

CHAPTER 227

INSURANCE

SENATE BILL 11-182

BY SENATOR(S) Carroll, Cadman, Giron, Guzman, Spence, Aguilar, Boyd, Foster, Heath, Newell, Tochtrop, Williams S.;
also REPRESENTATIVE(S) Liston, Barker, Court, Massey, Pabon, Pace, Conti, Fields, Holbert, Labuda, Swalm, Todd, Vigil,
Williams A., Wilson.

AN ACT

**CONCERNING THE ESTABLISHMENT OF AN INSURABLE INTEREST REQUIREMENT FOR LIFE
INSURANCE POLICIES.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 7 of title 10, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

**PART 7
INSURABLE INTEREST ACT**

10-7-701. Short title. THIS PART 7 SHALL BE KNOWN AND MAY BE CITED AS THE "INSURABLE INTEREST ACT".

10-7-702. Definitions. AS USED IN THIS PART 7, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "BUSINESS ENTITY" MEANS A LEGAL ENTITY, INCLUDING A JOINT VENTURE, PARTNERSHIP, CORPORATION, LIMITED LIABILITY COMPANY, OR BUSINESS TRUST.

(2) "PERSON" MEANS ANY NATURAL PERSON, BUSINESS ENTITY, ASSOCIATION, OR TRUST.

(3) "POLICY" MEANS AN INDIVIDUAL OR GROUP POLICY, GROUP CERTIFICATE, CONTRACT, OR ARRANGEMENT OF LIFE INSURANCE AFFECTING THE RIGHTS OF A RESIDENT OF THIS STATE OR BEARING A REASONABLE RELATION TO THIS STATE, REGARDLESS OF WHETHER DELIVERED OR ISSUED FOR DELIVERY IN THIS STATE.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(4) "SETTLOR" MEANS A PERSON WHO EXECUTES A TRUST INSTRUMENT, INCLUDING A PERSON FOR WHOM A FIDUCIARY OR AGENT IS ACTING.

(5) "STRANGER ORIGINATED LIFE INSURANCE" MEANS AN ACT, PRACTICE, OR ARRANGEMENT TO INITIATE A LIFE INSURANCE POLICY FOR THE BENEFIT OF A THIRD-PARTY INVESTOR WHO, AT THE TIME OF POLICY ORIGINATION, HAS NO INSURABLE INTEREST IN THE INSURED. STRANGER ORIGINATED LIFE INSURANCE PRACTICES INCLUDE CASES IN WHICH LIFE INSURANCE IS PURCHASED WITH RESOURCES OR GUARANTEES FROM OR THROUGH A PERSON OR ENTITY WHO, AT THE TIME OF INCEPTION, COULD NOT LAWFULLY INITIATE THE POLICY THEMSELVES AND WHERE, AT THE TIME OF INCEPTION, THERE IS AN ARRANGEMENT OR AGREEMENT, WHETHER VERBAL OR WRITTEN, TO DIRECTLY OR INDIRECTLY TRANSFER THE OWNERSHIP OF THE POLICY OR THE POLICY BENEFITS TO A THIRD PARTY. TRUSTS THAT ARE CREATED TO GIVE THE APPEARANCE OF INSURABLE INTEREST AND ARE USED TO INITIATE POLICIES FOR INVESTORS VIOLATE INSURABLE INTEREST LAWS AND THE PROHIBITION ON WAGERING ON LIFE. "STRANGER ORIGINATED LIFE INSURANCE" DOES NOT INCLUDE LAWFUL VIATICAL SETTLEMENT CONTRACTS AS PERMITTED BY PART 6 OF ARTICLE 7 OF TITLE 10, PROVIDED THAT SUCH CONTRACTS ARE NOT FOR THE PURPOSE OF EVADING REGULATION UNDER THIS ARTICLE.

10-7-703. Insurance on the life of another. A PERSON SHALL NOT PROCURE OR CAUSE TO BE PROCURED OR EFFECTED A POLICY UPON THE LIFE OF ANOTHER INDIVIDUAL UNLESS THE BENEFITS UNDER THE POLICY ARE PAYABLE TO THE INSURED, TO THE PERSONAL REPRESENTATIVE OF THE INSURED'S ESTATE, OR TO A PERSON HAVING, AT THE TIME THE POLICY IS ISSUED, AN INSURABLE INTEREST IN THE INDIVIDUAL INSURED.

