

SHORT TITLE: Insurance; relating to insurable interest and classes of policies permitted; authorizing employer or certain trust to insure lives of employees, directors and retired employees for benefit of employer or trust; effective date.

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

SENATE BILL NO. 643

By: Hooper

AS INTRODUCED

An Act relating to insurance; amending 36 O.S. 1991, Sections 3604 and 4101, which relate to insurable interest and classes of policies permitted; modifying definition; authorizing employer or certain trust to insure lives of employees, directors and retired employees for benefit of employer or trust; requiring consent of insured; deeming consent requirement satisfied under certain conditions; making certain retaliatory action unlawful; providing for determination of insurable interest; defining terms; construing provision; making provisions applicable to insurance contracts in force after certain date; providing insurable interest need not exist at time loss occurs; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 36 O.S. 1991, Section 3604, is amended to read as follows:

Section 3604. A. Any individual of competent legal capacity may procure or effect an insurance contract upon his own life or body for the benefit of any person. Except as provided in subsection D of this section, no person shall procure or cause to be procured any insurance contract upon the life or body of another individual unless the benefits under such contract are payable to

the individual insured or his personal representatives, or to a person having, at the time when such contract was made, an insurable interest in the individual insured.

B. If the beneficiary, assignee, or other payee under any contract made in violation of this section receives from the insurer any benefits thereunder accruing upon the death, disablement, or injury of the individual insured, the individual insured or his executor or administrator, as the case may be, may maintain an action to recover such benefits from the person so receiving them.

C. "Insurable interest" with reference to personal insurance includes only interests as follows:

1. In the case of individuals related closely by blood or by law, a substantial interest engendered by love and affection;

2. In the case of other persons, a lawful and substantial economic interest in having the life, health, or bodily safety of the individual insured continue, as distinguished from an interest which would arise only by, or would be enhanced in value by, the death, disablement or injury of the individual insured; ~~and~~

3. An individual heretofore or hereafter party to a contract or option for the purchase or sale of an interest in a business partnership or firm, or of shares of stock of a closed corporation or of an interest in such shares, has an insurable interest in the life of each individual party to such contract and for the purposes of such contract only, in addition to any insurable interest which may otherwise exist as to the life of such individual; and

4. An employer, or a trust which is sponsored by an employer for the benefit of its employees, has an insurable interest in each of the lives of the employer's employees, directors or retired employees, as set forth in subsection F of this section.

D. Life insurance contracts may be entered into in which the person paying the consideration for the insurance has no insurable interest in the life of the individual insured, where charitable,

benevolent, educational or religious institutions, or their agencies, are designated as the beneficiaries thereof. In no event shall an individual be named as a beneficiary to such a policy. In making such contracts the person paying the premium shall make and sign the application therefor as owner and shall designate a charitable, benevolent, educational or religious institution, or an agency thereof, as the beneficiary or beneficiaries of such contract. The application or any subsequent change of beneficiary designation shall be signed also by the individual whose life is to be insured. Such contracts shall be valid and binding among the parties thereto, notwithstanding the absence otherwise of an insurable interest in the life of the individual insured.

E. Life insurance contracts may be entered into in which the members of an alumni association of an institution of higher education accredited by the Oklahoma State Regents for Higher Education are insured under a group insurance policy and either the institution is the designated beneficiary thereof or the association is the designated beneficiary with the stipulation that the association will use the proceeds of such policies for direct grants to the institution or for scholarships for students of such institutions. In no event shall an individual be named as a beneficiary to such a policy. In making such contracts, the person paying the premium shall make and sign the application therefor as owner and shall designate an institution or alumni association as the beneficiary or beneficiaries of such contract. The application or any subsequent change of beneficiary designation shall be signed also by the individual whose life is to be insured. Such contracts shall be valid and binding among the parties thereto, notwithstanding the absence of an insurable interest in the life of the individual insured.

F. 1. Notwithstanding the provisions of paragraph 2 of subsection C of this section, an employer, or a trust which is

sponsored by an employer for the benefit of its employees, may insure for the benefit of the employer or trust the lives of the employer's employees, directors or retired employees on an individual or group basis with the consent of the insured.

2. The consent requirement of paragraph 1 of this subsection and Section 3607 of this title shall be deemed to be satisfied if:

- a. the employee, director or retired employee is provided with a written notice that the employer or trust intends to obtain life insurance coverage with respect to such person's life, and
- b. the employee, director or retired employee fails to provide written notification to the employer or trust, within thirty (30) days from the date that the notice was transmitted, that such person does not consent to the employer obtaining life insurance coverage on such person's life.

