

HB

360

# HOUSE COMMITTEE REPORT

(7)

Date Referred: January 22, 1992

FURTHER REFERRALS:

Date of Committee Action: 2/5/92

The JUDICIARY Committee considered:

HB 360

HOUSE BILL NO. 360

LIFE OR DISABILITY INS. FOR CHARITIES

"An Act relating to life or disability insurance obtained by charities."

RECOMMENDATIONS: [ ] the same title  
 be replaced with \_\_\_\_\_ [ ] a new title

[ ] have attached amendments(s)

[ ] do pass

[ ] do not pass

[ ] no recommendations

individual recommendations

[ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): \_\_\_\_\_ (Dept)

APPROVES PREVIOUS: \_\_\_\_\_ (Dept/Date)

[ ] fiscal impact \_\_\_\_\_

[ ] fiscal note(s) \_\_\_\_\_

[ ] zero fiscal note \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Walter Douley</i>	✓				
<i>W. J. ...</i>	-				
<i>Terry ...</i>	✓				
<i>H. ...</i>	✓				
<i>Mark ...</i>	X				

*Walter Douley*  
 \_\_\_\_\_  
 CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. HB 360

Revision Date: \_\_\_\_\_ Department Affected: Department of Law  
 Title: "An Act relating to life or disability insurance obtained by charities." BRU: Legal Services  
 Component: Operations  
 Sponsor: Representative Boyer  
 Requestor: House Judiciary Committee COMPONENT SERIAL NO. 

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.) This bill amends AS 21.42.020 to allow a charitable organization to obtain by procurement, assignment, or otherwise, life or disability insurance on an insured who consents to issuance of the insurance. These are transactions between private parties and they will not have a fiscal impact on the department.

Prepared By: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Date: February 3, 1992  
 Approved by Commissioner: Charles E. Cole, Attorney General  
 Agency: Department of Law Date: February 3, 1992

# Alaska State Legislature

REPRESENTATIVE  
MARK BOYER

VICE-CHAIRMAN  
HOUSE FINANCE COMMITTEE

FAIRBANKS

1098 LAKEVIEW TERRACE  
FAIRBANKS, ALASKA 99701  
(907) 456-6473

JUNEAU

P.O. BOX V  
STATE CAPITOL  
JUNEAU, ALASKA 99811  
(907) 465-3466

## House of Representatives

To: House Judiciary Committee  
From: Representative Mark Boyer, bill sponsor  
Date: January 30, 1992  
Subject: **HB 360** "An Act relating to life or disability insurance obtained by charities."

### The problem:

The I.R.S. issued a private letter ruling in 1990 (PLR 9110016) stating that a New York donor may not claim a federal income tax deduction for the donation of a life insurance policy to a charity unless the state specifically allows the charity to have an insurable interest in the donor. Alaska does not specifically allow charities to accept insurance policies as gifts. Consequently, donated policies may not be enforceable, because the donor's heir could challenge the gift and claim the policy. Without the federal tax deduction, there is little incentive for a person to donate an insurance policy to charitable organizations.

### How HB 360 solves the problem:

HB 360 amends Alaska Statutes to specifically allow a charitable organization to obtain life or disability insurance on an insured person if the donor consents to the issuance of the insurance to the non-profit agency. The I.R.S. prohibition on deductibility of the premium payments would no longer apply to Alaska because the insurance policy donation would be enforceable.

The United States Code (U.S.C.) 501(c)(3) exempts certain non-profit organizations from federal taxation. Exempt organizations may include certain charitable, educational, religious, and a variety of non-profit organizations.

## **The benefits:**

In a time when public funds are becoming less available for non-profit organizations, every effort should be made to encourage private contributions to fill the funding gap. This bill will provide an opportunity for donors to turn a modest donation into large gifts to their favorite charity.

## **Background on charitable deductions**

According to the IRS (*Statistics of Income Bulletin*), in 1989 over 29 million federal tax returns included itemized deductions for charitable contributions. The total value of those deductions was \$55.3 billion. The average deduction for a charitable contribution was \$1,897. The number of contributions dropped from a high of 36.7 million in 1986 when the tax code changed and only those who itemized their deductions could claim a deduction for charitable contributions.

## **The IRS ruling**

In 1990, the I.R.S. issued a private letter ruling that applied to a New York woman. The service said that she couldn't claim federal tax deductions on income, gift, and estate taxes for a charitable donation of life insurance because the state's law did not recognize charities as having an insurable interest in their donors.