10-7-704. Insurable interest. (1) AN INSURABLE INTEREST, WITH REFERENCE TO INSURANCE ON THE LIFE OF ANOTHER, EXISTS ONLY AS FOLLOWS:

(a) AN INDIVIDUAL HAS AN INSURABLE INTEREST IN THE LIFE OF ANOTHER PERSON IN WHOM THE INDIVIDUAL HAS A SUBSTANTIAL INTEREST ENGENDERED BY LOVE AND AFFECTION IN THE CONTINUATION OF THE LIFE OF THE INSURED AND WHO ARE:

(I) RELATED WITHIN THE FIFTH DEGREE OR CLOSER, AS MEASURED BY THE CIVIL LAW SYSTEM OF DETERMINING DEGREES OF RELATION, EITHER BY BLOOD OR MARRIAGE TO THE INSURED;

(II) STEPCHILDREN OF THE INSURED OR THEIR DESCENDANTS; OR

(III) INDIVIDUALS WHO ARE DESIGNATED AS BENEFICIARIES OF INSURANCE POLICIES FOR LIFE INSURANCE COVERAGE ON THE LIFE OF THE INSURED UNDER A DESIGNATED BENEFICIARY AGREEMENT EXECUTED PURSUANT TO ARTICLE 22 OF TITLE 15, C.R.S.;

(b) AN INDIVIDUAL HAS AN INSURABLE INTEREST IN THE LIFE OF ANOTHER PERSON IF SUCH INDIVIDUAL HAS A LAWFUL AND SUBSTANTIAL INTEREST IN THE CONTINUED LIFE OF THE INSURED, AS DISTINGUISHED FROM AN INTEREST THAT WOULD ARISE ONLY FROM, OR WOULD BE ENHANCED IN VALUE BY, THE DEATH OF THE INDIVIDUAL INSURED;

(c) AN INDIVIDUAL PARTY TO A CONTRACT FOR THE PURCHASE OR SALE OF AN INTEREST IN A BUSINESS ENTITY HAS AN INSURABLE INTEREST IN THE LIFE OF EACH OTHER INDIVIDUAL PARTY TO THE CONTRACT, BUT ONLY FOR THE PURPOSE OF CARRYING OUT THE INTENT AND PURPOSE OF THE CONTRACT;

(d) A TRUSTEE OF A TRUST HAS AN INSURABLE INTEREST IN THE LIFE OF AN INSURED UNDER A LIFE INSURANCE POLICY AS PROVIDED IN SECTION 15-16-501, C.R.S.;

(e) 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 USED PRIMARILY FOR THE BENEFIT OF PERSONS HAVING AN INSURABLE INTEREST IN THE LIFE OF INSURED;

(f) AN ORGANIZATION DESCRIBED IN SECTION 170 (c) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", 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 PURSUANT TO SECTION 10-7-115;

(g) 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. SEC. 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, BUT ONLY IF CONSENT IS OBTAINED IN WRITING FROM THE PARTICIPANT BEFORE THE INSURANCE IS PURCHASED. AN EMPLOYER, TRUSTEE, SPONSOR, OR CUSTODIAN MAY NOT RETALIATE OR TAKE ADVERSE ACTION AGAINST A PARTICIPANT WHO DOES NOT CONSENT TO THE ISSUANCE OF INSURANCE ON THE PARTICIPANT'S LIFE.

