

104TH CONGRESS
1ST SESSION

H. R. 2519

IN THE SENATE OF THE UNITED STATES

NOVEMBER 29, 1995

Received

AN ACT

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”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Amendments 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.

3 **SEC. 2. AMENDMENTS TO THE INVESTMENT COMPANY ACT**
 4 **OF 1940.**

5 (a) EXEMPTION.—Section 3(c)(10) of the Investment
 6 Company Act of 1940 (15 U.S.C. 80a–3(c)(10) is amend-
 7 ed to read as follows:

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

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

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

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

1 “(i) assets of the general endowment fund
2 or other funds of one or more charitable organi-
3 zations;

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

5 “(iii) assets contributed to a charitable or-
6 ganization in exchange for the issuance of char-
7 itable gift annuities;

8 “(iv) assets of a charitable remainder trust
9 or of any other trust, the remainder interests of
10 which are irrevocably dedicated to any chari-
11 table organization;

12 “(v) assets of a charitable lead trust;

13 “(vi) assets of a trust, the remainder inter-
14 ests of which are revocably dedicated to or for
15 the benefit of 1 or more charitable organiza-
16 tions, if the ability to revoke the dedication is
17 limited to circumstances involving—

18 “(I) an adverse change in the finan-
19 cial circumstances of a settlor or an in-
20 come beneficiary of the trust;

21 “(II) a change in the identity of the
22 charitable organization or organizations
23 having the remainder interest, provided
24 that the new beneficiary is also a chari-
25 table organization; or

1 “(III) both the changes described in
2 subclauses (I) and (II);

3 “(vii) assets of a trust not described in
4 clauses (i) through (v), the remainder interests
5 of which are revocably dedicated to a charitable
6 organization, subject to subparagraph (C); or

7 “(viii) such assets as the Commission may
8 prescribe by rule, regulation, or order in accord-
9 ance with section 6(e).

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

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

18 “(ii) such assets are commingled in the
19 fund with assets described in one or more of
20 clauses (i) through (vi) and (viii) of subpara-
21 graph (B).

22 “(D) For purposes of this paragraph—

23 “(i) a trust or fund is ‘maintained’ by a
24 charitable organization if the organization
25 serves as a trustee or administrator of the trust

1 or fund or has the power to remove the trustees
2 or administrators of the trust or fund and to
3 designate new trustees or administrators;

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

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

12 “(iv) the term ‘charitable lead trust’ means
13 a trust described in section 170(f)(2)(B),
14 2055(e)(2)(B), or 2522(c)(2)(B) of the Internal
15 Revenue Code of 1986;

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

21 “(vi) the term ‘charitable gift annuity’
22 means an annuity issued by a charitable organi-
23 zation that is described in section 501(m)(5) of
24 the Internal Revenue Code of 1986.”.

1 (b) DISCLOSURE BY EXEMPT CHARITABLE ORGANI-
2 ZATIONS.—Section 7 of the Investment Company Act of
3 1940 (15 U.S.C. 80a–7) is amended by adding at the end
4 the following new subsection:

5 “(e) DISCLOSURE BY EXEMPT CHARITABLE ORGANI-
6 ZATIONS.—Each fund that is excluded from the definition
7 of an investment company under section 3(c)(10)(B) of
8 this Act shall provide, to each donor to such fund, at the
9 time of the donation or within 90 days after the date of
10 enactment of this subsection, whichever is later, written
11 information describing the material terms of the operation
12 of such fund.”.

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

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

20 **SEC. 4. AMENDMENTS TO THE SECURITIES EXCHANGE ACT**
21 **OF 1934.**

22 (a) EXEMPTED SECURITIES.—Section 3(a)(12)(A) of
23 the Securities Exchange Act of 1934 (15 U.S.C.
24 78e(a)(12)(A)) is amended—

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

1 (2) by redesignating clause (v) as clause (vi);
2 and

3 (3) by inserting after clause (iv) the following
4 new clause:

5 “(v) any security issued by or any interest
6 or participation in any pooled income fund, col-
7 lective trust fund, collective investment fund, or
8 similar fund that is excluded from the definition
9 of an investment company under section
10 3(c)(10)(B) of the Investment Company Act of
11 1940; and”.

