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FOR DISCUSSION ONLY

**UNIFORM INSURABLE INTERESTS  
RELATING TO TRUSTS ACT  
(Amendment to Uniform Trust Code)**

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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*WITH PREFATORY NOTE AND PRELIMINARY COMMENTS*

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April 24, 2009

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RELATING TO TRUSTS ACT**

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1                   **UNIFORM INSURABLE INTERESTS RELATING TO TRUSTS ACT**  
2                                   **(AMENDMENT TO UNIFORM TRUST CODE)**

3  
4 **Section 113 is added to the Uniform Trust Code:**

5                   **SECTION 113. INSURABLE INTEREST; APPLICABILITY.**

6                   (a) For purposes of this section, the term settlor is limited to a person who executes the  
7 trust instrument. If a trust instrument is executed by a fiduciary or agent, the person for whom  
8 the fiduciary or agent is acting is the settlor.

9                   (b) Subject to other applicable law of this state,<sup>1</sup> a trustee of a trust has an insurable  
10 interest in the life of an individual insured under a life insurance policy owned by the trustee of  
11 the trust if on the date the policy is issued the individual whose life is insured is:

12                                   (1) a settlor of the trust; or

13                                   (2) an individual in whom a settlor of the trust has, or would have had if living at  
14 the time of the policy was issued, an insurable interest.

15                   (c) This section applies to any life insurance policy, owned by a trustee, issued before,  
16 on, or after the effective date of this [Code], if the policy is in force and an insured is alive on or  
17 after the effective date of the [Code].<sup>2</sup>

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<sup>1</sup> **Drafting Note:** Legislative drafting offices should consider whether specific state statutory provisions should be referenced in this sentence. Examples of statutes to be considered for referencing are the state insurance code generally, insurable interest statutes, and statutes regulating life settlements, viatical settlements, investor-owned life insurance arrangements, trusts created by business entities or organizations, or corporate- or employer-owned life insurance.

<sup>2</sup> **Drafting Note:** The amendatory language of subsections (a) and (b) could be enacted independently of the UTC, either as a free standing provision or as part of the insurable interest provisions of a jurisdiction's insurance code, in which case subsection (c) should read:

(c) This section applies to any trust existing before, on, or after the effective date of the section, regardless of the effective date of the governing instrument under which the trust was created, but only as to a life insurance policy that is in force and for which an insured is alive on or after the effective date of the section.

See comment for explanation.

## Comment

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2  
3       Every state requires, either as a matter of statutory or common law, that a purchaser of  
4 life insurance on another person must have an insurable interest in the life of the insured. See  
5 generally Robert H. Jerry, II & Douglas R. Richmond, Understanding Insurance Law, §§ 40, 43  
6 (LexisNexis Publishing, 4 ed., 2007), at 273-<sup>th</sup> 77, 293-98. The definition of insurable interest  
7 became a matter of widespread concern among trust and estate planners after *Chawla ex rel*  
8 *Giesinger v. Transamerica Occidental Life Insurance Co.*, 2005 WL 405405 (E.D. Va. 2005),  
9 aff'd in part, vac'd in part, 440 F.3d 639 (4<sup>th</sup> Cir. 2006), where a Virginia federal district court  
10 applying Maryland law held that a trust did not have an insurable interest in the life of the  
11 insured who was the grantor and the creator of the trust. This portion of the district court's  
12 decision was subsequently vacated by the Fourth Circuit when holding that the district court's  
13 decision should be affirmed on other grounds, but the appellate decision did not question or  
14 criticize the district court's insurable interest analysis. The Maryland legislature subsequently  
15 enacted a statute in the state's insurance code clarifying the circumstances when a trust has an  
16 insurable interest in another's life, and several other states have enacted varied forms of statutory  
17 clarification designed to address the "*Chawla* problem." During this process, the American  
18 College of Trust and Estate Counsel, among others, expressed their opinion that it would be best  
19 if a uniform approach could be fashioned in resolving the matter.

20  
21       Consequently, the Uniform Law Commission, after studying the issue, decided that it  
22 needed to clarify the issue with respect to the Uniform Trust Code (UTC) and a drafting  
23 committee was established to do so. The drafting committee, in addition to knowledgeable  
24 Conference members, consisted of representatives from the American Bar Association,  
25 American College of Trust and Estate Counsel, American Council of Life Insurers, consumer  
26 advocates, and other interested parties. This proposed amendment resulted from their efforts and,  
27 if approved, would be inserted at the end of Article 1 of the UTC, as Section 113. In keeping  
28 with the charge to the committee, the purpose of the amendment is to clarify when, for purposes  
29 of the Code, a trust that owns insurance on the life of another person has an insurable interest in  
30 the life of such person. By clarifying this area of law that was subjected to uncertainty by the  
31 *Chawla* decision, trust and estate planning practitioners will have a reliable basis upon which to  
32 draft trust instruments that involve the eventual payment of expected death benefits.