(h) A BUSINESS ENTITY HAS AN INSURABLE INTEREST IN THE LIFE OF ANY OF THE OWNERS, DIRECTORS, OFFICERS, PARTNERS, OR MANAGERS OF THE BUSINESS ENTITY OR ANY AFFILIATE OR SUBSIDIARY OF THE BUSINESS ENTITY, OR KEY EMPLOYEES OR KEY PERSONS OF THE BUSINESS ENTITY, AFFILIATE, OR SUBSIDIARY, BUT ONLY IF CONSENT IS OBTAINED IN WRITING FROM THE KEY EMPLOYEES OR KEY PERSONS BEFORE THE INSURANCE IS PURCHASED. THE BUSINESS ENTITY, AFFILIATE, OR SUBSIDIARY MAY NOT RETALIATE OR TAKE ADVERSE ACTION AGAINST ANY KEY EMPLOYEE OR KEY PERSON WHO DOES NOT CONSENT TO THE ISSUANCE OF INSURANCE ON THE KEY EMPLOYEE OR KEY PERSON'S LIFE. FOR PURPOSES OF THIS PARAGRAPH (h), "KEY EMPLOYEE" OR "KEY PERSON" MEANS AN INDIVIDUAL WHOSE POSITION OR COMPENSATION IS DESCRIBED IN SECTION 101 (j) (2) (A) (ii) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED.

(i) A FINANCIAL INSTITUTION OR OTHER PERSON TO WHOM A DEBT IS OWED, WHETHER FOR THE PURPOSES OF PREMIUM FINANCING OR OTHERWISE, HAS AN INSURABLE INTEREST IN THE LIFE OF THE BORROWER OR ANY OF THE OWNERS, DIRECTORS, OFFICERS, PARTNERS, OR MANAGERS OF THE BORROWER; KEY EMPLOYEES, GUARANTORS, OR KEY PERSONS OF THE BORROWER; OR ANY OF THE FOREGOING OF AN AFFILIATE OR A GUARANTOR OF THE BORROWER, BUT ONLY IF CONSENT IS OBTAINED IN WRITING FROM SUCH PERSONS BEFORE THE INSURANCE IS PURCHASED; EXCEPT THAT SUCH INSURABLE INTEREST IS LIMITED TO THE AMOUNT

OF THE DEBT OWED PLUS REASONABLE INTEREST AND SERVICE CHARGES. THE PROCEEDS PAYABLE UPON THE DEATH OF AN INSURED IN EXCESS OF THE TOTAL OUTSTANDING DEBT OWED SHALL BE PAID TO THE ESTATE OF THE INDIVIDUAL INSURED.

10-7-705. Insured's own life. AN INDIVIDUAL HAS AN INSURABLE INTEREST IN THE INDIVIDUAL'S OWN LIFE, AND AN INDIVIDUAL OF COMPETENT LEGAL CAPACITY WHO PROCURES OR EFFECTS A POLICY ON THE INDIVIDUAL'S OWN LIFE MAY DESIGNATE ANY PERSON AS THE BENEFICIARY AND, UNLESS THE INDIVIDUAL ELECTS AN IRREVOCABLE BENEFICIARY DESIGNATION, CHANGE THE BENEFICIARY AT ANY TIME THEREAFTER.

10-7-706. Reliance on statements. AN INSURER IS ENTITLED TO RELY UPON ALL REASONABLE STATEMENTS, DECLARATIONS, AND REPRESENTATIONS MADE BY AN APPLICANT FOR LIFE INSURANCE RELATIVE TO THE EXISTENCE OF AN INSURABLE INTEREST. NO INSURER INCURS LEGAL LIABILITY, EXCEPT AS SET FORTH IN THE POLICY, BY VIRTUE OF UNTRUE STATEMENTS, DECLARATIONS, OR REPRESENTATIONS RELIED UPON IN GOOD FAITH BY THE INSURER.

10-7-707. Consent of insured. (1) A POLICY UPON THE LIFE OF AN INDIVIDUAL, OTHER THAN A POLICY OF NONCONTRIBUTORY GROUP LIFE INSURANCE, SHALL NOT BE EFFECTED UNLESS, AT OR BEFORE THE TIME THE POLICY IS EFFECTUATED, THE INDIVIDUAL INSURED, HAVING LEGAL CAPACITY TO CONTRACT, APPLIES FOR OR CONSENTS IN WRITING TO THE POLICY AND ITS TERMS. CONSENT MAY BE GIVEN BY ANOTHER PERSON IN THE FOLLOWING CASES:

