

Union Calendar No. 178

104TH CONGRESS
1ST SESSION

H. R. 2519

[Report No. 104-333]

A BILL

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

NOVEMBER 10, 1995

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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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

NOVEMBER 10, 1995

Additional sponsors:

Mr. BRYANT of Texas, Mr. GILLMOR, Mr. HALL of Texas, Mr. HUTCHINSON, Mr. INGLIS of South Carolina, Mr. OXLEY, Mr. SMITH of Texas, Mr. BARTON of Texas, Mr. BENTSEN, Mr. LEWIS of Georgia, Mr. BREWSTER, Mr. McDERMOTT, Mr. RAMSTAD, Mr. HASTERT, Mr. FUNDERBURK, Mr. EMERSON, Mr. CRAMER, Mr. QUILLEN, Mr. STUMP, and Ms. WOOLSEY

NOVEMBER 10, 1995

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on October 24, 1995]

A BILL

To facilitate contributions to charitable organizations by codi-

fyng 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 “Phi-*
5 *lanthropy 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. 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.

8 **SEC. 2. AMENDMENTS TO THE INVESTMENT COMPANY ACT**
9 **OF 1940.**

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

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

16 “(i) *no part of the net earnings of which in-*
17 *ures to the benefit of any private shareholder or*
18 *individual; or*

19 “(ii) *which is or maintains a fund de-*
20 *scribed in subparagraph (B).*

1 “(B) For the purposes of subparagraph (A)(ii),
2 a fund is described in this subparagraph if such fund
3 is a pooled income fund, collective trust fund, collec-
4 tive investment fund, or similar fund maintained by
5 a charitable organization exclusively for the collective
6 investment and reinvestment of one or more of the fol-
7 lowing:

8 “(i) assets of the general endowment fund or
9 other funds of one or more charitable organiza-
10 tions;

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

12 “(iii) assets contributed to a charitable or-
13 ganization in exchange for the issuance of chari-
14 table gift annuities;

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

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

20 “(vi) assets of a trust not described in
21 clauses (i) through (v), the remainder interests of
22 which are revocably dedicated to a charitable or-
23 ganization, subject to subparagraph (C); or

24 “(vii) such assets (including assets
25 revocably dedicated to a charitable organization)

1 *as the Commission may prescribe by rule, regu-*
2 *lation, or order in accordance with section 6(c).*

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

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

11 “(ii) *such assets are commingled in the fund*
12 *with assets described in one or more of clauses*
13 *(i) through (v) of subparagraph (B).*

14 “(D) *For purposes of this paragraph—*

15 “(i) *a trust or fund is ‘maintained’ by a*
16 *charitable organization if the organization serves*
17 *as a trustee or administrator of the trust or fund*
18 *or has the power to remove the trustees or ad-*
19 *ministrators of the trust or fund and to des-*
20 *ignate new trustees or administrators;*

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

24 “(iii) *the term ‘charitable organization’*
25 *means an organization described in paragraphs*

1 (1) through (5) of section 170(c) or section
2 501(c)(3) of the Internal Revenue Code of 1986;

3 “(iv) the term ‘charitable lead trust’ means
4 a trust described in section 170(f)(2)(B),
5 2055(e)(2)(B), or 2522(c)(2)(B) of the Internal
6 Revenue Code of 1986;

7 “(v) the term ‘charitable remainder trust’
8 means a charitable remainder annuity trust or
9 a charitable remainder unitrust, as those terms
10 are defined in section 664(d) of the Internal Rev-
11 enue Code of 1986; and

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

16 (b) *DISCLOSURE BY EXEMPT CHARITABLE ORGANIZA-*
17 *TIONS.*—Section 7 of the Investment Company Act of 1940
18 (15 U.S.C. 80a-7) is amended by adding at the end the
19 following new subsection:

20 “(e) *DISCLOSURE BY EXEMPT CHARITABLE ORGANI-*
21 *ZATIONS.*—Each fund that is excluded from the definition
22 of an investment company under section 3(c)(10)(B) of this
23 Act shall provide, to each donor to such fund, at the time
24 of the donation or within 90 days after the date of enact-
25 ment of this subsection, whichever is later, written informa-

1 *tion describing the material terms of the operation of such*
2 *fund.”.*

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

4 *Section 3(a)(4) of the Securities Act of 1933 (15 U.S.C.*
5 *77c(a)(4)) is amended by inserting after the semicolon at*
6 *the end the following: “or any security of a fund that is*
7 *excluded from the definition of an investment company*
8 *under section 3(c)(10)(B) of the Investment Company Act*
9 *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 interest*
21 *or participation in any pooled income fund, col-*
22 *lective trust fund, collective investment fund, or*
23 *similar fund that is excluded from the definition*
24 *of an investment company under section*

1 3(c)(10)(B) of the Investment Company Act of
2 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.—

