

By: Eiland

H.B. No. 1857

A BILL TO BE ENTITLED

AN ACT

relating to the sale of charitable gift annuities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 102.002, 102.051, 102.102, and 102.152, Insurance Code, are amended to read as follows:

Sec. 102.002. QUALIFIED CHARITABLE GIFT ANNUITY. A charitable gift annuity is a qualified charitable gift annuity for purposes of this chapter if it was issued before September 1, 1995, or if it is:

(1) described by Section 501(m)(5), Internal Revenue Code of 1986; and

(2) issued by a charitable organization that on the date of the annuity agreement:

(A) has, exclusive of the assets funding the annuity agreement, a minimum of \$100,000 in unrestricted cash, cash equivalents, or publicly traded securities; ~~and~~

(B) has been in continuous operation for at least three years or is a successor or affiliate of a charitable organization that has been in continuous operation for at least three years; and

(C) is approved by the department under Section 102.102.

Sec. 102.051. ~~[NOT INSURANCE,]~~ EFFECT OF CERTAIN LAWS. (a) The issuance of a qualified charitable gift annuity:

1 (1) does not constitute engaging in the business of
2 insurance in this state;

3 (2) does not violate Section 15.05 or 17.46, Business
4 & Commerce Code; and

5 (3) is not an unconscionable action or course of
6 action for purposes of Section 17.50(a)(3), Business & Commerce
7 Code.

8 (b) Notwithstanding Subsection (a)(1), an organization that
9 issues a charitable gift annuity without the approval of the
10 department under Section 102.102 engages in the unauthorized
11 business of insurance and is subject to Chapter 101.

12 Sec. 102.102. NOTICE AND APPROVAL OF QUALIFIED STATUS [~~TO~~
13 ~~DEPARTMENT~~]. (a) Not later than the 60th day before the date on
14 which a charitable organization sells the organization's first
15 qualified charitable gift annuity, the [A charitable] organization
16 [that issues qualified charitable gift annuities] shall:

17 (1) notify the department's annuities division in
18 writing of the organization's intention to issue a charitable gift
19 annuity; and

20 (2) request in writing the department's approval of
21 the organization as a qualified charitable organization under this
22 chapter [not later than the date on which the organization enters
23 into the organization's first qualified charitable gift annuity
24 agreement].

25 (b) The notice required by this section must:

26 (1) be signed by an officer or director of the
27 organization;

1 (2) identify the organization; ~~and~~

2 (3) certify that:

3 (A) the organization is a charitable
4 organization; and

5 (B) the annuities issued by the organization are
6 ~~qualified~~ charitable gift annuities; and

7 (4) be submitted in a form and manner adopted by the
8 commissioner by rule under Subsection (c).

9 (c) The commissioner may adopt rules that establish the form
10 and manner of information that a charitable organization must ~~may~~
11 ~~not be required to~~ submit to request approval under this section
12 ~~[additional information except to determine appropriate penalties~~
13 ~~under Section 102.104].~~

14 (d) A postsecondary educational institution authorized to
15 grant degrees under a certificate of authority issued by the Texas
16 Higher Education Coordinating Board is exempt from Subsections
17 (b)(4) and (c).

18 (e) On receipt of notice and request for approval under this
19 section, the department may:

20 (1) approve a request for a charitable organization to
21 issue charitable gift annuities; or

22 (2) disapprove a request and notify the issuer in
23 writing of the grounds for the disapproval in sufficient detail to
24 allow remediation.

25 (f) A request under Subsection (b) is considered approved if
26 the commissioner does not act on the request on or before the 60th
27 day after the date that the department received the request.

1 (g) The department may withdraw the approval of a request
2 for qualified status of a charitable organization if the
3 organization no longer satisfies the requirements for approval.
4 The department shall notify the organization in writing of the
5 grounds for the withdrawal of approval in sufficient detail to
6 allow remediation.

7 (h) A proceeding under this chapter for the disapproval or
8 withdrawal of approval is a contested case subject to Chapter 2001,
9 Government Code.

10 Sec. 102.152. TREATMENT OF ANNUITY AS CHARITABLE GIFT
11 ANNUITY; ESTOPPEL. In any litigation or other proceeding brought
12 by or on behalf of a donor or the donor's heirs or distributees, an
13 annuity that the donor has treated as a charitable gift annuity in a
14 filing with the United States Internal Revenue Service shall be
15 considered to be a qualified charitable gift annuity issued by a
16 charitable organization, as described by Subchapters A and B and
17 Section 101.053(b).

18 SECTION 2. Subchapter B, Chapter 4005, Insurance Code, is
19 amended by adding Section 4005.056 to read as follows:

20 Sec. 4005.056. MODIFICATION OF METHOD OF COMPENSATION FOR
21 SALE OF ANNUITIES. In addition to any other remedy available, the
22 commissioner may order the modification of a method of compensation
23 for the sale of an annuity that the commissioner finds, after
24 notice and an opportunity for hearing, results in a pattern or
25 practice that violates Chapter 1115.

26 SECTION 3. (a) Section 1 of this Act applies only to an
27 annuity that is delivered, issued for delivery, or renewed on or

1 after January 1, 2010. An annuity that is delivered, issued for
2 delivery, or renewed before January 1, 2010, is governed by the law
3 as it existed immediately before the effective date of this Act, and
4 that law is continued in effect for that purpose.

5 (b) Section 2 of this Act applies only to a method of
6 compensation resulting in a sale occurring on or after September 1,
7 2009. A method of compensation resulting in a sale occurring before
8 September 1, 2009, is governed by the law as it existed immediately
9 before the effective date of this Act, and that law is continued in
10 effect for that purpose.

11 SECTION 4. This Act takes effect September 1, 2009.