

107TH CONGRESS  
2D SESSION

# S. 1933

To amend the Securities Exchange Act of 1934 and the Securities Act of 1933, to address liability standards in connection with violations of the Federal securities laws, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 12, 2002

Mr. SHELBY introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To amend the Securities Exchange Act of 1934 and the Securities Act of 1933, to address liability standards in connection with violations of the Federal securities laws, 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 “Investor Protection  
5 Act of 2002”.

1 **SEC. 2. LIABILITY STANDARDS IN PRIVATE SECURITIES**  
2 **LITIGATION.**

3 (a) IN GENERAL.—Section 21D(f) of the Securities  
4 Exchange Act of 1934 (15 U.S.C. 78u–4(f)) is amended  
5 to read as follows:

6 “(f) CIVIL LIABILITY.—

7 “(1) JOINT AND SEVERAL LIABILITY FOR DAM-  
8 AGES.—Any covered person against whom a final  
9 judgment is entered in a private action arising under  
10 this title shall be liable for damages jointly and sev-  
11 erally.

12 “(2) SETTLEMENT DISCHARGE.—

13 “(A) IN GENERAL.—A covered person who  
14 settles any private action arising under this title  
15 at any time before final verdict or judgment  
16 shall be discharged from all claims for contribu-  
17 tion brought by other persons.

18 “(B) BAR ORDER.—Upon entry of a settle-  
19 ment described in subparagraph (A) by the  
20 court, the court shall enter a bar order consti-  
21 tuting the final discharge of all obligations to  
22 the plaintiff of the settling covered person aris-  
23 ing out of the action, which order shall bar all  
24 future claims for contribution arising out of the  
25 action—

1 “(i) by any person against the settling  
2 covered person; and

3 “(ii) by the settling covered person  
4 against any person, other than a person  
5 whose liability has been extinguished by  
6 the settlement of the settling covered per-  
7 son.

8 “(C) REDUCTION.—If a covered person en-  
9 ters into a settlement with the plaintiff prior to  
10 final verdict or judgment, the verdict or judg-  
11 ment shall be reduced by the greater of—

12 “(i) an amount that corresponds to  
13 the percentage of responsibility of that cov-  
14 ered person; or

15 “(ii) the amount paid to the plaintiff  
16 by that covered person.

17 “(3) CONTRIBUTION.—

18 “(A) IN GENERAL.—A covered person who  
19 is jointly and severally liable for damages in  
20 any private action arising under this title may  
21 recover contribution from any other person who,  
22 if joined in the original action, would have been  
23 liable for the same damages. A claim for con-  
24 tribution shall be determined based on the per-  
25 centage of responsibility of the claimant and of

1 each person against whom a claim for contribu-  
 2 tion is made, as determined by the court.

3 “(B) STATUTE OF LIMITATIONS FOR CON-  
 4 TRIBUTION.—In any private action arising out  
 5 of this title determining liability, an action for  
 6 contribution shall be brought not later than 6  
 7 months after the date of entry of a final, non-  
 8 appealable judgment in the action.

9 “(4) APPLICABILITY.—Nothing in this sub-  
 10 section shall be construed to create, affect, or in any  
 11 manner modify, the standard for liability associated  
 12 with any action arising under the securities laws.

13 “(5) DEFINITIONS.—For purposes of this  
 14 subsection—

15 “(A) the term ‘covered person’ means—

16 “(i) a defendant in any private action  
 17 arising under this title; or

18 “(ii) a defendant in any private action  
 19 arising under section 11 of the Securities  
 20 Act of 1933, who is an outside director of  
 21 the issuer of the securities that are the  
 22 subject of the action; and

23 “(B) the term ‘outside director’ shall have  
 24 the meaning given such term by rule or regula-  
 25 tion of the Commission.”.

1 (b) CONFORMING AMENDMENT TO THE SECURITIES  
 2 ACT OF 1933.—Section 11(f)(2)(A) of the Securities Act  
 3 of 1933 (15 U.S.C. 77k(f)(2)(A)) is amended by striking  
 4 “in accordance” and all that follows through the period  
 5 and inserting “in accordance with section 21D(f) of the  
 6 Securities Exchange Act of 1934.”.

7 (c) APPLICABILITY.—The amendments made by this  
 8 section shall not affect or apply to any private action aris-  
 9 ing under the securities laws commenced before and pend-  
 10 ing on the date of enactment of this Act.

11 **SEC. 3. PERSONS WHO AID AND ABET VIOLATIONS.**

12 (a) COMMISSION AUTHORITY.—Section 20(e) of the  
 13 Securities Exchange Act of 1934 (15 U.S.C. 78t(e)) is  
 14 amended by striking “knowingly” and inserting “reck-  
 15 lessly”.

16 (b) PRIVATE LITIGATION.—Section 21D of the Secu-  
 17 rities Exchange Act of 1934 (15 U.S.C. 78u–4) is amend-  
 18 ed by adding at the end the following:

19 “(g) PERSONS THAT AID OR ABET VIOLATIONS.—  
 20 Any person that recklessly provides substantial assistance  
 21 to another person in violation of a provision of this title,  
 22 or of any rule or regulation issued under this title, shall  
 23 be deemed to be in violation of such provision to the same  
 24 extent as the person to whom such assistance is pro-  
 25 vided.”.

1 **SEC. 4. STATUTE OF LIMITATIONS.**

2 Title I of the Securities Exchange Act of 1934 (15  
3 U.S.C. 78a et seq.) is amended by adding at the end the  
4 following new section:

5 **“SEC. 37. STATUTE OF LIMITATIONS.**

6 “(a) IN GENERAL.—Except as otherwise specifically  
7 provided in this title, and notwithstanding section 9(e), an  
8 implied private right of action arising under this title may  
9 be brought not later than the earlier of—

10 “(1) 5 years after the date on which the alleged  
11 violation occurred; or

12 “(2) 3 years after the date on which the alleged  
13 violation was discovered.

14 “(b) EFFECTIVE DATE.—The limitations period pro-  
15 vided by this section shall apply to all proceedings com-  
16 menced after the date of enactment of the Investor Protec-  
17 tion Act of 2002.”.

18 **SEC. 5. REPEAL OF CERTAIN CLASS ACTION LIMITATIONS.**

19 (a) SECURITIES EXCHANGE ACT OF 1934.—Section  
20 28 of the Securities Exchange Act of 1934 (15 U.S.C.  
21 78bb) is amended—

22 (1) in subsection (a), by striking “Except as  
23 provided in subsection (f), the” and inserting “The”;  
24 and

25 (2) by striking subsection (f).

1       (b) SECURITIES ACT OF 1933.—Section 16 of the Se-  
2       curities Act of 1933 (15 U.S.C. 77p) is amended to read  
3       as follows:

4       **“SEC. 16. REMEDIES ADDITIONAL.**

5       “‘The rights and remedies provided by this title shall  
6       be in addition to any and all other rights and remedies  
7       that may exist at law or in equity.’”.

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