

Calendar No. 143

107TH CONGRESS
1ST SESSION**S. 1196****[Report No. 107-55]**

To amend the Small Business Investment Act of 1958, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 18, 2001

Mr. BOND (for himself and Mr. KERRY) introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

AUGUST 28, 2001

Reported under authority of the order of the Senate of July 30, 2001, by Mr. KERRY, without amendment

A BILL

To amend the Small Business Investment Act of 1958, 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 “Small Business Invest-
5 ment Company Amendments Act of 2001”.

1 **SEC. 2. SUBSIDY FEES.**

2 (a) IN GENERAL.—Section 303 of the Small Business
3 Investment Act of 1958 (15 U.S.C. 683) is amended—

4 (1) in subsection (b)—

5 (A) by striking “of not more than 1 per-
6 cent per year”;

7 (B) by inserting “which amount may not
8 exceed 1.28 percent per year, and” before
9 “which shall be paid”; and

10 (C) by striking “September 30, 2000” and
11 inserting “September 30, 2001”; and

12 (2) in subsection (g)(2)—

13 (A) by striking “of not more than 1 per-
14 cent per year”;

15 (B) by inserting “which amount may not
16 exceed 1.28 percent per year, and” before
17 “which shall be paid”; and

18 (C) by striking “September 30, 2000” and
19 inserting “September 30, 2001”.

20 (b) EFFECTIVE DATE.—The amendments made by
21 this section shall become effective on October 1, 2001.

22 **SEC. 3. CONFLICTS OF INTEREST.**

23 Section 312 of the Small Business Investment Act
24 of 1958 (15 U.S.C. 687d) is amended by striking “(includ-
25 ing disclosure in the locality most directly affected by the
26 transaction)”.

1 **SEC. 4. PENALTIES FOR FALSE STATEMENTS.**

2 (a) **CRIMINAL PENALTIES.**—Section 1014 of title 18,
3 United States Code, is amended by inserting “, as defined
4 in section 103 of the Small Business Investment Act of
5 1958 (15 U.S.C. 662), or the Small Business Administra-
6 tion in connection with any provision of that Act” after
7 “small business investment company”.

8 (b) **CIVIL PENALTIES.**—Section 951 of the Financial
9 Institutions Reform, Recovery, and Enforcement Act of
10 1989 (12 U.S.C. 1833a) is amended—

11 (1) by redesignating subsections (d) through (g)
12 as subsections (e) through (h), respectively; and

13 (2) in subsection (c)—

14 (A) in paragraph (1), by striking “or” at
15 the end;

16 (B) in paragraph (2)—

17 (i) by striking “1341;” and inserting
18 “1341”; and

19 (ii) by striking “institution.” and in-
20 sserting “institution; or”;

21 (C) by inserting immediately after para-
22 graph (2) the following:

23 “(3) section 16(a) of the Small Business Act
24 (15 U.S.C. 645(a)).”; and

25 (D) by striking “This section shall” and
26 inserting the following:

1 “(d) EFFECTIVE DATE.—This section shall”.

2 **SEC. 5. REMOVAL OR SUSPENSION OF MANAGEMENT OFFI-**
 3 **CIALS.**

4 Section 313 of the Small Business Investment Act
 5 of 1958 (15 U.S.C. 687e) is amended to read as follows:

6 **“SEC. 313. REMOVAL OR SUSPENSION OF MANAGEMENT OF-**
 7 **FICIALS.**

8 “(a) DEFINITION OF ‘MANAGEMENT OFFICIAL’.—In
 9 this section, the term ‘management official’ means an offi-
 10 cer, director, general partner, manager, employee, agent,
 11 or other participant in the management or conduct of the
 12 affairs of a licensee.

13 “(b) REMOVAL OF MANAGEMENT OFFICIALS.—

14 “(1) NOTICE OF REMOVAL.—The Administrator
 15 may serve upon any management official a written
 16 notice of its intention to remove that management
 17 official whenever, in the opinion of the
 18 Administrator—

19 “(A) such management official—

20 “(i) has willfully and knowingly com-
 21 mitted any substantial violation of—

22 “(I) this Act;

23 “(II) any regulation issued under
 24 this Act; or

1 “(III) a cease-and-desist order
2 which has become final; or

3 “(ii) has willfully and knowingly com-
4 mitted or engaged in any act, omission, or
5 practice which constitutes a substantial
6 breach of a fiduciary duty of that person
7 as a management official; and

8 “(B) the violation or breach of fiduciary
9 duty is one involving personal dishonesty on the
10 part of such management official.

