

ACT No. 2008-271

1 HB172
2 94379-5
3 By Representative Spicer
4 RFD: Banking and Insurance
5 First Read: 05-FEB-08
6 PFD: 01/31/2008



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ENROLLED, An Act,

To amend Sections 27-14-3 and 27-17A-32, Code of Alabama 1975, relating to insurable interests and preneed contracts, to provide that, upon the written consent of a preneed contract purchaser or preneed contract beneficiary, the trustee of a preneed trust has an insurable interest in the life of such preneed contract purchaser or preneed contract beneficiary, to provide that life insurance policies and annuities are permissible trustee investments of preneed contract funds, and to provide for a retroactive effect.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 27-14-3 and 27-17A-32, Code of Alabama 1975, are amended to read as follows:

"§27-14-3.

"(a) Insurable interest with reference to personal insurance is an interest based upon a reasonable expectation of pecuniary advantage through the continued life, health, or bodily safety of another person and consequent loss by reason of his or her death or disability or a substantial interest engendered by love and affection in the case of individuals closely related by blood or by law.

"(b) An individual has an unlimited insurable interest in his or her own life, health, and bodily safety and may lawfully take out a policy of insurance on his or her own

1 life, health, or bodily safety and have the same made payable
2 to whomsoever he or she pleases, regardless of whether the
3 beneficiary so designated has an insurable interest.

4 "(c) A corporation, foreign or domestic, has an
5 insurable interest in the life or physical or mental ability
6 of any of its directors, officers, or employees, or the
7 directors, officers, or employees of any of its subsidiaries
8 or any other person whose death or physical or mental
9 disability might cause financial loss to the corporation; or,
10 pursuant to any contractual arrangement with any shareholder
11 concerning the reacquisition of shares owned by the
12 shareholder at the time of his or her death or disability, on
13 the life or physical or mental ability of that shareholder for
14 the purpose of carrying out the contractual arrangement; or
15 pursuant to any contract obligating the corporation as part of
16 compensation arrangements or pursuant to a contract obligating
17 the corporation as guarantor or surety, on the life of the
18 principal obligor. The trustee of a trust established by a
19 corporation for the sole benefit of the corporation has the
20 same insurable interest in the life or physical or mental
21 ability of any person as does the corporation. The trustee of
22 a trust established by a corporation providing life, health,
23 disability, retirement, or similar benefits to employees of
24 the corporation or its affiliates and acting in a fiduciary
25 capacity with respect to the employees, retired employees, or

1 their dependents or beneficiaries has an insurable interest in
2 the lives of employees for whom the benefits are to be
3 provided.

4 "(d) After satisfaction of the requirements of
5 Section 27-17A-32(d)(1), the trustee of a trust established by
6 a certificate holder which complies with the requirements of
7 Chapter 17A has an insurable interest in the life of a preneed
8 contract purchaser or a preneed contract beneficiary. It is
9 the intention of the Legislature that the preceding sentence
10 shall be retroactive and shall also apply to all policies, as
11 defined in this chapter, issued prior to the effective date of
12 this amendatory act. It is also the intention of the
13 Legislature that the value of any life insurance policy
14 purchased by a trust pursuant to Chapter 17A of this title
15 shall not exceed the lesser of twenty thousand dollars
16 (\$20,000) or 100 percent of the purchase price of the preneed
17 contract regulated under Chapter 17A. Further, it is the
18 intention of the Legislature that any life insurance policy
19 purchased by a trust pursuant to Chapter 17A be used for the
20 sole benefit of the preneed contract purchaser, the preneed
21 contract beneficiary, or the funeral establishment or cemetery
22 providing funeral services, burial services, or funeral
23 merchandise for the preneed contract purchaser, and not for
24 the benefit of another person who otherwise lacks an insurable
25 interest under this section.

1 "~~(d)~~(e) Any provision of this section and chapter to
2 the contrary notwithstanding, a charitable organization that
3 meets the requirements of Section 501(c)(3) of the Internal
4 Revenue Code of 1986, as amended, may own or purchase life
5 insurance on an individual who consents to the ownership of
6 purchase of that insurance. The charitable organization shall
7 be deemed to have a substantial interest in the individual
8 insured and to have an insurable interest in the individual
9 insured whether the charitable organization originally
10 purchases the insurance or the insurance is later transferred
11 to the charitable organization by the insured or another
12 person. This subsection ~~(d)~~ is intended to clarify and declare
13 existing law.

14 "~~(e)~~(f) An insurable interest shall exist at the
15 time the contract of personal insurance becomes effective, but
16 this requirement need not exist at the time the loss occurs.

17 "~~(f)~~(g) Any personal insurance contract procured, or
18 caused to be procured, upon another individual is void unless
19 the benefits under the contract are payable to the individual
20 insured, or his or her personal representative, or to a person
21 having, at the time when the contract was made, an insurable
22 interest in the individual insured. In the case of a void
23 contract, the insurer shall not be liable on the contract but
24 shall be liable to repay to the person, or persons, who have
25 paid the premiums, all premium payments without interest.

1 "§27-17A-32.

