

## CHARITABLE GIFT ANNUITIES MODEL ACT

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### **Section 1. Scope**

This Act applies to charitable gift annuities issued by charitable organizations as herein defined and shall be known as the Charitable Gift Annuities Act.

### **Section 2. Definitions**

- A. (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 gift annuity” does not include a charitable remainder trust or a charitable lead trust or other similar arrangement where the charitable organization does not issue an annuity and incur a financial obligation to guarantee annuity payments.
- 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)].

### **Section 3. Certificate of Authority**

- A. A charitable organization shall not receive transfer of property, conditioned upon its agreement to pay an annuity to the donor or other annuitant unless and until it has obtained from the commissioner a certificate of authority to issue charitable gift annuities.
- B. A charitable organization shall file with the commissioner its application for a certificate of authority. The application shall be in form prescribed and furnished by the commissioner and shall be verified by two (2) of the applicant’s officers. The application shall include or be accompanied by such proof as the commissioner may reasonably require that the applicant is qualified under this Act. At filing of the application the applicant shall pay to the commissioner the applicable filing fees as specified in [insert citation].
- C. If after such investigation as the commissioner deems advisable, the commissioner finds that the applicant is in sound financial condition and is otherwise qualified, the commissioner shall issue to the applicant a certificate of authority. If the commissioner does not so find, the commissioner shall deny issuance of the certificate of authority and notify the applicant in writing stating the reasons for denial.

- D. The certificate of authority of a charitable organization issued under this Act shall continue until suspended or revoked by the commissioner or terminated by the organization, subject to continuance each year by payment on or before March 1 of the continuance fee of \$[insert amount] and filing of the annual report.
- E. A person acting on behalf of a charitable organization to solicit the transfers of property in exchange for annuity payments shall not be required to be licensed; however, the person shall be authorized in writing by the charitable organization to act on its behalf. The charitable organization shall keep a file of current written authorizations.

**Section 4. Surplus and Reserves**

- A. A charitable organization authorized by this Act shall maintain a segregated account for its charitable gift annuities. The assets of the account are not liable for any debts of the charitable organization other than those incurred pursuant to the issuance of charitable gift annuities. The assets of the account shall at least equal in amount the sum of the reserves on its outstanding annuities plus a surplus of ten percent (10%) of the reserves.
- B.
  - (1) Reserves on the outstanding annuities shall not be less than reserves calculated using:
    - (a) The Commissioner's Annuity Reserve Valuation Method as defined in the charitable organization's domestic state standard valuation law;
    - (b) Any mortality table permitted under the charitable organization's domestic state standard valuation law to be used in determining the minimum standard for the valuation of individual annuities issued during the same calendar year as the charitable gift annuity; and
    - (c) The maximum interest rate permitted under the charitable organization's domestic state standard valuation law to be used in determining the minimum standard for the valuation of individual annuities issued during the same calendar year as the charitable gift annuity.
  - (2) In determining the reserves, a deduction shall be made for any portion of the annuity risk that is reinsured by an authorized insurer or reinsurer. For this purpose, any annuity contract purchased from an authorized insurer or reinsurer by the charitable organization is considered to be "annuity risk reinsured."
- C. The general assets of the charitable organization shall be liable for annuity agreements to the extent that the segregated account is inadequate.

**Section 5. Investments**

The segregated assets shall be invested in the same manner and subject to the same investment laws applicable to domestic life insurers found in [insert section].

**Section 6. Annual Reports**

- A. A charitable organization authorized under this Act shall annually file a report verified by at least two (2) principal officers with the commissioner covering the preceding fiscal year. The report is due ninety (90) days after the close of the charity's fiscal year or at a later date approved by the commissioner.
- B. The report shall be on forms prescribed by the commissioner and shall include:
  - (1) A financial statement of the organization, including its balance sheet and receipts and disbursements for the preceding year;
  - (2) Any material changes in the information;
  - (3) The number of gift annuity contracts issued during the year, the number of gift annuity contracts as of the end of the year and the number of gift annuity contracts that terminated during the year;

- (4) The amount of annuity payments made during the year and the amounts transferred from the segregated account to the general account during the year; and
  - (5) Other information relating to the performance of the charitable gift annuity segment of the charitable organization necessary to enable the commissioner to:
    - (a) Issue certificates of authority;
    - (b) Ascertain maintenance of records;
    - (c) Evaluate solvency;
    - (d) Respond to consumer complaints; and
    - (e) Conduct hearings to determine compliance with this Act.
- C. A copy of a report containing the information required in Subsection B that has been filed in the state of domicile of the charitable organization will be deemed to satisfy the requirement of this section. The commissioner shall have the authority to request additional information.

