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The Statement text is reproduced below:

Charitable gift annuities

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In Illinois, charitable gift annuities are authorized by an exemption to the Unauthorized Companies Article of the Insurance Code (215 ILCS 5/121-2.10). "Charitable organization" is defined by reference to federal law.

In general, the Department of Insurance interprets the statute with the goal of ensuring that the obligations to the donor/annuitant would be protected if the charitable organization were to become insolvent and be liquidated.

Two alternative methods for issuing charitable gift annuities are authorized by the statute:

"(i) an insurer authorized to transact business in this State is directly obligated to the annuitant."

This method may be used where an insurer licensed in Illinois issues the annuity contract or guarantees the charity's payments to the donor. Under this option there may actually be two contracts: the contract issued by the insurer; and the agreement between the charity and the donor/annuitant. The contract may allow the insurer to make payments either to the annuitant or the charity, so long as the insurer's primary obligation is to the annuitant. For example: an insurer makes annuity payments to a charity on behalf of a donor, then the charity issues its own check to the annuitant or credits the annuitant's account.

The Department encourage charities to utilize alternative (i) in most cases because:

- The annuitant is protected by the Department's regulation of the insurance company and can take comfort in the insurance company's expertise and financial strength.
- The charity and its board of directors may avoid liability regarding the proper management of the funds needed to reserve for and pay the annuity obligations.
- If the insurer issues the annuity, the charity knows up-front the extent to which it will benefit from the charitable donation and is free to immediately use its share for charitable purposes. For example, the charity pays for the single premium annuity and then is free to use the remaining funds.
- Charities are often not aware of option (i) because it was not in the original legislation and because it is not the method advocated by the American Council on Gift Annuities, an association that widely promotes the charitable gift annuity form of fund raising to charities.

"(ii) the organization has been in active operation for not less than 20 years before the date the annuity is issued and has an unrestricted fund balance of not less than \$2,000,000 on the date the annuity is issued."

This option requires both the 20 years and the \$2,000,000 balance. Certain organizations can count an affiliated organization's history in qualifying for the 20 years. Legislative intent also allows organizations that have changed their legal form at some time in the history of the organization to qualify. It is the Department's position that the following two situations meet this requirement:

- The Department believes the exemption provided by Section 121-2.10 would extend to affiliated entities that are solely controlled by and carry out the purposes of a qualified entity (i.e., a foundation). This may also allow an umbrella organization to qualify under its affiliate's history.
- The Department has also determined that a foundation that is a "supporting organization" under Section 509(a)(3) of the Internal Revenue Code and operates exclusively for the benefit of and to carry out the purposes of a qualified entity would qualify under the main entity's 20 year history. This is typical of charitable organization foundations.

The Department, by internal memorandum, has defined "unrestricted fund balance" as "the balance of the organization's assets less its liabilities in funds that are not dedicated to uses inconsistent with the payment of annuity obligations." Nonprofit organizations typically have restricted funds whose use is limited to specified purposes such as capital/plant replacement and expansion or endowments with limited authorized uses. The balances of these funds would not be considered in determining whether an organization meets the \$2,000,000 unrestricted fund balance requirement.

The organization issuing the charitable gift annuities must itself maintain \$2,000,000 in unrestricted fund balances. It is not acceptable for those funds to be maintained by another entity, even though the organizations may be closely related. The funds must be available to meet the obligations to annuity holders in the event the issuing organization is liquidated.

Illinois has no filing requirements for issuers of these contracts. However, charities should be aware that an organization issuing charitable gift annuities that does not meet the requirements of the exemption is violating the Insurance Code and the Department will take regulatory action against them as an unauthorized insurer. Issuing charitable gift annuities in violation of this law is a business offense punishable by fines of up to \$10,000 for each offense. The Department is authorized to take regulatory action against the unauthorized insurer (charity) ranging from seeking an injunction against the unauthorized practice to liquidating an entity found to be in hazardous financial condition. The Attorney General is authorized to enforce the Department's regulatory actions.