33  
34       Subsection (a) provides that for purposes of this amendment the term "settlor" is limited  
35 to the individual who *executes* the trust instrument. This is narrower than the UTC definition of  
36 "settlor," which, in addition to the individual who executes the trust instrument, would include a  
37 person who merely contributes property to the trust. See UTC Section 103(15). Since it is the life  
38 of the "settlor" that provides the basis of the trustee's insurable interest under paragraph (1) of  
39 subsection (b) of this amendment, use of the UTC definition would vastly expand the  
40 opportunity for a trustee to buy life insurance to fund the trust in ways that might not be in  
41 keeping with the public policy underlying the insurable interest requirement. In addition, since  
42 there are situations where a trust instrument will be executed by a fiduciary or agent for the  
43 creator of the trust, this section makes clear that in such circumstances the fiduciary or agent  
44 shall be deemed to be the equivalent of the settlor.

1            Subsection (b) begins with the phrase “[s]ubject to other applicable law of this state.” As  
2 indicated above, as of 2008, a number of states have already adopted amendments to their  
3 insurance codes which address the circumstances when a trust has an insurable interest. Some of  
4 these statutes address collateral issues involving “stranger-originated life insurance,” or  
5 “STOLI,” which is a life insurance arrangement where investors who have no relationship to a  
6 person secure, with the person’s consent, a life insurance policy on such person’s life and fund  
7 the premium payments for investment purposes. This amendment intends neither to encourage  
8 nor to discourage STOLI arrangements, instead choosing to leave the assessment of the public  
9 policies implicated by STOLI arrangements to legislative and administrative bodies that might  
10 address STOLI outside the framework of this amendment. Thus, the amendment makes clear in  
11 subsection (b) that nothing in the statute supersedes other state law, presumably set forth in the  
12 state’s insurance code, that addresses the law of insurable interest generally, the trustee’s  
13 insurable interest specifically, the *Chawla* problem, or STOLI. The enactment of the amendment  
14 would leave the state insurance code as a separate, independent source of law for evaluation of  
15 whether a trust has an insurable interest in the life of a person on whose life the trust has  
16 purchased insurance. In short, the amendment resolves the *Chawla* problem for purposes of the  
17 UTC, but the amendment is STOLI-neutral; further, to the extent other state law specifies the  
18 circumstances when a trust has an insurable interest, this amendment supplements the provisions  
19 of such laws and does not contradict or supersede such other laws.

20  
21            Subsection (b) carries forward the widely approved rule that the time at which insurable  
22 interest in a life insurance policy is measured is the date the policy is issued, otherwise  
23 understood as the inception of the policy. Thus, if on the date the policy is issued the trustee has  
24 an insurable interest in the person whose life is insured, the policy is not subject to being  
25 declared void for lack of an insurable interest. Under the reasoning that an individual has an  
26 unlimited insurable interest in his or her own life, subsection (b) provides that trust has an  
27 insurable interest in the settlor’s own life. This logically follows because a settlor of a trust who  
28 funds a trust with insurance on his or her own life, in circumstances where the trust is  
29 represented by the trustee selected by the settlor when he or she executes the trust instrument,  
30 acquires an unlimited insurable interest in the settlor’s life when the trust owns insurance on the  
31 settlor’s life. Similarly, recognizing that an individual may purchase insurance on the life of  
32 anyone in whom that individual has an insurable interest up to, generally speaking, the amount of  
33 that interest, subsection (b) provides that the trust has an insurable interest in an individual in  
34 whom the settler has, or would have had if living at the time the policy was issued, an insurable  
35 interest.

36  
37            Subsection (c) clarifies which life insurance policies are subject to the amendment. It  
38 assumes that the amendment has already been incorporated into the UTC as Section 113 when  
39 the UTC is enacted by a particular jurisdiction or that it will be used to amend the original  
40 version of the UTC which was previously enacted. Since Section 1106 of the UTC, as originally  
41 drafted, already deals with the applicability of the UTC to trusts existing at the time of  
42 enactment, there is no need to address that issue in this amendment. However, as indicated in the  
43 Drafting Note to subsection (c), the language of the amendment might be enacted as part of the  
44 insurance code or otherwise in a jurisdiction that has not enacted the UTC. In that case, an issue  
45 may arise as to which trusts *and* life insurance policies the amendment applies. The language in  
46 the second Drafting Note is offered to help resolve that issue.