#### **Section 7. Examination**

Whenever the commissioner determines it to be expedient, the commissioner may make or cause to be made an examination of the assets and liabilities and other affairs of the charitable organization as they pertain to annuity agreements entered into pursuant to this Act. The commissioner shall keep information obtained in the course of examinations confidential until the examination is completed. The reasonable expenses incurred for an examination shall be paid by the charitable organization.

#### **Section 8. Filing of Contracts**

- A. An authorized charitable organization shall file for information with the commissioner a copy of each form of agreement that it proposes to issue to donors in exchange for property transferred to the organization. {Within [insert number] days the commissioner shall approve or disapprove the proposed agreement forms and shall notify the charitable organization as soon as practicable.}

**Drafting Note:** Insert the bracketed material in prior approval states.

- B. Each annuity agreement form shall include the following information:
- (1) The value of the property to be transferred;
  - (2) The amount of the annuity to be paid to the donor or other annuitant;
  - (3) The manner in which and the intervals at which payment is to be made;
  - (4) The age and sex of the person or persons during whose life payment is to be made;
  - (5) The reasonable value as of the date of the agreement of the benefits created; and
  - (6) The date that payments are to begin.

#### **Section 9. Disclosure**

- A. Before accepting the property transferred in exchange for the annuity agreement, the organization shall obtain a signed statement from a prospective donor acknowledging the following terms of the agreement:
- (1) The value of the property transferred;
  - (2) The amount of the periodic annuity benefits to be paid;

- (3) The manner in which and the intervals at which payment is to be made;
  - (4) The reasonable value as of the date of the agreement of the benefits created; and
  - (5) The date that payments are to begin.
- B. In addition to the above disclosure, the charitable organization shall obtain a signed statement from a prospective donor acknowledging that he or she has been informed that payments made under a charitable gift annuity are backed solely by the full faith and credit of the organization, are not insured or guaranteed by an insurance company, are not protected by any insurance guaranty association, and are not backed in any way by the State of [insert state].
- C. The requirements of Subsection A and B may be satisfied by an acknowledgment that is a part of the annuity agreement that is signed by the donor.

**Section 10. Other Applicable Code Provisions**

- A. These provisions of the insurance code apply to the transactions covered by this Act:
- (1) [insert citation to receivership law];
  - (2) [insert citation to laws on hazardous financial condition];
  - (3) [insert citation to laws governing unfair trade practices]; and
  - (4) [insert citation to laws governing investments].
- B. The provisions of [insert reference to state guaranty association law] do not apply to charitable gift annuities.

**Drafting Note:** In order to ensure consistency and uniformity in state insurance laws, it is recommended that states adopting this model act also amend their state guaranty association statutes to comply with Section 5L(7) of the Life and Health Guaranty Association Model Act. That provision states that for the purpose of providing guaranty association protection to policy owners, insureds, beneficiaries, annuitants, payees and assignees, a “member insurer” shall not include “(a)n organization that has a certificate or license limited to the issuance of charitable gift annuities under [insert appropriate section of the state code.]”

**Section 11. Severability**

If any provision of this Act or the application of the provision to any circumstances is held invalid, the remainder of the Act or the application of the provision to other circumstances shall not be affected.

**Section 12. Effective Date**

This Act shall become effective [insert date] and shall apply to charitable gift annuities agreements entered into on or after the effective date.

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*Chronological Summary of Action (all references are to the Proceedings of the NAIC).*

*1998 Proc. 3<sup>rd</sup> Quarter 14-15, 518-519, 567-570 (adopted).*