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Insurance

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stated articles permitted by the law of its domicile rather than original articles and amendments thereto as previously required.

The statute undoubtedly will prove to be very convenient and an effective time saver.

Shareholders' Consent in Lieu of Meeting. Chapter 160¹ permits effective shareholder action to be taken by unanimous written consent in all situations in which the law previously required a meeting and formal vote. Anyone acquainted with the practice in closely-held corporations is aware that a formal meeting is often useless and frequently fictional. The statute validates what, in effect at least, has been a general practice.

The statute probably is not broad enough to make a meeting unnecessary where the shareholders are divided but the result is inevitable. In such a case, the minority shareholders may wish to record an objection but will recognize the futility of attempting to persuade the majority at a meeting. The statute as drawn, however, refers to "consent" and this relates to "action . . . taken." The statute also gives the same effect to the consent as to "unanimous vote." Thus, while it might have been possible to have drawn a statute broadly enough to permit majority action while preserving minority dissent, the statute is cast more narrowly.

The statute does not apply to meetings of directors. While such meetings are also likely to be informal or fictional in closely-held corporations, the same freedom could be dangerous if the directors are not collectively the owners of all of the shares. If they do own all of the shares the statute could realistically cover director action, but in its present form it does not do so.

J. GORDON GOSE

INSURANCE

Credit Life, Accident and Health Insurance. Chapter 219¹ of the 1961 session laws is new. It relates to the regulation of credit life insurance and credit accident and health insurance and becomes a part of the Insurance Code of Washington.

It has long been recognized that a creditor has an insurable interest in the life of his debtor.² RCW 48.18.030(3)(b) defines "insurable

¹ Wash. Sess. Laws 1961, ch. 160.

² Wash. Sess. Laws 1961, ch. 219.

² See *Connecticut Mut. Life Ins. Co. v. Luchs*, 108 U.S. 498, 505 (1883); *Warnock*

interest" as including, "a lawful and substantial economic interest in having the life, health or bodily safety of the individual insured continue, as distinguished from an interest which would arise only by, or would be enhanced in value by, the death, disablement or injury of the individual insured." Under this provision, a creditor would clearly have an insurable interest in the life of his debtor in Washington. The chief difficulty appears to be in determining what relation the amount of insurance shall bear to the amount of the debt. Some courts have adopted the test that the amount of insurance must be reasonably proportionate to the amount of the debt.³ Other courts merely state that a creditor has an insurable interest in the life of his debtor to the extent of the debt.⁴ However, this will not indemnify the creditor to the extent that he has paid premiums and interest.⁵ Since a life insurance policy is not a contract of indemnity, the creditor-beneficiary may ordinarily collect the full proceeds of the policy where the creditor himself takes out the policy, even though the debt has been partially or fully paid or the amount of insurance exceeds the amount of the debt. The mere fact that a debtor-creditor relationship exists between the parties does not give the debtor the right to any of the proceeds.⁶ Where the creditor takes out the policy, he usually must obtain the consent of the debtor whose life is insured.⁷ In Washington the consent of the debtor whose life is insured by the creditor would be required by RCW 48.18.060.⁸

It is also well settled that a person has a right to insure his own life and may designate that the money be paid to any person whom he may

v. Davis, 104 U.S. 775, 779 (1881); *Butterworth v. Mississippi Valley Trust Co.*, 362 Mo. 133, 240 S.W.2d 676 (1951); *Equitable Life Assur. Soc'y v. Hazlewood*, 75 Tex. 338, 12 S.W. 621 (1889); *Burnett v. Amicable Life Ins. Co.*, 195 S.W.2d 237 (Tex. Civ. App. 1946); PATTERSON, *ESSENTIALS OF INSURANCE LAW* 175 (2d ed. 1957); VANCE, *INSURANCE* 200 (3d ed. 1951).

³ See *Watson v. Massachusetts Mut. Life Ins. Co.*, 140 F.2d 673 (D.C. Cir. 1943); PATTERSON, *op. cit. supra* note 2, at 175; VANCE, *op. cit. supra* note 2, at 201.

