CHAPTER 2008-36

Committee Substitute for Senate Bill No. 648

An act relating to insurable interests; amending s. 627.404, F.S.; providing definitions; providing for the requirement of an insurable interest in an insured at the time of an insurance contract; providing for actions by the insured to recover benefits under such a contract paid to a person lacking such an interest at the time such contract was executed; requiring the consent of the person insured for certain contracts; providing exceptions; providing applicability; providing intent; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 627.404, Florida Statutes, is amended to read:

627.404 Insurable interest; personal insurance.—

(1) Any individual of legal capacity may procure or effect an insurance contract on his or her own life or body for the benefit of any person, but no person shall procure or cause to be procured or effected an insurance contract on the life or body of another individual unless the benefits under such contract are payable to the individual insured or his or her personal representatives, or to any person having, at the time such contract was made, an insurable interest in the individual insured. The insurable interest need not exist after the inception date of coverage under the contract.

(2) For purposes of this section, the term:

(a) "Business entity" includes, but is not limited to, a joint venture, partnership, corporation, limited liability company, and business trust.

(b) "Insurable interest" as to life, health, or disability insurance includes only the following interests:

1. An individual has an insurable interest in his or her own life, body, and health.

2. An individual has an insurable interest in the life, body, and health of another person to whom the individual is closely related by blood or by law and in whom the individual has a substantial interest engendered by love and affection.

3. An individual has an insurable interest in the life, body, and health of another person if such individual has an expectation of a substantial pecuniary advantage through the continued life, health, and safety of that other person and consequent substantial pecuniary loss by reason of the death, injury, or disability of that other person.

4. An individual party to a contract for the purchase or sale of an interest in any business entity has an insurable interest in the life of each other party to such contract for the purpose of such contract only.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

5. A trust, or the trustee of a trust, has an insurable interest in the life of an individual insured under a life insurance policy owned by the trust, or the trustee of the trust acting in a fiduciary capacity, if the insured is the grantor of the trust; an individual closely related by blood or law to the grantor; or an individual in whom the grantor otherwise has an insurable interest if, in each of the situations described in subsection (5), the life insurance proceeds are primarily for the benefit of trust beneficiaries having an insurable interest in the life of the insured.

6. A guardian, trustee, or other fiduciary, acting in a fiduciary capacity, has an insurable interest in the life of any person for whose benefit the fiduciary holds property, and in the life of any other individual in whose life the 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.

7. A charitable organization meeting the requirements of s. 501(c)(3) of the United States Internal Revenue Code, as amended, has an insurable interest in the life of any person who consents in writing to the organization's ownership or purchase of that insurance.

8. A trustee, sponsor, or custodian of assets held in any plan governed by the Employee Retirement Income Security Act of 1974, 29 U.S.C. ss. 1001 et seq., or in any other retirement or employee benefit plan, has an insurable interest in the life of any participant in the plan with the written consent of the prospective insured. An employer, trustee, sponsor, or custodian may not retaliate or take adverse action against any participant who does not consent to the issuance of insurance on the participant's life.

9. A business entity has an insurable interest in the life, body, and health of any of the owners, directors, officers, partners, and managers of the business entity or any affiliate or subsidiary of the business entity, or key employees or key persons of the business entity or affiliate or subsidiary, if consent is obtained in writing from the key employees or persons before the insurance is purchased. The business entity or affiliate or subsidiary may not retaliate or take adverse action against any key employee or person who does not consent to the issuance of insurance on the key employee or key person's life. For purposes of this subsection, a "key employee" or "key person" means an individual whose position or compensation is described in s. 101(j)(2)(A)(ii) of the Internal Revenue Code of 1986.

(3)~~(1)~~ An insurer shall be entitled to rely upon all statements, declarations, and representations made by an applicant for insurance relative to the insurable interest which such applicant has in the insured; and no insurer shall incur any legal liability except as set forth in the policy, by virtue of any untrue statements, declarations, or representations so relied upon in good faith by the insurer.

(4) If the beneficiary, assignee, or other payee under any insurance contract procured by a person not having an insurable interest in the insured at the time such contract was made receives from the insurer any benefits thereunder by reason of the death, injury, or disability of the insured, the insured or his or her personal representative or other lawfully acting agent

may maintain an action to recover such benefits from the person receiving them.

(5) A contract of insurance upon a person, other than a policy of group life insurance or group or blanket accident, health, or disability insurance, may not be effectuated unless, on or before the time of entering into such contract, the person insured, having legal capacity to contract, applies for or consents in writing to the contract and its terms, except that any person having an insurable interest in the life of a minor younger than 15 years of age or any person upon whom a minor younger than 15 years of age is dependent for support and maintenance may effectuate a policy of insurance on the minor.

(6) For purposes of this section, the signature of the proposed insured, having capacity to contract, on the application for insurance shall constitute his or her written consent.

(7) This section does not apply to any policy of life insurance to which s. 624.402(8) applies.

~~(2) A charitable organization that meets the requirements of s. 501(c)(3) of the Internal Revenue Code of 1986, as amended, may own or purchase life insurance on an insured who consents to the ownership or purchase of that insurance.~~

Section 2. The amendments to s. 627.404, Florida Statutes, made by this act are intended to clarify existing law.

Section 3. This act shall take effect July 1, 2008.

Approved by the Governor May 28, 2008.

Filed in Office Secretary of State May 28, 2008.