

DIRECTIVE: 1-2005

TO: ALL LIFE INSURANCE COMPANIES/AGENTS, NAIC, TRADE ORGANIZATIONS, AND OTHER INTERESTED PARTIES

FROM: ARKANSAS INSURANCE DEPARTMENT

SUBJECT: DIRECTIVE ON INVESTOR-OWNED LIFE INSURANCE WITH CHARITABLE ORGANIZATIONS

DATE: MARCH 28, 2005

The Department issues this Directive to advise life insurers and agents in this state regarding the legality of "investor-owned" or "investor-initiated" life insurance transactions involving charitable organizations. An "investor-owned" life insurance program using a charitable organization is usually established to use life insurance policies as an elaborate investment program rather than to compensate a business or charity for the death of a person who provides a substantial economic interest to the organization.

In "investor-owned" life insurance transactions involving a charitable organization, a trust or business organization is created to sell shares in an investment involving life insurance policies and immediate annuities. These programs have been subject to criticism from many national insurance associations including the American Council of Life Insurers (ACLI), the Association for Advanced Life Underwriting (AALU), and the National Association of Insurance and Financial Advisors (NAIFA) because the programs violate existing state "insurable interest" law.

Arkansas' insurable interest law in Ark. Code Ann. §23-79-103 states that no person shall procure or cause to be procured any insurance contract on the life or body of another individual unless the benefits are payable to a person having an "insurable interest" in the individual insured at the time the contract was made. The intent of "insurable interest" statutes was to prevent strangers from speculating on the lives of other strangers in the purchase of life insurance. However, purchasers of life insurance on the lives of family members have insurable interests. Outside of family member and employer purchases of life insurance, and life insurance in connection with the purchase of an interest in a business, life insurance policy purchases on the lives of strangers, are restricted by requiring in Ark. Code Ann. §23-79-103(c)(1)(B) that an "insurable interest" exist at the time the life insurance policy is bought. A purchaser must have a "lawful and substantial economic interest in having the life, health, or bodily safety of the individual insured continue, as distinguished from an interest that would arise only by, or would be enhanced in value by, the death, disablement, or injury of the individual insured." Ark. Code Ann. §23-79-103(c)(1)(B). A charity itself has such a lawful and substantial economic interest in the lives of those whom it may rely upon for financial support. Ark. Code Ann. §23-79-103(c)(2)(A).

The Department's position is that in "investor-owned" life insurance purchases, by trusts or organizations formed by individuals or entities with no relationship with the individual insured, primarily for investment purposes and not solely for the benefit of a participating or sponsoring charity, the life insurance policies are not purchased by one with a substantial economic interest in the continuing life of the individual insured. The trust or business organization establishing "investor-owned" life insurance, even when charitable organizations are partial beneficiaries, have a lesser interest in having the life of the insured individual continue as distinguished from "an interest that would arise only by, or would be enhanced in value by, the death, disablement, or injury of the individual insured."

All insurers are required to furnish a copy of Directive 1-2005 to all of their appointed Arkansas insurance producers.

For questions regarding this Directive, please contact Booth Rand, Associate Counsel, Arkansas Insurance Department, 501-371-2820 or booth.rand@arkansas.gov.

Effective Date: March 28, 2005

(Signed by Julie Benafield Bowman)

JULIE BENAFIELD BOWMAN
INSURANCE COMMISSIONER
STATE OF ARKANSAS

March 31, 2005

DATE