⁴ See *Metcalf v. Montgomery*, 229 Ala. 156, 155 So. 582 (1934); *Progressive Life Ins. Co. v. Bohannon*, 74 Ga. App. 617, 40 S.E.2d 564 (1946); *Shaw v. M. Livingston & Co.*, 293 Ky. 575, 169 S.W.2d 612 (1943); *Pittsburgh Underwriters v. Mutual Life Ins. Co.*, 149 Pa. Super. 554, 27 A.2d 278 (1942); *Albrent v. Spencer*, 3 Wis.2d 273, 88 N.W.2d 333 (1958).

⁵ See *Equitable Life Assur. Soc'y v. Hazlewood*, 75 Tex. 338, 12 S.W. 621 (1889); VANCE, *op. cit. supra* note 2, at 200.

⁶ See *Alperstein v. National City Bank*, 103 N.Y.S.2d 930 (1951); *Prudential Ins. Co. of America v. Tutalo*, 55 R.I. 160, 178 Atl. 859 (1935).

⁷ See *Watson v. Massachusetts Mut. Life Ins. Co.*, 140 F.2d 673 (D.C. Cir. 1943); VANCE, *op. cit. supra* note 2, § 34.

⁸ "No life or disability insurance contract upon an individual, except a contract of group life insurance or of group or blanket disability insurance as defined in this code, shall be made or effectuated unless at the time of the making of the contract the individual insured, being of competent legal capacity to contract, in writing applies therefore or consents thereto, except in the following cases:...."

desire, whether or not the beneficiary or assignee named has an insurable interest in the life of the insured.⁹ Thus a debtor could take out an insurance policy on his own life in any amount and make it payable to his creditor or it could be assigned as security for the debt.¹⁰ In such case any surplus remaining after payment of the debt from the proceeds of the policy must ordinarily be paid over to the contingent beneficiary or to the personal representative of the deceased debtor.¹¹

The new act applies to all life insurance and all accident and health insurance issued in connection with loans or other credit transactions. It is not applicable where an individual policy is issued in connection with a loan or credit transaction which extends beyond five years, or where insurance is issued in an isolated transaction not related to an agreement or plan for insuring debtors of a creditor.

The act provides that credit life insurance and credit accident and health insurance issued in connection with a specific loan or other credit transaction must be issued in the following forms:

⁹ However, if a person takes out insurance on his own life and makes the policy payable to or assigns it to another who takes the initiative in the transaction and pays the premiums, the policy may be held invalid as a wagering transaction. *Thomas v. Connecticut Mut. Life Ins. Co.*, 124 Kan. 159, 257 Pac. 727 (1927); *Bromley's Adm'r v. Washington Life Ins. Co.*, 122 Ky. 402, 92 S.W. 17 (1906). See also *Warnock v. Davis*, 104 U.S. 775 (1881); *Amick v. Butler*, 111 Ind. 578, 12 N.E. 518 (1887); *Elmore v. Life Ins. Co.*, 187 S.C. 504, 198 S.E. 5 (1938); *VANCE, op. cit. supra* note 2, at 768. *But cf.*, *Grigsby v. Russell*, 222 U.S. 149 (1911); *Carnes v. Franklin Life Ins. Co.*, 81 F.2d 800 (5th Cir. 1936); *Butterworth v. Mississippi Valley Trust Co.*, 362 Mo. 133, 240 S.W.2d 676 (1951).

¹⁰ *Ducros v. Commissioner*, 272 F.2d 49 (6th Cir. 1959); *Aetna Life Ins. Co. v. Patton*, 176 F. Supp. 368 (S.D. Ill. 1959); *Theus v. Bankers Health & Life Ins. Co.*, 216 Ga. 377, 116 S.E.2d 573 (1960); *Levas v. Metropolitan Life Ins. Co.*, 175 Wash. 159, 26 P.2d 1032 (1933); *Buckner v. Ridgely Protective Ass'n*, 131 Wash. 174, 229 Pac. 313 (1924); *PATTERSON, op. cit. supra* note 2, at 166; *VANCE, op. cit. supra* note 2, at 188. RCW 48.18.030 provides, "(1) Any individual of competent legal capacity may procure or effect an insurance contract upon his own life or body for the benefit of any person..."

