this Act unless the defendant establishes and the court determines, in light of all the circumstances, including the stage of litigation and the availability of alternative relief under the Clayton Act, that it would be inequitable not to apply this subsection to a pending case. In consideration of this section, existence of a jury verdict, district court judgment, or any stage of litigation subsequent thereto, shall be deemed to be prima facie evidence that subsection (a) of this section shall not apply.

(Pub. L. 98–544, § 3, Oct. 24, 1984, 98 Stat. 2750.)

REFERENCES IN TEXT

For the effective date of this Act, referred to in subsec. (b), see Effective Date note below.

The Clayton Act, referred to in subsecs. (a) and (b), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, which is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of this title and to sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

EFFECTIVE DATE

Section effective thirty days before Oct. 24, 1984, see section 6 of Pub. L. 98–544, set out as a note under section 34 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 34 of this title.

### § 36. Recovery of damages, etc., for antitrust violations on claim against person based on official action directed by local government, or official or employee thereof acting in an official capacity

#### (a) Prohibition in general

No damages, interest on damages, costs or attorney's fees may be recovered under section 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or 15c) in any claim against a person based on any official action directed by a local government, or official or employee thereof acting in an official capacity.

#### (b) Nonapplication of prohibition for cases commenced before effective date of provisions

Subsection (a) of this section shall not apply with respect to cases commenced before the effective date of this Act.

(Pub. L. 98–544, § 4, Oct. 24, 1984, 98 Stat. 2750.)

REFERENCES IN TEXT

For effective date of this Act, referred to in subsec. (b), see Effective Date note below.

EFFECTIVE DATE

Section effective thirty days before Oct. 24, 1984, see section 6 of Pub. L. 98–544, set out as a note under section 34 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 34 of this title.

### § 37. Immunity from antitrust laws

#### (a) Inapplicability of antitrust laws

Except as provided in subsection (d) of this section, 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) of this section, 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 section and section 37a of this title 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) of this section 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) of this section shall not apply with respect to such charitable gift annuities and such charitable remainder trusts.

(Pub. L. 104–63, § 2, Dec. 8, 1995, 109 Stat. 687; Pub. L. 105–26, § 2(1), July 3, 1997, 111 Stat. 241.)

REFERENCES IN TEXT

For definition of ''antitrust laws'', referred to in text, see section 37a(1) of this title.

AMENDMENTS

1997—Pub. L. 105–26 amended section generally. Prior to amendment, section related to modification of antitrust laws to allow two or more charitable organizations to use, or to agree to use, the same annuity rate in issuing one or more charitable gift annuities and to limitations on such conduct.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 3 of Pub. L. 105–26 provided that: ''This Act [see Short Title of 1997 Amendments note set out under section 1 of this title], 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 [July 3, 1997] and shall apply in all administrative and judicial actions pending on or commenced after the date of the enactment of this Act.''

EFFECTIVE DATE

Section 4 of Pub. L. 104–63 provided that: ''This Act [enacting this section, section 37a of this title, and pro-

visions set out as a note under section 1 of this title] shall apply with respect to conduct occurring before, on, or after the date of the enactment of this Act [Dec. 8, 1995].''

STUDY AND REPORT

Section 4 of Pub. L. 105–26 provided that:

''(a) STUDY AND REPORT.—The Attorney General shall carry out a study to determine the effect of this Act [see Short Title of 1997 Amendments note set out under section 1 of this title] 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 [July 3, 1997].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 37a of this title.

### § 37a. Definitions

For purposes of this section and section 37 of this title:

**(1) Antitrust laws**

The term ''antitrust laws'' has the meaning given it in subsection (a) of section 12 of this title, except that such term includes section 45 of this title to the extent that such section 45 applies to unfair methods of competition.

**(2) Charitable remainder trust**

The term ''charitable remainder trust'' has the meaning given it in section 664(d) of title 26.

**(3) Charitable gift annuity**

The term ''charitable gift annuity'' has the meaning given it in section 501(m)(5) of title 26.

**(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 title 26.

**(5) Person**

The term ''person'' has the meaning given it in subsection (a) of section 12 of this title.

**(6) State**

The term ''State'' has the meaning given it in section 15g(2) of this title.

(Pub. L. 104–63, § 3, Dec. 8, 1995, 109 Stat. 687; Pub. L. 105–26, § 2(2), July 3, 1997, 111 Stat. 242.)

AMENDMENTS

1997—Pars. (1), (2). Pub. L. 105–26, § 2(2)(A)–(C), added par. (2), redesignated former par. (2) as (1), and struck out heading and text of former par. (1). Text read as follows: ''The term 'annuity rate' means the percentage of the fair market value of a gift (determined as of the date of the gift) given in exchange for a charitable gift annuity, that represents the amount of the annual payment to be made to 1 or 2 annuitants over the life of either or both under the terms of the agreement to give such gift in exchange for such annuity.''

Pars. (4) to (6). Pub. L. 105–26, § 2(2)(D), (E), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–26 applicable with respect to all conduct occurring before, on, or after July 3, 1997, and applicable in all administrative and judicial actions pending on or commenced after July 3, 1997, see section 3 of Pub. L. 105–26, set out as a note under section 37 of this title.

EFFECTIVE DATE

Section applicable with respect to conduct occurring before, on, or after Dec. 8, 1995, see section 4 of Pub. L. 104–63, set out as a note under section 37 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 37 of this title.

## CHAPTER 2—FEDERAL TRADE COMMISSION; PROMOTION OF EXPORT TRADE AND PREVENTION OF UNFAIR METHODS OF COMPETITION

SUBCHAPTER I—FEDERAL TRADE COMMISSION

Sec.

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42. Employees; expenses.
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(a) Investigation of persons, partnerships, or corporations.
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