

## 2013 DRAFTING REQUEST

### Senate Substitute Amendment (SSA-SB152)

Received: **6/27/2013** Received By: **pkahler**  
Wanted: **Soon** Same as LRB:  
For: **Frank Lasee (608) 266-3512** By/Representing: **Rob Kovach**  
May Contact: Drafter: **pkahler**  
Subject: **Insurance - other insurance** Addl. Drafters:  
Extra Copies:

Submit via email: **YES**  
Requester's email: **Sen.Lasee@legis.wisconsin.gov**  
Carbon copy (CC) to: **Tamara.Dodge@legis.wisconsin.gov**

---

#### Pre Topic:

No specific pre topic given

---

#### Topic:

Exemption from regulation for charitable gift annuities

---

#### Instructions:

See attached

---

#### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 7/2/2013	kfollett 7/10/2013	jfrantze 7/10/2013	_____			
/P1	pkahler 7/25/2013			_____	lparisi 7/10/2013		
/P2	pkahler 9/16/2013	csicilia 7/26/2013	jfrantze 7/26/2013	_____	lparisi 7/26/2013		
/P3	pkahler	csicilia	jmurphy	_____	mbarman		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	10/3/2013	9/17/2013	9/17/2013	_____	9/17/2013		
/1		kfollett 10/3/2013	rschluet 10/4/2013	_____	sbasford 10/4/2013	sbasford 10/4/2013	

FE Sent For:

<END>

**2013 DRAFTING REQUEST**

**Senate Substitute Amendment (SSA-SB152)**

Received: **6/27/2013** Received By: **pkahler**  
 Wanted: **Soon** Same as LRB:  
 For: **Frank Lasee (608) 266-3512** By/Representing: **Rob Kovach**  
 May Contact: Drafter: **pkahler**  
 Subject: **Insurance - other insurance** Addl. Drafters:  
 Extra Copies:

Submit via email: **YES**  
 Requester's email: **Sen.Lasee@legis.wisconsin.gov**  
 Carbon copy (CC) to: **Tamara.Dodge@legis.wisconsin.gov**

**Pre Topic:**

No specific pre topic given

**Topic:**

Exemption from regulation for charitable gift annuities

**Instructions:**

See attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 7/2/2013	kfollett 7/10/2013	jfrantze 7/10/2013	_____			
/P1	pkahler 7/25/2013			_____	lparisi 7/10/2013		
/P2	pkahler 9/16/2013	csicilia 7/26/2013	jfrantze 7/26/2013	_____	lparisi 7/26/2013		
/P3		csicilia	jmurphy	_____	mbarman		

Handwritten signature and date 10/13

Vers. Drafted

Reviewed  
9/17/2013

Typed  
9/17/2013

Proofed  
\_\_\_\_\_

Submitted  
9/17/2013

Jacketed

Required

FE Sent For:

11/5/13

<END>

**2013 DRAFTING REQUEST**

**Senate Substitute Amendment (SSA-SB152)**

Received: **6/27/2013** Received By: **pkahler**  
 Wanted: **Soon** Same as LRB:  
 For: **Frank Lasee (608) 266-3512** By/Representing: **Rob Kovach**  
 May Contact: Drafter: **pkahler**  
 Subject: **Insurance - other insurance** Addl. Drafters:  
 Extra Copies:

Submit via email: **YES**  
 Requester's email: **Sen.Lasee@legis.wisconsin.gov**  
 Carbon copy (CC) to: **Tamara.Dodge@legis.wisconsin.gov**

**Pre Topic:**

No specific pre topic given

**Topic:**

Exemption from regulation for charitable gift annuities

**Instructions:**

See attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 7/2/2013	kfollett 7/10/2013	jfrantze 7/10/2013	_____			
/P1	pkahler 7/25/2013			_____	lparisi 7/10/2013		
/P2		csicilia 7/26/2013	jfrantze 7/26/2013	_____	lparisi 7/26/2013		

*P3* *cjs* *9/17* *13* *9/17* *9/17*

FE Sent For:

**<END>**

2013 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB152)

