**South Carolina General Assembly**

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**H. 4500**

**STATUS INFORMATION**

General Bill

Sponsors: Rep. Herbkersman

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Currently residing in the House Committee on **Labor, Commerce and Industry**

Summary: Charitable Investment Recovery Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/6/2011 House Prefiled

12/6/2011 House Referred to Committee on **Labor, Commerce and Industry**

1/10/2012 House Introduced and read first time ([House Journal‑page 62](file:///h:\hj%20archive\2012\01-10-12.docx))

1/10/2012 House Referred to Committee on **Labor, Commerce and Industry** ([House Journal‑page 62](file:///h:\hj%20archive\2012\01-10-12.docx))

**VERSIONS OF THIS BILL**

[12/6/2011](file:///p:\pprever\2011-12\4500_20111206.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ENACTING THE “SOUTH CAROLINA CHARITABLE INVESTMENT RECOVERY ACT OF 2012” BY ADDING SECTION 33‑56‑56 SO AS TO EXEMPT CERTAIN LOANS TO CHARITIES FROM RETIREMENT ACCOUNTS FROM REPORTING REQUIREMENTS RELATED TO THE SOLICITATION OF CHARITABLE FUNDS; BY ADDING SECTION 38‑63‑110 SO AS TO PROVIDE A BONA FIDE CHARITY OR NOT‑FOR‑PROFIT CORPORATION MAY HAVE AN INSURABLE INTEREST IN THE LIFE OF AN INSURED IN CERTAIN CIRCUMSTANCES; TO AMEND SECTION 33‑31‑1407, RELATING TO A KNOWN CLAIM AGAINST A DISSOLVED CORPORATION, SO AS TO PROVIDE A CLAIM FOR A LIFE INSURANCE POLICY OWNED BY A CHARITY UNDER CERTAIN CIRCUMSTANCES MAY NOT BE BARRED; AND TO AMEND SECTION 35‑1‑102, RELATING TO CERTAIN DEFINITIONS ASSOCIATED WITH SOUTH CAROLINA UNIFORM SECURITIES ACT OF 2005, SO AS TO AMEND THE DEFINITION OF AN INVESTMENT CONTRACT.

Whereas, the General Assembly desires to support the economic development goals of this State by improving the availability of capital for bona fide charities and not‑for‑profit enterprises in South Carolina, and seeks to advance these goals through this Act as set forth in this preamble; and

Whereas, this act intends to support the social structure of this State through private capital by encouraging charitably inclined donors to invest in and redirect private retirement capital to bona fide charities resulting in continuity of services for local communities, job creation, and economic activity; and

Whereas, this act also seeks to encourage monetary velocity from passive treatment accounts to state and local communities for the active use and betterment of our State as determined by private citizens; and

Whereas, an additional intention of this act is to expand the economy of this State by preserving and enlarging its base of bona fide charities and fostering the use of private capital for social programs desired by private citizens; and

Whereas, a final intention of this act is to foster continued gratuity in the citizenry of this State without increasing individual taxation or depleting the tax base. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act must be known as and may be cited as the “South Carolina Charitable Investment Recovery Act of 2012”.

SECTION 2. Chapter 56, Title 33 of the 1976 Code is amended by adding:

“Section 33‑56‑56. The provisions of this chapter do not apply to a loan made pursuant to Section 38‑63‑110 from the retirement account of a donor to a charity if no fundraising activity is conducted by a professional solicitor paid directly by the charity. A commission paid by an insurance company is not considered paid by the charity.”

SECTION 3. Article 1, Chapter 63, Title 38 of the 1976 Code is amended by adding:

“Section 38‑63‑110. (A) A bona fide charity or not‑for‑profit corporation that complies with the Solicitation of Charitable Funds Act in Chapter 56, Title 33 has an insurable interest in the life of an insured under a life insurance policy if:

(1) the charity or not‑for‑profit corporation owns the policy from inception of the policy;

(2) the charity or not‑for‑profit corporation is the sole beneficiary of the policy as designated in writing by the insured on the policy beneficiary designation;

(3) the retirement account of the insured is designated as the sole collateral assignee of the insurance policy in order to secure repayment of a loan made from the retirement account; and

(4) no future assignment, sale, or conveyance of the insurance policy is made by the retirement account or the bona fide charity except in dissolution of the charity or not‑for‑profit corporation.

(B) The insured and the retirement account providing a loan described in subsection (A) must not be considered to have received an economic benefit from the existence of the collateral assignment.

(C) A loan described in subsection (A) and made to the charity or not‑for‑profit corporation without interest or requiring any payment during the life of the insured must be considered a legitimate debt as between the retirement account and the charity or not‑for‑profit corporation.

(D) A broker fee, broker commission, or similar remuneration may not be paid by the charity or not‑for‑profit corporation for soliciting an investment contemplated by this section. This subsection does not apply to a commission paid from an insurance company related to the issuance of an insurance policy.”

SECTION 4. Section 33‑31‑1407 of the 1976 Code is amended to read:

“Section 33‑31‑1407. (~~a~~A) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(~~b~~B) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:

(1) describe information that must be included in a claim;

(2) provide a mailing address where a claim may be sent;

(3) state the deadline, which may not be fewer than one hundred twenty days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and

(4) state that the claim will be barred if not received by the deadline.

(~~c~~C) A claim against the dissolved corporation is barred if a claimant:

(1) ~~if a claimant~~ who was given written notice under subsection (~~b~~B) does not deliver the claim to the dissolved corporation by the deadline;

(2) ~~if a claimant~~ whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice and the rejection notice stated that a proceeding to enforce the claim must be commenced within ninety days.

(D) A claim related to a life insurance policy owned by a charity pursuant to Section 38‑63‑110 may not be barred under a provision of this section.

(~~d~~E) For purposes of this section ‘claim’ does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.”

SECTION 5. Section 35‑1‑102(29)(E) of the 1976 Code, as added by Act 110 of 2005, is amended to read:

“(E) ‘Investment contract’ may include, among other contracts, an interest in a limited partnership and a limited liability company and shall include an investment in a viatical settlement or similar agreement. An investment contract does not include an insurance policy issued to a charity to secure repayment of a loan from the retirement account of a donor under Section 38‑63‑110.”

SECTION 6. This act takes effect upon approval by the Governor.

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