

HB 4679 S

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# 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

FILED

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**E N R O L L E D**

**H. B. 4679**

(BY DELEGATES H. WHITE AND KOMINAR)

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[Passed March 11, 2006; in effect ninety days from passage.]

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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
- 2 other property by a donor to a charitable organization in return

3 for an annuity payable over one or two lives, under which the  
4 actuarial value of the annuity is less than the value of the cash  
5 or other property transferred and the difference in value  
6 constitutes a charitable deduction for federal tax purposes.

7 (b) "Charitable organization" means an entity described by:

8 (1) Section 501(c)(3), of the Internal Revenue Code of  
9 1986 (26 U.S.C. 501(c) (3)); or

10 (2) Section 170(c), of the Internal Revenue Code of 1986  
11 (26 U.S.C. 170 (c))

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

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

21 (2) Has been in continuous operation for at least three years  
22 or is a successor or affiliate of a charitable organization that has  
23 been in continuous operation for at least three years.

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

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

**§33-13B-3. Notice to donor.**

1 (a) When entering into an agreement for a qualified  
2 charitable gift annuity, the charitable organization shall disclose  
3 to the donor in writing in the annuity agreement that a qualified  
4 charitable gift annuity is not insurance under the laws of this  
5 state, is not subject to regulation by the commissioner and is not  
6 protected by the West Virginia life and health insurance  
7 guaranty association established in article twenty-six-a of this  
8 chapter or by any other guaranty association established by this  
9 code.

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

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

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

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

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

1 Any person who violates any provision of section three or  
2 four of this article may, after notice and hearing pursuant to  
3 section thirteen, article two of this chapter, be fined by the  
4 commissioner a sum not to exceed one thousand dollars per

5 qualified charitable gift annuity agreement issued: *Provided*,  
6 That the failure of a charitable organization to comply with the  
7 notice requirements imposed under section three or four of this  
8 article does not prevent a charitable gift annuity that otherwise  
9 meets the requirements of this article from constituting a  
10 qualified charitable gift annuity.

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

1 The issuance of a qualified charitable gift annuity does not  
2 constitute a violation of article eleven of this chapter.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*C. Randolph White*

Chairman Senate Committee

*W. Burr*

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

*Russell E. Helms*

Clerk of the Senate

*Suzanne M. Day*

Clerk of the House of Delegates

*Carl Roy Tomblin*

President of the Senate

*Robert K. ...*

Speaker of the House of Delegates

The within is approved this the 30<sup>th</sup>  
day of March, 2006

*Robert M. ...*  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 29 2006

Time 4:00 pm