3. It shall be unlawful for the employer or trust to retaliate against any person for refusing to consent to the issuance of life insurance on such person's life.

4. The employer's or trust's insurable interest in nonmanagement and retired employees shall be limited to an amount of aggregate projected death benefits commensurate with the aggregate projected liabilities to such employees under all employee welfare benefit plans, as defined in Section 1002(1) of Title 29 of the United States Code. Calculations of life insurance benefits and welfare benefit liabilities shall be made in accordance with generally accepted actuarial principles. Matching of life insurance benefits and welfare benefit liabilities may be done on a cash flow, present value or other appropriate basis.

5. For purposes of this subsection:

- a. "employer" means any individual, sole proprietorship, partnership, limited liability company, corporation or

any other entity that is legally doing business in this state and shall also include all entities or persons which are controlled by or affiliated with any of the foregoing. The determination of whether any entity or person is controlled by or affiliated with another shall be made by applying the principles set forth in subsections (b) or (c) of Section 414 of Title 26 of the United States Code, as in effect on January 1, 1993, except that all references therein to eighty percent (80%) shall be changed to fifty-one percent (51%), and

b. "employee" means any common law employee of an employer.

6. This subsection shall not be construed to limit other insurable interests which may exist by statute or at common law.

7. Determination of the existence and extent of the insurable interest under any life insurance policy shall be made at the time the contract of insurance becomes effective but need not exist at the time the loss occurs.

8. The provisions of this subsection shall apply to all insurance contracts in force on or after the effective date of this act.

SECTION 2. AMENDATORY 36 O.S. 1991, Section 4101, is amended to read as follows:

Section 4101. No policy of group life insurance shall be delivered in this state unless it conforms to one of the following descriptions:

1. A policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustees shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

a. The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors and partners of one or more affiliated corporations, proprietors or partnerships if the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership or contract, or otherwise. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees. No director of a corporate employer shall be eligible for insurance under the policy unless such a person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship. A policy issued to insure the employees of a public body may provide that the term "employee" shall include elected or appointed officials.

- b. The premium for the policy shall be paid by the policyholder, either wholly from the employer's funds or funds contributed by him, or partly from such funds and partly from funds contributed by the insured employees, or from funds contributed wholly by the insured employees. A policy on which part or all of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least seventy-five percent (75%) of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of insurability is not satisfactory to the insurer.
- c. The policy must cover at least ten employees as of date of issue.
- d. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustee.

2. A policy issued to a creditor, who shall be deemed to be the policyholder, to insure debtors of the creditor. Credit unions and associations formed for the purpose of making loans to their members shall be deemed to be creditors within the meaning of this section. Policies issued to a creditor to insure debtors of the creditor are subject to the following requirements:

- a. The debtors eligible for insurance under the policy shall be all of the debtors of the creditor or all of any class or classes thereof determined by conditions pertaining to the indebtedness or to the purchase

giving rise to the indebtedness. The policy may provide that the term "debtors" shall include the debtors of one or more subsidiary corporations, and the debtors of one or more affiliated corporations, proprietors or partnerships if the business of the policyholder and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract or otherwise.

- b. The premium for the policy shall be paid by the policyholder, either from the creditor's funds, or from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligation outstanding at its date of issue without evidence of individual insurability unless at least seventy-five percent (75%) of the then eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be derived from the collection of such identifiable charges must insure all eligible debtors, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.
- c. The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least one hundred persons yearly, or may reasonably be expected to receive at least one hundred new entrants during the first policy year, and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than

seventy-five percent (75%) of the new entrants become insured.

- d. The amount of insurance on the life of any debtor shall at no time exceed the amount owed by him which is repayable to the creditor, or One Hundred Thousand Dollars (\$100,000.00), whichever is less, provided further, no company licensed to do business in this state shall issue in excess of One Hundred Thousand Dollars (\$100,000.00) group credit life insurance on one individual in the State of Oklahoma.
- e. The insurance shall be payable to the policyholder. Such payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment.

3. A policy issued to a labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives or agents, subject to the following requirements:

- a. The members eligible for insurance under the policy shall be all of the members of the union, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the union, or both.
- b. The premium for the policy shall be paid by the policyholder, either wholly from the union's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance, or from funds contributed wholly by the insured members. A policy on which part or all of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least seventy-five

percent (75%) of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

- c. The policy must cover at least ten members at date of issue.
- d. The amount of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union.

