



**SENATE SUBSTITUTE AMENDMENT 1,
TO SENATE BILL 152**

October 7, 2013 – Offered by Senator LASEE.

1 **AN ACT to repeal** 601.31 (1) (a) 4., 601.31 (1) (b) 4., 601.31 (1) (c) 4., 601.31 (1)
2 (k) 4., chapter 615 and 646.01 (1) (a) 2. d.; **to amend** 600.03 (27), 620.25 (2) and
3 645.02 (6); and **to create** 632.65 of the statutes; **relating to:** exemption from
4 regulation for certain annuities.

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 substitute amendment exempts from all regulation by OCI a qualified charitable gift annuity, which is defined in the substitute amendment 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 substitute amendment: 1) provides that a charitable organization may not issue a qualified charitable gift annuity unless it has been in continuous existence for at least three years, or is the successor or affiliate of a charitable organization that has been in continuous existence for at least three years; 2) requires that a contract 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, and is not protected by an insurance guaranty fund or association; and 3) requires a person that issued an existing qualified charitable gift annuity before the date that the new provisions go into effect to provide notice of the new provisions relating to the regulation of qualified charitable gift annuities to the policy owner or beneficiary of that qualified charitable gift annuity.

The substitute amendment repeals the chapter of the statutes and all related provisions that relate to the regulation of, and requirements for, gift annuities. The substitute amendment also removes an issuer of gift annuities from the definition of “insurer” so that laws applying to insurers do not apply to issuers of gift annuities.

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

1 **SECTION 1.** 600.03 (27) of the statutes is amended to read:

2 600.03 (27) “Insurer” means any person or association of persons doing an
3 insurance business as a principal, and includes, but is not limited to, fraternal,
4 ~~issuers of gift annuities~~, cooperative associations organized under s. 185.981,
5 insurers operating under subch. I of ch. 616, and risk retention groups. It “Insurer”
6 also includes any person purporting or intending to do an insurance business as a
7 principal on his or her own account. “Insurer” does not include a person that issues
8 only qualified charitable gift annuities, as defined in s. 632.65 (1).

9 **SECTION 2.** 601.31 (1) (a) 4. of the statutes is repealed.

10 **SECTION 3.** 601.31 (1) (b) 4. of the statutes is repealed.

11 **SECTION 4.** 601.31 (1) (c) 4. of the statutes is repealed.

12 **SECTION 5.** 601.31 (1) (k) 4. of the statutes is repealed.

1 **SECTION 6.** Chapter 615 of the statutes is repealed.

2 **SECTION 7.** 620.25 (2) of the statutes is amended to read:

3 620.25 (2) This section does not apply to ~~ss. s. 234.26 and 615.10.~~

4 **SECTION 8.** 632.65 of the statutes is created to read:

5 **632.65 Annuities exempt from regulation.** (1) In this section, “qualified
6 charitable gift annuity” means an annuity that satisfies all of the following:

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

11 2. The annuity meets the requirements of an annuity for which the obligation
12 to pay is excluded from the definition of “acquisition indebtedness” under section 514
13 (c) (5) of the Internal Revenue Code.

14 (2) (a) Notwithstanding any provision of chs. 600 to 646 to the contrary and
15 except as provided in this section, a qualified charitable gift annuity is not subject
16 to regulation under chs. 600 to 646.

17 (b) A charitable organization may not issue a qualified charitable gift annuity
18 unless the charitable organization has been in continuous existence for at least 3
19 years, or is a successor or affiliate of a charitable organization that has been in
20 continuous existence for at least 3 years.

21 (c) A qualified charitable gift annuity contract must include the following
22 disclosure statement: “A qualified charitable gift annuity is not insurance under the
23 laws of this state and is not subject to regulation by the commissioner of insurance
24 of this state or protected by an insurance guaranty fund or an insurance guaranty
25 association.”