The service said that the charity had effectively obtained the policy on the donor because the donor intended to purchase the policy and immediately give it to charity.

Because New York law did not specifically allow a third party to obtain an insurable interest in a donor, the policy would be invalid and could be taken away from the charity by the donor's heirs after the donor's death. New York has since taken action to remedy this problem as have other states.



University of Alaska Foundation

University of Alaska  
910 Yukon Drive, Suite 208  
Fairbanks, Alaska 99775-5240  
Office (907) 474-7687  
FAX (907) 474-7664 or (907) 474-5140



Office of Development  
SYDEV

Representative Mark Boyer  
Alaska State House of Representatives  
P.O. Box V  
Juneau, AK 99811

VIA FAX

January 17, 1992

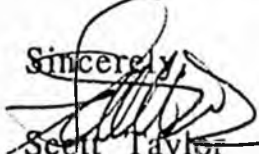
Dear Representative Boyer:

I understand that HB 360, which deals with changes to Alaska's statutes regarding life insurance policies, will receive its first hearing next Tuesday. The University Foundation strongly supports this bill since it will provide us, and other non-profits in Alaska, with the ability to have an insurable interest in the lives of donors who contribute life insurance policies to us. Through this change, our existing donors and potential contributors will be assured that their gifts of life insurance policies will be deductible as charitable donations under the Internal Revenue Service's rulings.

At the annual meeting of the University of Alaska Foundation on November 6, 1991, the Board of Trustees passed a unanimous motion indicating strong support for this change in Alaska's insurance statutes and directing that a resolution be prepared indicating their support. That resolution has not yet been completed. I shall send it to you when it is. In the interim I hope that this letter and the Board's action I have described will serve to indicate the Foundation's strong support of the statute changes outlined HB 360.

I thank you for all you are doing to help bring Alaska's laws into line with those in almost all other states which now do provide for charities to have an insurable interest in their donors.

Sincerely,

  
Scott Taylor

Executive Director

cc: Members of the Board of Trustees

# ALASKA PACIFIC UNIVERSITY

The President

January 24, 1992

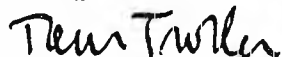
Rep. Mark Boyer  
State Capitol  
Juneau, AK 99801  
FAX 465-2278

Dear Mr. Boyer:

Alaska Pacific University supports House Bill No. 360 as it amends existing legislation and pertains to life or disability insurance that may be obtained by a 501(c)(3) charitable organization.

We appreciate your efforts to clarify this matter as it has been clarified in other states.

Sincerely yours,



F. Thomas Trotter  
President



**United Way**  
of Anchorage

Post Office Box 102052  
Anchorage, Alaska 99510-2052  
Phone (907) 562-4483  
Fax (907) 563-0920

January 16, 1992

Representative Mark Boyer  
State Capitol  
Juneau, Alaska 99801

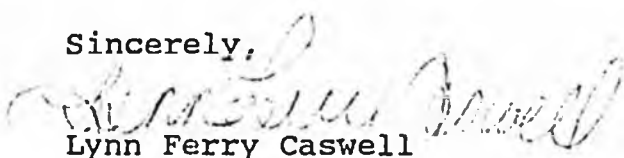
Dear Representative Boyer;

It is with great enthusiasm that I endorse house Bill 360, which essentially enables donors to assign life insurance policies to charitable organizations.

As funds for the provision of health and human services become more scarce from the federal and state governments, it is increasingly important for charitable organizations to seek other sources of funding. The opportunity for an individual to help insure the future viability of critical services will be of great value to those agencies providing the service.

My thanks to you for bringing this bill forward. I will follow its progress with keen interest.

Sincerely,

  
Lynn Ferry Caswell  
Executive Director

# THOMAS & ASSOCIATES

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Danny L. Thomas, CLU  
Lester R. Thomas, CLU

January 21, 1992

Mr. Kurt Parkan  
Representative Mark Boyer's Office

RE: H.B. 360

Dear Kurt:

Per our previous discussions relating to the insurable interest on life insurance either transferred to or purchased by a charity, the Alaska Insurance code needs to clarify that such eligible charity's insurable interest is recognized.

