

House Study Bill 114

Bill Text

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

~~No~~

- A person shall not engage in this state in any trade
1 4 practice which is defined in this chapter as, or determined
1 5 pursuant to section 507B.6

~~of this chapter~~

- to be, an unfair
1 6 method of competition, or an unfair or deceptive act or
1 7 practice in the business of insurance. The issuance of a
1 8 qualified charitable gift annuity as provided in chapter 508F
1 9 does not constitute a trade practice in violation of this
1 10 chapter.

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

1 12 As used in this chapter, unless the context clearly
1 13 indicates otherwise:

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

1 20 2. "Charitable organization" means an entity described by
1 21 any of the following:

1 22 a. Section 501(c)(3) of the Internal Revenue Code.

1 23 b. Section 170(c) of the Internal Revenue Code.

1 24 3. "Commissioner" means the commissioner of insurance.

1 25 4. "Internal Revenue Code" means the Internal Revenue Code
1 26 of 1986 as designated by the Tax Reform Act of 1986, as
1 27 amended to a date designated by rules adopted by the
1 28 commissioner.

1 29 5. "Property" means anything of value that is subject to
1 30 ownership, and includes but is not limited to property
1 31 classified as real, personal, mixed, tangible or intangible,
1 32 or any present or future interest in such property.

1 33 6. "Qualified charitable gift annuity" means a charitable
1 34 gift annuity that is described by section 501(m)(5) or
1 35 514(c)(5) of the Internal Revenue Code, if all of the
2 1 following apply:

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

2 4 b. On the date that the annuity agreement is issued, the
2 5 charitable organization has a minimum value of the lesser of
2 6 three hundred thousand dollars or five times the face amount
2 7 of total outstanding annuities in unrestricted cash, cash
2 8 equivalents, or publicly traded securities. However, the
2 9 total outstanding annuities as provided in this paragraph do
2 10 not include assets funding the annuity agreement.

2 11 c. The charitable organization has been in continuous
2 12 operation for at least three years or is a successor or
2 13 affiliate of a charitable organization that has been in
2 14 continuous operation for at least three years.

2 15 Sec. 3. NEW SECTION. 508F.2 QUALIFIED CHARITABLE GIFT

2 16 ANNUITY IS NOT INSURANCE.

2 17 1. The issuance of a qualified charitable gift annuity
2 18 does not constitute engaging in the business of insurance in
2 19 this state.

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

2 27 Sec. 4. NEW SECTION. 508F.3 ANNUITY AGREEMENT NOTICE
2 28 TO DONOR.

2 29 An agreement for a qualified charitable gift annuity
2 30 executed by a charitable organization and a donor shall be in
2 31 writing. The annuity agreement shall include a notice stating
2 32 that a qualified charitable gift annuity is not insurance
2 33 under the laws of this state and is not subject to regulation
2 34 by the commissioner or protected by an insurance guaranty fund
2 35 or an insurance guaranty association. The notice required by
3 1 this section shall be in a separate paragraph and in a type
3 2 size no smaller than that generally used in the annuity
3 3 agreement.

3 4 Sec. 5. NEW SECTION. 508F.4 NOTICE FILED WITH THE
3 5 COMMISSIONER.

3 6 1. A charitable organization that issues qualified
3 7 charitable gift annuities in this state on and after the
3 8 effective date of this Act shall file a notice with the
3 9 commissioner in writing not later than the date on which it
3 10 executes the organization's first qualified charitable annuity
3 11 agreement. All of the following shall apply:

3 12 a. The notice must be signed by an officer or director of
3 13 the charitable organization.

3 14 b. The notice must identify the name and address of the
3 15 charitable organization.

3 16 c. The notice must include a copy of the determination
3 17 letter issued by the internal revenue service.

3 18 d. The notice must certify that the charitable
3 19 organization is a bona fide charitable organization and that
3 20 the annuities issued by the charitable organization are
3 21 qualified charitable gift annuities.

3 22 2. The charitable organization is not required to submit
3 23 additional information, unless the information is to be used
3 24 to determine appropriate penalties that may be applicable
3 25 under section 508F.5.

3 26 Sec. 6. NEW SECTION. 508F.5 FAILURE TO COMPLY WITH
3 27 REQUIREMENTS.

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

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

4 1 a. Send a letter by restricted certified mail to the
4 2 charitable organization demanding that the charitable
4 3 organization comply with this chapter.

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

4 9 Sec. 7. NEW SECTION. 508F.6 PENALTIES.

4 10 The commissioner may determine, after hearing, that the
4 11 issuance of an annuity is not in compliance with this chapter
4 12 and that the entity issuing the annuity is subject to the

4 13 provisions and penalties of chapters 507A and 507B.

4 14 Sec. 8. NEW SECTION. 508F.7 NOT UNFAIR OR DECEPTIVE

4 15 TRADE PRACTICE.

4 16 The issuance of a qualified charitable gift annuity does
4 17 not constitute a violation of chapter 507B.

4 18 Sec. 9. NEW SECTION. 508F.8 RULES.

4 19 The commissioner may adopt rules pursuant to chapter 17A
4 20 necessary to administer and enforce this chapter.

4 21 Sec. 10. NOTICE FILING REQUIREMENTS DEADLINE.

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

4 28 EXPLANATION

4 29 This bill regulates charitable gift annuities. A
4 30 charitable gift annuity is a transfer of property by a donor
4 31 to a charitable organization in return for an annuity payable
4 32 over one or two lives. Specifically, the bill provides for a
4 33 qualified charitable organization which is issued by a
4 34 charitable organization and further defined in the federal
4 35 Internal Revenue Code. The bill provides that a qualified
5 1 charitable organization must have a minimum value of either
5 2 \$300,000 or five times the face amount of the total
5 3 outstanding annuities in unrestricted cash, cash equivalents,
5 4 or publicly traded securities.

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

5 10 The bill provides that an agreement for a qualified
5 11 charitable gift annuity executed by a charitable organization
5 12 and a donor must be in writing. The annuity agreement must
5 13 include a notice to donors stating that a qualified charitable
5 14 gift annuity is not insurance under the laws of this state and
5 15 is not subject to regulation by the insurance commissioner or
5 16 protected by an insurance guaranty fund or association.

5 17 The bill provides that a charitable organization that
5 18 issues a qualified charitable gift annuity must file a notice
5 19 with the commissioner stating information regarding the
5 20 information and its status as a charitable organization.

5 21 The bill provides that a failure to comply with the new
5 22 Code chapter's requirements does not prevent a charitable gift
5 23 annuity from constituting a qualified charitable gift annuity.
5 24 The bill provides that the commissioner may send a letter to
5 25 the organization demanding compliance with the Code chapter
5 26 requirements or establish and impose civil penalties of not
5 27 more than \$1,000 for each qualified charitable gift annuity
5 28 issued until the charitable organization complies with the
5 29 requirements.

5 30 The bill provides that the commissioner may determine that
5 31 the issuance of an annuity does not comply with the chapter's
5 32 requirements, and that the entity issuing the annuity is
5 33 subject to the penalties of Code chapters 507A and 507B.

5 34 The bill provides that the issuance of a qualified
5 35 charitable gift annuity does not constitute violation of Code
6 1 chapter 507B regulating unfair or deceptive practices in the
6 2 insurance industry.

6 3 LSB 1039DP 79

6 4 da/pj/5