

ACT 172

S.B. NO. 3049

A Bill for an Act Relating to Charitable Annuities.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 431:1-204, Hawaii Revised Statutes, is amended to read as follows:

**“§431:1-204 Life insurance defined.** (a) Life insurance is insurance on human lives and insurance appertaining thereto or connected therewith.

(b) For the purposes of this code, the transacting of life insurance includes ~~[the granting of annuities and endowment benefits, except for annuities which are provided by a nonprofit organization or a nonprofit educational foundation for a public educational institution under a charitable gift annuity agreement with a donor;]~~ contracting to provide additional benefits in the event of death or dismemberment by accident or accidental means[; additional benefits in event of], or in the

case of total and permanent disability of the insured[; and], further includes effecting optional modes of settlement of proceeds.

[For purposes of this section, “charitable gift annuity agreement” means a contract under which an individual transfers property to a charity, conditioned upon the right to receive a specific sum of money for life.

For the purposes of this section, a “nonprofit organization” means an organization that meets all of the following requirements:

- (1) Has been granted tax exempt status as a charitable organization by the Internal Revenue Service pursuant to section 501(c)(3) of the Internal Revenue Code of 1986, as amended;
- (2) Has conducted business in the State continuously for at least ten years;
- (3) Has a net worth in the State of not less than \$5,000,000;
- (4) Maintains a separate annuity fund with at least one half of the value of the annuity; and
- (5) Has filed a statement on forms that may be prescribed by the department of commerce and consumer affairs which certify compliance with this section; provided that the statement shall be filed on an annual basis in accordance with rules adopted by the department of commerce and consumer affairs.]

(c) For the purposes of this code, the transacting of life insurance includes the granting of annuities and endowment benefits, except for annuities that are provided under a charitable gift annuity agreement with a donor and issued by a nonprofit educational foundation or a nonprofit organization that has met the requirements of paragraphs (1) to (4).

A nonprofit educational foundation or nonprofit organization issuing charitable gift annuities shall:

- (1) Meet the following requirements:
  - (A) The foundation or organization shall have conducted business in the State continuously for at least ten years;
  - (B) The foundation or organization shall maintain a net worth in the State of not less than \$200,000 in cash, cash equivalents or publicly traded securities, exclusive of the assets funding any annuity; and
  - (C) The foundation or organization shall have filed an annual statement that certifies compliance with this subsection, on forms that may be prescribed by the department of the attorney general;
- (2) Maintain segregated assets in a financial institution equal to at least the sum of the reserves on its outstanding charitable gift annuity agreements, calculated in accordance with accepted actuarial standards, and a surplus of ten per cent of the reserves or the amount of \$100,000, whichever is higher. The assets shall be segregated as separate and distinct funds independent of all other funds and shall not be applied toward the payment of the debts and obligations of the foundation or organization, other than with respect to the annuity agreements. The segregated assets shall not be considered in determining whether the foundation or organization meets the net worth requirement of paragraph (1)(B). In determining the fund reserves, a deduction shall be made for all or any portion of an annuity risk that is lawfully reinsured by an authorized reinsurer;
- (3) Invest and manage assets as would a prudent investor, taking into account the purposes, terms, and distribution requirements expressed in its governing instrument. To satisfy this standard, the fiduciary shall exercise reasonable care, skill, and caution; and

- (4) Prominently state on the first page of a charitable gift annuity agreement that the agreement is not insurance under the laws of the State, is not subject to regulation by the insurance division, and is not protected by any state guaranty fund.

Upon the failure of a nonprofit educational foundation or nonprofit organization to comply with any of the requirements of paragraphs (1) to (4), a charitable gift annuity agreement issued by the foundation or organization shall be deemed life insurance and subject to the provisions of this code governing life insurance.

For the purposes of this subsection:

“Charitable gift annuity agreement” means a contract under which an individual transfers property to a charity, conditioned upon the right to receive a specific sum of money for life.

“Nonprofit organization” means an organization that has been granted tax exempt status as a charitable organization by the Internal Revenue Service pursuant to section 501(c)(3) of the Internal Revenue Code of 1986, as amended.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2004.

(Approved July 6, 2004.)