

Hoffman, Chair
Kettering
Taylor

HSB 114

COMMERCE AND REGULATION

SENATE/HOUSE FILE ^{SEN} 10 401
BY (PROPOSED DEPARTMENT OF
COMMERCE/INSURANCE
DIVISION BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to charitable gift annuities, by providing for
2 notice and filing requirements and providing for penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23

1 Section 1. Section 507B.3, unnumbered paragraph 1, Code
2 2001, is amended to read as follows:

3 No A person shall not engage in this state in any trade
4 practice which is defined in this chapter as, or determined
5 pursuant to section 507B.6 ~~of this chapter~~ to be, an unfair
6 method of competition, or an unfair or deceptive act or
7 practice in the business of insurance. The issuance of a
8 qualified charitable gift annuity as provided in chapter 508F
9 does not constitute a trade practice in violation of this
10 chapter.

11 Sec. 2. NEW SECTION. 508F.1 DEFINITIONS.

12 As used in this chapter, unless the context clearly
13 indicates otherwise:

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

20 2. "Charitable organization" means an entity described by
21 any of the following:

22 a. Section 501(c)(3) of the Internal Revenue Code.

23 b. Section 170(c) of the Internal Revenue Code.

24 3. "Commissioner" means the commissioner of insurance.

25 4. "Internal Revenue Code" means the Internal Revenue Code
26 of 1986 as designated by the Tax Reform Act of 1986, as
27 amended to a date designated by rules adopted by the
28 commissioner.

29 5. "Property" means anything of value that is subject to
30 ownership, and includes but is not limited to property
31 classified as real, personal, mixed, tangible or intangible,
32 or any present or future interest in such property.

33 6. "Qualified charitable gift annuity" means a charitable
34 gift annuity that is described by section 501(m)(5) or
35 514(c)(5) of the Internal Revenue Code, if all of the

1 following apply:

2 a. The annuity agreement is issued by a charitable
3 organization.

4 b. On the date that the annuity agreement is issued, the
5 charitable organization has a minimum value of the lesser of
6 three hundred thousand dollars or five times the face amount
7 of total outstanding annuities in unrestricted cash, cash
8 equivalents, or publicly traded securities. However, the
9 total outstanding annuities as provided in this paragraph do
10 not include assets funding the annuity agreement.

11 c. The charitable organization has been in continuous
12 operation for at least three years or is a successor or
13 affiliate of a charitable organization that has been in
14 continuous operation for at least three years.

15 Sec. 3. NEW SECTION. 508F.2 QUALIFIED CHARITABLE GIFT
16 ANNUITY IS NOT INSURANCE.

17 1. The issuance of a qualified charitable gift annuity
18 does not constitute engaging in the business of insurance in
19 this state.

20 2. A charitable gift annuity that meets the requirements
21 of a qualified charitable gift annuity shall be deemed to be a
22 qualified charitable gift annuity for purposes of this
23 chapter, regardless of whether the charitable gift annuity was
24 issued prior to the effective date of this Act. The issuance
25 of that charitable gift annuity shall not be construed as
26 engaging in the business of insurance in this state.

27 Sec. 4. NEW SECTION. 508F.3 ANNUITY AGREEMENT -- NOTICE
28 TO DONOR.

29 An agreement for a qualified charitable gift annuity
30 executed by a charitable organization and a donor shall be in
31 writing. The annuity agreement shall include a notice stating
32 that a qualified charitable gift annuity is not insurance
33 under the laws of this state and is not subject to regulation
34 by the commissioner or protected by an insurance guaranty fund
35 or an insurance guaranty association. The notice required by

1 this section shall be in a separate paragraph and in a type
2 size no smaller than that generally used in the annuity
3 agreement.

4 Sec. 5. NEW SECTION. 508F.4 NOTICE FILED WITH THE
5 COMMISSIONER.

6 1. A charitable organization that issues qualified
7 charitable gift annuities in this state on and after the
8 effective date of this Act shall file a notice with the
9 commissioner in writing not later than the date on which it
10 executes the organization's first qualified charitable annuity
11 agreement. All of the following shall apply:

12 a. The notice must be signed by an officer or director of
13 the charitable organization.

14 b. The notice must identify the name and address of the
15 charitable organization.

16 c. The notice must include a copy of the determination
17 letter issued by the internal revenue service.

18 d. The notice must certify that the charitable
19 organization is a bona fide charitable organization and that
20 the annuities issued by the charitable organization are
21 qualified charitable gift annuities.

22 2. The charitable organization is not required to submit
23 additional information, unless the information is to be used
24 to determine appropriate penalties that may be applicable
25 under section 508F.5.

