

INSURANCE CODE

TITLE 2. TEXAS DEPARTMENT OF INSURANCE  
SUBTITLE B. DISCIPLINE AND ENFORCEMENT  
CHAPTER 102. CHARITABLE GIFT ANNUITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 102.001. DEFINITIONS. In this chapter:

(1) "Charitable gift annuity" means an annuity:

(A) that is payable over the lives of one or two individuals;

(B) that is made in return for the transfer of cash or other property to a charitable organization; and

(C) the actuarial value of which is less than the value of the cash or other property transferred, with the difference in those values being a charitable deduction for federal tax purposes.

(2) "Charitable organization" means an entity described by:

(A) Section 501(c)(3), Internal Revenue Code of 1986; or

(B) Section 170(c), Internal Revenue Code of 1986.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.002. QUALIFIED CHARITABLE GIFT ANNUITY. A charitable gift annuity is a qualified charitable gift annuity for purposes of this chapter if it was issued before September 1, 1995, or if it is:

(1) described by Section 501(m)(5), Internal Revenue Code of 1986; and

(2) issued by a charitable organization that on the date of the annuity agreement:

(A) has, exclusive of the assets funding the annuity agreement, a minimum of \$100,000 in unrestricted cash, cash equivalents, or publicly traded securities; and

(B) 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.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

#### SUBCHAPTER B. ISSUANCE OF CHARITABLE GIFT ANNUITY

Sec. 102.051. NOT INSURANCE; EFFECT OF CERTAIN LAWS. The issuance of a qualified charitable gift annuity:

(1) does not constitute engaging in the business of insurance in this state;

(2) does not violate Section 15.05 or 17.46, Business & Commerce Code; and

(3) is not an unconscionable action or course of action for purposes of Section 17.50(a)(3), Business & Commerce Code.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

#### SUBCHAPTER C. NOTICE

Sec. 102.101. NOTICE TO DONOR. (a) A charitable organization that issues a qualified charitable gift annuity shall give to the donor, at the time an agreement for a qualified charitable gift annuity is entered into, written notice that the annuity is not:

(1) insurance under the laws of this state;

(2) subject to regulation by the department; and

(3) protected by a guaranty association affiliated with the department.

(b) The notice must be in a separate paragraph of the annuity agreement in a print size at least as large as the print size generally used in the agreement.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.102. NOTICE TO DEPARTMENT. (a) A charitable organization that issues qualified charitable gift annuities shall notify the department's annuities division in writing not later

than the date on which the organization enters into the organization's first qualified charitable gift annuity agreement.

(b) The notice required by this section must:

(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.

(c) The charitable organization may not be required to submit additional information except to determine appropriate penalties under Section 102.104.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.103. EFFECT ON ANNUITY OF FAILURE TO PROVIDE NOTICE. A charitable gift annuity that otherwise meets the requirements of Section 102.002 is a qualified charitable gift annuity without regard to whether the charitable organization that issues the annuity complies with the notice requirements of this subchapter.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.104. ENFORCEMENT OF NOTICE REQUIREMENTS. (a) The commissioner may enforce the notice requirements of this subchapter by sending by certified mail, return receipt requested, a letter demanding that the charitable organization comply with the notice requirements.

(b) The department may fine the charitable organization in an amount not to exceed \$1,000 for each qualified charitable gift annuity agreement issued by the organization until the time the organization complies with this subchapter.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER D. EFFECT OF CHARITABLE GIFT ANNUITY IN LITIGATION AND CERTAIN OTHER PROCEEDINGS

Sec. 102.151. IMMUNITY. Any person or entity involved in the issuance of a qualified charitable gift annuity shall have immunity from suit, including both a defense to liability and the right not to bear the cost, burden, and risk of discovery and trial, as to any claim brought by or on behalf of the donor or the donor's heirs or distributees alleging that the issuance of a charitable gift annuity constitutes engaging in the business of insurance in this state. An interlocutory appeal may be taken if a court denies or otherwise fails to grant a motion for summary judgment that is based on an assertion of the immunity provided in this section. Added by Acts 2001, 77th Leg., ch. 1420, Sec. 11.015(a), eff. Sept. 1, 2001.

Sec. 102.152. TREATMENT OF ANNUITY AS CHARITABLE GIFT ANNUITY; ESTOPPEL. In any litigation or other proceeding brought by or on behalf of a donor or the donor's heirs or distributees, an annuity that the donor has treated as a charitable gift annuity in a filing with the United States Internal Revenue Service shall be considered to be a charitable gift annuity issued by a charitable organization, as described by Subchapters A and B and Section [101.053\(b\)](#).

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 11.015(a), eff. Sept. 1, 2001.