

107TH CONGRESS
2D SESSION

H. R. 3617

To withdraw certain benefits of the Private Securities Litigation Reform Act from auditors that perform non-audit functions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 23, 2002

Mr. MARKEY introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To withdraw certain benefits of the Private Securities Litigation Reform Act from auditors that perform non-audit functions, 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 “Accountability for Ac-
5 countants Act of 2002”.

6 **SEC. 2. RESTORATION OF JOINT AND SEVERAL LIABILITY.**

7 (a) AMENDMENT.—Subparagraph (A) of section
8 21D(f)(2) of the Securities Exchange Act of 1934 (15
9 U.S.C. 78u–4(f)(2)(A)) is amended to read as follows:

1 “(A) JOINT AND SEVERAL LIABILITY.—
2 Any covered person against whom a final judg-
3 ment is entered in a private action shall be lia-
4 ble for damages jointly and severally only if the
5 trier of fact specifically determines that—

6 “(i) such covered person knowingly
7 committed a violation of the securities
8 laws;

9 “(ii) the covered person was the audi-
10 tor of the financial statements of the issuer
11 of the securities that are the subject of the
12 class action and such auditor failed to
13 comply with section 10A by failing to de-
14 tect and report an illegal act of such issuer
15 that is the basis of such class action;

16 “(iii) the covered person was the audi-
17 tor of the financial statements of such
18 issuer and such auditor performed any
19 non-audit functions for such issuer during
20 the fiscal year in which an alleged violation
21 of the securities laws occurred; or

22 “(iv) the issuer of such securities is
23 insolvent.”.

1 (b) UNCOLLECTABLE SHARES.—Section 21D(f)(4) of
2 such Act is amended by adding at the end the following
3 new subparagraph:

4 “(D) INAPPLICABILITY TO INSOLVENCY
5 CASES.—The provisions of this paragraph shall
6 not apply in any case in which the trier of fact
7 determines that the issuer of the securities that
8 are the subject of the class action is insolvent
9 under paragraph (2)(A)(iv).”.

10 (c) DISCLOSURE TO JURIES.—Section 21D(f) of such
11 Act is further amended—

12 (1) by striking paragraph (6); and

13 (2) by redesignating paragraphs (7) through
14 (10) as paragraphs (6) through (9), respectively.

15 (d) DEFINITION.—Section 21D(f)(9) of such Act (as
16 redesignated by subsection (c)(2) of this section) is
17 amended—

18 (1) by striking “and” at the end of subpara-
19 graph (C);

20 (2) by striking the period at the end of sub-
21 paragraph (D) and inserting “; and”; and

22 (3) by adding at the end the following new sub-
23 paragraph:

24 “(E) an auditor shall be considered to have
25 performed ‘non-audit functions for an issuer’ if

1 such auditor received any compensation for
2 services from such issuer for a fiscal year that
3 did not qualify to be treated as audit fees for
4 such fiscal year for purposes of item 9(e)(1) of
5 the schedule 14A of such issuer.”.

6 (e) PREVENTION OF STAYS OF DISCOVERY.—

7 (1) Section 21D(b)(3) of such Act is amended
8 by adding at the end the following new subpara-
9 graph:

10 “(E) INAPPLICABILITY TO ACTION
11 AGAINST AUDITORS.—In any private action
12 arising under this title against the auditor of
13 the financial statements of the issuer of the se-
14 curities that are the subject of such action, dis-
15 covery and other proceedings shall not be
16 stayed pursuant to this paragraph.”.

17 (2) Section 27(b) of the Securities Act of 1933
18 (15 U.S.C. 77z–1(b)) is amended by adding at the
19 end the following new paragraph:

20 “(5) INAPPLICABILITY TO ACTION AGAINST
21 AUDITORS.—In any private action arising under this
22 title against the auditor of the financial statements
23 of the issuer of the securities that are the subject of
24 such action, discovery and other proceedings shall
25 not be stayed pursuant to this subsection.”.

1 **SEC. 3. RESTORATION OF AIDING AND ABETTING LIABIL-**
2 **ITY.**

3 (a) SECURITIES ACT OF 1933.—Section 20 of the Se-
4 curities Act of 1933 (15 U.S.C. 77t) is amended by adding
5 at the end the following new subsection:

6 “(g) PROSECUTION OF PERSONS WHO AID OR ABET
7 VIOLATIONS.—For purposes of subsections (b) and (d),
8 any person who knowingly or recklessly provides substan-
9 tial assistance to another person in the violation of a provi-
10 sion of this title, or of any rule or regulation hereunder,
11 shall be deemed to violate such provision to the same ex-
12 tent as the person to whom such assistance is provided.
13 No person shall be liable under this subsection based on
14 an omission or failure to act unless such omission or fail-
15 ure constituted a breach of a duty owed by such person.”.

16 (b) SECURITIES EXCHANGE ACT OF 1934.—Section
17 20(e) of the Securities Exchange Act of 1934 (15 U.S.C.
18 78t(e)) is amended to read as follows:

19 “(e) PROSECUTION OF PERSONS WHO AID OR ABET
20 VIOLATIONS.—For purposes of subsections (d)(1) and
21 (d)(3) of section 21, or an action by a self-regulatory orga-
22 nization, or an express or implied private right of action
23 under this title, any person who knowingly or recklessly
24 provides substantial assistance to another person in the
25 violation of a provision of this title, or of any rule or regu-
26 lation thereunder, shall be deemed to violate such provi-

1 sion and shall be liable to the same extent as the person
2 to whom such assistance is provided. No person shall be
3 liable under this subsection based on an omission or fail-
4 ure to act unless such omission or failure constituted a
5 breach of a duty owed by such person.”.

