

By: Representative Montgomery (74th)

To: Judiciary A

HOUSE BILL NO. 1426

1 AN ACT TO PROVIDE FOR THE REGULATION OF CHARITABLE ANNUITY  
 2 CONTRIBUTIONS; TO DEFINE CERTAIN TERMS; TO CLARIFY THAT A  
 3 CHARITABLE GIFT ANNUITY IS NOT INSURANCE; TO PROVIDE FOR NOTICE TO  
 4 A DONOR AND NOTICE TO THE SECRETARY OF STATE; TO CLARIFY THAT  
 5 FAILURE TO PROVIDE NOTICE DOES NOT PREVENT THE QUALIFICATION OF A  
 6 CHARITABLE GIFT ANNUITY; TO PROVIDE THAT THE ISSUANCE OF A  
 7 QUALIFIED CHARITABLE GIFT ANNUITY IS NOT A VIOLATION OF UNFAIR  
 8 TRADE PRACTICE LAWS; AND FOR RELATED PURPOSES.

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

10 SECTION 1. The following words and phrases shall have the  
 11 meanings ascribed herein, unless the context clearly indicates  
 12 otherwise:

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

19 (b) "Charitable organization" means an entity described  
 20 by:

21 (i) Section 501(c)(3), Internal Revenue Code of  
 22 1986 (26 USCS Section 501(c)(3)); or

23 (ii) Section 170(c), Internal Revenue Code of 1986  
 24 (26 USCS Section 170(c)).

25 (c) "Qualified charitable gift annuity" means a  
 26 charitable gift annuity described in Section 501(m)(5), Internal  
 27 Revenue Code of 1986 (26 USCS Section 501(m)(5)), and Section  
 28 514(c)(5), Internal Revenue Code of 1986 (26 USCS Section

29 514(c)(5)), that is issued by a charitable organization that on  
30 the date of the annuity agreement:

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

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

39 SECTION 2. (1) The issuance of qualified charitable gift  
40 annuity does not constitute engaging in the business of insurance  
41 in this state.

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

46 SECTION 3. (1) When entering into an agreement for a  
47 qualified charitable gift annuity, the charitable organization  
48 shall disclose to the donor in writing in the annuity agreement  
49 that a qualified charitable gift annuity is not insurance under  
50 the laws of this state and is not subject to regulation by the  
51 Insurance Commissioner or protected by an insurance guaranty  
52 association.

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

56 SECTION 4. (1) A charitable organization that issues  
57 qualified charitable gift annuities shall notify the Secretary of  
58 State in writing by the later of ninety (90) days after the  
59 effective date of this act or the date on which it enters into the  
60 organization's first qualified charitable gift annuity agreement.  
61 The notice shall:

- 62           (a) Be signed by an officer or director of the  
63 organization;  
64           (b) Identity of the organization;  
65           (c) Certify that:  
66               (i) The organization is a charitable organization;  
67 and  
68               (ii) The annuities issued by the organization are  
69 qualified charitable gift annuities.

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

73           SECTION 5. The failure of a charitable organization to  
74 comply with the notice requirements imposed under Section 3 or 4  
75 of this act does not prevent a charitable gift annuity that  
76 otherwise meets the requirements of this act from constituting a  
77 qualified charitable gift annuity. The Secretary of State may  
78 enforce performance of the requirements of Sections 3 and 4 of  
79 this act by sending a letter by certified mail, return receipt  
80 requested, demanding that the charitable organization comply with  
81 the requirements of Sections 3 and 4 of this act. The Secretary  
82 of State may fine the charitable organization in an amount not to  
83 exceed One Thousand Dollars (\$1,000.00) per qualified charitable  
84 gift annuity agreement issued until such time as the charitable  
85 organization complies with Sections 3 and 4 of this act.

86           SECTION 6. The issuance of a qualified charitable annuity  
87 does not constitute a violation of the Unfair Trade Practices  
88 Laws.

89           SECTION 7. The Secretary of State is authorized to  
90 promulgate any rules and regulations necessary to carry out the  
91 provisions of this act.

92           SECTION 8. This act shall take effect and be in force from  
93 and after July 1, 2001.