

## CHARITABLE GIFT ANNUITIES EXEMPTION MODEL ACT

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### Section 1. Definitions

- A. “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.
- 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)).
- C. “Qualified charitable gift annuity” means a charitable gift annuity described by Section 501(m)(5), Internal Revenue Code of 1986 (26 U.S.C. Section 501(m)(5)), and Section 514(c)(5), Internal Revenue Code of 1986 (26 U.S.C. Section 514(c)(5)), that is issued by a charitable organization that on the date of the annuity agreement:
- (1) Has a minimum of \$300,000 in unrestricted cash, cash equivalents, or publicly traded securities, exclusive of the assets funding the annuity agreement; and
  - (2) Has been in continuous operation for at least three (3) years or is a successor or affiliate of a charitable organization that has been in continuous operation for at least three (3) years.

### Section 2. Charitable Gift Annuity Is Not Insurance

- A. The issuance of a qualified charitable gift annuity does not constitute engaging in the business of insurance in this state.
- B. A charitable gift annuity issued before [insert effective date of this statute] is a qualified charitable gift annuity for purposes of this Act, and the issuance of that charitable gift annuity does not constitute engaging in the business of insurance in this state.

### Section 3. Notice to Donor

- A. 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 commissioner or protected by an insurance guaranty association.
- B. The notice provisions required by this section shall be in a separate paragraph in a print size no smaller than that employed in the annuity agreement generally.

**Section 4. Notice to Department**

- A. A charitable organization that issues qualified charitable gift annuities shall notify the commissioner in writing by the later of ninety (90) days after the effective date of this Act 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 organization;
  - (2) Identify the organization; and
  - (3) Certify that:
    - (a) The organization is a charitable organization; and
    - (b) The annuities issued by the organization are qualified charitable gift annuities.
- B. The organization shall not be required to submit additional information except to determine appropriate penalties that may be applicable under Section 5 of this Act.

**Section 5. Effect of Failure to Provide Required Notice**

The failure of a charitable organization to comply with the notice requirements imposed under Section 3 or 4 of this Act does not prevent a charitable gift annuity that otherwise meets the requirements of this Act from constituting a qualified charitable gift annuity. The commissioner may enforce performance of the requirements of Sections 3 and 4 of this Act by sending a letter by certified mail, return receipt requested, demanding that the charitable organization comply with the requirements of Sections 3 and 4 of this Act. The commissioner may fine the charitable organization in an amount not to exceed \$1,000 per qualified charitable gift annuity agreement issued until such time as the charitable organization complies with Sections 3 and 4 of this Act.

**Section 6. Not Unfair or Deceptive Trade Practice**

The issuance of a qualified charitable gift annuity does not constitute a violation of [insert reference to unfair trade practices law].

**Section 7. Effective Date**

This Act shall be effective [insert 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, 571-572 (adopted).*

## CHARITABLE GIFT ANNUITIES EXEMPTION MODEL ACT

**This chart is intended to provide readers with additional information to more easily access state statutes, regulations, bulletins or administrative rulings related to the NAIC model. Such guidance provides readers with a starting point from which they may review how each state has addressed the model and the topic being covered. The NAIC Legal Division has reviewed each state’s activity in this area and has determined whether the citation most appropriately fits in the Model Adoption column or Related State Activity column based on the definitions listed below. The NAIC’s interpretation may or may not be shared by the individual states or by interested readers.**

**This chart does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Nor does this state page reflect a determination as to whether a state meets any applicable accreditation standards. Every effort has been made to provide correct and accurate summaries to assist readers in locating useful information. Readers should consult state law for further details and for the most current information.**

**CHARITABLE GIFT ANNUITIES EXEMPTION MODEL ACT**

**KEY:**

**MODEL ADOPTION:** States that have citations identified in this column adopted the most recent version of the NAIC model in a **substantially similar manner**. This requires states to adopt the model in its entirety but does allow for variations in style and format. States that have adopted portions of the current NAIC model will be included in this column with an explanatory note.

**RELATED STATE ACTIVITY:** Examples of Related State Activity include but are not limited to: older versions of the NAIC model, statutes or regulations addressing the same subject matter, or other administrative guidance such as bulletins and notices. States that have citations identified in this column **only** (and nothing listed in the Model Adoption column) have **not** adopted the most recent version of the NAIC model in a **substantially similar manner**.

**NO CURRENT ACTIVITY:** No state activity on the topic as of the date of the most recent update. This includes states that have repealed legislation as well as states that have never adopted legislation.