Received: 6/27/2013 Received By: pkahler  
 Wanted: Soon Same as LRB:  
 For: Frank Lasee (608) 266-3512 By/Representing: Rob Kovach  
 May Contact: Drafter: pkahler  
 Subject: Insurance - other insurance Addl. Drafters:  
 Extra Copies:

Submit via email: YES  
 Requester's email: Sen.Lasee@legis.wisconsin.gov  
 Carbon copy (CC) to: Tamara.Dodge@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Exemption from regulation for charitable gift annuities

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 7/2/2013	kfollett 7/10/2013	jfrantze 7/10/2013	_____			
/P1		P2 gjs 7/26/13	JL 7	pkahler 26	Iparisi 7/10/2013		

FE Sent For:

<END>

2013 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB152)

Received: 6/27/2013 Received By: pkahler  
 Wanted: Soon Same as LRB:  
 For: Frank Lasee (608) 266-3512 By/Representing: Rob Kovach  
 May Contact: Drafter: pkahler  
 Subject: Insurance - other insurance Addl. Drafters:  
 Extra Copies:

Submit via email: YES  
 Requester's email: Sen.Lasee@legis.wisconsin.gov  
 Carbon copy (CC) to: Tamara.Dodge@legis.wisconsin.gov

Pre Topic:

No specific pre topic given


Topic:

Exemption from regulation for charitable gift annuities

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler	1/1/10 7/10		 7/10			

FE Sent For:

<END>



**Kahler, Pam**

---

**From:** Kovach, Robert  
**Sent:** Friday, June 14, 2013 4:47 PM  
**To:** Kahler, Pam; Larson, Brian  
**Cc:** Wieske, JP - OCI  
**Subject:** Ammendment needed for LRB 2087

SB 152

Dear Pam,

After discussions with the assembly author and Senator Lasee, we would rather do more to deregulate charitable gift annuities.

I copied Brian Larson on this message because he did some of the research that brought us to this conclusion. → 6-0680

It appears the protections that are provided by OCI are not needed:

- Fed's regulate to make sure there are no fraudulent charities offering these annuities
- The Philanthropy Protection act of 1995 protects annuitants from insolvent charities in many cases, and Senator Lasee believes that an investor would be saavy enough to handle the risks on their own.
- The charity that offers these products should be able to structure this product effectively without state assistance

Can you draft a sub that would do this, and let me know if there are any other issues that I may not be thinking of?

I also cc'd JP Wieske. It is OK to discuss the drafting process with OCI for this draft.

Senator Lasee would like to exec this bill on Wednesday June 26 if we can get the language ready by then.

Thanks,

**Rob Kovach**

Policy Advisor/Committee Clerk  
Office of Senator Frank Lasee  
(608) 266-3512

Remove OCI involvement (in bill)

if ch. 615 does not apply to other annuities,  
repeal it.



[handwritten notes: PI, v m not run]

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**  
**SENATE SUBSTITUTE AMENDMENT,**  
**TO SENATE BILL 152**

*Draft  
(w/7-2)  
SOON*

*gov cut*

1 **AN ACT** ...; **relating to:** exemption from regulation for certain annuities.

*Insert A*

***Analysis by the Legislative Reference Bureau***

The bill repeals the chapter of the statutes and all related provisions that relate to the regulation of, and requirements for the issuers of, gift annuities.

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

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

3 **SECTION 2.** 601.31 (1) (b) 4. of the statutes is repealed.

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

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

6 **SECTION 5.** Chapter 615 of the statutes is repealed.

7 **SECTION 6.** 645.02 (6) of the statutes is amended to read:

*Insert 1-6*

1                   645.02 (6) All licensees under ch. ~~615~~<sup>✓</sup> or 616.

2                   History: 1975 c. 223, 373, 374; 1979 c. 93, 261, 355; 1985 a. 29.  
3                   **SECTION 7. 646.01 (1) (a) 2. d.** of the statutes<sup>4</sup> is repealed.

(END)

*D. note*



## 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

Insert A

X

←

2

**SENATE BILL 152**

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:*

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

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

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

(b) "Qualified charitable gift annuity" means an annuity that satisfies all of the following:

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

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

Insert 1-6

↓ Insert cont'd

SENATE BILL 152

*Insert 1-6 cont'd*

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.