11 “(2) CONTENTS OF NOTICE.—A notice of inten-
12 tion to remove a management official, as provided in
13 paragraph (1), shall contain a statement of the facts
14 constituting grounds therefor, and shall fix a time
15 and place at which a hearing will be held thereon.

16 “(3) HEARINGS.—

17 “(A) TIMING.—A hearing described in
18 paragraph (2) shall be fixed for a date not ear-
19 lier than 30 days nor later than 60 days after
20 the date of service of notice of the hearing, un-
21 less an earlier or a later date is set by the Ad-
22 ministrator at the request of—

23 “(i) the management official, and for
24 good cause shown; or

1 “(ii) the Attorney General of the
2 United States.

3 “(B) CONSENT.—Unless the management
4 official shall appear at a hearing described in
5 this paragraph in person or by a duly author-
6 ized representative, that management official
7 shall be deemed to have consented to the
8 issuance of an order of removal under para-
9 graph (1).

10 “(4) ISSUANCE OF ORDER OF REMOVAL.—

11 “(A) IN GENERAL.—In the event of con-
12 sent under paragraph (3)(B), or if upon the
13 record made at a hearing described in this sub-
14 section, the Administrator finds that any of the
15 grounds specified in the notice of removal has
16 been established, the Administrator may issue
17 such orders of removal from office as the Ad-
18 ministrator deems appropriate.

19 “(B) EFFECTIVENESS.—An order under
20 subparagraph (A) shall—

21 “(i) become effective at the expiration
22 of 30 days after the date of service upon
23 the subject licensee and the management
24 official concerned (except in the case of an
25 order issued upon consent as described in

1 paragraph (3)(B), which shall become ef-
2 fective at the time specified in such order);
3 and

4 “(ii) remain effective and enforceable,
5 except to such extent as it is stayed, modi-
6 fied, terminated, or set aside by action of
7 the Administrator or a reviewing court in
8 accordance with this section.

9 “(c) AUTHORITY TO SUSPEND OR PROHIBIT PAR-
10 TICIPATION.—

11 “(1) IN GENERAL.—The Administrator may, if
12 the Administrator deems it necessary for the protec-
13 tion of the licensee or the interests of the Adminis-
14 tration, suspend from office or prohibit from further
15 participation in any manner in the management or
16 conduct of the affairs of the licensee, or both, any
17 management official referred to in subsection (b)(1),
18 by written notice to such effect served upon the
19 management official.

20 “(2) EFFECTIVENESS.—A suspension or prohi-
21 bition under paragraph (1)—

22 “(A) shall become effective upon service of
23 notice under paragraph (1); and

1 “(B) unless stayed by a court in pro-
2 ceedings authorized by paragraph (3), shall re-
3 main in effect—

4 “(i) pending the completion of the ad-
5 ministrative proceedings pursuant to a no-
6 tice of intention to remove served under
7 subsection (b); and

8 “(ii) until such time as the Adminis-
9 trator shall dismiss the charges specified in
10 the notice, or, if an order of removal or
11 prohibition is issued against the manage-
12 ment official, until the effective date of any
13 such order.

14 “(3) JUDICIAL REVIEW.—Not later than 10
15 days after any management official has been sus-
16 pended from office or prohibited from participation
17 in the management or conduct of the affairs of a li-
18 censee, or both, under paragraph (1), that manage-
19 ment official may apply to the United States district
20 court for the judicial district in which the home of-
21 fice of the licensee is located, or the United States
22 District Court for the District of Columbia, for a
23 stay of the suspension or prohibition pending the
24 completion of the administrative proceedings pursu-
25 ant to a notice of intent to remove served upon the

1 management official under subsection (b), and such
2 court shall have jurisdiction to stay such action.

3 “(d) AUTHORITY TO SUSPEND ON CRIMINAL
4 CHARGES.—

5 “(1) IN GENERAL.—Whenever a manage-
6 ment official is charged in any information, in-
7 dictment, or complaint authorized by a United
8 States attorney, with the commission of or par-
9 ticipation in a felony involving dishonesty or
10 breach of trust, the Administrator may, by writ-
11 ten notice served upon that management offi-
12 cial, suspend that management official from of-
13 fice or prohibit that management official from
14 further participation in any manner in the man-
15 agement or conduct of the affairs of the li-
16 censee, or both.

17 “(2) EFFECTIVENESS.—A suspension or
18 prohibition under paragraph (1) shall remain in
19 effect until the subject information, indictment,
20 or complaint is finally disposed of, or until ter-
21 minated by the Administrator.

