

105TH CONGRESS
2^D SESSION

S. 1244

AN ACT

To amend title 11, United States Code, to protect certain charitable contributions, 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.**

4 This Act may be cited as the “Religious Liberty and
5 Charitable Donation Protection Act of 1998”.

1 **SEC. 2. DEFINITIONS.**

2 Section 548(d) of title 11, United States Code, is
3 amended by adding at the end the following:

4 “(3) In this section, the term ‘charitable contribution’
5 means a charitable contribution, as that term is defined
6 in section 170(c) of the Internal Revenue Code of 1986,
7 if that contribution—

8 “(A) is made by a natural person; and

9 “(B) consists of—

10 “(i) a financial instrument (as that term is
11 defined in section 731(c)(2)(C) of the Internal
12 Revenue Code of 1986); or

13 “(ii) cash.

14 “(4) In this section, the term ‘qualified religious or
15 charitable entity or organization’ means—

16 “(A) an entity described in section 170(c)(1) of
17 the Internal Revenue Code of 1986; or

18 “(B) an entity or organization described in sec-
19 tion 170(c)(2) of the Internal Revenue Code of
20 1986.”.

21 **SEC. 3. TREATMENT OF PRE-PETITION QUALIFIED CHARI-
22 TABLE CONTRIBUTIONS.**

23 (a) IN GENERAL.—Section 548(a) of title 11, United
24 States Code, is amended—

25 (1) by inserting “(1)” after “(a)”;

1 (2) by striking “(1) made” and inserting “(A)
2 made”;

3 (3) by striking “(2)(A)” and inserting “(B)(i);

4 (4) by striking “(B)(i)” and inserting “(ii)(I)”;

5 (5) by striking “(ii) was” and inserting “(II)
6 was”;

7 (6) by striking “(iii)” and inserting “(III)”;

8 and

9 (7) by adding at the end the following:

10 “(2) A transfer of a charitable contribution to a
11 qualified religious or charitable entity or organization shall
12 not be considered to be a transfer covered under para-
13 graph (1)(B) in any case in which—

14 “(A) the amount of that contribution does not
15 exceed 15 percent of the gross annual income of the
16 debtor for the year in which the transfer of the con-
17 tribution is made; or

18 “(B) the contribution made by a debtor exceed-
19 ed the percentage amount of gross annual income
20 specified in subparagraph (A), if the transfer was
21 consistent with the practices of the debtor in making
22 charitable contributions.”.

23 (b) TRUSTEE AS LIEN CREDITOR AND AS SUCCESSOR
24 TO CERTAIN CREDITORS AND PURCHASERS.—Section
25 544(b) of title 11, United States Code, is amended—

1 (1) by striking “(b) The trustee” and inserting
 2 “(b)(1) Except as provided in paragraph (2), the
 3 trustee”; and

4 (2) by adding at the end the following:

5 “(2) Paragraph (1) shall not apply to a transfer of
 6 a charitable contribution (as that term is defined in sec-
 7 tion 548(d)(3)) that is not covered under section
 8 548(a)(1)(B), by reason of section 548(a)(2). Any claim
 9 by any person to recover a transferred contribution de-
 10 scribed in the preceding sentence under Federal or State
 11 law in a Federal or State court shall be preempted by the
 12 commencement of the case.”.

13 (c) CONFORMING AMENDMENTS.—Section 546 of
 14 title 11, United States Code, is amended—

15 (1) in subsection (e)—

16 (A) by striking “548(a)(2)” and inserting
 17 “548(a)(1)(B)”; and

18 (B) by striking “548(a)(1)” and inserting
 19 “548(a)(1)(A)”; and

20 (2) in subsection (f)—

21 (A) by striking “548(a)(2)” and inserting
 22 “548(a)(1)(B)”; and

23 (B) by striking “548(a)(1)” and inserting
 24 “548(a)(1)(A)”; and

25 (3) in subsection (g)—

1 (A) by striking “section 548(a)(1)” each
2 place it appears and inserting “section
3 548(a)(1)(A)”;

4 (B) by striking “548(a)(2)” and inserting
5 “548(a)(1)(B)”.

6 **SEC. 4. TREATMENT OF POST-PETITION CHARITABLE CON-**
7 **TRIBUTIONS.**

8 (a) CONFIRMATION OF PLAN.—Section
9 1325(b)(2)(A) of title 11, United States Code, is amended
10 by inserting before the semicolon the following: “, includ-
11 ing charitable contributions (that meet the definition of
12 ‘charitable contribution’ under section 548(d)(3)) to a
13 qualified religious or charitable entity or organization (as
14 that term is defined in section 548(d)(4)) in an amount
15 not to exceed 15 percent of the gross income of the debtor
16 for the year in which the contributions are made”.

17 (b) DISMISSAL.—Section 707(b) of title 11, United
18 States Code, is amended by adding at the end the follow-
19 ing: “In making a determination whether to dismiss a case
20 under this section, the court may not take into consider-
21 ation whether a debtor has made, or continues to make,
22 charitable contributions (that meet the definition of ‘chari-
23 table contribution’ under section 548(d)(3)) to any quali-
24 fied religious or charitable entity or organization (as that
25 term is defined in section 548(d)(4)).”.

1 **SEC. 5. APPLICABILITY.**

2 This Act and the amendments made by this Act shall
3 apply to any case brought under an applicable provision
4 of title 11, United States Code, that is pending or com-
5 menced on or after the date of enactment of this Act.

6 **SEC. 6. RULE OF CONSTRUCTION.**

7 Nothing in the amendments made by this Act is in-
8 tended to limit the applicability of the Religious Freedom
9 Restoration Act of 1993 (42 U.S.C. 2002bb et seq.).

Passed the Senate May 13, 1998.

Attest:

Secretary.

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