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

15 “(e) CHARITABLE ORGANIZATIONS.—

16 “(1) EXEMPTION.—Notwithstanding any other
17 provision of this title, but subject to paragraph (2)
18 of this subsection, a charitable organization, as de-
19 fined in section 3(c)(10)(D) of the Investment Com-
20 pany Act of 1940, or any trustee, director, officer,
21 employee, or volunteer of such a charitable organiza-
22 tion acting within the scope of such person’s employ-
23 ment or duties with such organization, shall not be
24 deemed to be a ‘broker’, ‘dealer’, ‘municipal securi-
25 ties broker’, ‘municipal securities dealer’, ‘govern-

1 ment securities broker’, or ‘government securities
2 dealer’ for purposes of this title solely because such
3 organization or person buys, holds, sells, or trades in
4 securities for its own account in its capacity as
5 trustee or administrator of, or otherwise on behalf of
6 or for the account of—

7 “(A) such a charitable organization;

8 “(B) a fund that is excluded from the defi-
9 nition of an investment company under section
10 3(c)(10)(B) of the Investment Company Act of
11 1940; or

12 “(C) a trust or other donative instrument
13 described in section 3(c)(10)(B) of the Invest-
14 ment Company Act of 1940, or the settlors (or
15 potential settlors) or beneficiaries of any such
16 trust or other instrument.

17 “(2) LIMITATION ON COMPENSATION.—The ex-
18 emption provided under paragraph (1) shall not be
19 available to any charitable organization, or any
20 trustee, director, officer, employee, or volunteer of
21 such a charitable organization, unless each person
22 who, on or after 90 days after the date of enactment
23 of this subsection, solicits donations on behalf of
24 such charitable organization from any donor to a
25 fund that is excluded from the definition of an in-

1 investment company under section 3(c)(10)(B) of the
2 Investment Company Act of 1940, is either a volun-
3 teer or is engaged in the overall fund raising activi-
4 ties of a charitable organization and receives no
5 commission or other special compensation based on
6 the number or the value of donations collected for
7 the fund.”.

8 (d) CONFORMING AMENDMENT.—Section
9 12(g)(2)(D) of such Act (15 U.S.C. 78l(g)(2)(D)) is
10 amended by inserting before the period “; or any security
11 of a fund that is excluded from the definition of an invest-
12 ment company under section 3(c)(10)(B) of the Invest-
13 ment Company Act of 1940”.

14 **SEC. 5. AMENDMENT OF THE INVESTMENT ADVISERS ACT**
15 **OF 1940.**

16 Section 203(b) of the Investment Advisers Act of
17 1940 (15 U.S.C. 80b–3(b)) is amended—

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

19 (2);

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

22 (3) by adding at the end the following new
23 paragraph:

24 “(4) any investment adviser that is a charitable
25 organization, as defined in section 3(c)(10)(D) of

1 the Investment Company Act of 1940, or is a trust-
2 ee, director, officer, employee, or volunteer of such
3 a charitable organization acting within the scope of
4 such person’s employment or duties with such orga-
5 nization, whose advice, analyses, or reports are pro-
6 vided only to one or more of the following:

7 “(A) any such charitable organization;

8 “(B) a fund that is excluded from the defi-
9 nition of an investment company under section
10 3(c)(10)(B) of the Investment Company Act of
11 1940; or

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

18 **SEC. 6. PROTECTION OF PHILANTHROPY UNDER STATE**

19 **LAW.**

20 (a) **REGISTRATION REQUIREMENTS.**—A security is-
21 sued by or any interest or participation in any pooled in-
22 come fund, collective trust fund, collective investment
23 fund, or similar fund that is excluded from the definition
24 of an investment company under section 3(c)(10)(B) of
25 the Investment Company Act of 1940, and the offer or

1 sale thereof, shall be exempt from any statute or regula-
2 tion of a State that requires registration or qualification
3 of securities.

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

15 (1) a charitable organization;

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

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

24 (c) STATE ACTION.—Notwithstanding subsections
25 (a) and (b), during the 3-year period beginning on the

1 date of enactment of this Act, a State may enact a statute
2 that specifically refers to this section and provides pro-
3 spectively that this section shall not preempt the laws of
4 that State referred to in this section.

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

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

10 (2) the term “security” has the same meaning
11 as in section 3 of the Securities Exchange Act of
12 1934; and

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

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

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

1 of 1934, the Investment Company Act of 1940, or the In-
2 vestment Advisers Act of 1940, or any State statute or
3 regulation preempted as provided in section 6 of this Act,
4 except as otherwise specifically provided in such Acts or
5 State law.

Passed the House of Representatives November 28,
1995.

Attest:

ROBIN H. CARLE,

Clerk.