
SECOND SUBSTITUTE SENATE BILL 5506

State of Washington 57th Legislature

2002 Regular Session

By Senate Committee on Labor, Commerce & Financial Institutions
(originally sponsored by Senator Jacobsen)

READ FIRST TIME 01/23/2002.

1 AN ACT Relating to the separate reserve fund maintained by a
2 charitable gift annuity business; amending RCW 48.38.010, 48.38.020,
3 and 48.38.050; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 48.38.010 and 1998 c 284 s 1 are each amended to read
6 as follows:

7 The commissioner may grant a certificate of exemption to any
8 insurer or educational, religious, charitable, or scientific
9 institution conducting a charitable gift annuity business:

10 (1) Which is organized and operated exclusively as, or for the
11 purpose of aiding, an educational, religious, charitable, or scientific
12 institution which is organized as a nonprofit organization without
13 profit to any person, firm, partnership, association, corporation, or
14 other entity;

15 (2) Which possesses a current tax exempt status under the laws of
16 the United States;

17 (3) Which serves such purpose by issuing charitable gift annuity
18 contracts only for the benefit of such educational, religious,
19 charitable, or scientific institution;

1 (4) Which appoints the insurance commissioner as its true and
2 lawful attorney upon whom may be served lawful process in any action,
3 suit, or proceeding in any court, which appointment shall be
4 irrevocable, shall bind the insurer or institution or any successor in
5 interest, shall remain in effect as long as there is in force in this
6 state any contract made or issued by the insurer or institution, or any
7 obligation arising therefrom, and shall be processed in accordance with
8 RCW 48.05.210;

9 (5) Which is fully and legally organized and qualified to do
10 business and has been actively doing business under the laws of the
11 state of its domicile for a period of at least three years prior to its
12 application for a certificate of exemption;

13 (6) Which has and maintains minimum unrestricted net assets of five
14 hundred thousand dollars. "Unrestricted net assets" means the excess
15 of total assets over total liabilities that are neither permanently
16 restricted nor temporarily restricted by donor-imposed stipulations;

17 (7) Which files with the insurance commissioner its application for
18 a certificate of exemption showing:

19 (a) Its name, location, and organization date;

20 (b) The kinds of charitable annuities it proposes to offer;

21 (c) A statement of the financial condition, management, and affairs
22 of the organization and any affiliate thereof, as that term is defined
23 in RCW 48.31B.005, on a form satisfactory to, or furnished by the
24 insurance commissioner;

25 (d) Such other documents, stipulations, or information as the
26 insurance commissioner may reasonably require to evidence compliance
27 with the provisions of this chapter;

28 (8) Which subjects itself and any affiliate thereof, as that term
29 is defined in RCW 48.31B.005, to periodic examinations conducted under
30 chapter 48.03 RCW as may be deemed necessary by the insurance
31 commissioner;

32 (9) Which files with the insurance commissioner for the
33 commissioner's advance approval a copy of any policy or contract form
34 to be offered or issued to residents of this state. The grounds for
35 disapproval of the policy or contract form shall be those set forth in
36 RCW 48.18.110; ((and))

37 (10) Which:

38 (a) Files with the insurance commissioner on or before March 1 of
39 each year a copy of its annual statement prepared pursuant to the laws

1 of its state of domicile, as well as such other financial material as
2 may be requested, including the annual statement or other such
3 financial materials as may be requested relating to any affiliate, as
4 that term is defined in RCW 48.31B.005; and

5 (b) Coincident with the filing of its annual statement, pays an
6 annual filing fee of twenty-five dollars plus five dollars for each
7 charitable gift annuity contract written for residents of this state
8 during the previous calendar year; and

9 (c) Which includes on or attaches to the first page of the annual
10 statement the statement of a qualified actuary setting forth the
11 actuary's opinion relating to annuity reserves and other actuarial
12 items. "Qualified actuary" as used in this subsection means a member
13 in good standing of the American academy of actuaries or a person who
14 has otherwise demonstrated actuarial competence to the satisfaction of
15 the insurance regulatory official of the domiciliary state; and

16 (11) Which agrees to pay no commission or compensation of any kind
17 from any source to any person or organization that is in any manner
18 based or contingent upon the solicitation, sale, issuance, or value of
19 a particular gift annuity.

20 **Sec. 2.** RCW 48.38.020 and 1998 c 284 s 2 are each amended to read
21 as follows:

22 (1) Upon granting to such insurer or institution under RCW
23 48.38.010 a certificate of exemption to conduct a charitable gift
24 annuity business, the insurance commissioner shall require it to
25 establish and maintain a separate reserve fund adequate to meet the
26 future payments under its charitable gift annuity contracts.

