

SUBJECT: Status of charitable gift annuities

COMMITTEE: Insurance — favorable, without amendment

VOTE: 7 ayes — Smithee, Eiland, Burnam, J. Moreno, Olivo, Seaman, Wise

0 nays

2 absent — G. Lewis, Thompson

WITNESSES: None

BACKGROUND: A charitable gift annuity (CGA) is a fund-raising vehicle by which a donor makes a gift to charity in exchange for a below-market annuity for life. The IRS Code allows donors to take charitable income, gift and estate tax deductions on the difference between the gift's value and the value of the annuity received in return by the donor. The IRS Code also distinguishes CGAs from “commercial type insurance.”

The 74th Legislature enacted HB 3104 by Junell, allowing certain legitimate charities to issue CGAs without regulation by the Department of Insurance if they notified donors that the annuities were not insurance products. Subsequently, a federal court ruling questioned whether the 1995 legislation was intended to apply to those charitable gift annuities whose status was being challenged at the time.

DIGEST: HB 823 would apply to litigation or other proceedings brought by or on behalf of a donor or the donor’s heirs involving charitable gift annuities.

It would provide that, in such situations, an annuity the donor has treated as a charitable gift annuity in a filing with the Internal Revenue Service would be considered as a qualified charitable gift annuity issued by a charitable organization under the Insurance Code.

HB 823 states that its purpose is to clarify legislative intent concerning existing law. It would apply to all charitable gift annuities issued before, on, or after its effective date, including any charitable gift annuity that was the subject of litigation or another pending proceeding.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house.

NOTES:

The companion bill, SB 333 by Sibley, passed the Senate on the Local and Uncontested calendar on March 2 and was reported favorably as substituted by the House Insurance Committee and sent to the Local and Consent Calendars Committee.

The committee substitute to SB 333 would immunize from suit a person or entity involved in the issuance of a qualified charitable gift annuity from suit. This would include both a defense to liability and the right not to bear the cost, burden, and risk of discovery and trial. This would involve any claim brought by or on behalf of the donor or the donor's heirs or distributees alleging that the issuance of a charitable gift annuity constituted engaging in the business of insurance in this state. An interlocutory appeal could be taken if a court denied or otherwise failed to grant a motion for summary judgment that was based on an assertion of the immunity provided in the bill.

During the 1997 session, a similar bill, SB 1948 by Sibley, passed the Senate, but died in the House on a point of order against all bills on the calendar.