- (a) A SPOUSE MAY CONSENT TO INSURANCE ON THE OTHER SPOUSE;
- (b) A PARENT OR A PERSON HAVING LEGAL CUSTODY OF A MINOR MAY CONSENT TO THE ISSUANCE OF A POLICY ON A DEPENDENT CHILD;
- (c) A COURT-APPOINTED GUARDIAN OF A PERSON MAY CONSENT TO THE ISSUANCE OF A POLICY ON THE PERSON UNDER GUARDIANSHIP;
- (d) A COURT-APPOINTED CONSERVATOR OF A PERSON'S ESTATE MAY CONSENT TO THE ISSUANCE OF A POLICY ON THE PERSON WHOSE ESTATE IS UNDER CONSERVATORSHIP;
- (e) AN ATTORNEY-IN-FACT MAY CONSENT TO THE ISSUANCE OF A POLICY ON THE PERSON THAT APPOINTED THE ATTORNEY-IN-FACT FOR THE LIMITED PURPOSE OF REPLACING ONE OR MORE POLICIES WITH ONE OR MORE NEW POLICIES IF, AS THE RESULT OF THE REPLACEMENT, THE AGGREGATE AMOUNT OF LIFE INSURANCE ON THE PERSON REMAINS THE SAME OR DECREASES;
- (f) A TRUSTEE OF A REVOCABLE TRUST MAY CONSENT TO THE ISSUANCE OF A POLICY ON THE LIFE OF A SETTLOR OF THE TRUST; AND
- (g) A COURT OF GENERAL JURISDICTION MAY GIVE CONSENT TO THE ISSUANCE OF A POLICY UPON A SHOWING OF FACTS THAT THE COURT CONSIDERS SUFFICIENT TO JUSTIFY THE ISSUANCE OF THE POLICY.

10-7-708. Prohibited practices. (1) IT IS UNLAWFUL FOR ANY PERSON TO PROCURE, OR CAUSE TO BE PROCURED OR EFFECTED, A POLICY IN VIOLATION OF SECTION 10-7-703. SUCH CONDUCT IS AN UNFAIR OR DECEPTIVE ACT OR PRACTICE PURSUANT TO SECTION 10-3-1104.

(2) IT IS UNLAWFUL FOR ANY PERSON TO ENGAGE IN STRANGER ORIGINATED LIFE INSURANCE OR OTHERWISE WAGER ON LIFE. SUCH CONDUCT IS AN UNFAIR OR DECEPTIVE PRACTICE PURSUANT TO SECTION 10-3-1104.

10-7-709. Actions to recover death benefits. IF THE BENEFICIARY, ASSIGNEE, OR OTHER PAYEE RECEIVED THE DEATH BENEFITS UNDER A LIFE INSURANCE POLICY PROCURED OR EFFECTED IN VIOLATION OF THIS ARTICLE, THE PERSONAL REPRESENTATIVE OF THE INSURED'S ESTATE OR OTHER LAWFULLY ACTING AGENT MAY MAINTAIN AN ACTION TO RECOVER THE DEATH BENEFITS FROM THE PERSON RECEIVING THEM.

10-7-710. Legitimate insurance transactions. (1) EXCEPT WHERE A LIFE INSURANCE POLICY IS PROCURED OR EFFECTED IN VIOLATION OF SECTION 10-7-708, NOTHING IN THIS ARTICLE PREVENTS:

(a) AN OWNER OF A POLICY, WHETHER OR NOT THE OWNER OF THE POLICY IS ALSO THE SUBJECT OF THE INSURANCE, FROM ENTERING INTO A VIATICAL SETTLEMENT CONTRACT;

(b) ANY PERSON FROM SOLICITING A PERSON TO ENTER INTO A VIATICAL SETTLEMENT CONTRACT; OR

(c) AN OWNER OR BENEFICIARY FROM ENFORCING THE PAYMENT OF ALL BENEFITS AND PROCEEDS OF THE POLICY OBTAINED UNDER A VIATICAL SETTLEMENT CONTRACT.

SECTION 2. 10-3-1104 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS to read:

10-3-1104. Unfair methods of competition - unfair or deceptive acts or practices. (1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(kk) VIOLATION OF SECTION 10-7-703 OF THE "INSURABLE INTEREST ACT", PART 7 OF ARTICLE 7 OF THIS TITLE;

(ll) ENGAGING IN STRANGER ORIGINATED LIFE INSURANCE.

SECTION 3. Applicability. This act shall apply to policies written on or after the effective date of this act.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 27, 2011