6 (c) INVESTMENT COMPANY ACT OF 1940.—Section
7 42 of the Investment Company Act of 1940 (15 U.S.C.
8 80a–41) is amended by adding at the end the following
9 new subsection:

10 “(f) PROSECUTION OF PERSONS WHO AID OR ABET
11 VIOLATIONS.—For purposes of subsections (d) and (e),
12 any person who knowingly or recklessly provides substan-
13 tial assistance to another person in the violation of a provi-
14 sion of this title, or of any rule, regulation, or order here-
15 under, shall be deemed to violate such provision to the
16 same extent as the person to whom such assistance is pro-
17 vided. No person shall be liable under this subsection
18 based on an omission or failure to act unless such omission
19 or failure constituted a breach of a duty owed by such
20 person.”.

21 (d) INVESTMENT ADVISERS ACT OF 1940.—Section
22 209(d) of the Investment Advisers Act of 1940 (15 U.S.C.
23 80b–9) is amended—

24 (1) in subsection (d)—

1 (A) by striking “or that any person has
2 aided, abetted, counseled, commanded, induced,
3 or procured, is aiding, abetting, counseling,
4 commanding, inducing, or procuring, or is
5 about to aid, abet, counsel, command, induce,
6 or procure such a violation,”; and

7 (B) by striking “or in aiding, abetting,
8 counseling, commanding, inducing, or procuring
9 any such act or practice”; and

10 (2) by adding at the end the following new sub-
11 section:

12 “(f) PROSECUTION OF PERSONS WHO AID OR ABET
13 VIOLATIONS.—For purposes of subsections (d) and (e),
14 any person who knowingly or recklessly provides substan-
15 tial assistance to another person in the violation of a provi-
16 sion of this title, or of any rule, regulation, or order here-
17 under, shall be deemed to violate such provision to the
18 same extent as the person to whom such assistance is pro-
19 vided. No person shall be liable under this subsection
20 based on an omission or failure to act unless such omission
21 or failure constituted a breach of duty owed by such per-
22 son.”.

1 **SEC. 4. DESTRUCTION OF RECORDS; SEPARATION OF**
2 **FUNCTIONS.**

3 (a) **AUDIT REQUIREMENTS.**—Section 10A of the Se-
4 curities Exchange Act of 1934 (15 U.S.C. 78j–1) is
5 amended—

6 (1) by redesignating subsections (e) and (f) as
7 subsections (g) and (h), respectively; and

8 (2) by inserting after subsection (d) the fol-
9 lowing new subsections:

10 “(e) **DESTRUCTION OF RECORDS.**—

11 “(1) **MAINTENANCE OF RECORDS REQUIRED.**—

12 Any accountant that conducts an audit of an issuer
13 pursuant to this title to which subsection (a) applies
14 shall maintain all documents (including electronic
15 documents) sent, received, or created in connection
16 with any audit, review, or other engagement for such
17 issuer for a period of four years from the end of the
18 fiscal period in which the engagement was con-
19 cluded.

20 “(2) **PENALTY.**—In addition to any other sanc-
21 tions that may be available, any person who know-
22 ingly and willfully violates paragraph (1) shall be
23 subject to fine and imprisonment to the same extent
24 as a person violating section 1512(b) of title 18,
25 United States Code.

1 “(f) CONSIDERATION OF SEPARATION OF AUDIT AND
2 NON-AUDIT FUNCTIONS.—

3 “(1) CONSIDERATION REQUIRED.—Any ac-
4 countant that conducts an audit of an issuer pursu-
5 ant to this title to which subsection (a) applies shall,
6 within 60 days after the date of enactment of the
7 Accountability for Accountants Act of 2002, initiate
8 a review of—

9 “(A) whether that accountant should divest
10 itself of any interests in non-audit businesses in
11 light of the inherent potential conflicts of inter-
12 est in providing both audit and non-audit serv-
13 ices to an issuer; or

14 “(B) whether the accountant should cease
15 providing non-audit services to those companies
16 whose financial statements it audits.

17 “(2) REPORTS.—Each accountant to which
18 paragraph (1) applies shall report to the Commis-
19 sion within 12 months after such date of enactment
20 on whether such accountant has decided to either di-
21 vest its non-audit services, or to cease providing non-
22 audit services to audit clients. The Commission shall
23 submit a report to Congress on the reports received
24 under the preceding sentence.”.

1 (b) PRESERVATION OF RECORDS DURING SHARE-
2 HOLDER LITIGATION.—

3 (1) SECURITIES ACT OF 1933.—Section 27(b)(2)
4 of the Securities Act of 1933 (15 U.S.C. 77z-
5 1(b)(2)) is amended by inserting “, and the issuer
6 of the securities that are the subject of such action,”
7 after “in the complaint”.

8 (2) SECURITIES EXCHANGE ACT OF 1934.—Sec-
9 tion 21D(b)(3)(C)(i) of the Securities Act of 1933
10 (15 U.S.C. 77z-1(b)(3)(C)(i)) is amended by insert-
11 ing “, and the issuer of the securities that are the
12 subject of such action,” after “in the complaint”.

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