

104TH CONGRESS
1ST SESSION

H. R. 2519

To facilitate contributions to charitable organizations by codifying certain exemptions from the Federal securities laws, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 24, 1995

Mr. FIELDS of Texas (for himself, Mr. BLILEY, Mr. BURR, Mr. DINGELL, Mr. EDWARDS, Mr. FRISA, and Mr. MARKEY) introduced the following bill; which was referred to the Committee on Commerce

A BILL

To facilitate contributions to charitable organizations by codifying certain exemptions from the Federal securities laws, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Philanthropy Protection Act of 1995”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Amendment to the Investment Company Act of 1940.
- Sec. 3. Amendment to the Securities Act of 1933.
- Sec. 4. Amendments to the Securities Exchange Act of 1934.

Sec. 5. Amendment of the Investment Advisers Act of 1940.
Sec. 6. Protection of philanthropy under state law.
Sec. 7. Effective dates and applicability.

1 **SEC. 2. AMENDMENT TO THE INVESTMENT COMPANY ACT**
2 **OF 1940.**

3 Section 3(c)(10) of the Investment Company Act of
4 1940 (15 U.S.C. 80a-3(c)(10) is amended to read as fol-
5 lows:

6 “(10)(A) Any company organized and operated
7 exclusively for religious, educational, benevolent, fra-
8 ternal, charitable, or reformatory purposes—

9 “(i) no part of the net earnings of which
10 inures to the benefit of any private shareholder
11 or individual; or

12 “(ii) which is or maintains a fund de-
13 scribed in subparagraph (B).

14 “(B) For the purposes of subparagraph (A)(ii),
15 a fund is described in this subparagraph if such
16 fund is a pooled income fund, collective trust fund,
17 collective investment fund, or similar fund main-
18 tained by a charitable organization exclusively for
19 the collective investment and reinvestment of one or
20 more of the following:

21 “(i) assets of the general endowment fund
22 or other funds of one or more charitable organi-
23 zations;

24 “(ii) assets of a pooled income fund;

1 “(iii) assets contributed to a charitable or-
2 ganization in exchange for the issuance of char-
3 itable gift annuities;

4 “(iv) assets of a charitable remainder trust
5 or of any other trust, the remainder interests of
6 which are irrevocably dedicated to any chari-
7 table organization;

8 “(v) assets of a charitable lead trust; or

9 “(vi) assets of a trust not described in
10 clauses (i) through (v), the remainder interests
11 of which are revocably dedicated to a charitable
12 organization, subject to subparagraph (C).

13 “(C) A fund that contains assets described in
14 clause (vi) of subparagraph (B) shall be excluded
15 from the definition of an investment company for a
16 period of 3 years after the date of enactment of this
17 subparagraph, but only if—

18 “(i) such assets were contributed before
19 the date which is 60 days after the date of en-
20 actment of this subparagraph; and

21 “(ii) such assets are commingled in the
22 fund with assets described in one or more of
23 clauses (i) through (v) of subparagraph (B).

24 “(D) For purposes of this paragraph—

1 “(i) a trust or fund is ‘maintained’ by a
2 charitable organization if the organization
3 serves as a trustee or administrator of the trust
4 or fund or has the power to remove the trustees
5 or administrators of the trust or fund and to
6 designate new trustees or administrators;

7 “(ii) the term ‘pooled income fund’ has the
8 same meaning as in section 642(c)(5) of the In-
9 ternal Revenue Code of 1986;

10 “(iii) the term ‘charitable organization’
11 means an organization described in paragraphs
12 (1) through (5) of section 170(c) or section
13 501(c)(3) of the Internal Revenue Code of
14 1986;

15 “(iv) the term ‘charitable lead trust’ means
16 a trust described in section 170(f)(2)(B),
17 2055(e)(2)(B), or 2522(c)(2)(B) of the Internal
18 Revenue Code of 1986;

19 “(v) the term ‘charitable remainder trust’
20 means a charitable remainder annuity trust or
21 a charitable remainder unitrust, as those terms
22 are defined in section 664(d) of the Internal
23 Revenue Code of 1986; and

24 “(vi) the term ‘charitable gift annuity’
25 means an annuity issued by a charitable organi-

1 zation that is described in section 501(m)(5) of
2 the Internal Revenue Code of 1986.”.

