

By: Senator(s) Hewes

To: Insurance

SENATE BILL NO. 2948

1 AN ACT TO PROVIDE THAT THE ISSUANCE OF A QUALIFIED CHARITABLE
 2 GIFT ANNUITY DOES NOT CONSTITUTE ENGAGING IN THE BUSINESS OF
 3 INSURANCE; TO REQUIRE NOTICE IN WRITING TO THE DONOR THAT A
 4 QUALIFIED CHARITABLE GIFT ANNUITY IS NOT INSURANCE AND IS NOT
 5 SUBJECT TO REGULATION BY THE INSURANCE COMMISSIONER OR PROTECTED
 6 BY AN INSURANCE GUARANTY ASSOCIATION; TO PROVIDE THAT A CHARITABLE
 7 ORGANIZATION THAT ISSUES QUALIFIED CHARITABLE GIFT ANNUITIES SHALL
 8 NOTIFY THE COMMISSIONER OF INSURANCE; TO AUTHORIZE THE
 9 COMMISSIONER OF INSURANCE TO FINE ANY CHARITABLE ORGANIZATION
 10 WHICH FAILS TO PROVIDE THE REQUIRED NOTICE; TO PROVIDE THAT THE
 11 ISSUANCE OF A QUALIFIED CHARITABLE GIFT ANNUITY DOES NOT
 12 CONSTITUTE A VIOLATION OF THE PROVISIONS OF LAW WHICH REGULATE
 13 TRADE PRACTICES IN THE BUSINESS OF INSURANCE; AND FOR RELATED
 14 PURPOSES.

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

16 SECTION 1. **Definitions.**

17 (1) "Charitable gift annuity" means a transfer of cash or
 18 other property by a donor to a charitable organization in return
 19 for an annuity payable over one (1) or two (2) lives, under which
 20 the actuarial value of the annuity is less than the value of the
 21 cash or other property transferred and the difference in value
 22 constitutes a charitable deduction for federal tax purposes.

23 (2) "Charitable organization" means an entity described by:

24 (a) Section 501(c)(3), Internal Revenue Code of 1986
 25 (26 U.S.C. Section 501(c)(3)); or

26 (b) Section 170(c), Internal Revenue Code of 1986 (26
 27 U.S.C. Section 170(c)).

28 (3) "Qualified charitable gift annuity" means a charitable
 29 gift annuity described in Section 501(m)(5), Internal Revenue Code
 30 of 1986 (26 U.S.C. Section 501(m)(5)), and Section 514(c)(5),
 31 Internal Revenue Code of 1986 (26 U.S.C. Section 514(c)(5)), that

32 is issued by a charitable organization that on the date of the
33 annuity agreement:

34 (a) Has a minimum of Three Hundred Thousand Dollars
35 (\$300,000.00) in unrestricted cash, cash equivalents, or publicly
36 traded securities, exclusive of the assets funding the annuity
37 agreement; and

38 (b) Has been in continuous operation for at least three
39 (3) years or is a successor or affiliate of a charitable
40 organization that has been in continuous operation for at least
41 three (3) years.

42 **SECTION 2. Charitable gift annuity is not insurance.**

43 (1) The issuance of a qualified charitable gift annuity does
44 not constitute engaging in the business of insurance in this
45 state.

46 (2) A charitable gift annuity issued before July 1, 2001, is
47 a qualified charitable gift annuity for purposes of this act, and
48 the issuance of that charitable gift annuity does not constitute
49 engaging in the business of insurance in this state.

50 **SECTION 3. Notice to donor.**

51 (1) When entering into an agreement for a qualified
52 charitable gift annuity, the charitable organization shall
53 disclose to the donor in writing in the annuity agreement that a
54 qualified charitable gift annuity is not insurance under the laws
55 of this state and is not subject to regulation by the insurance
56 commissioner or protected by an insurance guaranty association.

57 (2) The notice provisions required by this section must be
58 in a separate paragraph in a print size no smaller than that
59 employed in the annuity agreement generally.

60 **SECTION 4. Notice to department.**

61 (1) A charitable organization that issues qualified
62 charitable gift annuities shall notify the commissioner in writing
63 by the later of ninety (90) days after the effective date of this

64 Act or the date on which it enters into the organization's first
65 qualified charitable gift annuity agreement. The notice shall:

66 (a) Be signed by an officer or director of the
67 organization;

68 (b) Identify the organization; and

69 (c) Certify that:

70 (i) The organization is a charitable organization;
71 and

72 (ii) The annuities issued by the organization are
73 qualified charitable gift annuities.

74 (2) The organization shall not be required to submit
75 additional information except to determine appropriate penalties
76 that may be applicable under Section 5 of this act.

77 **SECTION 5. Effect of failure to provide required notice.**

78 The failure of a charitable organization to comply with the
79 notice requirements imposed under Section 3 or 4 of this act does
80 not prevent a charitable gift annuity that otherwise meets the
81 requirements of this act from constituting a qualified charitable
82 gift annuity. The commissioner may enforce performance of the
83 requirements of Sections 3 and 4 of this act by sending a letter
84 by certified mail, return receipt requested, demanding that the
85 charitable organization comply with the requirements of Sections 3
86 and 4 of this act. The commissioner may fine the charitable
87 organization in an amount not to exceed One Thousand Dollars
88 (\$1,000.00) per qualified charitable gift annuity agreement issued
89 until such time as the charitable organization complies with
90 Sections 3 and 4 of this act.

91 **SECTION 6. Not unfair or deceptive trade practice.**

92 The issuance of a qualified charitable gift annuity does not
93 constitute a violation of Sections 83-5-29 through 83-5-51 which
94 regulate trade practices in the business of insurance.

95 SECTION 7. This act shall take effect and be in force from
96 and after July 1, 2001.