SUBJECT: Exempting charitable gift annuities from insurance department regulation

COMMITTEE: Insurance — favorable, without amendment

VOTE: 8 ayes — Smithee, Duncan, Averitt, Counts, Driver, Dutton, G. Lewis, Shields

0 nays

1 absent — De La Garza

WITNESSES: For — The Rev. Larry Guinn, Harvey J. Byram and Karl H. Doerner, Seventh-Day Adventists; Carol McDonald, Independent Colleges and Universities of Texas, Inc.; Jackie W. Francy, American Heart Association, Inc.; Ellen Eisenlohr Dorn, Charitable Accord and Baptist Foundation of Texas.

Against — Robert W. Blevins, Texas Life Insurance Association

BACKGROUND: A charitable gift annuity provides regular fixed payments to a person who donates their assets to a charity. The annuity may be payable over the life of the donor and an heir. The difference between the value of the donated gift and the smaller value of the annuity can be deducted from federal taxes.

DIGEST: HB 3104 would exempt certain charitable gift annuities (CGAs) from regulation by the Texas Insurance Department if they meet Internal Revenue Code requirements and are issued by charities that have been in existence for at least three years and hold at least $100,000 in unrestricted liquid assets, exclusive of the assets funding the annuity agreement.

The insurance department could impose up to a $1,000 penalty on charities that either failed to notify the department of their intent to issue CGAs or failed to notify donors in writing that their CGA was not an insurance product or protected by a state insurance guaranty fund. A CGA issued before September 1, 1995, the bill's effective date, would be considered a qualified charitable gift annuity. Issuance of a CGA specifically would not be considered an unfair or deceptive trade practice.

SUPPORTERS SAY:

By clarifying that issuing a charitable gift annuity (CGA) does not constitute engaging in the business of insurance and cannot be regulated by the insurance department, HB 3104 would encourage the use of CGAs as a fund-raising tool for charities. CGAs benefit both charities and their donors. They give charities a useful way to encourage donations and provide donors with a tax deduction and a guaranteed stream of income for life.

Adequate safeguards would protect the donors who give assets to a charity in exchange for an annuity, without imposing burdensome regulations on the charitable organizations. Charitable organizations and CGAs would have to meet requirements of the Internal Revenue Code. In addition, charitable organizations issuing CGAs would have to have a minimum of $100,000 in liquid assets, exclusive of assets funding the annuity agreement, and have been in operation for at least three years. The insurance department would be permitted to penalize those charities that either failed to notify the department of their intent to issue CGAs or failed to notify donors in writing that their CGA was not an insurance product or guaranteed by a state insurance guaranty fund.

OPPONENTS SAY:

Charitable gift annuities may be a good fund-raising tool, but the state has a responsibility to protect the public from unscrupulous fund-raisers who would misuse the tool — con-men, under-funded charities, etc. — and would promise lifetime annuities they cannot deliver. Texas should follow the lead of all the other large-population states and provide some oversight of CGAs and how they may be "sold" to the unwary.

HB 3104 would leave the public inadequately protected. At the very least charities that issue CGAs should be required to have segregated funds, file forms of agreements and their rates with the state, and provide annual reports and some form of permit or certificate to their donors. Such charities should be required to have liquid assets higher than $100,000 to indicate they can cover the annuities they issue and should be in existence for at least 10 years to ensure their stability.

NOTES:

SB 1251 by Montford, the companion to HB 3104, was referred to the Senate Economic Development Committee.