26 Sec. 6. NEW SECTION. 508F.5 FAILURE TO COMPLY WITH
27 REQUIREMENTS.

28 1. The failure of a charitable organization to comply with
29 the requirements of sections 508F.3 and 508F.4 does not
30 prevent a charitable gift annuity that otherwise meets the
31 requirements of this chapter from constituting a qualified
32 charitable gift annuity.

33 2. The commissioner shall enforce performance of the
34 requirements of sections 508F.3 and 508F.4. The commissioner
35 may do any of the following:

1 a. Send a letter by restricted certified mail to the
2 charitable organization demanding that the charitable
3 organization comply with this chapter.

4 b. Establish and impose civil penalties on the charitable
5 organization in an amount not to exceed one thousand dollars
6 for each qualified charitable gift annuity issued until the
7 charitable organization complies with the requirements of this
8 chapter.

9 Sec. 7. NEW SECTION. 508F.6 PENALTIES.

10 The commissioner may determine, after hearing, that the
11 issuance of an annuity is not in compliance with this chapter
12 and that the entity issuing the annuity is subject to the
13 provisions and penalties of chapters 507A and 507B.

14 Sec. 8. NEW SECTION. 508F.7 NOT UNFAIR OR DECEPTIVE
15 TRADE PRACTICE.

16 The issuance of a qualified charitable gift annuity does
17 not constitute a violation of chapter 507B.

18 Sec. 9. NEW SECTION. 508F.8 RULES.

19 The commissioner may adopt rules pursuant to chapter 17A
20 necessary to administer and enforce this chapter.

21 Sec. 10. NOTICE FILING REQUIREMENTS -- DEADLINE.

22 Notwithstanding section 508F.4 as enacted in this Act, a
23 charitable organization that issues qualified charitable gift
24 annuities in this state on and after the effective date of
25 this Act shall have ninety days following the effective date
26 of this Act to file a notice with the commissioner as
27 otherwise provided in section 508F.4.

28 EXPLANATION

29 This bill regulates charitable gift annuities. A
30 charitable gift annuity is a transfer of property by a donor
31 to a charitable organization in return for an annuity payable
32 over one or two lives. Specifically, the bill provides for a
33 qualified charitable organization which is issued by a
34 charitable organization and further defined in the federal
35 Internal Revenue Code. The bill provides that a qualified

1 charitable organization must have a minimum value of either
2 \$300,000 or five times the face amount of the total
3 outstanding annuities in unrestricted cash, cash equivalents,
4 or publicly traded securities.

5 The bill provides that the issuance of a qualified
6 charitable gift annuity does not constitute engaging in the
7 business of insurance in this state. The bill provides that
8 this also applies to qualified charitable gift annuities
9 issued before the effective date of the bill.

10 The bill provides that an agreement for a qualified
11 charitable gift annuity executed by a charitable organization
12 and a donor must be in writing. The annuity agreement must
13 include a notice to donors stating that a qualified charitable
14 gift annuity is not insurance under the laws of this state and
15 is not subject to regulation by the insurance commissioner or
16 protected by an insurance guaranty fund or association.

17 The bill provides that a charitable organization that
18 issues a qualified charitable gift annuity must file a notice
19 with the commissioner stating information regarding the
20 information and its status as a charitable organization.

21 The bill provides that a failure to comply with the new
22 Code chapter's requirements does not prevent a charitable gift
23 annuity from constituting a qualified charitable gift annuity.
24 The bill provides that the commissioner may send a letter to
25 the organization demanding compliance with the Code chapter
26 requirements or establish and impose civil penalties of not
27 more than \$1,000 for each qualified charitable gift annuity
28 issued until the charitable organization complies with the
29 requirements.

30 The bill provides that the commissioner may determine that
31 the issuance of an annuity does not comply with the chapter's
32 requirements, and that the entity issuing the annuity is
33 subject to the penalties of Code chapters 507A and 507B.

34 The bill provides that the issuance of a qualified
35 charitable gift annuity does not constitute violation of Code

114

1 chapter 507B regulating unfair or deceptive practices in the
2 insurance industry.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

HSB 114

Background statement on Proposed Legislation on Charitable Gift Annuities

A charitable gift annuity is created when a person makes a gift to a qualified charity and, in exchange receives periodic payments. Prior to 1996, charitable gift annuities (cgas) were regulated by the Securities Bureau of the Iowa Insurance Division. The federal Philanthropy Protection Act of 1995 pre-empted regulation of cgas as securities products. The law took effect in December 1998. At present, there is no regulatory structure in place in Iowa to govern cgas. The proposed legislation would adopt the National Association of Insurance Commissioner's new model law on cgas. The legislation is necessary to give guidance to the charities that utilize cgas and to provide a measure of protection to consumers that make gifts to charities via cgas.

