

AN ACT
RELATING TO INSURANCE; EXEMPTING CHARITABLE GIFT ANNUITIES
FROM REGULATIONS APPLICABLE TO INSURANCE COMPANIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the New Mexico Insurance Code is enacted to read:

"CHARITABLE GIFT ANNUITIES--EXEMPT FROM REGULATION AS INSURANCE COMPANY.--

A. As used in this section:

(1) "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;

(2) "charitable organization" means an entity described in:

(a) Section 501(c)(3) of the Internal Revenue Code of 1986; or

(b) Section 170(c) of that act; and

(3) "qualified charitable gift annuity" means a charitable gift annuity described in Section 501(m)(5) and Section 514(c)(5) of that act that is issued by a charitable organization that on the date of the annuity agreement:

(a) has either an unrestricted fund balance consisting of assets in excess of liabilities of not less than three hundred thousand dollars (\$300,000) or

unencumbered assets in its gift annuity fund of not less than three hundred thousand dollars (\$300,000); and

(b) has been in continuous operation 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.

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

C. A charitable gift annuity issued prior to July 1, 1999 is a qualified charitable gift annuity for purposes of this section, and the issuance of that charitable gift annuity does not constitute engaging in the business of insurance in this state.

D. 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 division or protected by a guaranty association affiliated with the division. The disclosure shall be in a separate paragraph in a print size no smaller than that employed generally in the annuity agreement.

E. A charitable organization that issues qualified charitable gift annuities shall notify the insurance division in writing by the later of October 1, 1999 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 charitable organization;

(2) identify the charitable organization;
and

(3) certify that the organization is a charitable organization and the annuities issued by the organization are qualified charitable gift annuities. The charitable organization shall not be required to provide additional information to the division except as provided in Subsection F of this section.

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F. The failure of a charitable organization to comply with the notice requirements provided in Subsections D and E of this section does not prevent a charitable gift annuity that otherwise meets the requirements of this section from constituting a qualified charitable gift annuity; provided, however, that the superintendent may enforce performance of those requirements by sending a letter by certified mail, return receipt requested, demanding that the charitable organization comply with the notice requirements provided in Subsections D and E of this section.

G. The issuance of a qualified charitable gift annuity does not constitute a violation of the Unfair Practices Act."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999. _____