



2013 SENATE BILL 152

April 25, 2013 – Introduced by Senators LASEE, HARSDORF, SCHULTZ and PETROWSKI, cosponsored by Representatives KNUDSON, ZEPNICK, MARKLEIN and CZAJA. Referred to Committee on Insurance and Housing.

- 1 **AN ACT to create** 632.65 of the statutes; **relating to:** exemption from regulation
2 for certain annuities and providing a penalty.

Analysis by the Legislative Reference Bureau

An annuity is an insurance contract under which the insurer agrees to pay the person covered under the annuity (annuitant) periodic payments, starting immediately or at a future date, for a set period of time or an indefinite period of time, such as for the remainder of the annuitant's life. Annuities and their sale are regulated by the office of the commissioner of insurance (OCI). This bill exempts from all regulation by OCI a qualified charitable gift annuity, which is defined in the bill as an annuity: 1) that is established under a transaction that is treated, for federal income tax purposes, partly as a charitable contribution and partly as an investment in an annuity contract, and 2) for which the obligation to pay is not an "acquisition indebtedness" under a provision in the Internal Revenue Code. To meet the second criterion just described, an annuity must be the sole consideration issued in exchange for property, if the value of the annuity is less than 90 percent of the value of the property; must be payable over the life of one or two individuals in being at the time the annuity is issued; and must be payable under a contract that does not guarantee a minimum amount, or specify a maximum amount, of payments and that does not provide for an adjustment in the amount of the annuity payments by reference to the income received from the transferred, or any other, property.

The bill requires that an agreement for a qualified charitable gift annuity contain a disclosure statement that the annuity is not insurance, is not subject to regulation by the commissioner of insurance (commissioner), and is not protected by

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an insurance guaranty fund or association. The bill requires a charitable organization that issues qualified charitable gift annuities to provide written notice that satisfies specified requirements to the commissioner no later than the date on which it executes its first qualified charitable gift annuity agreement after the enactment of the bill. If a charitable organization does not comply with the requirements under the bill, the commissioner may send the charitable organization a letter demanding compliance and may order a charitable organization that does not comply within 45 days after receiving such a demand letter to pay a forfeiture of up to \$1,000 for each qualified charitable gift annuity issued out of compliance.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 632.65 of the statutes is created to read:

2 **632.65 Annuities exempt from regulation.** (1) In this section:

3 (a) “Charitable organization” means a domestic or foreign corporation
4 conducted without profit and engaged solely in bona fide charitable, religious,
5 missionary, educational, or philanthropic activities.

6 (b) “Qualified charitable gift annuity” means an annuity that satisfies all of the
7 following:

8 1. The annuity is established under a transaction that, for federal income tax
9 purposes, is treated partly as a charitable contribution under section 170 of the
10 Internal Revenue Code and partly as an investment in an annuity contract under
11 section 72 of the Internal Revenue Code.

12 2. The annuity meets the requirements of an annuity for which the obligation
13 to pay is excluded from the definition of “acquisition indebtedness” under section 514

14 (c) (5) of the Internal Revenue Code.

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1 (2) Except as provided in this section, notwithstanding any provision of chs.
2 600 to 646 to the contrary, a qualified charitable gift annuity is not subject to
3 regulation under chs. 600 to 646.

4 (3) A charitable organization that issues qualified charitable gift annuities
5 shall include in an agreement for a qualified charitable gift annuity that is issued
6 after the effective date of this subsection [LRB inserts date], the following
7 disclosure statement: “A qualified charitable gift annuity is not insurance under the
8 laws of this state and is not subject to regulation by the commissioner of insurance
9 of this state or protected by an insurance guaranty fund or an insurance guaranty
10 association.”

11 (4) A charitable organization that issues qualified charitable gift annuities in
12 this state shall provide written notice to the commissioner no later than the date on
13 which it executes its first qualified charitable gift annuity agreement after the
14 effective date of this subsection [LRB inserts date]. The notice shall do all of the
15 following:

16 (a) Contain the signature of an officer or director of the charitable organization.

17 (b) Identify the name and address of the charitable organization.

18 (c) Include a copy of the letter from the Internal Revenue Service granting the
19 charitable organization tax-exempt status as an entity described under section 501
20 (c) (3) of the Internal Revenue Code.

21 (d) Certify that the annuities issued by the charitable organization are
22 qualified charitable gift annuities.

23 (5) (a) If a charitable organization that issues qualified charitable gift
24 annuities does not comply with the requirements of this section, the commissioner

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1 may, by certified mail, send the charitable organization a letter demanding that it
2 comply with the requirements.

3 (b) If, within 45 days after receipt of the demand letter, the charitable
4 organization fails to comply with the requirements of this section, the commissioner
5 may order the charitable organization to pay any of the following forfeitures:

6 1. If the charitable organization does not provide written notice to the
7 commissioner under sub. (4), or if the written notice does not include all of the
8 information required under sub. (4), a forfeiture of up to \$1,000 for each qualified
9 charitable gift annuity issued by the charitable organization after the date on which
10 the charitable organization was required to send the written notice.

11 2. A forfeiture of up to \$1,000 for each qualified charitable gift annuity issued
12 by the charitable organization after the effective date of this subdivision [LRB
13 inserts date], under an agreement that does not contain the disclosure statement
14 under sub. (3).

15 (END)