

## Konrad Jackson

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**From:** Brenda Nation <BrendaNation@acli.com>  
**Sent:** Friday, February 22, 2013 11:01 AM  
**To:** Konrad Jackson  
**Subject:** AK HB 102 - ACLI's Concerns  
**Attachments:** insurable interest NCCUSL FINAL July 2010.pdf; Rptr's Summary Proposed UTC Amendment 2010 Annual Mtg FINAL VER 6-29-1....docx; KeatingStein062410.pdf

**Importance:** High

By way of introduction, I represent the American Council of Life Insurers (ACLI), a national trade association representing more than 300 legal reserve life insurers operating in the United States. Our members represent over 90% of the assets and premiums of the U.S. life insurance and annuity industry.

Our interest in HB 102 is with regard to Sections 13, 38 and 39 of the bill, relating to insurable interests for life insurance policies.

Taking each section (out of order), ACLI offers the following comments in HB 102:

### **Section 39:**

ACLI supports the proposed adoption of the language in Section 39, that for the most part, tracks the Insurable Interest Amendments to the Uniform Trust Code (UTC), which were adopted by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in July, 2010 (attached). These amendments were drafted with much consideration by NCCUSL experts over their model recommendation for several years, and were given congratulatory recognition by ACLI when they were adopted (our CEO's letter to the NCCUSL President is attached).

ACLI actively participated in the NCCUSL effort from its beginning, voicing our concern in protecting against the problem of stranger-originated life insurance (STOLI) by inadvertently broadening the model insurable interest law with respect to trusts. The NCCUSL Drafting Committee's Reporter's Summary (attached) highlights this concern and better explains STOLI for purposes of our comments below.

### **Section 38 (Pages 36-37) Amending the Insurance Code AS 21.42.020(a):**

The proposed addition of the words “or immediately after the contract was made” in AS 21.42.020(a) are very concerning to ACLI for the following reasons:

- It is a well settled rule of law in all the states that an insurable interest must be present at the time the insurance contract is made.
- The attached NCCUSL Insurable Interest Amendments to the Uniform Trust Code reflect this rule of law:
  - o “Subsection (b) carries forward the widely approved rule that the time at which insurable interest in a life insurance policy is determined is the date the policy is issued, otherwise understood as the inception of the policy.”
  - o The proposed NCCUSL amendments in Section 39 of HB 102 substantiate this rule of law with respect to trustees and insurable interest in proposed AS 21.42.020(e)(2), which reads in part:  
**“on the date the contract is made**, a settlor of the trust is the individual insured, has an insurable interest in the individual insured...” By adding this expansion to insurable interest in AS 21.42.020(a), puts this section at odds with the proposed new Section 39 (AS 21.42.020(e)(2) of the bill.
- Expanding the state’s insurable interest law to apply immediately after the contract is made is contrary to long-held principles of insurable interest law –either you have an insurable interest at the time of contract or you don’t. The validity of a life insurance contract hinges on whether there is insurable interest at the time the insurance contract is made.
- To include the proposed expansion of the insurable interest statute in Alaska with the language “or immediately after the contract was made” is not only contrary to state and public policy interests, it completely undermines the longstanding test of insurable interest. How is “immediately after” defined – is it five minutes, 2 days, a month?
- For these reasons, ACLI requests that the proposed amendment to Section 38 of the bill be stricken.

### **Section 13 (Pages 16-18) Trustee duties relating to insurance (New section of law):**

The proposed new section of law in Sec. 13, adding a new section of the law, AS. 13.36.273. Trustee duties relating to insurance, is very problematic to ACLI.

- Section 13 appears to provide that a trustee (the owner of the life insurance policy) does not have an obligation to determine whether the trust has a valid insurable interest, unless the trust instrument provided otherwise or the trustee who applied for or accepted ownership of the insurance policy had knowledge that there was not a valid insurable interest or if he had knowledge of a stranger-originated life insurance (STOLI) arrangement.
- The owner of a policy has the obligation to determine if there is an insurable interest. Relieving him of liability if he has no knowledge would create a way for STOLI promoters to hide facts and insulate the trustee from liability. This proposal is contrary to NCCUSL’s and ACLI’s efforts in the 2010 amendments to the

Uniform Trust Code to protect against STOLI abuses in the use of trusts. (The attached NCCUSL documents further illustrate these efforts).

- New Section 13, specifically AS 13.36.263(a), appears to completely undermine New Section 39 and NCCUSL's efforts in addressing and prohibiting STOLI in its amendments to the Uniform Trust Code.
- For these reasons, ACLI requests that the proposed new Section 13 of the bill be stricken.

Best regards,

Brenda Nation

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