

PHILANTHROPY PROTECTION ACT OF 1995

Public Law 104-62
104th Congress

An Act

Dec. 8, 1995
[H.R. 2519]

Philanthropy
Protection Act of
1995.

15 USC 80a-51
note.

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

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

(b) **TABLE OF CONTENTS.**—The table of contents for 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.

SEC. 2. AMENDMENTS TO THE INVESTMENT COMPANY ACT OF 1940.

(a) **EXEMPTION.**—Section 3(c)(10) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(10)) is amended to read as follows:

“(10)(A) Any company organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes—

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

“(ii) which is or maintains a fund described in subparagraph (B).

“(B) For the purposes of subparagraph (A)(ii), a fund is described in this subparagraph if such fund is a pooled income fund, collective trust fund, collective investment fund, or similar fund maintained by a charitable organization exclusively for the collective investment and reinvestment of one or more of the following:

“(i) assets of the general endowment fund or other funds of one or more charitable organizations;

“(ii) assets of a pooled income fund;

“(iii) assets contributed to a charitable organization in exchange for the issuance of charitable gift annuities;

“(iv) assets of a charitable remainder trust or of any other trust, the remainder interests of which are irrevocably dedicated to any charitable organization;

“(v) assets of a charitable lead trust;

“(vi) assets of a trust, the remainder interests of which are revocably dedicated to or for the benefit of 1 or more

charitable organizations, if the ability to revoke the dedication is limited to circumstances involving—

“(I) an adverse change in the financial circumstances of a settlor or an income beneficiary of the trust;

“(II) a change in the identity of the charitable organization or organizations having the remainder interest, provided that the new beneficiary is also a charitable organization; or

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

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

“(viii) such assets as the Commission may prescribe by rule, regulation, or order in accordance with section 6(c).

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

“(i) such assets were contributed before the date which is 60 days after the date of enactment of this subparagraph; and

“(ii) such assets are commingled in the fund with assets described in one or more of clauses (i) through (vi) and (viii) of subparagraph (B).

“(D) For purposes of this paragraph—

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

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

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

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

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

“(vi) the term ‘charitable gift annuity’ means an annuity issued by a charitable organization that is described in section 501(m)(5) of the Internal Revenue Code of 1986.”.

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

“(e) DISCLOSURE BY EXEMPT CHARITABLE ORGANIZATIONS.—Each fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of this Act shall provide, to

each donor to such fund, at the time of the donation or within 90 days after the date of enactment of this subsection, whichever is later, written information describing the material terms of the operation of such fund.”.

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

Section 3(a)(4) of the Securities Act of 1933 (15 U.S.C. 77c(a)(4)) is amended by inserting after the semicolon at the end the following: “or any security of a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940;”.

SEC. 4. AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.

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

- (1) in clause (iv) by striking “and” at the end;
- (2) by redesignating clause (v) as clause (vi); and
- (3) by inserting after clause (iv) the following new clause:
“(v) any security issued by or any interest or participation in any pooled income fund, collective trust fund, collective investment fund, or similar fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940; and”.

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

“(e) CHARITABLE ORGANIZATIONS.—

“(1) EXEMPTION.—Notwithstanding any other provision of this title, but subject to paragraph (2) of this subsection, a charitable organization, as defined in section 3(c)(10)(D) of the Investment Company Act of 1940, or any trustee, director, officer, employee, or volunteer of such a charitable organization acting within the scope of such person’s employment or duties with such organization, shall not be deemed to be a ‘broker’, ‘dealer’, ‘municipal securities broker’, ‘municipal securities dealer’, ‘government securities broker’, or ‘government securities dealer’ for purposes of this title solely because such organization or person buys, holds, sells, or trades in securities for its own account in its capacity as trustee or administrator of, or otherwise on behalf of or for the account of—

“(A) such a charitable organization;

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

“(C) a trust or other donative instrument described in section 3(c)(10)(B) of the Investment Company Act of 1940, or the settlors (or potential settlors) or beneficiaries of any such trust or other instrument.

“(2) LIMITATION ON COMPENSATION.—The exemption provided under paragraph (1) shall not be available to any charitable organization, or any trustee, director, officer, employee, or volunteer of such a charitable organization, unless each person who, on or after 90 days after the date of enactment of this subsection, solicits donations on behalf of such charitable organization from any donor to a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940, is either a volunteer or is engaged in the overall fund raising activities

of a charitable organization and receives no commission or other special compensation based on the number or the value of donations collected for the fund.”.

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

SEC. 5. AMENDMENT OF THE INVESTMENT ADVISERS ACT OF 1940.

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

- (1) by striking “or” at the end of paragraph (2);
- (2) by striking the period at the end of paragraph (3) and inserting “; or”; and
- (3) by adding at the end the following new paragraph:

“(4) any investment adviser that is a charitable organization, as defined in section 3(c)(10)(D) of the Investment Company Act of 1940, or is a trustee, director, officer, employee, or volunteer of such a charitable organization acting within the scope of such person’s employment or duties with such organization, whose advice, analyses, or reports are provided only to one or more of the following:

“(A) any such charitable organization;

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

“(C) a trust or other donative instrument described in section 3(c)(10)(B) of the Investment Company Act of 1940, or the trustees, administrators, settlors (or potential settlors), or beneficiaries of any such trust or other instrument.”.

SEC. 6. PROTECTION OF PHILANTHROPY UNDER STATE LAW.

15 USC 80a-3a.

(a) REGISTRATION REQUIREMENTS.—A security issued by or any interest or participation in any pooled income fund, collective trust fund, collective investment fund, or similar fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940, and the offer or sale thereof, shall be exempt from any statute or regulation of a State that requires registration or qualification of securities.

(b) TREATMENT OF CHARITABLE ORGANIZATIONS.—No charitable organization, or any trustee, director, officer, employee, or volunteer of a charitable organization acting within the scope of such person’s employment or duties, shall be required to register as, or be subject to regulation as, a dealer, broker, agent, or investment adviser under the securities laws of any State because such organization or person buys, holds, sells, or trades in securities for its own account in its capacity as trustee or administrator of, or otherwise on behalf of or for the account of one or more of the following:

(1) a charitable organization;

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

(3) a trust or other donative instrument described in section 3(c)(10)(B) of the Investment Company Act of 1940, or the settlors (or potential settlors) or beneficiaries of any such trusts or other instruments.

(c) STATE ACTION.—Notwithstanding subsections (a) and (b), during the 3-year period beginning on the date of enactment of this Act, a State may enact a statute that specifically refers to this section and provides prospectively that this section shall not preempt the laws of that State referred to in this section.

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

(1) the term “charitable organization” means an organization described in paragraphs (1) through (5) of section 170(c) or section 501(c)(3) of the Internal Revenue Code of 1986;

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

(3) the term “State” means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

15 USC 77c note.

SEC. 7. EFFECTIVE DATES AND APPLICABILITY.

This Act and the amendments made by this Act shall apply in all administrative and judicial actions pending on or commenced after the date of enactment of this Act, as a defense to any claim that any person, security, interest, or participation of the type described in this Act and the amendments made by this Act is subject to the provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any State statute or regulation preempted as provided in section 6 of this Act, except as otherwise specifically provided in such Acts or State law.

Approved December 8, 1995.

LEGISLATIVE HISTORY—H.R. 2519:

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CONGRESSIONAL RECORD, Vol. 141 (1995):

Nov. 28, considered and passed House.

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