

105TH CONGRESS
1ST SESSION

S. 921

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.

IN THE SENATE OF THE UNITED STATES

JUNE 17, 1997

Mr. COVERDELL (for himself, Mr. DODD, and Mr. DEWINE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

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.

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.**

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

6 **SEC. 2. IMMUNITY FROM ANTITRUST LAWS.**

7 The Charitable Gift Annuity Antitrust Relief Act of
8 1995 (15 U.S.C. 37 et seq.) is amended—

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

1 **“SEC. 2. IMMUNITY FROM ANTITRUST LAWS.**

2 “(a) INAPPLICABILITY OF ANTITRUST LAWS.—Ex-
3 cept as provided in subsection (d), the antitrust laws, and
4 any State law similar to any of the antitrust laws, shall
5 not apply to charitable gift annuities or charitable remain-
6 der trusts.

7 “(b) IMMUNITY.—Except as provided in subsection
8 (d), any person subjected to any legal proceeding for dam-
9 ages, injunction, penalties, or other relief of any kind
10 under the antitrust laws, or any State law similar to any
11 of the antitrust laws, on account of setting or agreeing
12 to rates of return or other terms for, negotiating, issuing,
13 participating in, implementing, or otherwise being involved
14 in the planning, issuance, or payment of charitable gift
15 annuities or charitable remainder trusts shall have immu-
16 nity from suit under the antitrust laws, including the right
17 not to bear the cost, burden, and risk of discovery and
18 trial, for the conduct set forth in this subsection.

19 “(c) TREATMENT OF CERTAIN ANNUITIES AND
20 TRUSTS.—Any annuity treated as a charitable gift annu-
21 ity, or any trust treated as a charitable remainder trust,
22 either—

23 “(1) in any filing by the donor with the Inter-
24 nal Revenue Service; or

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

1 shall be conclusively presumed for the purposes of this Act
 2 to be respectively a charitable gift annuity or a charitable
 3 remainder trust, unless there has been a final determina-
 4 tion by the Internal Revenue Service that, for fraud or
 5 otherwise, the donor's annuity or trust did not qualify re-
 6 spectively as a charitable gift annuity or charitable re-
 7 mainder trust when created.

8 “(d) LIMITATION.—Subsections (a) and (b) shall not
 9 apply with respect to the enforcement of a State law simi-
 10 lar to any of the antitrust laws, with respect to charitable
 11 gift annuities, or charitable remainder trusts, created after
 12 the State enacts a statute, not later than December 8,
 13 1998, that expressly provides that subsections (a) and (b)
 14 shall not apply with respect to such charitable gift annu-
 15 ities and such charitable remainder trusts.”; and

16 (2) in section 3—

17 (A) by striking paragraph (1);

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

20 (C) by inserting after paragraph (1), as so
 21 redesignated, the following:

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

1 (D) by redesignating paragraphs (4) and
 2 (5) as paragraphs (5) and (6), respectively; and
 3 (E) by inserting after paragraph (3) the
 4 following:

5 “(4) FINAL DETERMINATION.—The term ‘final
 6 determination’ includes an Internal Revenue Service
 7 determination, after exhaustion of donor’s and
 8 donee’s administrative remedies, disallowing the do-
 9 nor’s charitable deduction for the year in which the
 10 initial contribution was made because of the donee’s
 11 failure to comply at such time with the requirements
 12 of section 501(m)(5) or 664(d), respectively, of the
 13 Internal Revenue Code of 1986 (26 U.S.C.
 14 501(m)(5), 664(d)).”.

15 **SEC. 3. APPLICATION OF ACT.**

16 This Act, and the amendments made by this Act,
 17 shall apply with respect to all conduct occurring before,
 18 on, or after the date of the enactment of this Act and
 19 shall apply in all administrative and judicial actions pend-
 20 ing on or commenced after the date of the enactment of
 21 this Act.

22 **SEC. 4. STUDY AND REPORT.**

23 (a) STUDY AND REPORT.—The Attorney General
 24 shall carry out a study to determine the effect of this Act
 25 on markets for noncharitable annuities, charitable gift an-

1 nities, and charitable remainder trusts. The Attorney
2 General shall prepare a report summarizing the results of
3 the study.

4 (b) DETAILS OF STUDY AND REPORT.—The report
5 referred to in subsection (a) shall include any information
6 on possible inappropriate activity resulting from this Act
7 and any recommendations for legislative changes, includ-
8 ing recommendations for additional enforcement re-
9 sources.

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

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