*(end of ins 1-6)*

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

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBs0089/fin

PJK:.....

PI  
AGF  
r m not sure

*Date*

Do we need an initial applicability for any of the provisions, such as first applies to annuities issued on the effective date, or for the treatment of s. 645.02 (6), first applies to delinquency proceedings commenced on the effective date?

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: [pam.kahler@legis.wisconsin.gov](mailto:pam.kahler@legis.wisconsin.gov)



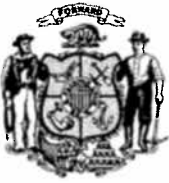
**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBs0089/P1dn  
PJK:KJF:JF

July 10, 2013

Do we need an initial applicability for any of the provisions, such as first applies to annuities issued on the effective date, or for the treatment of s. 645.02 (6) first applies to delinquency proceedings commenced on the effective date?

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: [pam.kahler@legis.wisconsin.gov](mailto:pam.kahler@legis.wisconsin.gov)



stays r m i run

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**  
**SENATE SUBSTITUTE AMENDMENT,**  
**TO SENATE BILL 152**

D-note  
(in 7-25)

SAV

regenerate ↓

substitute amendment

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** 645.02 (6); and **to create**  
3 632.65 of the statutes; **relating to:** exemption from regulation for certain  
4 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 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

# This substitute amendment

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 repeals the chapter of the statutes and all related provisions that relate to the regulation of, and requirements for the issuers of, gift annuities.

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

Insert 2-1

- 1 SECTION 1. 601.31 (1) (a) 4. of the statutes is repealed.
- 2 SECTION 2. 601.31 (1) (b) 4. of the statutes is repealed.
- 3 SECTION 3. 601.31 (1) (c) 4. of the statutes is repealed.
- 4 SECTION 4. 601.31 (1) (k) 4. of the statutes is repealed.
- 5 SECTION 5. Chapter 615 of the statutes is repealed.
- 6 SECTION 6. 632.65 of the statutes is created to read:
- 7 **632.65 Annuities exempt from regulation.** (1) In this section, "qualified
- 8 charitable gift annuity" means an annuity that satisfies all of the following:
- 9 1. The annuity is established under a transaction that, for federal income tax
- 10 purposes, is treated partly as a charitable contribution under section 170 of the
- 11 Internal Revenue Code and partly as an investment in an annuity contract under
- 12 section 72 of the Internal Revenue Code.
- 13 2. The annuity meets the requirements of an annuity for which the obligation
- 14 to pay is excluded from the definition of "acquisition indebtedness" under section 514
- 15 (c) (5) of the Internal Revenue Code.
- 16 (2) Notwithstanding any provision of chs. 600 to 646 to the contrary, a qualified
- 17 charitable gift annuity is not subject to regulation under chs. 600 to 646.
- 18 SECTION 7. 645.02 (6) of the statutes is amended to read:

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.



2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRBs0089/P2ins  
PJK:.....

*v m is new*

INSERT 2-1

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 an issuer of gift

8 annuities

History: 1971 c. 260; 1973 c. 22; Sup. Ct. Order, 67 Wis. 2d 585, 776 (1975); 1975 c. 223, 371, 374, 375, 421; 1977 c. 339; 1979 c. 89 ss. 383, 543; 1979 c. 102 ss. 49 to 53, 236 (22); 1979 c. 177; 1981 c. 38, 82; 1983 a. 120, 189, 274, 358; 1985 a. 29; 1987 a. 167, 247; 1989 a. 23, 31; 1989 a. 187 s. 29; 1993 a. 201; 1995 a. 225; 1999 a. 30; 2001 a. 65; 2003 a. 261; 2007 a. 170; 2009 a. 28.

(END OF INSERT 2-1)

~~insurer that issues only  
gift annuities or a  
licensee under ch. 616~~

issues  
a person that issues only  
qualified charitable gift annuities, as  
defined in §. 632.65 (1)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBs0089/P2dn

PJK:.....

gs

*V misner*

*- late -*

This redraft adds the amendment of the definition of "insurer." It is not clear to me what effect not regulating gift annuities has on the issuers of them. Are the issuers still regulated but the annuities are not? This version of the draft eliminates regulation of the issuers, too, which seems to make sense since the licensing requirement under ch. 615 and the fees for licensing are eliminated in the draft.

