

1975 Senate Bill 631

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### CHAPTER 374, Laws of 1975

AN ACT to repeal chapter 199; to amend 600.03 (27) (a) and 646.01 (1); and to create 601.31 (1) (e), (2) (d) and (3) (d), 610.53, chapter 615 and 645.02 (6) of the statutes, relating to placing issuers of gift annuities under insurance regulations and granting rule-making authority.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. Chapter 199 of the statutes is repealed.

SECTION 2. 600.03 (27) (a) of the statutes is amended to read:

600.03 (27) (a) "Insurer" means any person or association of persons doing an insurance business as a principal, and includes fraternal benefit societies, ~~donee~~ gift annuity societies, title guaranty corporations, cooperative associations organized under s. 185.981, ~~1969~~ 1973 stats., and voluntary benefit plans organized under s. 185.991, ~~1969~~ 1973 stats. It also includes any person purporting or intending to do an insurance business as a principal on his own account.

SECTION 3. 601.31 (1) (e), (2) (d) and (3) (d) of the statutes are created to read:

601.31 (1) (e) Licensees under ch. 615, \$100.

(2) (d) Licensees under ch. 615, \$100.

(3) (d) Licensees under ch. 615, §25.

SECTION 4. 610.53 of the statutes is created to read:

**610.53 Transition provisions for issuers of gift annuities.** (1) EXISTING ORGANIZATIONS. An issuer corporation subject to ch. 615 which has been in active operation for at least 10 years and has for a period of at least 2 years been engaged in the issuance of gift annuities may continue to issue them, if:

(a) *Registration.* It registers with the commissioner as an issuer corporation within 30 days after the effective date of this act (1975), whereupon the commissioner shall promptly issue a certificate of authority under s. 615.05; and

(b) *Cease and desist order.* It is not ordered to cease and desist the issuance of gift annuities on a finding, after a hearing, that the issuer is not likely to be able to satisfy the requirements of ch. 615 within a reasonable time.

(2) DELAYED ACCOMMODATION. If prompt adjustment to the requirements of ch. 615 would result in hardship, disproportionate expense or serious inconvenience to a previously authorized association or corporation, and if the interests of the annuitants and the public can otherwise be protected, the commissioner may grant a delay for compliance with specified requirements, but in no case more than 2 years beyond the effective date otherwise applicable.

(3) WAIVER OF FEES. If the commissioner is satisfied that an issuer corporation subject to ch. 615 has been in active operation for at least 10 years and has for a period of at least 2 years been engaged in the issuance of gift annuities in conformity to ch. 199, 1973 stats., he shall waive the fees otherwise required by s. 601.31 (1) (e) and (2) (d).

SECTION 5. Chapter 615 of the statutes is created to read:

#### CHAPTER 615

#### GIFT ANNUITIES

NOTE: Gift annuities, often called "donor" annuities, heretofore regulated by Chapter 199 of the Wisconsin Statutes, are agreements whereby an eleemosynary organization agrees to pay a life annuity to a donor in return for the contribution of a capital sum. Thus, the gift annuity is nothing more than a traditional annuity agreement, priced in order that the donor can make a contribution to the issuer of the annuity.

The gift annuity has been described as follows:

When a person enters a gift annuity agreement with a religious, charitable or educational institution, he is actually doing two things. He is making a gift to the institution and is also purchasing a fixed income for life. Probably if he could afford to do so, he would turn over the entire amount of principal to the organization as an outright gift; but he needs to make some provision for income during his lifetime. (Statement entitled "Philosophy of Gift Annuity Agreements" prepared by the Committee on Gift Annuities, an organization of over 450 gift-annuity issuing agencies who utilize the device for raising funds, and distributed at 12th Conference in Chicago, 1965.)

Under current law the gift annuity is subjected to limited financial regulation of its assets and reserves (s. 199.02), but is otherwise exempted from the insurance laws (s. 199.04 (1)). The corporation or association issuing the annuity must maintain admitted assets equal to the sum of its reserves, computed on the basis of s. 206.201 or any higher standard, and a surplus of 10% of such reserves or \$100,000, whichever is higher (s. 199.02). The funds must be invested in accordance with the rules for a life insurance company, and must be separately maintained (s. 199.02). If the donee is a

college or university and the annuity is other than payment of a sum certain, it is exempt from regulation under ch. 199 and is also exempt from the insurance laws (s. 199.04 (2)). Though annuities not involving payment of a sum certain, such as, for example, the lifetime use of a house, may not present risks quite so serious as money annuities, since they might possibly amount to a property interest directly enforceable on the property, they are not necessarily risk-free.

Nondomestic corporations and associations may issue gift annuities if they comply with the same requirements as are imposed on domestics (s. 199.03).

