

Charitable Gift Annuities Exemption Model Act

Note: The following **Charitable Gift Annuities Exemption Model Act** was approved by the National Association of Insurance Commissioners (NAIC) at its Winter Meeting on 12-07-98 in Orlando, Florida. In early 1999, it was forwarded to the Insurance Commissioners of all 50 states (and the District of Columbia) with its Meeting Minutes, for forwarding to the state legislatures, suggesting that each state legislature choose either it or the Charitable Gift Annuities Model Act and make it a part of the Insurance Law of that state.

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Section 1. Definitions

A. "Charitable gift annuity" means a transfer of cash or other property by a donor to a charitable organization in return for an annuity payable over one or two lives, under which the actuarial value of the annuity is less than the value of the cash or other property transferred and the difference in value constitutes a charitable deduction for federal tax purposes.

B. "Charitable organization" means an entity described by:

- (1) Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3)); or
- (2) Section 170(c), Internal Revenue Code of 1986 (26 U.S.C. Section 170(c)).

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

- (1) Has a minimum of \$300,000 in unrestricted cash, cash equivalents, or publicly traded securities, exclusive of the assets funding the annuity agreement; and
- (2) Has been in continuous operation for at least three (3) years or is a successor or affiliate of

a charitable organization that has been in continuous operation for at least three (3) years.

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Section 2. Charitable Gift Annuity is Not Insurance

A. The issuance of a qualified charitable gift annuity does not constitute engaging in the business of insurance in this state.

B. A charitable gift annuity issued before [insert effective date of this statute] is a qualified charitable gift annuity for purposes of this Act, and the issuance of that charitable gift annuity does not constitute engaging in the business of insurance in this state.

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Section 3. Notice to Donor

A. 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 state and is not subject to regulation by the insurance commissioner or protected by an insurance guaranty association.

B. The notice provisions required by this section must be in a separate paragraph in a print size no smaller than that employed in the annuity agreement generally.

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Section 4. Notice to Department

A. A charitable organization that issues qualified charitable gift annuities shall notify the commissioner in writing by the later of ninety (90) days after the effective date of this Act or the date on which it enters into the organization's first qualified charitable gift annuity agreement. The notice shall:

(1) Be signed by an officer or director of the organization;

(2) Identify the organization; and

(3) Certify that:

(a) The organization is a charitable organization; and

(b) The annuities issued by the organization are qualified charitable gift annuities.

B. The organization shall not be required to submit additional information except to determine appropriate penalties that may be applicable under Section 5 of this Act.

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Section 5. Effect of Failure to Provide Required Notice

The failure of a charitable organization to comply with the notice requirements imposed under Section 3 or 4 of this Act does not prevent a charitable gift annuity that otherwise meets the requirements of this Act from constituting a qualified charitable gift annuity. The commissioner may enforce performance of the requirements of Sections 3 and 4 of this Act by sending a letter by certified mail, return receipt requested, demanding that the charitable organization comply with the requirements of Sections 3 and 4 of this Act. The commissioner may fine the charitable organization in an amount not to exceed \$1,000 per qualified charitable gift annuity agreement issued until such time as the charitable organization complies with Sections 3 and 4 of this Act.

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Section 6. Not Unfair or Deceptive Trade Practice

The issuance of a qualified charitable gift annuity does not constitute a violation of [insert reference to unfair trade practices law].

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Section 7. Effective Date

This Act shall be effective [insert date].

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(Draft Approved by NAIC at its Winter National Meeting, Orlando, FL on 12-07-98)

