

BILL ANALYSIS

C.S.S.B. 961
By: Ellis
Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law specifically exempts charitable gift annuities from being considered and regulated as insurance and establishes the requirements that must be satisfied to be considered a charitable gift annuity. Current law provides a safeguard for fraudulent actors working under the cover of a charitable organization and provides that a charitable organization may not be made to submit additional information except to determine appropriate penalties for failure to notify the Texas Department of Insurance of its intent to issue charitable gift annuities.

While most charitable gift annuities are legitimate, some are not. The inability to request information from the entities issuing gift annuities may dramatically lengthen the time before the department uncovers any evidence that a gift annuity arrangement is actually a scam, resulting in needless harm to Texas consumers. The current requirements allow fraudulent actors to assume control of a dormant and previously legitimate charitable organization and to issue fraudulent charitable gift annuities completely unhindered by any regulation or investigation by the department.

C.S.S.B. 961 amends the requirements for a charitable organization to be approved by the Texas Department of Insurance to sell qualified charitable gift annuities and establishes notification requirements for the sale of such annuities by a qualified educational organization. The bill authorizes the commissioner of insurance to order an insurer that offers compensation for the sale of annuities to cease and desist or modify the compensation under certain conditions.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of insurance in SECTION 3 of this bill.

ANALYSIS

C.S.S.B. 961 amends the Insurance Code to amend the criteria for a qualified charitable gift annuity to increase from \$100,000 to \$300,000 the minimum amount in unrestricted cash, cash equivalents, or publicly traded securities a charitable organization issuing such an annuity is required to have, in addition to meeting other requirements. The bill establishes that a charitable gift annuity that is delivered or issued for delivery on or after January 1, 2010 is a qualified charitable gift annuity if it is issued by a qualified educational organization that, on the date of the annuity agreement, has, exclusive of the assets funding the annuity agreement, a minimum of \$300,000 in unrestricted cash, cash equivalents, or publicly traded securities and has been in continuous operation for at least three years or is a successor or affiliate of an institution or foundation that has been in continuous operation for at least three years. The bill adds to the definition of "charitable gift annuity" an annuity that is made in return for the transfer of cash or other property to a qualified educational organization. The bill defines "qualified educational organization" to mean an issuer of a charitable gift annuity that is an institution of higher education, a private or independent institution of higher education, or a foundation designated in writing by one of those institutions to issue charitable gift annuities for the benefit of the

institution.

C.S.S.B. 961 amends the requirement that a charitable organization notify the annuities division of the Texas Department of Insurance in writing regarding the organization's issuance of qualified charitable gift annuities to require the organization to notify the division, not later than the 60th day before the date on which a organization sells its first qualified charitable gift annuity, of the organization's intention to issue such an annuity and request in writing the department's approval of the organization as a qualified charitable organization under these provisions, rather than requiring the organization to notify the division not later than the date on which the organization enters into its first qualified charitable gift annuity agreement. The bill includes in the notice requirements that it be submitted in a form and manner adopted by rule by the commissioner of insurance, authorizes the commissioner to adopt such rules, and removes a provision prohibiting the charitable organization from being required to submit additional information except to determine appropriate penalties under provisions relating to the enforcement of the notice requirements. The bill authorizes the department, on receipt of notice and request for approval, to approve a request for a charitable organization to issue charitable gift annuities or to disapprove a request and notify the issuer in writing of the grounds for the disapproval in sufficient detail to allow remediation, and provides that a request is considered approved if the commissioner does not act on the request on or before the 60th day after the date the department received the request. The bill authorizes the department to withdraw the approval of a request if the organization no longer satisfies the requirements for approval and requires the department to notify the organization in writing of the grounds for the withdrawal in sufficient detail to allow remediation. The bill establishes that a proceeding for the disapproval or withdrawal of approval for a charitable organization is a contested case under the Administrative Procedure Act.

C.S.S.B. 961 sets out notification requirements for a qualified educational organization that are similar to a charitable organization, except a qualified educational organization is required to request in writing the department's acknowledgment of the organization as a qualified educational organization, whereas a charitable organization is required to request the department's approval of the organization, and a qualified educational organization is not required to submit its notice in a form and manner adopted by the commissioner by rule. The bill requires the department, on receipt of notice and request for acknowledgment by a qualified educational organization, to acknowledge that the organization may issue a charitable gift annuity. The bill makes the above provisions applicable only to an annuity that is delivered or issued for delivery on or after January 1, 2010.