Although Wisconsin's current regulation of the gift annuity is limited, it was one of the early states to deal specifically with the matter. Some states subject the gift annuity fully to the insurance code, have no statutory exemptions and treat such annuities as conventional insurance products. Among the states in this category, according to a 1968 survey of state insurance departments, were Florida, Hawaii, Rhode Island and Vermont. (See Cousins, "State Regulation of Gift Annuities," Proceedings of the Thirteenth Conference of the Committee on Gift Annuities, pp. 59-67 (1968).) A few states, like Wisconsin, subject gift annuities only to specialized and limited regulation. These also include California (Deerings CAL. Code, Ins., ss. 11520-11524), Maryland (Ann. Code of Md., Art. 48A, s. 487), and New York (McKinney's Cons. Laws of N.Y. Ann., Ins. s. 45). Since 1972, New Jersey (N.J.S.A. 17B: 17-13. 1) has had a law much like that of Wisconsin except that granting of exemption is discretionary with the commissioner as it is in the law of New York.

On the other hand, Massachusetts (General Laws, ch. 175, s. 118) has a special exemption from the insurance laws for the issuers of gift annuities.

Minnesota does not regulate gift annuities, even in the absence of an exempting provision in its statutes. Some legal authorities have argued that annuities are not insurance products, but the weight of authority and reason is that any annuity involving a life contingency is insurance.

There is no basis for statutory exemption of the issuers of gift annuities from insurance regulation. Though there is a gift aspect to the gift annuity, it is still an insurance contract. If it is not reliable, the consequences are the same as if a conventional annuity is not performed. Since the donor presumably needs the guaranteed income, failure of the donee to perform may be catastrophic to the donor. It is true that under current Wisconsin law, only a limited class of institutions issue gift annuities: those corporations or associations "conducted without profit engaged solely in bona fide charitable, religious, missionary, educational or philanthropic activities ..." (s. 199.01). But there is no reason to assume that such organizations are free from the financial problems of other organizations, which might imperil the performance of their contracts. Therefore, this proposed law provides that issuers of gift annuities not only continue to be subject to the same limited regulation as heretofore, but when necessary to more stringent regulation. Colleges and universities need equal control — their finances are often precarious, and never more so than in recent years. There has been much recent publicity about the financial difficulties of well known universities, both public and private; some smaller institutions have closed altogether. This law provides that all donees obtain certificates of authority before proceeding to issue annuities. This is a new requirement. The requirement does not extend substantive control except for annuities not involving

payment of a sum certain, but it facilitates the enforcement of the rules that already exist.

This law also provides that the commissioner may extend regulation beyond its present scope, to approximate insurance regulation, whenever such extension is necessary to protect donor annuitants or the public. Financial guarantees are the most important needs, but they alone may not be enough to protect policyholders if there are abuses in the soliciting and negotiating process.

These statements do not disparage the performance or integrity of those issuing gift annuities. They merely recognize that the issuers are selling an insurance product, and that their annuitants need protection similar to that accorded insurance buyers. Regulation is needed, as with commercial insurance, not for the vast majority of reliable institutions for whom the regulations create no burden, but for the occasional institution that is less conscientiously or less competently managed.

This law gives the commissioner reasonable power to contract or expand the regulation of gift annuities, within specified limits, as circumstances dictate. If abuses develop or dangers loom, he can act accordingly. If they do not, he may continue the limited regulation ordinarily contemplated for gift annuities.

**615.03 Applicability of insurance code to gift annuities.** (1) GENERAL REQUIREMENT OF LICENSE. No person may issue an annuity to another person unless the issuer is:

- (a) An insurer authorized to do so under ch. 611 or 618;
- (b) A licensee under this chapter; or
- (c) A natural person who issues such an annuity to a relative by blood or marriage within the third degree of kinship as computed according to s. 852.03 (2).

(2) GENERAL REGULATORY POWERS. All licensees under this chapter are subject to ch. 601.

(3) DELINQUENCY PROCEEDINGS. A segregated account under s. 615.10 is deemed an insurer within the meaning of s. 645.03 (3), claims of annuitants are discharged under s. 645.68 (4) by purchase of an equivalent life annuity from an insurer authorized to do such business in this state. If claims of annuitants remain undischarged after completion of a liquidation under ch. 645, the liquidator has a claim against the other assets of the corporation for that deficit.

(4) GUARANTY FUNDS. Chapter 646 is not applicable to licensees under this chapter.

(5) APPLICATION OF INSURANCE CODE. The commissioner may by rule or order impose on licensees under this chapter any other provisions of the insurance code applicable to ch. 611 corporations, if necessary to protect the interests of annuitants or the public.

NOTE: This section gives the commissioner full regulatory power over issuers of gift annuities. He may use his power as necessary to protect annuitants and the public and eliminate any abuses that develop, but need not and should not engage in elaborate regulation unless problems develop. He may rely on regulation in and reports to other states which also regulate gift annuities, to the extent he considers such reliance to be prudent.

Since the annuities are issued by a segregated account, which is for practical purposes a separate corporation, there is no justification for subjecting the general assets of the eleemosynary institution to the claims of

general creditors. But gift annuitants deserve better treatment. Sub. (3) provides that result.