¹¹ *People's Life Ins. Co. v. Whiteside*, 94 F.2d 409 (5th Cir. 1938); *Bosma v. Evans*, 96 Colo. 504, 44 P.2d 511 (1935); *VANCE, op. cit. supra* note 2, at 738. In *Dunn v. Second Nat'l Bank*, 131 Tex. 198, 113 S.W.2d 165, 169 (1938), the court stated: "a creditor named as a beneficiary in a policy of life insurance may after the death of the insured collect the amount due according to the terms of the policy, but he may retain for himself only the amount of the debt due at the death of the insured, together with any such amount as he may have paid to preserve the policy. The remainder will be given to the estate of the insured." However, the intent of the parties in the transaction may lead to a different result. In *Fehr v. Cawthon*, 293 Fed. 152 (6th Cir. 1923), it was held that the creditor was entitled to the full proceeds of policies of \$10,000, on the death of the insured debtor, although the amount of the debt remaining was only about \$2,000. The creditor had suggested that the insurance be taken out by the debtor and he had paid the initial and first annual premiums when the insured debtor died. The insured may make his creditor the absolute beneficiary though the amount of the policy exceeds the amount of the debt. In such case the creditor-beneficiary's right to proceeds of the policy upon death of the insured is not limited to the amount of the debt plus interest. See *Forster v. Franklin Life Ins. Co.*, 135 Colo. 383, 311 P.2d 700 (1957); *Chapman v. Scott*, 234 S.C. 469, 109 S.E.2d 1 (1959).

- (1) Individual policies of life insurance issued to debtors on the term plan;
- (2) Individual policies of accident and health insurance issued to debtors on a term plan, or disability benefit provisions in individual policies of credit life insurance;
- (3) Group policies of life insurance issued to creditors providing insurance upon the lives of debtors on the term plan;¹²
- (4) Group policies of accident and health insurance issued to creditors on a term plan insuring debtors, or disability benefit provisions in group life insurance policies to provide such coverage.¹³

Credit life insurance is limited initially to the amount of the debt to be repaid and the amount of a group life insurance policy is limited to the amount of the debt to be repaid in installments to the creditor, with a maximum of ten thousand dollars. In any event, the debt to be repaid under the contract may not extend longer than five years. In the case of credit accident and health insurance the total amount of periodic indemnity payments may not exceed the total of the periodic scheduled installments to be paid on the debt; nor shall such periodic indemnity payments be greater than the debt divided by the number of periodic installments.

Such insurance shall commence when the debtor becomes obligated on his debt to the creditor, except in the case of a group policy covering existing obligations where the insurance shall commence on the effective date of the policy. The insurance shall terminate not more than fifteen days beyond the maturity date of the debt. Upon discharge of the debt by renewal or refinancing the existing insurance must be terminated before any new insurance is issued in connection with such renewal or refinancing.

At the time when the indebtedness is incurred an individual policy must be issued and delivered to the debtor in connection with all credit life insurance and all credit accident and health insurance and a certificate of insurance must be issued and delivered in the case of group insurance. This policy or group certificate must indicate the name and home office of the insurer, the name and identity of the debtor, the amount of premium payment, a description of the coverage and any exceptions, restrictions and limitations. It shall provide that the

¹² RCW 48.24.040 provides: "The lives of a group of individuals may be insured under a policy issued to a creditor... to insure debtors of the creditor..." This is now subject to the provisions of the new act relating to credit life insurance and credit accident and health insurance, as well as to the requirements stated in the section. See Wash. Sess. Laws 1961, ch. 194, § 9, amending RCW 48.24.040.

