

SENATE BILL NO. 143
INTRODUCED BY BOHLINGER
BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING "CHARITABLE GIFT ANNUITY", "CHARITABLE ORGANIZATION", AND "QUALIFIED CHARITABLE GIFT ANNUITY"; PROVIDING THAT A QUALIFIED CHARITABLE GIFT ANNUITY IS NOT INSURANCE; REQUIRING THAT CHARITABLE ORGANIZATIONS ENTERING INTO A CHARITABLE GIFT ANNUITY AGREEMENT GIVE NOTICE TO DONORS AND THE STATE AUDITOR; REQUIRING THE NOTICE TO DONORS TO INCLUDE A STATEMENT OF WHETHER THE CHARITABLE ORGANIZATION HAS EVER INITIATED A LAWSUIT AGAINST A FEDERAL OR STATE GOVERNMENTAL AGENCY; PROVIDING A FINE FOR FAILURE TO GIVE PROPER NOTICES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Definitions.** In [sections 1 through 5], the following definitions apply:

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

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

(a) section 501(c)(3) of the Internal Revenue Code of 1986, 26 U.S.C. 501(c)(3); or

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

(3) (a) "Qualified charitable gift annuity" means a charitable gift annuity, described by section 501(m)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 501(m)(5), section 514(c)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 514(c)(5), section 1011(b) of the Internal Revenue Code of 1986, 26 U.S.C. 1011(b), and the implementing regulations, that is issued by a charitable organization that, on the date of the annuity agreement:

(i) has a minimum of \$300,000 net worth or has a minimum of \$100,000 in unrestricted cash, cash equivalents, or publicly traded securities, exclusive of the assets funding the annuity agreement;

(ii) has been in continuous operation for at least 3 years or is a successor or affiliate of a charitable organization that has been in continuous operation for at least 3 years; and

(iii) maintains a separate annuity fund with at least one-half the value of the initial amount transferred for outstanding annuities.

(b) If the charitable organization cannot meet the requirements of subsections (3)(a)(i) through (3)(a)(iii), the issuance of a qualified charitable gift annuity by a charitable organization must be commercially insured by a licensed insurance company that is qualified to do business in Montana.

NEW SECTION. Section 2. Charitable gift annuity not insurance. (1) The issuance of a qualified charitable gift annuity does not constitute engaging in the business of insurance in this state.

(2) A charitable gift annuity issued before [the effective date of this act] is a qualified charitable gift annuity for purposes of [sections 1 through 5], and the issuance of that charitable gift annuity does not constitute engaging in the business of insurance in this state.

NEW SECTION. Section 3. Notice to donor. (1) When entering into an agreement for a qualified charitable gift annuity, the charitable organization shall disclose to the donor, in writing, in the annuity agreement, that a qualified charitable gift annuity is not insurance under the laws of this state and is not subject to regulation by the commissioner or protected by an insurance guaranty association.

(2) The notice provisions required by this section must be in a separate paragraph in print size that is not smaller than that employed in the annuity agreement generally.

(3) THE NOTICE REQUIRED BY THIS SECTION MUST INCLUDE A STATEMENT INFORMING THE DONOR OF WHETHER THE CHARITABLE ORGANIZATION HAS EVER INITIATED A LAWSUIT AGAINST A FEDERAL OR STATE GOVERNMENTAL AGENCY.

NEW SECTION. Section 4. Notice to commissioner. (1) A charitable organization that issues qualified charitable gift annuities shall notify the commissioner in writing within 90 days after [the effective date of this act] or the date on which it enters into the organization's first qualified charitable gift annuity agreement **AND SHALL NOTIFY THE COMMISSIONER ON MARCH 1 OF EACH YEAR IN WHICH THE CHARITABLE ORGANIZATION ISSUES QUALIFIED CHARITABLE GIFT ANNUITIES.** The notice must:

- (a) be signed by an officer or director of the organization;
- (b) identify the organization;
- (c) certify that:
 - (i) the organization is a charitable organization; and
 - (ii) the annuities issued by the organization are qualified charitable gift annuities.

(2) The organization is not required to submit additional information except:

(A) WITHIN 30 DAYS OF RECEIPT OF A WRITTEN REQUEST, TO PROVIDE THE COMMISSIONER WITH FINANCIAL DOCUMENTS VERIFYING INFORMATION THAT WAS PROVIDED TO THE COMMISSIONER IN THE NOTICE; OR

(B) to enable the commissioner to determine appropriate penalties that may be applicable under [section 5].

NEW SECTION. Section 5. Failure to provide required notice. The failure of a charitable organization to comply with the notice requirements imposed under [sections 3 and 4] does not prevent a charitable gift annuity that otherwise meets the requirements of [sections 1 through 5] from constituting a qualified charitable gift annuity. The commissioner may enforce performance of the requirements of [sections 3 and 4] by sending a letter by certified mail, return receipt requested, demanding that the charitable organization comply with the requirements of [sections 3 and 4]. The commissioner may fine the charitable organization in an amount not to exceed \$1,000 for each qualified charitable gift annuity agreement issued until the time that the charitable organization complies with [sections 3 and 4].

NEW SECTION. Section 6. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 33, chapter 20, ~~part 3~~; and the provisions of Title 33, chapter 20, ~~part 3~~, apply to [sections 1 through 5].

NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval.

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