22 “(3) AUTHORITY UPON CONVICTION.—If a
23 judgment of conviction with respect to an of-
24 fense described in paragraph (1) is entered
25 against a management official, then at such

1 time as the judgment is not subject to further
2 appellate review, the Administrator may issue
3 and serve upon the management official an
4 order removing that management official, which
5 removal shall become effective upon service of a
6 copy of the order upon the licensee.

7 “(4) AUTHORITY UPON DISMISSAL OR
8 OTHER DISPOSITION.—A finding of not guilty
9 or other disposition of charges described in
10 paragraph (1) shall not preclude the Adminis-
11 trator from thereafter instituting proceedings to
12 suspend or remove the management official
13 from office, or to prohibit the management offi-
14 cial from participation in the management or
15 conduct of the affairs of the licensee, or both,
16 pursuant to subsection (b) or (c).

17 “(e) NOTIFICATION TO LICENSEES.—Copies of each
18 notice required to be served on a management official
19 under this section shall also be served upon the interested
20 licensee.

21 “(f) PROCEDURAL PROVISIONS; JUDICIAL RE-
22 VIEW.—

23 “(1) HEARING VENUE.—Any hearing provided
24 for in this section shall be—

1 “(A) held in the Federal judicial district or
2 in the territory in which the principal office of
3 the licensee is located, unless the party afforded
4 the hearing consents to another place; and

5 “(B) conducted in accordance with the
6 provisions of chapter 5 of title 5, United States
7 Code.

8 “(2) ISSUANCE OF ORDERS.—After a hearing
9 provided for in this section, and not later than 90
10 days after the Administrator has notified the parties
11 that the case has been submitted for final decision,
12 the Administrator shall render a decision in the mat-
13 ter (which shall include findings of fact upon which
14 its decision is predicated), and shall issue and cause
15 to be served upon each party to the proceeding an
16 order or orders consistent with the provisions of this
17 section.

18 “(3) AUTHORITY TO MODIFY ORDERS.—The
19 Administrator may modify, terminate, or set aside
20 any order issued under this section—

21 “(A) at any time, upon such notice, and in
22 such manner as the Administrator deems prop-
23 er, unless a petition for review is timely filed in
24 a court of appeals of the United States, as pro-
25 vided in paragraph (4)(B), and thereafter until

1 the record in the proceeding has been filed in
2 accordance with paragraph (4)(C); and

3 “(B) upon such filing of the record, with
4 permission of the court.

5 “(4) JUDICIAL REVIEW.—

6 “(A) IN GENERAL.—Judicial review of an
7 order issued under this section shall be exclu-
8 sively as provided in this subsection.

9 “(B) PETITION FOR REVIEW.—Any party
10 to a hearing provided for in this section may
11 obtain a review of any order issued pursuant to
12 paragraph (2) (other than an order issued with
13 the consent of the management official con-
14 cerned, or an order issued under subsection
15 (d)), by filing in the court of appeals of the
16 United States for the circuit in which the prin-
17 cipal office of the licensee is located, or in the
18 United States Court of Appeals for the District
19 of Columbia Circuit, not later than 30 days
20 after the date of service of such order, a written
21 petition praying that the order of the Adminis-
22 trator be modified, terminated, or set aside.

23 “(C) NOTIFICATION TO ADMINISTRA-
24 TION.—A copy of a petition filed under sub-
25 paragraph (B) shall be forthwith transmitted by

1 the clerk of the court to the Administrator, and
2 thereupon the Administrator shall file in the
3 court the record in the proceeding, as provided
4 in section 2112 of title 28, United States Code.

5 “(D) COURT JURISDICTION.—Upon the fil-
6 ing of a petition under subparagraph (A)—

7 “(i) the court shall have jurisdiction,
8 which, upon the filing of the record under
9 subparagraph (C), shall be exclusive, to af-
10 firm, modify, terminate, or set aside, in
11 whole or in part, the order of the Adminis-
12 trator, except as provided in the last sen-
13 tence of paragraph (3)(B);

14 “(ii) review of such proceedings shall
15 be had as provided in chapter 7 of title 5,
16 United States Code; and

17 “(iii) the judgment and decree of the
18 court shall be final, except that the judg-
19 ment and decree shall be subject to review
20 by the Supreme Court of the United States
21 upon certiorari, as provided in section
22 1254 of title 28, United States Code.

23 “(E) JUDICIAL REVIEW NOT A STAY.—The
24 commencement of proceedings for judicial re-
25 view under this paragraph shall not, unless spe-

1 cifically ordered by the court, operate as a stay
2 of any order issued by the Administrator under
3 this section.”.

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