

191 Peachtree Street
Atlanta, Georgia 30303-1763
www.kslaw.com

Benjamin H. Pruett
Direct Dial: 404-572-2469
Direct Fax: 404-572-5139
bpruett@kslaw.com

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Faryl S. Moss, Esq.
Faryl S. Moss & Associates
Box 724980
Atlanta, GA 31139

**Re: State Bar of Georgia Fiduciary Law Section
Legislation Proposal - Insurable Interest Statute**

Dear Faryl:

I am writing on behalf of the Fiduciary Legislation Committee (“Committee”) of the Fiduciary Law Section (“Section”) to submit proposed legislation that has been approved by the Committee and, in the opinion of the Committee, merits the endorsement of the Executive Committee of the Section. Accordingly, we respectfully request that the Executive Committee of the Section review the proposed legislation and, upon your approval of same and in accordance with Section 1.02 of Standing Board Policy 100 of the Board of Governors, forward the proposal to the Advisory Committee on Legislation of the State Bar, as well as to the President, the President Elect, and the Executive Committee of the State Bar at least thirty (30) days in advance of the meeting of the Board of Governors scheduled for November 18, 2005, so that the Board of Governors will have an opportunity to review this legislation prior to the 2006 session of the Georgia General Assembly.

Specific Legislation Proposed, Including Summary of Existing Law

The enclosed proposed legislation, which has been annotated with explanatory footnotes, would amend O.C.G.A. § 33-24-3, regarding ***insurable interest*** for life insurance policies, for the purpose of codifying existing common law by express establishment of certain insurable interests which heretofore have only been implied in existing law.

The purpose of insurable interest laws generally is to prevent the use of life insurance to wager on the lives of individuals by persons who otherwise would suffer no loss (financial or otherwise) by the individual’s death. Therefore, the law requires that before a person or entity may legally purchase a life insurance policy, that person or entity must have some economic or other interest in the continued life of the insured, such that the person or entity would suffer an economic or other loss upon the death of the insured.

The proposed amendments are not intended to create or expand insurable interests where none existed before, but are instead intended to expressly state various interests that have been assumed to exist and form the basis for numerous commonplace uses of life insurance. One such example is the use of *irrevocable life insurance trusts* to hold insurance for the benefit of the insured's family in a manner that avoids inclusion of the life insurance proceeds in the insured's gross estate for federal estate tax purposes. Another example is the use of life insurance to provide a source of liquidity to fund a buy-sell agreement for a closely held business, where one owner has the right and/or the obligation to purchase the interest of another owner upon such other owner's death.

The need to recognize expressly such insurable interests is highlighted by the recent case of *Chawla v. Transamerica Occidental Life Insurance Company*, 2005 WL 405405 (E.D. Va. Feb. 3, 2005), in which a federal district court in Virginia, construing the insurable interest statute of the state of Maryland, determined that a trust lacked an insurable interest in the life of the settlor of the trust, essentially because the Maryland insurable interest statute did not expressly state that a trust had any such insurable interest. The facts in *Chawla* were somewhat peculiar, and the court's ruling on the insurable interest issue was not necessary to the resolution of the case and has therefore been widely criticized. Nevertheless, given that the purchase of life insurance by personal life insurance trusts is one of the most common and, prior to *Chawla*, non-controversial techniques of estate planning, the fact that any court could determine that such a trust lacks insurable interest merely because such an interest is not specifically stated in the statute is cause for concern.

Germaneness to State Bar and Fiduciary Law Section

The legislation is germane to the legitimate purposes of the State Bar, due to the number of trusts holding life insurance in Georgia, based upon Georgia lawyers having advised their clients to establish such trusts. Moreover, the State Bar has a legitimate interest in improving the statute laws of the State of Georgia whenever doing so will further the purposes for which such statutes were originally enacted.

Known Proponents/Opponents of the Legislation and Reasons for Support/Opposition

The Committee is not aware of any persons or organizations who have formally expressed either support or opposition for the legislation at this point.

Other Interested Committees or Sections; Certification of Notice

The only other Section of the State Bar that the Committee has identified as having a potential interest in the proposed legislation is the Tort and Insurance Practice Section, and a copy of the proposed legislation was submitted to David Forestner, Chairperson of that section on August 1, 2005.

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Recommendation of Position to Be Adopted by the State Bar.

The Committed recommends that the Section and the State Bar support the passage of this legislation

Conclusion

Please let me know if we can provide any further information with respect to this proposal.

Sincerely,

Benjamin H. Pruett

BHP

Enclosures