

§ 58-3-6. Charitable gift annuities.

(a) A charitable organization as described in section 501(c)(3) or section 170(c) of the Internal Revenue Code or an educational institution may receive a transfer of property from a donor in exchange for an annuity payable over one or two lives, under which the actuarial value of the annuity is less than the value of the property transferred and the difference in value constitutes a charitable deduction for federal tax purposes. The issuance of the annuity by a charitable organization does not constitute engaging in the business of insurance if the organization, when the annuity agreement is issued:

- (1) Has a minimum of \$100,000 in unrestricted cash, cash equivalents, or publicly-traded securities, exclusive of the assets contributed by the donor in return for the annuity agreement;
- (2) Has been in active, continuous operation for at least three years or is a successor to or affiliate of a charitable organization that has been in active operation for at least three years; and
- (3) Includes the following disclosure clause in each annuity agreement issued on or after November 1, 1998: "This annuity is not issued by an insurance company, is not subject to regulation by the State of North Carolina, and is not protected or otherwise guaranteed by any government agency or insurance guaranty fund."

Subdivisions (1) and (2) of this subsection do not apply to an educational institution that was issuing annuity agreements prior to October 30, 1998 nor to an organization formed solely to support an educational institution in active operation at least three years prior to October 30, 1998.

(b) A charitable organization or educational institution that issues a charitable annuity shall notify the Department by January 1, 1999, or within 90 days of issuing its first annuity, whichever is later. The notice shall be signed by an officer or director of the organization or educational institution, identify the organization or institution, and certify that the organization or institution is a charitable organization or educational institution and that its annuities are issued in compliance with the applicable provisions of subsection (a) of this section.

(c) A charitable organization that issues charitable annuities must make available to the Commissioner, upon request, a copy of its Internal Revenue Service Form 990 or Form 990-EZ for the most recent fiscal year for which the due date has passed. If the organization was not required to file either form with the Internal Revenue Service for the preceding fiscal year, or was allowed to submit the form in abbreviated format, it shall make available to the Commissioner, upon request, the same information that would have been required to have been filed under the Form 990, in a similar format as specified by the Commissioner. A copy of the Form 990, or corresponding substitute information as authorized by the Commissioner, shall be made available to the prospective annuitant at the time of the initial solicitation of the contribution, and updated information shall be made available at the time of execution of the annuity agreement.

(d) The Department may enforce performance of the requirements of this section by notifying the organization or institution and demanding that it comply with the requirements of this section. The Department may fine an organization or educational institution, up to \$1,000 per annuity agreement, for failure to comply after notice and demand from the Commissioner.

(e) A charitable gift annuity issued by a charitable organization or educational institution prior to October 30, 1998 does not constitute engaging in the business of insurance.

(f) For purposes of this section, an "educational institution" means a public or private college, university, or community college that maintains a faculty to provide instruction to students. (1998-211, s. 1(b).)