3 **SEC. 3. AMENDMENT TO THE SECURITIES ACT OF 1933.**

4 Section 3(a)(4) of the Securities Act of 1933 (15
5 U.S.C. 77c(a)(4)) is amended by inserting after the semi-
6 colon at the end the following: “or any security of a fund
7 that is excluded from the definition of an investment com-
8 pany under section 3(c)(10)(B) of the Investment Com-
9 pany Act of 1940;”.

10 **SEC. 4. AMENDMENTS TO THE SECURITIES EXCHANGE ACT**
11 **OF 1934.**

12 (a) EXEMPTED SECURITIES.—Section 3(a)(12)(A) of
13 the Securities Exchange Act of 1934 (15 U.S.C.
14 78c(a)(12)(A)) is amended—

15 (1) in clause (iv) by striking “and” at the end;

16 (2) by redesignating clause (v) as clause (vi);

17 and

18 (3) by inserting after clause (iv) the following

19 new clause:

20 “(v) any security issued by or any in-
21 terest or participation in any pooled in-
22 come fund, collective trust fund, collective
23 investment fund, or similar fund that is ex-
24 cluded from the definition of an investment

1 company under section 3(c)(10)(B) of the
2 Investment Company Act of 1940; and”.

3 (b) EXEMPTION FROM BROKER-DEALER PROVI-
4 SIONS.—Section 3 of such Act (15 U.S.C. 78c) is amended
5 by adding at the end the following new subsection:

6 “(e) CHARITABLE ORGANIZATIONS.—Notwithstand-
7 ing any other provision of this title, a charitable organiza-
8 tion, as defined in section 3(c)(10)(D) of the Investment
9 Company Act of 1940, or any trustee, director, officer,
10 employee, or volunteer of such a charitable organization
11 acting within the scope of such person’s employment or
12 duties with such organization, shall not be deemed to be
13 a ‘broker’, ‘dealer’, ‘municipal securities broker’, ‘munici-
14 pal securities dealer’, ‘government securities broker’, or
15 ‘government securities dealer’ for purposes of this title
16 solely because such organization or person buys, holds,
17 sells, or trades in securities for its own account in its ca-
18 pacity as trustee or administrator of, or otherwise on be-
19 half of or for the account of—

20 “(1) such a charitable organization;

21 “(2) a fund that is excluded from the definition
22 of an investment company under section 3(c)(10)(B)
23 of the Investment Company Act of 1940; or

24 “(3) a trust or other donative instrument de-
25 scribed in section 3(c)(10)(B) of the Investment

1 Company Act of 1940, or the settlors (or potential
2 settlors) or beneficiaries of any such trust or other
3 instrument.”.

4 (c) DISCLOSURE AND SOLICITATION BY EXEMPT
5 CHARITABLE ORGANIZATIONS.—Section 3 of the Securi-
6 ties Exchange Act of 1934 (15 U.S.C. 78c) is further
7 amended by adding at the end the following new sub-
8 section:

9 “(f) DISCLOSURE AND SOLICITATION BY EXEMPT
10 CHARITABLE ORGANIZATIONS.—The Commission shall
11 prescribe rules to require that—

12 “(1) each charitable organization shall provide,
13 to each donor to a fund that is maintained by such
14 organization and that is excluded from the definition
15 of an investment company under section 3(c)(10)(B)
16 of the Investment Company Act of 1940, at the time
17 of the donation or within 60 days after the effective
18 date of such rule, whichever is later, written infor-
19 mation describing the material terms of the instru-
20 ments governing the operation of such fund; and

21 “(2) any person soliciting donations on behalf
22 of such a charitable organization from any such
23 donor is either a volunteer or is engaged in the over-
24 all fund raising activities of a charitable organization
25 and receives no commission or other special com-

1 pensation based on the amount of donations col-
2 lected for the fund.”.

3 (d) CONFORMING AMENDMENT.—Section
4 12(g)(2)(D) of such Act (15 U.S.C. 78l(g)(2)(D)) is
5 amended by inserting before the period “; or any security
6 of a fund that is excluded from the definition of an invest-
7 ment company under section 3(c)(10)(B) of the Invest-
8 ment Company Act of 1940”.