27 (2) The assets of the separate reserve fund:

28 (a) Shall be held legally and physically segregated from the other
29 assets of the certificate of exemption holder;

30 (b) Shall be invested in the same manner that persons of reasonable
31 prudence, discretion, and intelligence exercise in the management of a
32 like enterprise, not in regard to speculating but in regard to the
33 permanent disposition of their funds, considering the probable income
34 as well as the probable safety of their capital. Investments shall be
35 of sufficient value, liquidity, and diversity to assure the insurer or
36 institution's ability to meet its outstanding obligations; and

1 (c) Shall not be liable for any debts of the insurer or institution
2 holding a certificate of exemption under this chapter, other than those
3 incurred pursuant to the issuance of charitable gift annuities.

4 (3) The amount of the separate reserve fund shall be:

5 (a) For contracts issued prior to July 1, 1998, not less than an
6 amount computed in accordance with the standard of valuation based on
7 the 1971 individual annuity mortality table with six percent interest
8 for single premium immediate annuity contracts and four percent
9 interest for all other individual annuity contracts;

10 (b) For contracts issued on or after July 1, 1998, in an amount not
11 less than the aggregate reserves calculated according to the standards
12 set forth in RCW 48.74.030 for other annuities with no cash settlement
13 options;

14 (c) Plus a surplus of ten percent of the combined amounts under (a)
15 and (b) of this subsection.

16 (4) The general assets of the insurer or institution holding a
17 certificate of exemption under this chapter shall be liable for the
18 payment of annuities to the extent that the separate reserve fund is
19 inadequate.

20 (5) For any failure on its part to establish and maintain the
21 separate reserve fund, the insurance commissioner shall revoke its
22 certificate of exemption.

23 (6) If an institution holding a certificate of exemption under RCW
24 48.38.010 has purchased a single premium life annuity that pays the
25 entire amount stipulated in the gift annuity agreement or agreements
26 from an insurer (a) holding a certificate of authority under chapter
27 48.05 RCW, (b) licensed in the state in which the institution has its
28 principle office, and (c) licensed in the state in which the single
29 premium life annuity is issued, then in determining the minimum reserve
30 fund that must be maintained under this section, a deduction shall be
31 allowed from the minimum reserve fund in an amount not exceeding the
32 reserve fund amount required for the annuity or annuities for which the
33 single premium life annuity is purchased, subject to the following
34 conditions:

35 (i) The institution has filed with the commissioner a copy of the
36 single premium life annuity purchased and specifying which charitable
37 gift annuity or annuities are being insured; and

38 (ii) The institution has entered into a written agreement with the
39 annuitant and the insurer issuing the single premium life annuity

1 providing that if for any reason the institution is unable to continue
2 making the annuity payments required by its annuity agreements, the
3 annuitants shall receive payments directly from the insurer and the
4 insurer shall be credited with all of these direct payments in the
5 accounts between the insurer and the institution.

6 **Sec. 3.** RCW 48.38.050 and 1998 c 284 s 4 are each amended to read
7 as follows:

8 (1) The insurance commissioner may refuse to grant, or may revoke
9 or suspend, a certificate of exemption if the insurance commissioner
10 finds that the insurer or institution:

11 (a) Has violated any provision of this title prior to obtaining a
12 certificate of exemption from the commissioner;

13 (b) Does not meet the requirements of this chapter ((or if the
14 insurance commissioner finds that the insurer or institution));

15 (c) Has violated RCW 48.01.030 or any provisions of chapter 48.30
16 RCW ((or is found by the insurance commissioner to be));

17 (d) Has paid a commission or compensation of any kind from any
18 source to any person or organization that is in any manner based or
19 contingent upon the solicitation, sale, issuance, or value of a
20 particular gift annuity; or

21 (e) Is in such condition that its further issuance of charitable
22 gift annuities would be hazardous to annuity contract holders and the
23 people of this state.

24 (2) After hearing or with the consent of the insurer or institution
25 and in addition to or in lieu of the suspension, revocation, or refusal
26 to renew any certificate of exemption, the commissioner may levy a fine
27 upon the insurer or institution in an amount not more than ten thousand
28 dollars. The order levying such a fine shall specify the period within
29 which the fine shall be fully paid and which period shall not be less
30 than fifteen nor more than thirty days from the date of the order.
31 Upon failure to pay such a fine when due the commissioner shall revoke
32 the certificate of exemption of the insurer or institution if not
33 already revoked, and the fine shall be recovered in a civil action
34 brought in behalf of the commissioner by the attorney general. Any
35 fine so collected shall be paid by the commissioner to the state
36 treasurer for the account of the general fund.

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