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## INSURANCE Charitable Gift Annuities: Define Certain Terms; Provide That a Qualified Charitable Gift Annuity Issued by a Charitable Organization Shall Not Constitute Engaging in the Business of Insurance; Provide for Certain Disclosures and Notices; Provide for the Effects of Failure to Provide Such Notices

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## INSURANCE

*Charitable Gift Annuities: Define Certain Terms; Provide That a Qualified Charitable Gift Annuity Issued by a Charitable Organization Shall Not Constitute Engaging in the Business of Insurance; Provide for Certain Disclosures and Notices; Provide for the Effects of Failure to Provide Such Notices*

CODE SECTIONS: O.C.G.A. §§ 33-58-1 to -6 (new)  
BILL NUMBER: SB 300  
ACT NUMBER: 720  
GEORGIA LAWS: 2000 Ga. Laws 868  
SUMMARY: The Act, based on the Model Charitable Gifts Act, adds several sections to the Georgia Code to allow defined charitable institutions, including educational institutions, to raise funds through the sale of annuities without being considered to be engaging in the business of insurance. Only institutions with \$300,000 in unrestricted assets that have been in continuous operation for at least three years or that are a successor or affiliate of such an organization may make use of the Act.  
EFFECTIVE DATE: July 1, 2000

### *History*

Prior to the 2000 General Assembly session, Georgia was one of only twelve states that did not allow charitable organizations to issue charitable gift annuities (CGAs).<sup>1</sup> CGAs are generally used to raise money for issuing charitable institutions.<sup>2</sup> Specifically, individuals donate money and then collect interest

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1. *See* Audio Recording of House Proceedings, Mar. 14, 2000 (remarks by Rep. Louise McBee) <<http://www.ganet.org/services/leg/audio/2000archive.html>> [hereinafter House Audio].

2. *See* Telephone Interview with Sen. Paul C. Broun, Senate District No. 46 (May 16, 2000) [hereinafter Broun Interview].

on the funds throughout their lives.<sup>3</sup> The difference in the money donated and the annuity collected is deductible from federal income tax.<sup>4</sup> The CGA continues throughout the life of the donor and may descend one generation.<sup>5</sup>

Prior to the passage of SB 300, Georgia colleges and universities avoided issuing CGAs because it was unclear whether they would be considered as engaging in the business of insurance.<sup>6</sup> Senator Paul Broun introduced SB 300 to remove any uncertainty and to allow Georgia's charitable organizations, specifically colleges and universities to use CGAs as a revenue source.<sup>7</sup>

### *SB 300*

Senator Paul C. Broun of the 46th District introduced SB 300 on the Senate floor on January 11, 2000.<sup>8</sup> The Senate assigned the bill to its Industry and Labor Committee, which favorably reported the bill, as substituted, on February 9, 2000.<sup>9</sup> The substitute altered the original language (1) to apply the bill to all charitable organizations rather than solely those operated under the University System of Georgia and (2) to provide for required "disclosures and notices" rather than solely "notices."<sup>10</sup> The Senate adopted the Committee substitute and passed the bill unanimously on February 14, 2000.<sup>11</sup> On February 15, the bill was assigned to the House Committee on Higher Education, which favorably reported the bill on March 9, 2000.<sup>12</sup> The House passed the bill on March 14, 2000,<sup>13</sup> and forwarded the bill to Governor Barnes, who signed it into law on April 27, 2000.<sup>14</sup>

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3. *See id.*

4. *See id.*

5. *See id.*

6. *See* House Audio, *supra* note 1.

7. *See id.*; Broun Interview, *supra* note 2.

8. *See* State of Georgia Final Composite Status Sheet, Mar. 22, 2000; *see also* SB 300, as introduced, 2000 Ga. Gen. Assem.

9. *See* State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

10. *Compare* SB 300, as introduced, 2000 Ga. Gen. Assem., *with* SB 300 (SCS), 2000 Ga. Gen. Assem.

11. *See* Georgia Senate Voting Record, SB 300 (Feb. 14, 2000); State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

12. *See* State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

13. *See* Georgia House of Representatives Voting Record, SB 300 (Mar. 14, 2000).

14. *See* 2000 Ga. Laws 868, § 3, at 872.

*The Act*

Section 1 of the Act adds Chapter 58 to Title 33 of the Georgia Code.<sup>15</sup> The five parts of Chapter 58 provide for the following.

Code section 33-58-1 defines a 'charitable gift annuity' as a transfer of cash or other property to a charitable organization in return for an annuity payable over one or two lives.<sup>16</sup> The actuarial value of the annuity is less than the value of cash or property transferred with the difference constituting a charitable deduction for federal tax purposes.<sup>17</sup> A charitable organization is defined as an entity described in the Internal Revenue Code, 26 U.S.C. § 501(c)(3) or 26 U.S.C. § 170(c).<sup>18</sup> Further, the section defines a 'qualified charitable gift' as a charitable gift annuity described in the Internal Revenue Code, 26 U.S.C. § 501(m)(5) and 26 U.S.C. § 514 (c)(5).<sup>19</sup> A qualified charitable gift is issued by a charitable organization with a minimum of \$300,000 in unrestricted assets that has been in continuous operation for at least three years or is the affiliate or successor of such an organization.<sup>20</sup>

Code section 33-58-2 provides that the issuance of a qualified charitable gift annuity (CGA) does not constitute engaging in the business of insurance and that any CGA issued prior to July 1, 2000, is a qualified CGA.<sup>21</sup>

Code section 33-58-3 requires that a charitable organization must disclose, in writing, that the CGA is not insurance, not subject to regulation by the Insurance Commissioner, and not protected by an insurance guaranty association.<sup>22</sup> The written notice cannot be in smaller print than that used in the annuity agreement generally.<sup>23</sup>

Code section 33-58-4 mandates that when a charitable the date it issues its first CGA.<sup>24</sup> The notice must bear the signature of an officer or director of the organization, identify the organization,

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15. See SB 300, as passed, 2000 Ga. Gen. Assem.

16. See O.C.G.A. § 33-58-1(1) (2000).

17. See *id.*

18. See *id.* § 33-58-1(2).

19. See *id.* § 33-58-1(3).

20. See *id.*

21. See *id.* § 33-58-2.

22. See *id.* § 33-58-3(a).

23. See *id.* § 33-58-3(b).

24. See *id.* § 33-58-4(a).

and certify that the organization is charitable and that the CGAs are qualified.<sup>25</sup>

Code section 33-58-5 provides that failure to meet the requirements of Code section 33-58-3 or -4 does not prevent an otherwise qualified CGA from being valid.<sup>26</sup> The Commissioner of Insurance may demand that the organization meet the requirements of the Act.<sup>27</sup> The Commissioner may also fine the organization for failure to comply; however, the fine may not exceed \$1,000 per qualified CGA.<sup>28</sup>

Finally, Code section 33-58-6 provides that the issuance of a qualified CGA does not violate Code section 10-1-15.<sup>29</sup>

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25. *See id.* The Commissioner may request additional information if necessary to assess penalties to an organization under Code section 33-58-5. *See id.* § 33-58-4(b).

26. *See id.* § 33-58-5.

27. *See id.*

28. *See id.*

29. *See id.* § 33-58-6.