

No. 1996-127

AN ACT

SB 1433

Exempting the issuance by a qualified charity of a qualified charitable gift annuity from regulation under insurance laws.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Charitable Gift Annuity Exemption Act.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Qualified charitable gift annuity.” An annuity which:

(1) Qualifies as a “charitable gift annuity” under section 501(m)(5) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(m)(5)) or any successor provision.

(2) Contains in a written agreement substantially all of the following provisions:

(i) The parties acknowledge that, as of the date hereof, the fair market value of the property transferred to (the qualified charity) is substantially in excess of the fair market value of the annuity and that the difference between those values constitutes a gift by the donor to (the qualified charity) for its charitable purposes.

(ii) (The qualified charity) has advised the donor that a charitable gift annuity is not designed primarily as an investment but rather as a charitable gift.

(iii) The promise to pay the annuity is not insurance under the laws of Pennsylvania, is not subject to regulation by the Insurance Department and is not protected by the Pennsylvania Life and Health Insurance Guaranty Association under Article XVII of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, or other protective device.

(iv) A statement as to whom the donor may contact to obtain a copy of the following information:

(A) the organization’s status under section 170(c) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 170(c)) or any successor provisions; and

(B) financial statements filed with a governmental agency or audited financial statements from the charity showing that the charity

has unrestricted and unencumbered assets in the form of cash, cash equivalents or publicly traded securities of at least \$100,000 plus one-half of the principal value of any annuities issued by the organization and then in effect.

(v) The date the qualified charity or its predecessor came into existence and a statement that qualified charities must have been in existence for at least three years.

(vi) A description of the basis upon which the organization qualifies as a qualified charity.

“Qualified charity.” An organization which on the date a qualified charitable gift annuity is issued meets all of the following criteria:

(1) Is an organization described in section 170(c) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 170(c)) or any successor provision.

(2) Has been in continuous existence for at least three years or is the successor to or an entity controlled by such organization.

(3) Has unrestricted and unencumbered assets in the form of cash, cash equivalents or publicly traded securities of at least \$100,000 plus one-half of the principal value of any annuities issued by the organization and then in effect.

(4) Is one of the following types of organizations:

(i) Educational institutions, the curricula of which in whole or in part are registered with or approved by the Department of Education, either directly or by acceptance of accreditation by an accrediting body recognized by the Department of Education, and any auxiliary associations, foundations and support groups which are directly responsible to educational institutions.

(ii) Hospitals which are subject to regulation by the Department of Health or the Department of Public Welfare and the hospital foundation, if any, which is an integral part thereof.

(iii) Charitable organizations which are required to or do file a registration statement with the Department of State under the provisions of the act of December 19, 1990 (P.L.1200, No.202), known as the Solicitation of Funds for Charitable Purposes Act.

(iv) Senior citizen centers and nursing homes which are nonprofit and charitable and which voluntarily file a registration statement with the Department of State under the provisions of the Solicitation of Funds for Charitable Purposes Act.

(v) Any bona fide duly constituted religious institutions and such separate groups or corporations which form an integral part of religious institutions, provided that:

(A) such religious institutions, groups or corporations are tax exempt pursuant to the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

(B) no part of their net income inures to the direct benefit of any individual; and

(C) their conduct is primarily supported by government grants or contracts, funds solicited from their own memberships, congregations or previous donors and fees charged for services rendered.

(vi) Any corporation established by an act of Congress that is required by Federal law to submit annual reports of its activities to Congress containing itemized accounts of all receipts and expenditures after being fully audited by the Department of Defense.

Section 3. Exemption from regulation.

The laws of this Commonwealth regulating insurance¹, including, but not limited to, the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, and the act of May 17, 1921 (P.L.789, No.285), known as The Insurance Department Act of 1921, shall not apply to the issuance by a qualified charity of a qualified charitable gift annuity.

Section 4. Previously issued annuities.

A charitable gift annuity issued prior to the effective date of this act shall be deemed to be a qualified charitable gift annuity if both of the following conditions are met:

(1) The charitable gift annuity qualified as a charitable contribution under the provisions of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.) governing charitable deductions at the time the charitable gift annuity was issued.

(2) The issuing organization was a qualified charity at the time the charitable gift annuity was issued or becomes a qualified charity within one year of the effective date of this act.

Section 5. Effective date.

This act shall take effect in 60 days.

APPROVED—The 16th day of October, A.D. 1996.

THOMAS J. RIDGE

¹"issuance" in enrolled bill.