

103^D CONGRESS
2^D SESSION

H. R. 4858

To amend the Securities Act of 1933 and the Investment Company Act of 1940 to promote capital formation for small businesses and others through exempted offerings under the Securities Act and through investment pools that are excepted or exempted from regulation under the Investment Company Act of 1940 and through business development companies.

IN THE HOUSE OF REPRESENTATIVES

JULY 29, 1994

Mr. MARKEY (for himself and Mr. FIELDS of Texas) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Securities Act of 1933 and the Investment Company Act of 1940 to promote capital formation for small businesses and others through exempted offerings under the Securities Act and through investment pools that are excepted or exempted from regulation under the Investment Company Act of 1940 and through business development companies.

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 “Small Business Incen-
5 tive Act of 1993”.

1 **SEC. 2. EXEMPTED SECURITIES.**

2 Section 3(b) of the Securities Act of 1933 (15 U.S.C.
3 77c(b)) is amended by striking “\$5,000,000” and insert-
4 ing “\$10,000,000”.

5 **SEC. 3. EXCLUSIONS FROM THE DEFINITION OF INVEST-**
6 **MENT COMPANY.**

7 Section 3(c) of the Investment Company Act of 1940
8 (15 U.S.C. 80a-3(c)) is amended—

9 (1) in paragraph (1), by inserting after the first
10 sentence the following new sentence: “Such issuer
11 shall be deemed to be an investment company for
12 purposes of the limitations set forth in subpara-
13 graphs (A)(i) and (B)(i) of section 12(d)(1) govern-
14 ing the purchase or other acquisition by such issuer
15 of any security issued by a registered investment
16 company and the sale of any security issued by a
17 registered open-end investment company to any such
18 issuer.”;

19 (2) in paragraph (1)(A)—

20 (A) by inserting after “issuer” the first
21 place it appears “and the company is or (but
22 for the exceptions set forth in this paragraph
23 and paragraph (7)) would be an investment
24 company”; and

1 (B) by striking “unless as of the date” and
2 all that follows through the end of subpara-
3 graph (A) and inserting a period; and

4 (3) by amending paragraph (7) to read as
5 follows:

6 “(7) Any issuer whose outstanding securities
7 are owned exclusively by persons who, at the time of
8 acquisition of such securities, are qualified pur-
9 chasers, except that such issuer shall be deemed to
10 be an investment company for purposes of the limi-
11 tations set forth in subparagraphs (A)(i) and (B)(i)
12 of section 12(d)(1) governing the purchase or other
13 acquisition by such issuer of any security issued by
14 a registered investment company and the sale of any
15 security issued by a registered open-end investment
16 company to any such issuer.”.

17 **SEC. 4. DEFINITION OF QUALIFIED PURCHASER.**

18 Section 2(a) of the Investment Company Act of 1940
19 (15 U.S.C. 80a-2(a)) is amended by adding at the end
20 the following new paragraph:

21 “(51) ‘Qualified purchaser’ means—

22 “(A) any natural person who owns at least
23 \$10,000,000 in securities of issuers, each of
24 which is not an affiliated person, as defined in
25 section 2(a)(3)(C), of such person;

1 “(B) any person, acting for its own ac-
2 count or the accounts of other qualified pur-
3 chasers, who in the aggregate owns and invests
4 on a discretionary basis, not less than
5 \$100,000,000 in securities of issuers, each of
6 which is not an affiliated person, as defined in
7 section 2(a)(3)(C), of such person; or

8 “(C) any person, who may own or invest a
9 lesser amount in securities than specified in
10 subparagraphs (A) and (B), that the Commis-
11 sion, by rule or regulation, has determined does
12 not need the protections of this title, after con-
13 sideration of factors such as—

14 “(i) a high degree of financial sophis-
15 tication, including extensive knowledge of
16 and experience in financial matters;

17 “(ii) sizable net worth;

18 “(iii) a substantial amount of assets
19 owned or under management;

20 “(iv) relationship with an issuer; or

21 “(v) such other factors as the Com-
22 mission may determine to be consistent
23 with the purpose of this paragraph.

24 The Commission also may adopt such rules and reg-
25 ulations governing the persons specified in subpara-

1 graphs (A) and (B) as it determines are necessary
2 or appropriate in the public interest and for the pro-
3 tection of investors.”.

4 **SEC. 5. DEFINITION OF INVESTMENT SECURITIES.**

5 Section 3(a) of the Investment Company Act of 1940
6 (15 U.S.C. 80a-3(a)) is amended in the last sentence by
7 striking subparagraph (C) and inserting the following:
8 “(C) securities issued by any majority-owned subsidiary
9 of the owner, unless such subsidiary is an investment com-
10 pany or is excluded from the definition of an investment
11 company solely by virtue of paragraph (1) or (7) of sub-
12 section (c).”.