It is my understanding that an insurable interest is determined by the laws of the applicable state and that if the laws in Alaska (for those domiciled in Alaska) does not recognize that a charity has an insurable interest in the life of donor, a deduction may not be allowed for gifting of policy and premiums paid, and potentially may cause proceeds payable to charity to be questioned. It therefore is important that State clarify the insurance laws giving charities insurable interest. If the code is amended, if it is possible, it would be beneficial if it would cover people already having been insured by a charity or a policy already transferred to a charity.

Enclosed is a copy from the American Society of Chartered Life Underwriter monthly newsletter indicating that States have been working on specific statutes giving charities an insurable interest in the lives of donors.

Sincerely,



Danny L. Thomas, CLU

Enclosure  
DLT:lafs

# Section Keeps Subscribers Posted on Insurable Interest Issue

The issue of insurable interest related to charitable giving has been an ongoing topic of discussion for subscribers to the Society's Section Subscription Service since July 1990, when the Estate Planning Section published its first issue of *News and Views*.

In that issue, Gary D. Aronowitz, JD, LL.M., CLU, editor of the newsletter, authored an article, "Insurable Interest and Charitable Giving: Beware of Potholes," outlining problems created by the New York State Insurance Department's legal interpretation of a state law saying that charities do not have an insurable interest in the life of a donor.

In that article and in the September

1990 newsletter, he presented his research on the subject, including techniques that could potentially help circumvent this problem. Mr. Aronowitz had pointed out that as of July 1990, 14 states — Arizona, Connecticut, Delaware, Hawaii, Idaho, Kentucky, Maine, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, Texas, and Wyoming — had specific statutes giving charities an insurable interest in the lives of donors.

In the May 1991 issue of the newsletter, an item by Mr. Aronowitz underscored the value of national networking through the Section. "After I published my initial article, I

Continued on page 24

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## Insurable Interest

Continued from page 6

received letters from a number of people around the country telling me how their laws and state insurance departments had interpreted charitable insurable interest questions."

"Subscriber Frank Venable, CLU, of Georgia notified me that the Life Underwriters of Georgia were very active in a recent change in the insurance laws giving charities insurable interest. In New Jersey, where I live, my state assemblyman, who happens to be the assistant minority leader, has introduced legislation to amend the New Jersey statutes, and hopefully we will have some action on this change in the near future. I have notified many of my contacts in charitable organizations in New Jersey about the introduction of this bill."

With the recent release of Private Letter Ruling 91 10 016 (please see related article on page 6), it became clear that Mr. Aronowitz and the subscribers of the Estate Planning Section were on to something with

even broader reaching implications.

In the May 1991 issue, Mr. Aronowitz wrote that in a previous issue, "I responded to an inquiry from one of our members with regard to possibly having a savings provision in a decedent's will specifically bequeathing any proceeds by the estate back to the charity. In my response, I also raised the possibility that, in a state where a charity does not have an insurable interest, the IRS could deny a deduction for the premium payments. Little did I know, at that time, that my worst fears were being realized in a request for a Private Letter Ruling."

For now, many aspects of the issue remain unclear, with the potential for new state laws, changes in IRS interpretations, court challenges, etc. Mr. Aronowitz's ongoing expert analysis of the situation, as well as other important developments in estate planning, will appear in future publications sent to Section subscribers.

For more information on Sections, please see page 12. **SP**

# STATE OF ALASKA

## DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

WALTER J. HICKEL, GOVERNOR

P.O. BOX D  
JUNEAU, ALASKA 99811-0800  
PHONE: (907) 485-2515

August 16, 1991

Phil A Younker, Jr.  
Phil A Younker & Associates Ltd.  
P. O. Box 83529  
Fairbanks, Alaska 99709

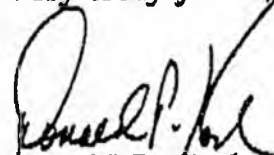
Dear Mr Younker

Re: Insurable Interests of Charities

Director Walsh advised me that you had called concerning the captioned subject and has asked me to respond to your inquiry.

This is a question that has come to this Division with a bit more frequency since the IRS issued its private ruling 9110016 on November 30, 1990 based on New York law. It unfortunately is an area on which we do not issue opinions. We have not been able to locate any Alaska case law on the subject. We believe that this is a grey area and one that should be specifically clarified and structured in statute. This would require specific legislation.

Very truly yours,



Donald P. Koch, CIE  
Chief of Market Surveillance

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