<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Alabama	NO CURRENT ACTIVITY	
Alaska	ALASKA STAT. § 21.03.070 (2001).	
American Samoa	NO CURRENT ACTIVITY	
Arizona		ARIZ. REV. STAT. ANN. § 20-103 (1954/2014); § 20-119 (1997/2004).
Arkansas		ARK. CODE ANN. § 23-63-201 (1959/2013); CODE ARK. R. 054.00.090 (2010).
California		CAL. INS. CODE §§ 11520 to 11524 (1935/1995).
Colorado		COLO. REV. STAT. § 10-3-903 (1963/1998).
Connecticut	CONN. GEN. STAT. §§ 38a-1030 to 38a-1039 (1999) (portions of model).	
Delaware		DEL. CODE ANN. tit. 18, § 2902 (1953/1983).
District of Columbia	NO CURRENT ACTIVITY	

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Florida		FLA. STAT. § 627.481 (1974/2002); FLA. ADMIN. CODE ANN. r. 69O-202.001 to 69O-202.015 (1990/2003).
Georgia	GA. CODE ANN. §§ 33-58-1 to 33-58-6 (2000).	
Guam	NO CURRENT ACTIVITY	
Hawaii		HAW. REV. STAT. § 431:1-204 (1987/2005).
Idaho		IDAHO CODE ANN. § 41-120 (1996).
Illinois		215 ILL. COMP. STAT. 5/121-2.10 (1995/1996).
Indiana		IND. CODE § 27-1-12.4 (1994).
Iowa	IOWA CODE §§ 508F.1 to 508F.8 (2001).	
Kansas	NO CURRENT ACTIVITY	
Kentucky		KY. REV. STAT. ANN. § 304.1-120 (1970/2013).
Louisiana		LA. REV. STAT. ANN. §§ 22:951 to 22:952 (1958/1993).
Maine		ME. REV. STAT. ANN. tit. 24-A, §§ 703 to 703-A (1962/1995).
Maryland		MD. CODE ANN., INS. § 16-114 (1957/1996); MD. CODE REGS. 31.9. 07.01 to 31.9.07.07 (1995).
Massachusetts		MASS. GEN. LAWS ch. 175, § 118 (1870/1968).
Michigan	NO CURRENT ACTIVITY	
Minnesota	NO CURRENT ACTIVITY	

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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Mississippi	MISS. CODE ANN. §§ 79-11-651 to 79-11-661 (2001).	
Missouri	MO. REV. STAT. §§ 352.500 to 352.520 (1996/2001).	
Montana		MONT. CODE ANN. §§ 33-20-701 to 33-20-702 (2003/2005) (portions of model).
Nebraska		NEB. REV. STAT. ANN. §§ 59-1801 to 59-1803 (1996).
Nevada	NEV. REV. STAT. §§ 688A.281 to 688A.285 (1999).	
New Hampshire	N.H. REV. STAT. ANN. §§ 403-E:1 to 403-E:5 (1999).	
New Jersey		N.J. STAT. ANN. § 17B:17-13.1 (1971/2004); N.J. ADMIN. CODE §§ 11:4-8.1 to 11:4-8.11 (1971/2005).
New Mexico	N.M. STAT. ANN. § 59A-1-16.1 (1999).	
New York		N.Y. INS. LAW § 1110 (1984/2013).
North Carolina		N.C. GEN. STAT. § 58-3-6 (1998).
North Dakota		N.D. CENT. CODE §§ 26.1-34.1-01 to 26.1-34.1-07 (1991).
Northern Marianas	NO CURRENT ACTIVITY	
Ohio	NO CURRENT ACTIVITY	
Oklahoma		OKLA. STAT. tit. 36, §§ 4071 to 4082 (1998).
Oregon		OR. REV. STAT. ANN. § 731.038 (2005).
Pennsylvania		10 PA. STAT. ANN. §§ 361 to 364 (1996).
Puerto Rico	NO CURRENT ACTIVITY	