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: [pam.kahler@legis.wisconsin.gov](mailto:pam.kahler@legis.wisconsin.gov)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBs0089/P2dn  
PJK:cjs:jf

July 26, 2013

This redraft adds the amendment of the definition of "insurer." It is not clear to me what effect not regulating gift annuities has on the issuers of them. Are the issuers still regulated but the annuities are not? This version of the draft eliminates regulation of the issuers, too, which seems to make sense since the licensing requirement under ch. 615 and the fees for licensing are eliminated in the draft.

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: [pam.kahler@legis.wisconsin.gov](mailto:pam.kahler@legis.wisconsin.gov)

## **Kahler, Pam**

---

**From:** Kovach, Robert  
**Sent:** Wednesday, August 07, 2013 5:18 PM  
**To:** Wieske, JP - OCI  
**Subject:** RE: languagge

That's pretty easy. I have some other suggestions from Marquette University that I have to look over as well... Thanks for the update.

## **Rob Kovach**

Policy Advisor/Committee Clerk  
Office of Senator Frank Lasee  
(608) 266-3512

---

**From:** Wieske, JP - OCI [<mailto:JP.Wieske@wisconsin.gov>]  
**Sent:** Wednesday, August 07, 2013 5:15 PM  
**To:** Kovach, Robert  
**Subject:** languagge

Rob,

I know I have been late in getting this to you. Here is the "warning label" language we would propose. I think the key change is the issue of guaranty fund.

JP

"A qualified charitable gift annuity is not insurance under the laws of this state and is not subject to regulation by the commissioner of insurance of this state or protected by an insurance guaranty fund or an insurance guaranty association."

J.P. Wieske, FLMI  
Legislative Liaison & Public Information Officer  
Office of the Commissioner of Insurance  
[jpwieske@wisconsin.gov](mailto:jpwieske@wisconsin.gov)  
(608) 266-2493



**Kahler, Pam**

---

**From:** Kahler, Pam  
**Sent:** Monday, August 05, 2013 12:57 PM  
**To:** Kovach, Robert  
**Cc:** Larson, Brian  
**Subject:** RE: Gift annuities bill draft

Looks like what they are proposing would require going back to SB 152 language for s. 632.65 (1) to (3) and then add the requirements for three years of operation (s. 615.04 currently requires 10 years of operation) and \$100,000 of assets (which is similar to the requirement under s. 615.10).

---

**From:** Kovach, Robert  
**Sent:** Monday, August 05, 2013 12:33 PM  
**To:** Larson, Brian; Kahler, Pam  
**Subject:** FW: Gift annuities bill draft

Dear Brian and Pam,

Can you look over these suggested changes for the Gift Annuities Substitute amendment? Brian already did some research about the federal protections and regulations that apply to gift annuities, and I wanted to make sure there aren't already similar provisions in federal law.

Pam, since Brian is out until the 12<sup>th</sup>, we can wait until he gets back if he didn't share his research with you.

Thanks!

**Rob Kovach**

Policy Advisor/Committee Clerk  
 Office of Senator Frank Lasee  
 (608) 266-3512

---

**From:** Gran, Michelle [<mailto:michelle.gran@marquette.edu>]  
**Sent:** Friday, August 02, 2013 2:59 PM  
**To:** Kovach, Robert  
**Cc:** Czech-Mrochinski, Mary  
**Subject:** FW: Gift annuities bill draft

Dear Rob,

Thank you so much for the opportunity to review the substitute amendment.

Marquette would like to pose three items for consideration. We are offering these suggestions so that Wisconsin maintains its positive reputation in this area. While we understand what the authors are trying to accomplish and not make matters overly burdensome for smaller charities, we think the following items would be best practices for the bill authors to consider without creating a regulatory burden on any state agency. Marquette will still use some of the existing practices for gift annuities even if such items are no longer required under state statutes to ensure donor confidence, but we would ask that these small modifications be considered for adoption to give all donors confidence in a gift annuity with even the smallest of charities.

