

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.