A question has been raised about occasional gift annuities issued by small eleemosynary institutions. They are the most risky of all. This statute prohibits them. The Committee on Gift Annuities, representing issuers of such annuities, recommends that small issuers reinsure the annuities with commercial insurers. Report of Thirteenth Conference, 1968, p. 71. Sound public policy also requires that approach. Enforcement may not always be possible but that does not justify contracts hazardous to annuitants. The latter would have some protection from the prohibition, despite the enforcement difficulties, for illicit issuance would be an offense against the insurance laws, providing for enforcement rights against the issuer. See ch. 601 generally and, in particular, s. 601.71.

The detailed provisions to be applied to issuers of gift annuities can be promulgated by rule within the limits of the insurance code, so far as they are not contained in this draft. Sub. (5) so provides.

Liquidation of the segregated account of a licensee would be an unfortunate but appropriate consequence of certain situations. Sub. (3) so provides. But the guaranty fund created by ch. 646 is not appropriate for licensees under this chapter and sub. (4) so provides.

**615.04 Application for certificate of authority to issue gift annuities.** A domestic or foreign corporation conducted without profit and engaged solely in bona fide charitable, religious, missionary, educational or philanthropic activities, which has been in active operation for at least 10 years, may apply to the commissioner for a certificate of authority to receive gifts of money or other property conditioned upon, or in return for, its agreement to pay an annuity to the donor or his nominee or both. It shall include with its application any documents or information the commissioner reasonably requires.

**615.05 Issuance of certificate of authority to issue gift annuities.** The commissioner shall issue a certificate applied for under s. 615.04 if:

- (1) All requirements of the law have been met; and
- (2) He is satisfied that the corporation is in a position properly to negotiate, execute and safeguard such annuity contracts.

**615.06 Alteration or revocation of certificate of authority.** If the commissioner issues a summary order under s. 645.21 against an issuer corporation, he may revoke its certificate of authority or issue a new one with such limits as he deems necessary.

NOTE: This section parallels s. 611.20 (4) (b) for domestic insurance corporations.

**615.10 Segregated account.** (1) REQUIRED ACCOUNT. Every licensee under s. 615.05 shall maintain a segregated account for its gift annuities. The assets of the account shall at least equal in amount the sum of the reserves on its outstanding annuities, calculated on the basis of actuarial tables and assumptions approved by the commissioner, plus a surplus of 10% of the reserves or \$100,000, whichever is greater. The required reserves may be reduced by an appropriate amount to reflect the reinsurance of risks by an insurer authorized to do such business in this state with direct liability of the reinsurer to the annuitant. The required surplus may also be reduced to the extent the commissioner considers appropriate, including to zero, if all risks are fully reinsured with direct liability of the reinsurer to the annuitant by an insurer authorized to issue annuities in this state.

(2) IDENTIFIABLE ASSETS. Section 611.24 (3) (b) and (f) applies to segregated accounts under this section.

(3) LIABILITY. The assets of the segregated account are not liable for any debts of the licensee other than those incurred under this chapter.

(4) LIABILITY OF LICENSEE'S GENERAL ASSETS. The general assets of the licensee are liable on annuities to the extent that the segregated fund is not adequate. If any provisions of the law prevent such assets from being thus liable or from being executed upon, the commissioner may require the licensee to increase its surplus under sub. (1) to an amount he considers adequate or may require that the segregated fund be incorporated as a life insurer under ch. 611.

(5) INVESTMENTS. Assets of a segregated account under this section shall be invested in accordance with ch. 620.

NOTE: This section continues in subs. (1) to (3) the essential provisions of s. 199.02. Sub. (4) makes it clear that the licensee is absolutely liable for the promises of annuities it makes unless its segregated account is authorized as an insurer. On the other hand, the segregated assets are liable only for the obligations connected with the annuity business, under sub. (3).

Sub. (1) provides also for voluntary reinsurance of all risks, which has advantages both for the licensee and the annuitant. It would give the licensee freedom from the necessity of engaging in an unfamiliar insurance business and would give the annuitant the advantage of a promise from an experienced insurer issuing annuities as a business act backed up by the guaranty fund of ch. 646.

SECTION 6. 645.02 (6) of the statutes is created to read:

645.02 (6) All licensees under ch. 615.

SECTION 7. 646.01 (1) of the statutes is amended to read:

646.01 (1) SCOPE. This chapter shall apply to all kinds and lines of direct insurance, except variable annuities and variable value life insurance contracts, and to all insurers authorized to do business in this state except ~~fraternal benefit societies~~ fraternals, assessable mutual corporations including town ~~mutual insurance corporations, nonprofit mutuals, issuers of gift annuities under ch. 615, service plans,~~ the insurance corporations under ch. 613 and state insurance fund, and the Wisconsin indemnity fund funds.

SECTION 8. **Program responsibilities.** In the list of program responsibilities specified for the commissioner of insurance in section 15.731 of the statutes, delete "199" and insert "200".

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