2 "(a) Without limiting in any way the liability of
3 the seller under a preneed contract to perform its obligations
4 thereunder, including, without limitation, the obligation to
5 deliver the funeral merchandise, and for installation thereof
6 if it is to be included in the preneed contract, the seller
7 shall not be required to place in trust proceeds paid under
8 the contract for funeral merchandise. If the trust proceeds
9 have previously been paid, the seller may withdraw the
10 principal amount there, at such time as the funeral
11 merchandise, if comprised of materials designed to withstand
12 prolonged, protected storage without deterioration, is placed
13 in storage with a responsible third party bonded and insured
14 for the wholesale value thereof and evidenced by a receipt
15 specifically identifying the item, the specific preneed
16 contract, the location of the item, and the identity and
17 address of the bonding and insuring parties. For purposes of
18 this subsection only, caskets and alternative containers may
19 not be delivered prior to death.

20 "(b) The trustee shall make regular valuations of
21 the assets it holds in trust and provide a report of the
22 valuations to the certificate holder at least quarterly. Any
23 person who withdraws appreciation in the value of trust, other
24 than the pro rata portion of such appreciation which may be
25 withdrawn upon the death of a contract beneficiary or upon

1 cancellation of a preneed contract, shall be required to make
 2 additional deposits from his or her own funds to restore the
 3 aggregate value of assets to the value of funds deposited in
 4 trust, but excluding from the funds deposited those funds paid
 5 out upon preneed contracts which the person has fully
 6 performed or which have been otherwise withdrawn, as provided
 7 in this article. The certificate holder shall be liable to
 8 third parties to the extent that income from the trust is not
 9 sufficient to pay the expenses of the trust.

10 "(c) The trustee of the trust established pursuant
 11 to this article shall have all of the following powers:

12 "(1) Make investments and exercise necessary
 13 investment powers, provided that the commissioner may by order
 14 require the trustee to liquidate or dispose of any investment
 15 within 30 days after the order.

16 "(2) Borrow money up to an aggregate amount of 10
 17 percent of trust assets, at interest rates then prevailing
 18 from any individual, bank, insurance company, or other source,
 19 irrespective of whether any such person is then acting as
 20 trustee, and to create security interests in no more than 10
 21 percent of trust assets by mortgage, pledge, or otherwise,
 22 upon the terms and conditions and for the purposes as the
 23 trustee may deem advisable.

24 "(3) Commingle the property of the trust with the
 25 property of any other preneed funeral or endowment care trust

1 established pursuant to this article and make corresponding
2 allocations and divisions of assets, liabilities, income, and
3 expenses.

4 "(d) Notwithstanding the provisions of Section
5 19-3-125, the trustee may, subject to compliance with the
6 requirements set forth below, invest any portion or all of the
7 funds received under preneed contracts and deposited in trust
8 in life insurance contracts or annuities issued on the lives
9 of preneed contract purchasers or preneed contract
10 beneficiaries (hereinafter, the insured or annuitant) without
11 any obligation to cover at a minimum the retail amount of the
12 preneed contract at the time of purchase of the life insurance
13 contracts or annuities as set forth in Section 27-17A-3.

14 "(1) Trust funds shall not be invested by the
15 trustee in life insurance contracts or annuities unless the
16 following requirements are met:

17 "a. The company issuing the life insurance contracts
18 or annuities is licensed by the Department of Insurance and
19 the insurance producer or annuity seller is properly licensed
20 within its domiciliary jurisdiction.

21 "b. Prior to the investment, the insured or
22 annuitant consents, in writing, to the investment in life
23 insurance contracts or annuities.

24 "c. For life insurance contracts or annuities issued
25 prior to the effective date of this amendatory act and

1 currently in force, such contracts shall be construed to have
2 been an authorized investment by the trustee under this
3 chapter if the insured or annuitant is notified in writing of
4 the existence of any such contract and provided with a copy of
5 the contract.

6 "(2) Upon request, the insured or annuitant shall be
7 provided with a copy of any life insurance contract or annuity
8 issued to a preened trustee at no expense to the insured or
9 annuitant.

10 "(3) Any life insurance contract or annuity issued
11 in accordance with this subsection and otherwise in compliance
12 therewith shall be valid and in full force according to the
13 terms and conditions thereof.

14 "(4) A trustee that invests all or any portion of
15 the funds received under preened contracts and deposited in
16 trust in life insurance contracts or annuities issued by one
17 company licensed by the department shall be considered to
18 satisfy the standards and requirements of Section 19-3-120.2
19 and Chapter 3B of Title 19.

20 "(5) It is the intention of the Legislature that
21 this subsection shall be retroactive and shall apply to all
22 life insurance contracts or annuities issued prior to the
23 effective date of this amendatory act."

1 Section 2. The provisions of this act shall not
2 apply to a cause of action filed prior to the effective date
3 of this amendatory act.

4 Section 3. This act shall become effective
5 immediately following its passage and approval by the
6 Governor, or its otherwise becoming law.

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[Handwritten Signature]

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Speaker of the House of Representatives

[Handwritten Signature]

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President and Presiding Officer of the Senate

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House of Representatives

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I hereby certify that the within Act originated in
and was passed by the House 14-FEB-08.

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Greg Pappas
Clerk

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Senate

30-APR-08

Passed

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APPROVED May 6, 2008

TIME 11:20 a.m.

[Handwritten Signature]
GOVERNOR

Alabama Secretary Of State

Act Num....: 2008-271
Bill Num....: H-172