4. A policy issued to the trustees of a fund established in this state by two or more employers in the same industry, provided a majority of the employees to be insured of each employer are located within this state, or to the trustees of a fund established by one or more labor unions, or by one or more employers in the same industry and one or more labor unions or by one or more employers and one or more labor unions whose members are in the same or related occupation or trades, or by an association of persons, licensed by the State of Oklahoma to engage in a recognized profession, which trustees shall be deemed the policyholder to insure employees of the employers or members of the unions or members of an association of persons, licensed by the State of Oklahoma to engage in a recognized profession, for the benefit of persons other than the employers or the unions, or the association of persons, licensed by the State of Oklahoma to engage in a recognized profession, subject to the following requirements:

- a. The persons eligible for insurance shall be all of the employees of the employers or all of the members of

the union, or all the members of an association of persons, licensed by the State of Oklahoma to engage in a recognized profession, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the unions, or to both, or pertaining to membership in the association of persons, licensed by the State of Oklahoma to engage in a recognized profession. The policy may provide that the term "employees" shall include the individual proprietor or partners if any employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or a partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both if their duties are principally connected with such trusteeship, and that the term "members of an association" shall include employees of members.

- b. The premium for the policy shall be paid by the trustees wholly from funds contributed by the employer or employers of the insured persons, or by the union or unions, or by both, or by an association of persons, licensed by the State of Oklahoma to engage

in a recognized profession, or from funds contributed wholly or in part by the insured persons. A policy on which part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance may be placed in force only if at least seventy-five percent (75%) of the then eligible persons, excluding any as to whom evidence of insurability is not satisfactory to the insurer, elect to make the required contributions. A policy issued to the trustees of a fund established by an association of persons, licensed by the State of Oklahoma to engage in a recognized profession, on which part or all the premium is to be derived from funds contributed by the insured persons specifically for their insurance, may be placed in force only if the total number of persons covered at the date of issue exceeds six hundred or seventy-five percent (75%) of the eligible persons, whichever is less, excluding any as to whom evidence of insurability is not satisfactory to the insurer, elect to make the required contribution. A policy on which no part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance must insure all eligible persons, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

- c. The policy must cover at date of issue at least one hundred persons; and if the fund is established by the members of an association of employers the policy may be issued only if (a) either (i) the participating employers constitute at date of issue at least sixty percent (60%) of those employer members whose

employees are not already covered by group life insurance or (ii) the total number of persons covered at date of issue exceeds six hundred; and (b) the policy shall not require that if a participating employer discontinues membership in the association, the insurance of his employees shall cease solely by reason of such discontinuance.

- d. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or unions.

5. A policy issued to any nonprofit industrial association to insure the executives of employer members of a nonprofit industrial association, which is now and has been actively functioning for a period of not less than ten (10) years, such policy to be issued to such association which shall be deemed to be the employer for the purposes of this article, or to the association and executives of such employer members jointly and insuring only all of such executives for amounts of insurance based upon some plan which will preclude individual selection, for the benefit of persons other than such association, and the premium on which shall be paid by the employer members or the employer members and the executives of such employer members jointly.

6. A policy issued to a credit union which shall be deemed the policyholder, to insure eligible members for the benefit of someone other than the credit union or its officials and subject to the following requirements:

- a. The members eligible for insurance under the policy shall be all the members of the credit union or all of any class or classes thereof.
- b. The premiums for the policy shall be paid by the policyholder, either wholly from the credit union's

funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

- c. The amount of insurance under the policy may be based on the amount of the member's savings in the credit union or upon some other plan precluding individual selection either by the members or by the credit union.

7. A policy issued to a charitable, benevolent, educational or religious institution, or their agencies, to insure the members thereof for the purpose set forth in subsection D of Section 3604 of this title.

8. A policy issued to an alumni association of an institution of higher education accredited by the Oklahoma State Regents for Higher Education, to insure the members thereof for the purpose set forth in subsection E of Section 3604 of this title.

9. A policy issued to an employer, or a trust which is sponsored by an employer for the benefit of its employees, to insure the employer's employees, directors or retired employees, as set forth in subsection F of Section 3604 of this title.

SECTION 3. This act shall become effective September 1, 1994.

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