13 **SEC. 6. EXEMPTION FOR ECONOMIC, BUSINESS, AND IN-**
14 **DUSTRIAL DEVELOPMENT COMPANIES.**

15 Section 6(a) of the Investment Company Act of 1940
16 (15 U.S.C. 80a-6(a)) is amended by adding at the end
17 the following new paragraph:

18 “(5)(A) Any company that is not engaged in
19 the business of issuing redeemable securities, the op-
20 erations of which are subject to regulation by the
21 State in which the company is organized under a
22 statute governing entities that provide financial or
23 managerial assistance to enterprises doing business,
24 or proposing to do business, in that State if—

1 “(i) the organizational documents of the
2 company state that the activities of the com-
3 pany are limited to the promotion of economic,
4 business, or industrial development in the State
5 through the provision of financial or managerial
6 assistance to enterprises doing business, or pro-
7 posing to do business, in that State, and such
8 other activities that are incidental or necessary
9 to carry out that purpose;

10 “(ii) immediately following each sale of the
11 securities of the company by the company or
12 any underwriter for the company, not less than
13 80 percent of the securities of the company
14 being offered in such sale, on a class-by-class
15 basis, are held by persons who reside or have a
16 substantial business presence in that State;

17 “(iii) the securities of the company are
18 sold, or proposed to be sold, by the company or
19 any underwriter for the company, solely to ac-
20 credited investors, as defined in section 2(15) of
21 the Securities Act of 1933, or to such other
22 persons that the Commission, as necessary or
23 appropriate in the public interest and consistent
24 with the protection of investors, may permit by
25 rule, regulation, or order; and

1 “(iv) the company does not purchase any
2 security issued by an investment company, as
3 defined in section 3, or by any company that
4 would be an investment company except for the
5 exclusions from the definition of investment
6 company in section 3(c), other than—

7 “(I) any security that is rated invest-
8 ment grade by at least 1 nationally recog-
9 nized statistical rating organization; or

10 “(II) any security issued by a reg-
11 istered open-end investment company that
12 is required by its investment policies to in-
13 vest not less than 65 percent of its total
14 assets in securities described in subclause
15 (I) or securities that are determined by
16 such registered open-end investment com-
17 pany to be comparable in quality to securi-
18 ties described in subclause (I).

19 “(B) Notwithstanding the exemption provided
20 by this paragraph, the provisions of section 9 (and,
21 to the extent necessary to enforce such provisions,
22 sections 38 through 51) of this title shall apply to
23 a company described in this paragraph as if the
24 company were an investment company registered
25 under this title.

1 **SEC. 8. DEFINITION OF ELIGIBLE PORTFOLIO COMPANY.**

2 Section 2(a)(46)(C) of the Investment Company Act
3 of 1940 (15 U.S.C. 80a-2(a)(46)(C)) is amended—

4 (1) in clause (ii), by striking “or” at the end;

5 (2) by redesignating clause (iii) as clause (iv);

6 and

7 (3) by inserting after clause (ii) the following:

8 “(iii) it has total assets of not more
9 than \$4,000,000, and capital and surplus
10 (shareholders’ equity less retained earn-
11 ings) of not more than \$2,000,000, except
12 that the Commission may adjust such
13 amounts by rule, regulation, or order to re-
14 flect changes in 1 or more generally ac-
15 cepted indices or other indicators for small
16 businesses; or”.

17 **SEC. 9. DEFINITION OF BUSINESS DEVELOPMENT COM-**
18 **PANY.**

19 Section 2(a)(48)(B) of the Investment Company Act
20 of 1940 (15 U.S.C. 80a-2(a)(48)(B)) is amended by in-
21 serting before the semicolon at the end the following: “,
22 and provided further that a business development com-
23 pany need not make available significant managerial as-
24 sistance with respect to any company described in section
25 2(a)(46)(C)(iii), or with respect to any other company that
26 meets such criteria as the Commission may by rule, regu-

1 lation, or order permit, as consistent with the public inter-
2 est, the protection of investors, and the purposes fairly in-
3 tended by the policy and provisions of this title”.

4 **SEC. 10. ACQUISITION OF ASSETS BY BUSINESS DEVELOP-**
5 **MENT COMPANIES.**

6 Section 55(a)(1)(A) of the Investment Company Act
7 of 1940 (15 U.S.C. 80a-54(a)(1)(A)) is amended—

8 (1) by striking “or from any person” and in-
9 sserting “from any person”; and

10 (2) by inserting before the semicolon “, or from
11 any other person, subject to such rules and regula-
12 tions as the Commission may prescribe as necessary
13 or appropriate in the public interest or for the pro-
14 tection of investors”.

15 **SEC. 11. FILING OF WRITTEN STATEMENTS.**

16 Section 64(b)(1) of the Investment Company Act of
17 1940 (15 U.S.C. 80a-63(b)(1)) is amended by inserting
18 “and capital structure” after “portfolio”.

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