¹³ Wash. Sess. Laws 1961, ch. 219, § 4.

benefits are to be paid to the creditor to reduce or extinguish the debt and any excess remaining is to be paid to the beneficiary named by the debtor or to the debtor's estate. In lieu of an individual policy or group certificate a copy of the application or notice of the proposed insurance, signed by the debtor and providing essentially the same information, may be delivered to the debtor. However, upon acceptance of the insurance by the insurer and within thirty days from the date the indebtedness is incurred, the insurer must deliver the policy or group certificate to the debtor.

The policies, certificates of insurance, notices of proposed insurance, applications for insurance, any endorsements or riders and schedules of premium rates must be filed with the insurance commissioner and approved by him before they may be used.¹⁴

The debtor may have the option of furnishing the required insurance in connection with any credit transaction by means of his existing insurance policies or he may procure and furnish the required coverage through any insurer authorized to transact insurance business within the state.

The act is not intended to amend or repeal any provision of chapter 31.08 RCW, known as the "Small Loan Act."

Life Insurance. Several amendments in the Washington Insurance Code have been made by chapter 194.¹ The changes in the standard valuation law with regard to mortality tables and disability tables are not enumerated here.² The life insurance nonforfeiture law has been amended by including provisions as to the adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy.³

A new section⁴ provides for insuring the lives of a group of individuals under a policy issued to a credit union as the policyholder. Eligible members of such credit union may be insured for the benefit of persons other than the credit union or its officials. The members eligible for such insurance must be all of the members of the credit union, or all of the members with the exception of those not insurable to the satisfaction of the insurer or all of those members of any class or classes as

¹⁴ See RCW 48.18.100-110. In addition, the form will be disapproved if the benefits are not reasonable in relation to the premium.

¹ Wash. Sess. Laws 1961, ch. 194.

² Wash. Sess. Laws 1961, ch. 194, § 3.

³ Wash. Sess. Laws 1961, ch. 194, § 7.

⁴ Wash. Sess. Laws 1961, ch. 194, § 8.

determined by conditions with relation to their age and/or membership in the credit union. The policy premium must be paid either wholly from the credit union's funds, or partially from such funds with the remaining portion to be paid by the members for their insurance. The entire premium may not be procured from funds contributed by the individual members. There must be at least twenty-five members insured at the date of issue of the policy and the amount of insurance of any member must not exceed the amount of his total shares and deposits, with a maximum of two thousand dollars.

RCW 48.24.040 has been amended by the deletion of two subsections relating to the insurance of debtor groups. These subsections formerly provided that the amount of insurance on the life of a debtor must not exceed the amount owed by him which was repayable in installments to his creditor over a period of not more than five years, with a maximum of ten thousand dollars;⁵ also, that the insurance must be payable to the policyholder with such payment extinguishing the unpaid indebtedness of the debtor to the extent of the payment.⁶

ROBERT L. TAYLOR

JUDICIAL ADMINISTRATION

Your attention is directed to four laws and one proposed constitutional amendment which came out of the 1961 session of the Washington Legislature.

1. Chapter 42¹ amends RCW 2.24.010 by eliminating the requirement that court commissioners must reside at the county seat. This change, a Judicial Council proposal, will make it possible to appoint court commissioners to serve in population centers other than the county seat, such as Kennewick or Richland in Benton County, or Aberdeen or Hoquiam in Grays Harbor County. If implemented, this device will eliminate the necessity for and the expense of trips to the county seat with respect to matters which can be handled locally by the court commissioner.²

2. Court rule 41.04W(b),³ as amended 9 September 1959, was promulgated as a means of eliminating dead and dormant superior court cases in which nothing had happened for over a year. The rule failed

⁵ Wash. Sess. Laws 1961, ch. 194, § 9. See also Wash. Sess. Laws 1961, ch. 219, § 6.

⁶ Wash. Sess. Laws 1961, ch. 194, § 9(5). See also Wash. Sess. Laws 1961, ch. 219, § 9(2).

¹ Wash. Sess. Laws 1961, ch. 42.

² For powers of court commissioners, see RCW 2.24.040-050.

³ WASH. R. P. P. 41.04W(b).