1. The charity needs to have been in continuous existence for at least three years, or is a successor or affiliate of a charitable organization that has been in continuous operation for at least three years.
2. A charity shall disclose in writing to each donor and annuitant that the annuity is (1) not issued by an insurance company; 2) is not subject to regulation by the state of Wisconsin; and 3) is not protected by the Wisconsin Insurance Security Fund or any other insurance guaranty association.
  - a. These requirements can be met by placing such disclosure wording in the charitable gift annuity agreement.
  - b. Suggested disclosure language: This charitable gift annuity is not issued by an insurance company, is not subject to regulation by the State of Wisconsin, and is not protected by the Wisconsin Insurance Security Fund or any other insurance guaranty association.
3. A charity shall have unrestricted assets of at least \$100,000 in order to issue gift annuities.

The first item ensures that there is some stability on the part of the charity so that the charity is more likely to be able to meet its gift annuity obligations. The second item ensures that donors will understand that gift annuities are not insurance, so that they will be fully cognizant that of the risk they are taking by entering into a gift annuity contract with a charity as opposed to a commercial annuity contract with an insurance company. The third item helps to make certain that a charity has the necessary resources to meet its gift annuity obligations.

Mary and I would be happy to connect with you, and perhaps the Legislative Council attorney, via conference call if you would like to discuss any of these suggestions further.

Thank you so much for your consideration. Have a great weekend.

Yours truly,

Michelle

Michelle Gran, J.D.  
Director of Gift Agreements  
Marquette University  
1250 West Wisconsin Avenue, Suite 421  
Milwaukee, Wisconsin 53233  
T: 414-288-4513  
F: 414-288-7300  
Email: [michelle.gran@marquette.edu](mailto:michelle.gran@marquette.edu)

---

**From:** Kovach, Robert [<mailto:Robert.Kovach@legis.wisconsin.gov>]  
**Sent:** Friday, July 19, 2013 1:53 PM  
**To:** Gran, Michelle  
**Subject:** Gift annuities bill draft

Dear Michelle;

I have attached a copy of a substitute amendment we drafted that will remove the state regulations over gift annuities.

If you could give me feedback, that would be great.

Thanks!

50089

9-10

add disclosure stat → ~~proposed~~  
 ① to sub

but sub applies to prospective annuitants  
 of

Rob run by JP + get back to me

keep

ch 615 for do. annuitants

limit to ch. 615 to annuitants entered into before  
 eff. date

②

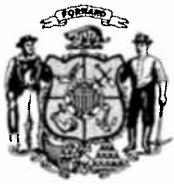
add 3 if that charity must have been in existence

issue left is whether to keep ch 615 + have it  
 only apply to existing annuitants

9-12 per Rob

don't limit to prospective only  
 retain repeal of ch 615

OCI will send notice to annuitants of  
 changes



P3

stays r m is run

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**  
**SENATE SUBSTITUTE AMENDMENT,**  
**TO SENATE BILL 152**

Wash

in 9-16

(SOON)  
D-note

Gen Cat

SAW

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) and 645.02 (6);  
3 and **to create** 632.65 of the statutes; **relating to:** exemption from regulation  
4 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.

*This* 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.

*Insert A*  
*The*

***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.

✓ 13          **SECTION 6.** Chapter 615 of the statutes is repealed.

14          **SECTION 7.** 632.65 of the statutes is created to read:

✓ 15          **632.65 Annuities exempt from regulation.** (1) In this section, "qualified  
16 charitable gift annuity" means an annuity that satisfies all of the following:

*Insert 2-13*



2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRBs0089/P3ins  
PJK:.....

*pm is*

INSERT A

*contract* *existing* *a*  
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 ~~an~~ *a* ~~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, 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.

(END OF INSERT A)

INSERT 3-9

1 *u* (b) A charitable organization may not issue a qualified charitable gift annuity  
2 unless the charitable organization has been in continuous existence for at least 3  
3 years, or is a successor or affiliate of a charitable organization that has been in  
4 continuous existence for at least 3 years.

