WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2006

ENROLLED

House Bill No. 4679
(By Delegates H. White and Kominar)

Passed March 11, 2006
In Effect Ninety Days from Passage
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-13B-1, §33-13B-2, §33-13B-3, §33-13B-4, §33-13B-5 and §33-13B-6, all relating to qualified charitable gift annuities; providing definitions; declaring issuance of certain annuities not business of insurance; requiring certain notices by issuers; and providing penalties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §33-13B-1, §33-13B-2, §33-13B-3, §33-13B-4, §33-13B-5 and §33-13B-6, all to read as follows:

ARTICLE 13B. CHARITABLE GIFT ANNUITIES.

§33-13B-1. Definitions.

1 (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), of the Internal Revenue Code of
1986 (26 U.S.C. 501(c) (3)); or

(2) Section 170(c), of the Internal Revenue Code of 1986
(26 U.S.C. 170 (c)

(c) "Qualified charitable gift annuity" means a charitable
gift annuity described by 501(m) (5), of the Internal Revenue
Code of 1986 (26 U.S.C. 501(m) (5)), and 514(c) (5), of the
Internal Revenue Code of 1986 (26 U.S.C. 514(c) (5)), that is
issued by a charitable organization that on the date of the
annuity agreement:

(1) Has a minimum of three hundred thousand dollars in
unrestricted cash, cash equivalents, or publicly traded securi-
ties, exclusive of the assets funding the annuity agreement; and

(2) 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.

§33-13B-2. Charitable gift annuity is not insurance.

Notwithstanding any other provision of this code to the
contrary, the issuance of a qualified charitable gift annuity does
not constitute engaging in the business of insurance in this state,
and the issuance of any charitable gift annuity prior to the first
day of July, two thousand six, does not constitute engaging in
the business of insurance in this state.

(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, is not subject to regulation by the commissioner and is not protected by the West Virginia life and health insurance guaranty association established in article twenty-six-a of this chapter or by any other guaranty association established by this code.

(b) The notice required by this section shall be in a separate paragraph in a print size no smaller than that employed in the annuity agreement generally.

§33-13B-4. Notice to insurance commission.

(a) A charitable organization that issues qualified charitable gift annuities shall notify the commissioner of such fact in writing by the later of the thirtieth day of September, two thousand-six or the date on which it enters into the organization’s first qualified charitable gift annuity agreement.

(b) The notice required by subsection (a) of this section shall identify the organization, be signed by an officer or director of the organization, and certify that the organization is a charitable organization and that the annuities issued by the organization are qualified charitable gift annuities.

§33-13B-5. Failure to provide required notice; penalties.

Any person who violates any provision of section three or four of this article may, after notice and hearing pursuant to section thirteen, article two of this chapter, be fined by the commissioner a sum not to exceed one thousand dollars per
qualified charitable gift annuity agreement issued: *Provided*,

That the failure of a charitable organization to comply with the
notice requirements imposed under section three or four of this
article does not prevent a charitable gift annuity that otherwise
meets the requirements of this article from constituting a
qualified charitable gift annuity.

§33-13B-6. Unfair or deceptive trade practices act not applicable.

The issuance of a qualified charitable gift annuity does not
constitute a violation of article eleven of this chapter.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 30th day of March, 2006.

Governor