7 “(1) EXEMPTION.—Notwithstanding any other
8 provision of this title, but subject to paragraph (2) of
9 this subsection, a charitable organization, as defined
10 in section 3(c)(10)(D) of the Investment Company Act
11 of 1940, or any trustee, director, officer, employee, or
12 volunteer of such a charitable organization acting
13 within the scope of such person’s employment or du-
14 ties with such organization, shall not be deemed to be
15 a ‘broker’, ‘dealer’, ‘municipal securities broker’, ‘mu-
16 nicipal securities dealer’, ‘government securities
17 broker’, or ‘government securities dealer’ for purposes
18 of this title solely because such organization or person
19 buys, holds, sells, or trades in securities for its own
20 account in its capacity as trustee or administrator of,
21 or otherwise on behalf of or for the account of—

22 “(A) such a charitable organization;

23 “(B) a fund that is excluded from the defi-
24 nition of an investment company under section

1 3(c)(10)(B) of the Investment Company Act of
2 1940; or

3 “(C) a trust or other donative instrument
4 described in section 3(c)(10)(B) of the Invest-
5 ment Company Act of 1940, or the settlors (or
6 potential settlors) or beneficiaries of any such
7 trust or other instrument.

8 “(2) LIMITATION ON COMPENSATION.—The ex-
9 emption provided under paragraph (1) shall not be
10 available to any charitable organization, or any
11 trustee, director, officer, employee, or volunteer of such
12 a charitable organization, unless each person who, on
13 or after 90 days after the date of enactment of this
14 subsection, solicits donations on behalf of such chari-
15 table organization from any donor to a fund that is
16 excluded from the definition of an investment com-
17 pany under section 3(c)(10)(B) of the Investment
18 Company Act of 1940, is either a volunteer or is en-
19 gaged in the overall fund raising activities of a chari-
20 table organization and receives no commission or
21 other special compensation based on the number or
22 the value of donations collected for the fund.”.

23 (d) CONFORMING AMENDMENT.—Section 12(g)(2)(D)
24 of such Act (15 U.S.C. 78l(g)(2)(D)) is amended by insert-
25 ing before the period “; or any security of a fund that is

1 *excluded from the definition of an investment company*
2 *under section 3(c)(10)(B) of the Investment Company Act*
3 *of 1940”.*

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

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

8 *(1) by striking “or” at the end of paragraph (2);*

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

11 *(3) by adding at the end the following new para-*
12 *graph:*

13 *“(4) any investment adviser that is a charitable*
14 *organization, as defined in section 3(c)(10)(D) of the*
15 *Investment Company Act of 1940, or is a trustee, di-*
16 *rector, officer, employee, or volunteer of such a chari-*
17 *table organization acting within the scope of such*
18 *person’s employment or duties with such organiza-*
19 *tion, whose advice, analyses, or reports are provided*
20 *only to one or more of the following:*

21 *“(A) any such charitable organization;*

22 *“(B) a fund that is excluded from the defi-*
23 *inition of an investment company under section*
24 *3(c)(10)(B) of the Investment Company Act of*
25 *1940; or*

1 “(C) a trust or other donative instrument
2 described in section 3(c)(10)(B) of the Invest-
3 ment Company Act of 1940, or the trustees, ad-
4 ministrators, settlors (or potential settlors), or
5 beneficiaries of any such trust or other instru-
6 ment.”.

7 **SEC. 6. PROTECTION OF PHILANTHROPY UNDER STATE**
8 **LAW.**

9 (a) *REGISTRATION REQUIREMENTS.*—A security is-
10 sued by or any interest or participation in any pooled in-
11 come fund, collective trust fund, collective investment fund,
12 or similar fund that is excluded from the definition of an
13 investment company under section 3(c)(10)(B) of the In-
14 vestment Company Act of 1940, and the offer or sale thereof,
15 shall be exempt from any statute or regulation of a State
16 that requires registration or qualification of securities.

17 (b) *TREATMENT OF CHARITABLE ORGANIZATIONS.*—
18 No charitable organization, or any trustee, director, officer,
19 employee, or volunteer of a charitable organization acting
20 within the scope of such person’s employment or duties,
21 shall be required to register as, or be subject to regulation
22 as, a dealer, broker, agent, or investment adviser under the
23 securities laws of any State because such organization or
24 person buys, holds, sells, or trades in securities for its own
25 account in its capacity as trustee or administrator of, or

1 *otherwise on behalf of or for the account of one or more*
2 *of the following:*

3 *(1) a charitable organization;*

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

7 *(3) a trust or other donative instrument de-*
8 *scribed in section 3(c)(10)(B) of the Investment Com-*
9 *pany Act of 1940, or the settlors (or potential settlors)*
10 *or beneficiaries of any such trusts or other instru-*
11 *ments.*

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

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

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

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

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

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

7 This Act and the amendments made by this Act shall
8 apply in all administrative and judicial actions pending
9 on or commenced after the date of enactment of this Act,
10 as a defense to any claim that any person, security, interest,
11 or participation of the type described in this Act and the
12 amendments made by this Act is subject to the provisions
13 of the Securities Act of 1933, the Securities Exchange Act
14 of 1934, the Investment Company Act of 1940, or the Invest-
15 ment Advisers Act of 1940, or any State statute or regula-
16 tion preempted as provided in section 6 of this Act, except
17 as otherwise specifically provided in such Acts or State law.