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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Rhode Island	NO CURRENT ACTIVITY	
South Carolina		S.C. CODE ANN. § 38-5-20 (1987/1993).
South Dakota		S.D. CODIFIED LAWS §§ 58-1-16 to 58-1-17 (1994/2001).
Tennessee		TENN. CODE ANN. §§ 56-52-101 to 56-52-111 (2007/2012).
Texas	TEX. INS. CODE ANN. § 102.051 (1999); §§ 102.101 to 102.104 (1995/1999).	
Utah		UTAH CODE ANN. § 31A-1-301 (1985/2014); § 31A-22-1305 (1986).
Vermont	VT. STAT. ANN. tit. 9, §§ 2517 to 2518 (2001); VT. STAT. ANN. tit. 8, § 3718a (2001).	
Virgin Islands	NO CURRENT ACTIVITY	
Virginia		VA. CODE ANN. §§ 38.2-106 to 38.2-106.1 (1986/1996).
Washington		WASH. REV. CODE ANN. §§ 48.38.010 to 48.38.075 (1979/2002); WASH. ADMIN. CODE 284-38-010 to 284-38-200 (1979).
West Virginia	W. VA. CODE §§ 33-13B-1 to 33-13B-6 (2006).	
Wisconsin		WIS. STAT. § 632.65 (2014).
Wyoming	NO CURRENT ACTIVITY	

## CHARITABLE GIFT ANNUITIES EXEMPTION MODEL ACT

### Proceedings Citations

Cited to the Proceedings of the NAIC

A representative from a charitable organization association said there were three alternative approaches available for regulating charitable gift annuities: (1) regulate the charity; (2) issue an exemption; or (3) the law may be silent. He noted that in the past three years most activity on the state level has been adopting statutes that provide a conditional exemption for the charity. He suggested that the working group develop two alternative model statutes: one that regulated charities and one that a state could use to exempt charitable organizations from its laws. **1997 Proc. 1<sup>st</sup> Quarter 665.**

While the working group was developing a model act regulating charities that issued charitable gift annuities, the chair announced that the American Council of Gift Annuities had provided an alternative draft for a model that exempted charitable gift annuities from insurance provisions. He asked if the working group was interested in considering this alternative model. One regulator said it might be useful, since some states have an exemption from insurance laws. The chair asked if states needed the working group's help in developing an exemption and the group decided a model was not necessary. **1997 Proc. 2<sup>nd</sup> Quarter 617.**

After the Charitable Gift Annuities Model Act was adopted by the group responsible for its drafting, it was forwarded to the Executive Committee for its approval. That committee voted to return it to the drafters with instructions to consider further issues. The group was asked to consider development of a companion model that would exempt charitable organizations from most state insurance laws. **1998 Proc. 1<sup>st</sup> Quarter 15.**

The working group reviewed a copy of one state's statute that exempted charitable gift annuities from regulation if they met certain requirements, and decided to develop an exemption model using it as the basis. **1998 Proc. 3<sup>rd</sup> Quarter 572.**

#### **Section 1. Definitions**

C. A member of the working group asked what would happen if the charity had not been in business for three years. The chair responded that, if the charity did not meet the qualifications in the statute, it did not have an exemption from insurance department regulation. **1998 Proc. 3<sup>rd</sup> Quarter 572.**

One of the drafters involved in preparing the model act regulating charitable gift annuities noted that the draft did not have any provision for reserves. He asked if that meant a charity could take all of the money and spend it and the chair responded in the affirmative. A representative from a charitable giving organization said it is the practice of most charities to hold the gift until the annuitant dies. The main purpose of the draft is to screen out charities without sufficient financial strength. **1998 Proc. 3<sup>rd</sup> Quarter 572-573.**

A regulator pointed out that the \$300,000 requirement would allow a charity to be exempt one year, but not another. The chair responded that this was true and opined that in a year that it did not have enough assets, it would not negotiate charitable gift annuities. **1998 Proc. 3<sup>rd</sup> Quarter 573.**

Another regulator questioned the impact if a charity did not meet the exemption in a particular year. He asked if it would be considered an insurer and perhaps subject to premium tax. He noted that his state has some regulation of these charities and had a great deal of trouble getting the required financial information. He thought this provision would be difficult for charities, many of whom would not understand the impact of having lower amounts in a particular year. **1998 Proc. 3<sup>rd</sup> Quarter 567.**

#### **Section 2. Charitable Gift Annuity is Not Insurance**

#### **Section 3. Notice to Donor**

#### **Section 4. Notice to Department**

#### **Section 5. Effect of Failure to Provide Required Notice**

#### **Section 6. Not Unfair or Deceptive Trade Practices**



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**Proceedings Citations**

Cited to the Proceedings of the NAIC

**Section 7.        Effective Date**

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*Chronological Summary of Actions*

*December 1998: Adopted model.*