9 **SEC. 5. AMENDMENT OF THE INVESTMENT ADVISERS ACT**
10 **OF 1940.**

11 Section 203(b) of Investment Advisers Act of 1940
12 (15 U.S.C. 80b–3(b)) is amended—

13 (1) by striking “or” at the end of paragraph

14 (2);

15 (2) by striking the period at the end of para-
16 graph (3) and inserting “; or”; and

17 (3) by adding at the end the following new
18 paragraph:

19 “(4) any investment adviser that is a charitable
20 organization, as defined in section 3(c)(10)(D) of
21 the Investment Company Act of 1940, or is a trust-
22 ee, director, officer, employee, or volunteer of such
23 a charitable organization acting within the scope of
24 such person’s employment or duties with such orga-

1 nization, whose advice, analyses, or reports are pro-
2 vided only to one or more of the following:

3 “(A) any such charitable organization;

4 “(B) a fund that is excluded from the defi-
5 nition of an investment company under section
6 3(c)(10)(B) of the Investment Company Act of
7 1940; or

8 “(C) a trust or other donative instrument
9 described in section 3(c)(10)(B) of the Invest-
10 ment Company Act of 1940, or the trustees, ad-
11 ministrators, settlors (or potential settlors), or
12 beneficiaries of any such trust or other instru-
13 ment.”.

14 **SEC. 6. PROTECTION OF PHILANTHROPY UNDER STATE**
15 **LAW.**

16 (a) **REGISTRATION REQUIREMENTS.**—A security is-
17 sued by or any interest or participation in any pooled in-
18 come fund, collective trust fund, collective investment
19 fund, or similar fund that is excluded from the definition
20 of an investment company under section 3(c)(10)(B) of
21 the Investment Company Act of 1940, and the offer or
22 sale thereof, shall be exempt from any statute or regula-
23 tion of a State that requires registration or qualification
24 of securities.

1 (b) TREATMENT OF CHARITABLE ORGANIZATIONS.—
2 No charitable organization, or any trustee, director, offi-
3 cer, employee, or volunteer of a charitable organization
4 acting within the scope of such person's employment or
5 duties, shall be required to register as, or be subject to
6 regulation as, a dealer, broker, agent, or investment ad-
7 viser under the securities laws of any State because such
8 organization or person buys, holds, sells, or trades in secu-
9 rities for its own account in its capacity as trustee or ad-
10 ministrator of, or otherwise on behalf of or for the account
11 of one or more of the following:

12 (1) a charitable organization;

13 (2) a fund that is excluded from the definition
14 of an investment company under section 3(c)(10)(B)
15 of the Investment Company Act of 1940; or

16 (3) a trust or other donative instrument de-
17 scribed in section 3(c)(10)(B) of the Investment
18 Company Act of 1940, or the settlors (or potential
19 settlors) or beneficiaries of any such trusts or other
20 instruments.

21 (c) STATE ACTION.—Notwithstanding subsections
22 (a) and (b), during the 3-year period beginning on the
23 date of enactment of this Act, a State may enact a statute
24 that specifically refers to this section and provides pro-

1 spectively that this section shall not preempt the laws of
2 that State referred to in this section.

3 (d) DEFINITIONS.—For purposes of this section—

4 (1) the term “charitable organization” means
5 an organization described in paragraphs (1) through
6 (5) of section 170(c) or section 501(c)(3) of the In-
7 ternal Revenue Code of 1986;

8 (2) the term “security” has the same meaning
9 as in section 3 of the Securities Exchange Act of
10 1934; and

11 (3) the term “State” means each of the several
12 States of the United States, the District of Colum-
13 bia, the Commonwealth of Puerto Rico, the Virgin
14 Islands, Guam, American Samoa, and the Common-
15 wealth of the Northern Mariana Islands.

16 **SEC. 7. EFFECTIVE DATES AND APPLICABILITY.**

17 This Act and the amendments made by this Act shall
18 apply in all administrative and judicial actions pending on
19 or commenced after the date of enactment of this Act, as
20 a defense to any claim that any person, security, interest,
21 or participation of the type described in this Act and the
22 amendments made by this Act is subject to the provisions
23 of the Securities Act of 1933, the Securities Exchange Act
24 of 1934, the Investment Company Act of 1940, or the In-
25 vestment Advisers Act of 1940, or any State statute or

- 1 regulation preempted as provided in section 6 of this Act,
- 2 except as otherwise specifically provided in such Acts or
- 3 State law.

