Bill No.: _____

Requested: _____

Committee: _____

Drafted by: Departmental
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Stored – 10/11/16
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Checked by _____

By: **Leave Blank (By Request – Departmental – Maryland Insurance Administration)**

A BILL ENTITLED

AN ACT concerning

Insurance – Charitable Gift Annuities – Special Permit Holders – Required Financial Statements

FOR the purpose of requiring a holder of a special permit needed to make agreements with donors for annuity payments to certain entities to submit to the Maryland Insurance Commissioner a certain financial statement instead of an annual report; requiring the financial statement to be prepared by a certain individual and presented in a certain manner; authorizing the Commissioner to waive the requirement to submit the financial statement under certain circumstances; making clarifying and conforming changes; and generally relating to special permit holders and charitable gift annuities.

BY repealing and reenacting, with amendments,
Article – Insurance
Section 16–114
Annotated Code of Maryland
(2011 Replacement Volume and 2016 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets] indicate matter deleted from existing law.

Article – Insurance

16–114.

(a) In this section, "community foundation" means a nonprofit organization that is:

(1) formed to receive contributions and distribute money to meet cultural, educational, charitable, environmental, civic, or other similar needs of a community; and

(2) governed by a board of private citizens who reside in the community.

(b) An educational or religious organization, hospital, or community foundation may not make or issue in the State agreements for annuity payments with donors until it has obtained from the Commissioner a special permit issued in accordance with this section.

(c) (1) On application, the Commissioner may issue a special permit to make agreements for annuity payments with donors to an educational or religious organization not conducted for profit and engaged in bona fide educational or religious activities, to a hospital in the State, or to a community foundation if the educational or religious organization, hospital, or community foundation:

(i) except as provided in paragraph (2) of this subsection, has been in active operation in the State for at least 10 years before issuance of the special permit; and

(ii) has been granted exemption from federal income taxation under § 501 of the Internal Revenue Code.

(2) The Commissioner may issue a special permit to a community foundation that has been in existence for at least 5 years but less than 10 years if the community foundation maintains **[**admitted**]** assets in an amount up to 100% of the contributions made to the community foundation, as determined by the Commissioner.

(d) (1) Each special permit holder shall have and maintain **[**admitted**]** assets at least equal to adequate reserves on its outstanding agreements for annuity payments

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with donors as indicated by its [annual report] **CERTIFIED AUDITED FISCAL YEAR–END FINANCIAL STATEMENT**.

(2) In determining the reserves of a special permit holder on outstanding agreements for annuity payments with donors, a deduction shall be made for all or part of an annuity risk that is reinsured by an authorized life insurer.

(3) **(I)** [A] **SUBJECT TO PARAGRAPH (5) OF THIS SUBSECTION, A** special permit holder shall submit [an annual report] **ANNUALLY A CERTIFIED AUDITED FISCAL YEAR–END FINANCIAL STATEMENT** to the Commissioner within 90 days after the end of the special permit holder's fiscal year.

(II) THE FINANCIAL STATEMENT REQUIRED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL BE:

1. PREPARED BY A CERTIFIED PUBLIC ACCOUNTANT; AND

2. PRESENTED IN CONFORMITY WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

(4) The [annual reports] **CERTIFIED AUDITED FISCAL YEAR–END FINANCIAL STATEMENT** shall be treated as confidential by the Commissioner and [are] **IS** not available for public inspection.

(5) ON APPLICATION BY THE SPECIAL PERMIT HOLDER, THE COMMISSIONER:

(I) MAY WAIVE THE REQUIREMENT OF A CERTIFIED AUDITED FISCAL YEAR–END FINANCIAL STATEMENT; AND

(II) MAY REQUIRE INSTEAD ADDITIONAL DOCUMENTS OR INFORMATION THAT THE COMMISSIONER CONSIDERS NECESSARY.

(e) A special permit issued under this section authorizes the special permit holder to receive gifts of money or other property conditional on, or in consideration of, the special permit holder's agreement to pay an annuity to the donor or the donor's nominee and to make and carry out agreements for annuity payments with donors.

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1 (f) A special permit is in effect only as long as the special permit holder is exempt
2 from federal income taxation under § 501 of the Internal Revenue Code.

3 (g) (1) If the Commissioner finds, after notice and hearing, that a special
4 permit holder has failed to comply with the requirements of this section or is not exempt
5 from federal income taxation under § 501 of the Internal Revenue Code, the Commissioner
6 may:

7 (i) revoke or suspend the special permit; or

8 (ii) order the special permit holder to stop making new agreements
9 for annuity payments with donors until the requirements have been satisfied.

10 (2) In case of revocation or suspension, outstanding agreements for annuity
11 payments with donors shall remain in force.

12 (3) The action of the Commissioner under this subsection is subject to
13 judicial review under § 2–215 of this article.

14 (h) (1) Except as otherwise provided in this section, a special permit holder is
15 exempt from the provisions of this article with respect to issuing annuities.

16 (2) Special permit holders are not subject to a law enacted after June 1,
17 1957, unless they are expressly designated in the law.

18 (i) (1) Other than by agreements for annuity payments with donors, an
19 educational or religious organization, hospital, or community foundation may agree to:

20 (i) accept conditional donations; and

21 (ii) pay to the donor or the donor's nominee a specified return
22 established with reference to the actual net earnings of the particular donation or with
23 reference to the actual or estimated earnings of a specified fund of the donee organization.

24 (2) An educational or religious organization, hospital, or community
25 foundation that accepts conditional donations and pays a specified return to donors under

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1 paragraph (1) of this subsection is exempt from this section and all other provisions of this
2 article with respect to issuing annuities.

3 (3) Educational or religious organizations, hospitals, or community
4 foundations that accept conditional donations and pay specified returns to donors under
5 this subsection are not subject to any law enacted after June 1, 1957, unless they are
6 expressly designated in the law.

7 (j) Notwithstanding the absence of express power in the charter of a domestic
8 educational, religious, or hospital corporation or community foundation, the corporation or
9 community foundation may make the agreements for annuity payments with donors or
10 other agreements with respect to conditional donations that are expressly allowed by this
11 section.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 October 1, 2017.