

Public Law 105-26
105th Congress

An Act

To immunize donations made in the form of charitable gift annuities and charitable remainder trusts from the antitrust laws and State laws similar to the antitrust laws.

July 3, 1997
[H.R. 1902]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Charitable
Donation
Antitrust
Immunity Act of
1997.
15 USC 1 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Charitable Donation Antitrust Immunity Act of 1997”.

SEC. 2. IMMUNITY FROM ANTITRUST LAWS.

The Charitable Gift Annuity Antitrust Relief Act of 1995 (15 U.S.C. 37 et seq.) is amended—

(1) by amending section 2 to read as follows:

15 USC 37.

“SEC. 2. IMMUNITY FROM ANTITRUST LAWS.

“(a) **INAPPLICABILITY OF ANTITRUST LAWS.**—Except as provided in subsection (d), the antitrust laws, and any State law similar to any of the antitrust laws, shall not apply to charitable gift annuities or charitable remainder trusts.

“(b) **IMMUNITY.**—Except as provided in subsection (d), any person subjected to any legal proceeding for damages, injunction, penalties, or other relief of any kind under the antitrust laws, or any State law similar to any of the antitrust laws, on account of setting or agreeing to rates of return or other terms for, negotiating, issuing, participating in, implementing, or otherwise being involved in the planning, issuance, or payment of charitable gift annuities or charitable remainder trusts shall have immunity from suit under the antitrust laws, including the right not to bear the cost, burden, and risk of discovery and trial, for the conduct set forth in this subsection.

“(c) **TREATMENT OF CERTAIN ANNUITIES AND TRUSTS.**—Any annuity treated as a charitable gift annuity, or any trust treated as a charitable remainder trust, either—

“(1) in any filing by the donor with the Internal Revenue Service; or

“(2) in any schedule, form, or written document provided by or on behalf of the donee to the donor;

shall be conclusively presumed for the purposes of this Act to be respectively a charitable gift annuity or a charitable remainder trust, unless there has been a final determination by the Internal Revenue Service that, for fraud or otherwise, the donor’s annuity or trust did not qualify respectively as a charitable gift annuity or charitable remainder trust when created.

“(d) LIMITATION.—Subsections (a) and (b) shall not apply with respect to the enforcement of a State law similar to any of the antitrust laws, with respect to charitable gift annuities, or charitable remainder trusts, created after the State enacts a statute, not later than December 8, 1998, that expressly provides that subsections (a) and (b) shall not apply with respect to such charitable gift annuities and such charitable remainder trusts.”; and

15 USC 37a.

(2) in section 3—

(A) by striking paragraph (1);

(B) by redesignating paragraph (2) as paragraph (1);

(C) by inserting after paragraph (1), as so redesignated,

the following:

“(2) CHARITABLE REMAINDER TRUST.—The term ‘charitable remainder trust’ has the meaning given it in section 664(d) of the Internal Revenue Code of 1986 (26 U.S.C. 664(d)).”;

(D) by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively; and

(E) by inserting after paragraph (3) the following:

“(4) FINAL DETERMINATION.—The term ‘final determination’ includes an Internal Revenue Service determination, after exhaustion of donor’s and donee’s administrative remedies, disallowing the donor’s charitable deduction for the year in which the initial contribution was made because of the donee’s failure to comply at such time with the requirements of section 501(m)(5) or 664(d), respectively, of the Internal Revenue Code of 1986 (26 U.S.C. 501(m)(5), 664(d)).”.

15 USC 37 note.

SEC. 3. APPLICATION OF ACT.

This Act, and the amendments made by this Act, shall apply with respect to all conduct occurring before, on, or after the date of the enactment of this Act and shall apply in all administrative and judicial actions pending on or commenced after the date of the enactment of this Act.

15 USC 37 note.

SEC. 4. STUDY AND REPORT.

(a) STUDY AND REPORT.—The Attorney General shall carry out a study to determine the effect of this Act on markets for noncharitable annuities, charitable gift annuities, and charitable remainder trusts. The Attorney General shall prepare a report summarizing the results of the study.

(b) DETAILS OF STUDY AND REPORT.—The report referred to in subsection (a) shall include any information on possible inappropriate activity resulting from this Act and any recommendations for legislative changes, including recommendations for additional enforcement resources.

(c) SUBMISSION OF REPORT.—The Attorney General shall submit the report referred to in subsection (a) to the Chairman and the ranking member of the Committee on the Judiciary of the House of Representatives, and to the Chairman and the ranking member of the Committee on the Judiciary of the Senate, not later than 27 months after the date of the enactment of this Act.

Approved July 3, 1997.

LEGISLATIVE HISTORY—H.R. 1902:

HOUSE REPORTS: No. 105-146 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 143 (1997):

June 23, considered and passed House.

June 24, considered and passed Senate.