

By: Senator(s) Hewes

To: Insurance

SENATE BILL NO. 2948
(As Passed the Senate)

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 SECRETARY OF STATE; TO AUTHORIZE THE SECRETARY OF STATE
9 TO FINE ANY CHARITABLE ORGANIZATION WHICH FAILS TO PROVIDE THE
10 REQUIRED NOTICE; TO PROVIDE THAT THE ISSUANCE OF A QUALIFIED
11 CHARITABLE GIFT ANNUITY DOES NOT CONSTITUTE A VIOLATION OF THE
12 PROVISIONS OF LAW WHICH REGULATE TRADE PRACTICES IN THE BUSINESS
13 OF INSURANCE; AND FOR RELATED PURPOSES.

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

15 SECTION 1. Definitions.

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

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

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

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

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

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

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

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

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

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

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

49 **SECTION 3. Notice to donor.**

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

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

59 **SECTION 4. Notice to department.**

60 (1) A charitable organization that issues qualified
61 charitable gift annuities shall notify the Secretary of State in
62 writing by the later of ninety (90) days after the effective date
63 of this Act or the date on which it enters into the organization's

64 first qualified charitable gift annuity agreement. The notice
65 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 Secretary of State may enforce performance of
83 the requirements of Sections 3 and 4 of this act by sending a
84 letter by certified mail, return receipt requested, demanding that
85 the charitable organization comply with the requirements of
86 Sections 3 and 4 of this act. The Secretary of State may fine the
87 charitable organization in an amount not to exceed One Thousand
88 Dollars (\$1,000.00) per qualified charitable gift annuity
89 agreement issued until such time as the charitable organization
90 complies with 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.