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HOUSE BILL NO. 897

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Commerce and Labor
on February 19, 1996)

(Patron Prior to Substitute—Delegate Clement)

A BILL to amend and reenact § 38.2-106 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 38.2-106.1 and 38.2-3113.2, relating to insurance; exemption of certain charitable gift annuities from regulation.

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-106 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 38.2-106.1 and 38.2-3113.2, as follows:

§ 38.2-106. Annuities.

"Annuities" means all agreements to make periodic payments in fixed dollar amounts pursuant to the terms of a contract for a stated period of time or for the life of the person or persons specified in the contract. "Annuities" does not include contracts defined in § 38.2-102 and qualified charitable gift annuities as defined in § 38.2-106.1.

As used in this title, unless the context requires otherwise, "annuity" shall be deemed to include "variable annuity" and "modified guaranteed annuity," and shall be deemed to include a contract under which a lump sum cash settlement is an alternative to the option of periodic payments.

§ 38.2-106.1. Charitable gift annuities.

A. For purposes of this title:

"Charitable gift annuity" means an agreement by a charitable organization to make periodic payments in fixed dollar amounts payable over one or two lives, under which the actuarial value of the annuity, as determined for federal tax purposes, is less than the value of the cash or other property transferred by the donor in return therefor and the difference in value constitutes a charitable contribution for federal tax purposes.

"Charitable organization" means an entity described in:

1. § 501 (c) (3) of the Internal Revenue Code of 1986 (26 U.S.C. § 501 (c) (3)); or

2. § 170 (c) of the Internal Revenue Code of 1986 (26 U.S.C. § 170 (c)).

"Qualified charitable gift annuity" means a charitable gift annuity that conforms to the requirements of § 501 (m) (5) of the Internal Revenue Code of 1986 (26 U.S.C. § 501 (m) (5)) and § 514 (c) (5) of the Internal Revenue Code of 1986 (26 U.S.C. § 514 (c) (5)) and that is issued by a charitable organization that on the date of the annuity agreement:

1. Has a minimum of \$100,000 in unrestricted cash, cash equivalents, or publicly traded securities, exclusive of the assets contributed by the donor in return for the annuity agreement; and

2. Has been in continuous operation as a charitable organization for at least three years or is a successor or affiliate of a charitable organization that has been in continuous operation as such for at least three years.

§ 38.2-3113.2. Qualified charitable gift annuities; issuance not business of insurance; disclosures to donors; unfair trade practices provisions not applicable.

A. The issuance of a qualified charitable gift annuity does not constitute engaging in the business of insurance in this Commonwealth. A charitable gift annuity issued before the effective date of this section is a qualified charitable gift annuity for purposes of this title if it meets the requirements of § 501 (m)(5) of the Internal Revenue Code of 1986 (26 U.S.C. § 501 (m)(5)) and § 514 (c) (5) of the Internal Revenue Code of 1986 (26 U.S.C. § 514 (c) (5)), and the issuance of that charitable gift annuity does not constitute engaging in the business of insurance in this Commonwealth.

B. When entering into an agreement for a qualified charitable gift annuity, the charitable organization shall disclose to the donor in writing in the annuity agreement that a qualified charitable gift annuity is not insurance under the laws of this Commonwealth and is neither subject to regulation by the Commission nor protected by the Virginia Life, Accident and Sickness Insurance Guaranty Association. The notice provisions required by this subsection must be in a separate paragraph in a print size no smaller than that employed in the annuity agreement generally.

C. The solicitation or issuance of a qualified charitable gift annuity does not constitute a violation of the unfair trade practices provisions of Chapter 5 (§ 38.2-500 et seq.) of this title.

2. That the provisions of this act amending § 38.2-106, the definition of "charitable gift annuity" as added by this act in § 38.2-106.1, and subsections A and C in § 38.2-3113.2 as added by this act are declarative of existing law.