Substituted for by SF 102
4-9-01
(P. 1115)

4/5/01 UNFINISHED BUSINESS CALENDAR

FEB 26 2001

Place On Calendar

HOUSE FILE 401
BY COMMITTEE ON COMMERCE
AND REGULATION

WITHDRAWN
4-9-01

(SUCCESSOR TO HSB 114)
(COMPANION TO SF 102)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to charitable gift annuities, by providing for
2 notice and filing requirements and providing for penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21

1 Section 1. Section 507B.3, unnumbered paragraph 1, Code
2 2001, is amended to read as follows:

3 No A person shall not engage in this state in any trade
4 practice which is defined in this chapter as, or determined
5 pursuant to section 507B.6 ~~of this chapter~~ to be, an unfair
6 method of competition, or an unfair or deceptive act or
7 practice in the business of insurance. The issuance of a
8 qualified charitable gift annuity as provided in chapter 508F
9 does not constitute a trade practice in violation of this
10 chapter.

11 Sec. 2. NEW SECTION. 508F.1 DEFINITIONS.

12 As used in this chapter, unless the context clearly
13 indicates otherwise:

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

20 2. "Charitable organization" means an entity described by
21 any of the following:

22 a. Section 501(c)(3) of the Internal Revenue Code.

23 b. Section 170(c) of the Internal Revenue Code.

24 3. "Commissioner" means the commissioner of insurance.

25 4. "Internal Revenue Code" means the Internal Revenue Code
26 of 1986 as designated by the Tax Reform Act of 1986, as
27 amended to a date designated by rules adopted by the
28 commissioner.

29 5. "Property" means anything of value that is subject to
30 ownership, and includes but is not limited to property
31 classified as real, personal, mixed, tangible or intangible,
32 or any present or future interest in such property.

33 6. "Qualified charitable gift annuity" means a charitable
34 gift annuity that is described by section 501(m)(5) or
35 514(c)(5) of the Internal Revenue Code, if all of the

1 following apply:

2 a. The annuity agreement is issued by a charitable
3 organization.

4 b. On the date that the annuity agreement is issued, the
5 charitable organization has a minimum value of the lesser of
6 three hundred thousand dollars or five times the face amount
7 of total outstanding annuities in unrestricted cash, cash
8 equivalents, or publicly traded securities. However, the
9 total outstanding annuities as provided in this paragraph do
10 not include assets funding the annuity agreement.

11 c. The charitable organization has been in continuous
12 operation for at least three years or is a successor or
13 affiliate of a charitable organization that has been in
14 continuous operation for at least three years.

15 Sec. 3. NEW SECTION. 508F.2 QUALIFIED CHARITABLE GIFT
16 ANNUITY IS NOT INSURANCE.

17 1. The issuance of a qualified charitable gift annuity
18 does not constitute engaging in the business of insurance in
19 this state.

20 2. A charitable gift annuity that meets the requirements
21 of a qualified charitable gift annuity shall be deemed to be a
22 qualified charitable gift annuity for purposes of this
23 chapter, regardless of whether the charitable gift annuity was
24 issued prior to the effective date of this Act. The issuance
25 of that charitable gift annuity shall not be construed as
26 engaging in the business of insurance in this state.

27 Sec. 4. NEW SECTION. 508F.3 ANNUITY AGREEMENT -- NOTICE
28 TO DONOR.

29 An agreement for a qualified charitable gift annuity
30 executed by a charitable organization and a donor shall be in
31 writing. The annuity agreement shall include a notice stating
32 that a qualified charitable gift annuity is not insurance
33 under the laws of this state and is not subject to regulation
34 by the commissioner or protected by an insurance guaranty fund
35 or an insurance guaranty association. The notice required by

1 this section shall be in a separate paragraph and in a type
2 size no smaller than that generally used in the annuity
3 agreement.

4 Sec. 5. NEW SECTION. 508F.4 NOTICE FILED WITH THE
5 COMMISSIONER.

6 1. A charitable organization that issues qualified
7 charitable gift annuities in this state on and after the
8 effective date of this Act shall file a notice with the
9 commissioner in writing not later than the date on which it
10 executes the organization's first qualified charitable annuity
11 agreement. All of the following shall apply:

12 a. The notice must be signed by an officer or director of
13 the charitable organization.