5 *u* (c) A qualified charitable gift annuity contract must include the following  
6 disclosure statement: *insert 3-9-6*

7 *u* (3) This section applies to qualified charitable gift annuities in existence on or  
8 after the effective date of this subsection .... [LRB inserts date]. A person that issued  
9 before the effective date of this subsection .... [LRB inserts date], a qualified  
10 charitable gift annuity that is in existence on the effective date of this subsection ....  
11 [LRB inserts date], shall provide notice of the provisions of this section to the policy  
12 owner or beneficiary, whichever is appropriate, of the qualified charitable gift  
13 annuity.

(END OF INSERT 3-9)

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

Insert 3-9-6

7 disclosure statement: <sup>no &</sup> "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



Insert 2-13

Section #. 620.25 (2) of the statutes is amended to read:

620.25 (2) This section does not apply to ~~ss. 234.26 and 615.10~~ <sup>§.</sup>

History: 1979 c. 279; 2009 a. 33.

(end of insert 2-13)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBs0089/P3dn

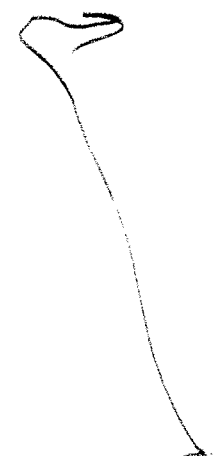
PJK:j:...

*vmisun*  
*js*

*-date-*

I spoke with Robin Jacobs from OCI. It was her understanding that the issuers of existing qualified charitable gift annuities, not OCI, would provide notice of the new provisions to the policy owners and beneficiaries.

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: pam.kahler@legis.wisconsin.gov



*④ Note that the fees under s. 601.31 (1)(c) 4. and (k) 4. are paid annually. Are they required to be paid by a specific date? Depending on the date, an initial applicability provision may be needed.*

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBs0089/P3dn  
PJK:cjs:jm

September 17, 2013

I spoke with Robin Jacobs from OCI. It was her understanding that the issuers of existing qualified charitable gift annuities, not OCI, would provide notice of the new provisions to the policy owners and beneficiaries.

Note that the fees under s. 601.31 (1) (c) 4. and (k) 4. are paid annually. Are they required to be paid by a specific date? Depending on the date, an initial applicability provision may be needed.

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: [pam.kahler@legis.wisconsin.gov](mailto:pam.kahler@legis.wisconsin.gov)

## Kahler, Pam

---

**From:** Kovach, Robert  
**Sent:** Thursday, October 03, 2013 10:07 AM  
**To:** Kahler, Pam; Wieske, JP - OCI  
**Subject:** RE: Gift annuity End date

JP confirmed to me that the "filings" are just compliance reports, and no fees. He also confirmed 12/31 would be the best time to ensure no 2014 filings would be required.

Looks like this one is ready to go!

## Rob Kovach

Policy Advisor/Committee Clerk  
Office of Senator Frank Lasee  
(608) 266-3512

---

**From:** Kahler, Pam  
**Sent:** Wednesday, October 02, 2013 3:48 PM  
**To:** Wieske, JP - OCI  
**Cc:** Kovach, Robert  
**Subject:** RE: Gift annuity End date

If you are thinking that the old provisions and requirements would run through 12/31, the effective date would be January 1, 2014. We're not sure what you mean by "filings." Do they have anything to do with the fees in s. 601.31?

---

**From:** Wieske, JP - OCI [<mailto:JP.Wieske@wisconsin.gov>]  
**Sent:** Wednesday, October 02, 2013 3:37 PM  
**To:** Kovach, Robert; Kahler, Pam  
**Subject:** RE: Gift annuity End date

The 12/31 end date makes sense since it is calculated on calendar year. I don't know if you want us to collect filings that would have been required based on the previous years' experience or not.

J.P. Wieske, FLMI  
Legislative Liaison & Public Information Officer  
Office of the Commissioner of Insurance  
[jpwieske@wisconsin.gov](mailto:jpwieske@wisconsin.gov)  
(608) 266-2493

---

**From:** Kovach, Robert [<mailto:Robert.Kovach@legis.wisconsin.gov>]  
**Sent:** Wednesday, October 02, 2013 2:30 PM  
**To:** Kahler, Pam - LEGIS  
**Cc:** Wieske, JP - OCI  
**Subject:** FW: Gift annuity End date

Dear Pam,

I think this means that December 31<sup>st</sup> would be a good effective date for the Gift annuity bill, but I don't understand the "but will require one last filing" part. I have a call in to JP to explain it, but I think we can have you put that on the draft.