C.S.S.B. 961 specifies in the requirement that, for purposes of any litigation or other proceeding brought by or on behalf of a donor or the donor's heirs, an annuity the donor has treated as a charitable gift annuity in a filing with the U.S. Internal Revenue Service be considered to be a charitable gift annuity issued by a charitable organization, that the annuity is a qualified charitable gift annuity, and that the consideration includes a qualified charitable gift annuity issued by a qualified educational organization.

C.S.S.B. 961 removes language that makes provisions establishing the maturity date of an annuity applicable only if the annuity contract permits an election to have annuity payments begin on optional maturity dates. The bill makes this provision applicable only to an annuity that is delivered or issued for delivery on or after June 1, 2010.

C.S.S.B. 961 authorizes the commissioner, if the commissioner finds a pattern or practice of unsuitable sales of annuities, or such a pattern or practice is reasonably expected, because of the compensation offered by an insurer for the sale of annuities, to order the insurer to cease and desist or modify the compensation offered. The bill specifies that this remedy is available after notice and hearing and is in addition to any other remedy available for a violation of provisions relating to the suitability of certain annuity transactions. The bill prohibits such an order from including a regular salaried officer or employee of a licensed insurer, a jointly managed affiliate

of a licensed insurer, or a licensed insurance agent if the officer or employee does not receive a commission or other compensation for the services of the officer or employee that is directly dependent on the amount of business done.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 961 adds a definition not in the original for "qualified educational organization" and includes in the definition of "charitable gift annuity" an annuity that is made in return for the transfer of cash or other property to a qualified educational organization.

C.S.S.B. 961 amends a provision not amended in the original relating to the criteria for a qualified charitable gift annuity to increase from \$100,000 to \$300,000 the minimum amount in unrestricted cash, cash equivalents, or publicly traded securities a charitable organization issuing such an annuity is required to have, in addition to meeting other requirements. The substitute removes provisions in the original authorizing the Texas Department of Insurance to investigate as necessary to verify that an organization issuing a charitable gift annuity meets certain criteria, and creating an exception to the prohibition against requiring a charitable organization to submit additional information to the department if the organization is aiding the department in an investigation and verification of the organization.

C.S.S.B. 961 adds provisions not in the original setting forth the requirements for a qualified charitable gift annuity issued by a qualified educational organization and making those provisions applicable only to an annuity that is delivered or issued for delivery on or after January 1, 2010.

C.S.S.B. 961 adds provisions not in the original regarding notice and approval requirements for a charitable gift organization and notice requirements for a qualified educational organization and making those provisions applicable only to an annuity that is delivered or issued for delivery on or after January 1, 2010.

C.S.S.B. 961 adds a provision not in the original specifying the requirement that, for purposes of any litigation or other proceeding brought by or on behalf of a donor or the donor's heirs, an annuity the donor has treated as a charitable gift annuity in a filing with the U.S. Internal Revenue Service be considered to be a charitable gift annuity issued by a charitable organization, that the annuity is a qualified charitable gift annuity, and that the consideration includes a qualified charitable gift annuity issued by a qualified educational organization.

C.S.S.B. 961 differs from the original by establishing that the maturity date of an annuity is the latest date on which an election is permitted by contract, but not later than the later of the next anniversary of the annuity contract that follows the annuitant's 70th birthday or the 10th anniversary of the contract, whereas the original provides that the maturity date is the later of those two anniversary dates. The substitute adds a provision not in the original making this change applicable to an annuity that is delivered or issued for delivery on or after June 1, 2010.

C.S.S.B. 961 differs from the original by authorizing the commissioner of insurance, if the commissioner finds a pattern or practice of unsuitable sales of annuities, or such a pattern or practice is reasonably expected, because of the compensation offered by an insurer for the sale of annuities, to order the insurer to cease and desist or modify the compensation offered, whereas the original authorizes the commissioner, if the commissioner finds that a method of compensation for the sale of an annuity results in a pattern or practice that violates provisions relating to the suitability of certain annuity transactions, to order the modification of that method of compensation. The substitute adds a provision not in the original prohibiting such an order to

cease and desist or modify the compensation offered from including a regular salaried officer or employee of a licensed insurer, a jointly managed affiliate of a licensed insurer, or a licensed insurance agent if the officer or employee does not receive a commission or other compensation for the services of the officer or employee that is directly dependent on the amount of business done.

C.S.S.B. 961 removes a provision applying the provisions of the original to an annuity that is delivered, issued for delivery, or renewed on or after January 1, 2011. The substitute adds a saving provision and prospective clause not in the original relating to the authority of the commissioner to issue an order to cease and desist, or to modify the compensation offered by an insurer for the sale of annuities after notice and hearing if the commissioner finds a pattern or practice of unsuitable sales of annuities.