

Fiscal Note

2007 General Session
State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals or local governments. Enactment may have a positive impact on the life insurance portfolio values of businesses that invest in life insurance policies on current and former employees.

1/30/2007, 3:20:45 PM, Lead Analyst: Eckersley, S.

Office of the Legislative Fiscal Analyst