I think we will be moving this for a vote in the next couple weeks.

## **Rob Kovach**

Policy Advisor/Committee Clerk  
Office of Senator Frank Lasee  
(608) 266-3512

---

**From:** Wieske, JP - OCI [<mailto:JP.Wieske@wisconsin.gov>]

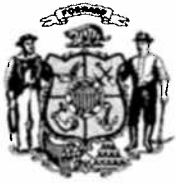
**Sent:** Monday, September 23, 2013 9:13 AM

**To:** Kovach, Robert

**Subject:** Gift annuity End date

Rob,  
12/31 makes some sense but will require one last filing.

J.P. Wieske, FLMI  
Legislative Liaison & Public Information Officer  
Office of the Commissioner of Insurance  
[jp.wieske@wisconsin.gov](mailto:jp.wieske@wisconsin.gov)  
(608) 266-2493



*stays in is run*

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

SENATE SUBSTITUTE AMENDMENT,

TO SENATE BILL 152

*D - vote  
SOON  
(in 10-3)*

*Regen*

1 AN ACT *to repeat* 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.

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

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

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

4           620.25 (2) This section does not apply to ~~ss. s.~~ s. 234.26 and 615.10.

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

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

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

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

22           (c) A qualified charitable gift annuity contract must include the following  
23 disclosure statement: “A qualified charitable gift annuity is not insurance under the  
24 laws of this state and is not subject to regulation by the commissioner of insurance



1 of this state or protected by an insurance guaranty fund or an insurance guaranty  
2 association.”

3 (3) This section applies to qualified charitable gift annuities in existence on or  
4 after the effective date of this subsection .... [LRB inserts date]. A person that issued  
5 before the effective date of this subsection .... [LRB inserts date], a qualified  
6 charitable gift annuity that is in existence on the effective date of this subsection ....  
7 [LRB inserts date], shall provide notice of the provisions of this section to the policy  
8 owner or beneficiary, whichever is appropriate, of the qualified charitable gift  
9 annuity.

✓

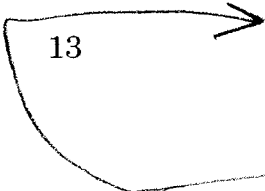
10 SECTION 9. 645.02 (6) of the statutes is amended to read:

11 645.02 (6) All licensees under ch. ~~615~~ or 616.

12 SECTION 10. 646.01 (1) (a) 2. d. ✓ of the statutes is repealed.

13

(END)



Insert 4-12

D-ute

**2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBs0089/lins  
PJK:.....

**INSERT 4-12**

1           **SECTION 1. Effective date.**

2           (1) This act takes effect on December 31, 2013, or on the day after publication,  
3           whichever is later.

(END OF INSERT 4-12)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBs0089/1dn

PJK: 



You have requested that the effective date be December 31, 2013. It is very unusual to have such an effective date, because the repeals and other changes will take effect with one day left in the year (a delayed effective date specifies when a change is first applicable, from the beginning of the day specified, not at the end of the day specified). Normally, if you want current law to run through the end of the year, the effective date would be January 1.

No one addressed the issue in my Drafter's Note of fee payment, so I will assume that no initial applicability provision is needed.

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: [pam.kahler@legis.wisconsin.gov](mailto:pam.kahler@legis.wisconsin.gov)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBs0089/ldn  
PJK:kjf:rs

October 4, 2013

You have requested that the effective date be December 31, 2013. It is very unusual to have such an effective date, because the repeals and other changes will take effect with one day left in the year (a delayed effective date specifies when a change is first applicable, from the beginning of the day specified, not at the end of the day specified). Normally, if you want current law to run through the end of the year, the effective date would be January 1.

No one addressed the issue in my Drafter's Note of fee payment, so I will assume that no initial applicability provision is needed.

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: [pam.kahler@legis.wisconsin.gov](mailto:pam.kahler@legis.wisconsin.gov)