14 b. The notice must identify the name and address of the
15 charitable organization.

16 c. The notice must include a copy of the determination
17 letter issued by the internal revenue service.

18 d. The notice must certify that the charitable
19 organization is a bona fide charitable organization and that
20 the annuities issued by the charitable organization are
21 qualified charitable gift annuities.

22 2. The charitable organization is not required to submit
23 additional information, unless the information is to be used
24 to determine appropriate penalties that may be applicable
25 under section 508F.5.

26 Sec. 6. NEW SECTION. 508F.5 FAILURE TO COMPLY WITH
27 REQUIREMENTS.

28 1. The failure of a charitable organization to comply with
29 the requirements of sections 508F.3 and 508F.4 does not
30 prevent a charitable gift annuity that otherwise meets the
31 requirements of this chapter from constituting a qualified
32 charitable gift annuity.

33 2. The commissioner shall enforce performance of the
34 requirements of sections 508F.3 and 508F.4. The commissioner
35 may do any of the following:

1 a. Send a letter by restricted certified mail to the
2 charitable organization demanding that the charitable
3 organization comply with this chapter.

4 b. Establish and impose civil penalties on the charitable
5 organization in an amount not to exceed one thousand dollars
6 for each qualified charitable gift annuity issued until the
7 charitable organization complies with the requirements of this
8 chapter.

9 Sec. 7. NEW SECTION. 508F.6 PENALTIES.

10 The commissioner may determine, after hearing, that the
11 issuance of an annuity is not in compliance with this chapter
12 and that the entity issuing the annuity is subject to the
13 provisions and penalties of chapters 507A and 507B.

14 Sec. 8. NEW SECTION. 508F.7 NOT UNFAIR OR DECEPTIVE
15 TRADE PRACTICE.

16 The issuance of a qualified charitable gift annuity does
17 not constitute a violation of chapter 507B.

18 Sec. 9. NEW SECTION. 508F.8 RULES.

19 The commissioner may adopt rules pursuant to chapter 17A
20 necessary to administer and enforce this chapter.

21 Sec. 10. NOTICE FILING REQUIREMENTS -- DEADLINE.

22 Notwithstanding section 508F.4 as enacted in this Act, a
23 charitable organization that issues qualified charitable gift
24 annuities in this state on and after the effective date of
25 this Act shall have ninety days following the effective date
26 of this Act to file a notice with the commissioner as
27 otherwise provided in section 508F.4.

28 EXPLANATION

29 This bill regulates charitable gift annuities. A
30 charitable gift annuity is a transfer of property by a donor
31 to a charitable organization in return for an annuity payable
32 over one or two lives. Specifically, the bill provides for a
33 qualified charitable organization which is issued by a
34 charitable organization and further defined in the federal
35 Internal Revenue Code. The bill provides that a qualified

1 charitable organization must have a minimum value of either
2 \$300,000 or five times the face amount of the total
3 outstanding annuities in unrestricted cash, cash equivalents,
4 or publicly traded securities.

5 The bill provides that the issuance of a qualified
6 charitable gift annuity does not constitute engaging in the
7 business of insurance in this state. The bill provides that
8 this also applies to qualified charitable gift annuities
9 issued before the effective date of the bill.

10 The bill provides that an agreement for a qualified
11 charitable gift annuity executed by a charitable organization
12 and a donor must be in writing. The annuity agreement must
13 include a notice to donors stating that a qualified charitable
14 gift annuity is not insurance under the laws of this state and
15 is not subject to regulation by the insurance commissioner or
16 protected by an insurance guaranty fund or association.

17 The bill provides that a charitable organization that
18 issues a qualified charitable gift annuity must file a notice
19 with the commissioner stating information regarding the
20 information and its status as a charitable organization.

21 The bill provides that a failure to comply with the new
22 Code chapter's requirements does not prevent a charitable gift
23 annuity from constituting a qualified charitable gift annuity.
24 The bill provides that the commissioner may send a letter to
25 the organization demanding compliance with the Code chapter
26 requirements or establish and impose civil penalties of not
27 more than \$1,000 for each qualified charitable gift annuity
28 issued until the charitable organization complies with the
29 requirements.

30 The bill provides that the commissioner may determine that
31 the issuance of an annuity does not comply with the chapter's
32 requirements, and that the entity issuing the annuity is
33 subject to the penalties of Code chapters 507A and 507B.

34 The bill provides that the issuance of a qualified
35 charitable gift annuity does not constitute violation of Code

1 chapter 507B regulating unfair or deceptive practices in the
2 insurance industry.

- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35