

108TH CONGRESS
1ST SESSION

S. 1890

To require the mandatory expensing of stock options granted to executive officers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 19, 2003

Mr. ENZI (for himself, Mr. REID, Mr. ENSIGN, Mrs. BOXER, Mr. ALLEN, Mrs. MURRAY, Mr. ALLARD, Mr. BURNS, and Mr. SMITH) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To require the mandatory expensing of stock options granted to executive officers, 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 “Stock Option Account-
5 ing Reform Act”.

1 **SEC. 2. MANDATORY EXPENSING OF STOCK OPTIONS HELD**
2 **BY HIGHLY COMPENSATED OFFICERS.**

3 Section 13 of the Securities Exchange Act of 1934
4 (15 U.S.C. 78m) is amended by adding at the end the
5 following:

6 “(m) MANDATORY EXPENSING OF STOCK OP-
7 TIONS.—

8 “(1) NAMED EXECUTIVE OFFICER.—As used in
9 this subsection, the term ‘named executive officer’
10 means—

11 “(A) all individuals serving as the chief ex-
12 ecutive officer of an issuer, or acting in a simi-
13 lar capacity, during the most recent fiscal year,
14 regardless of compensation level; and

15 “(B) the 4 most highly compensated execu-
16 tive officers, other than an individual identified
17 under subparagraph (A), that were serving as
18 executive officers of an issuer at the end of the
19 most recent fiscal year.

20 “(2) IN GENERAL.—Subject to paragraph (4),
21 every issuer of a security registered pursuant to sec-
22 tion 12 shall show as an expense in the annual re-
23 port of such issuer filed under subsection (a)(2), the
24 fair value of all options to purchase the stock of the
25 issuer granted after December 31, 2004, to a named
26 executive officer of the issuer.

1 “(3) FAIR VALUE.—

2 “(A) IN GENERAL.—The fair value of an
3 option to purchase the stock of the issuer that
4 is subject to paragraph (2) shall be—

5 “(i) equal to the value that would be
6 agreed upon by a willing buyer and seller
7 of such option, who are not under any
8 compulsion to buy or sell such option; and

9 “(ii) shall take into account all of the
10 characteristics and restrictions imposed
11 upon the option.

12 “(B) PRICING MODEL.—To the extent that
13 an option pricing model, such as the Black-
14 Scholes method or a binomial model, is used to
15 determine the fair value of an option, the as-
16 sumed volatility of the underlying stock shall be
17 zero.

18 “(4) EXEMPTIONS.—

19 “(A) SMALL BUSINESS ISSUERS.—This
20 subsection shall not apply to an issuer, if—

21 “(i) the issuer has annual revenues of
22 less than \$25,000,000;

23 “(ii) the issuer is organized under the
24 laws of the United States or Canada;

1 “(iii) the issuer is not an investment
2 company (as such term is defined under
3 section 3 of the Investment Company Act
4 of 1940 (15 U.S.C. 80a-3));

5 “(iv) the aggregate value of the out-
6 standing voting and non-voting common
7 equity securities of the issuer held by non-
8 affiliated parties is less than \$25,000,000;
9 and

10 “(v) in the case of an issuer that
11 meets the criteria in clauses (i) through
12 (iv) and is a majority owned subsidiary,
13 the parent of the issuer meets the require-
14 ments of this paragraph.

15 “(B) DELAYED EFFECTIVENESS.—The re-
16 quirements of this subsection shall not apply to
17 an issuer before the end of the 3-year period
18 beginning on the date of the completion of the
19 initial public offering of the securities of the
20 issuer, and shall only apply to an option to pur-
21 chase the stock of an issuer granted after such
22 date.”.

1 **SEC. 3. PROHIBITION ON EXPENSING AND ECONOMIC IM-**
 2 **PACT STUDY.**

3 (a) PROHIBITION.—Section 19(b) of the Securities
 4 Act of 1933 is amended by adding at the end the fol-
 5 lowing:

6 “(3) PROHIBITION ON EXPENSING STAND-
 7 ARDS.—

8 “(A) IN GENERAL.—The Commission shall
 9 not recognize as “generally accepted” any ac-
 10 counting principle established by a standard
 11 setting body relating to the expensing of stock
 12 options unless—

13 “(i) it complies with the requirements
 14 of subparagraph (B); and

15 “(ii) the economic impact study re-
 16 quired under section 3(b) of the Stock Op-
 17 tion Accounting Reform Act of 2003 has
 18 been completed.

19 “(B) REQUIREMENTS.—A standard re-
 20 ferred to in subparagraph (A) shall require
 21 that—

22 “(i) if an option to purchase the stock
 23 of an issuer that is subject to the require-
 24 ments of section 13(m) of the Securities
 25 Exchange Act of 1934 is exercised, for-
 26 feited, or expires unexercised, any expense

1 that had been reported under that section
2 13(m) with respect to such option shall be
3 reported in the fiscal year in which the op-
4 tion expires or is forfeited as a reduction
5 of the total expense required to be reported
6 under that section 13(m) during that fiscal
7 year; and

8 “(ii) to the extent that any reduction
9 required under clause (i) exceeds total op-
10 tion expenses for any fiscal year, such ex-
11 cess shall be reported as income with re-
12 spect to options to purchase the stock of
13 the issuer.”.

14 (b) ECONOMIC IMPACT STUDY.—The Secretary of
15 Commerce and the Secretary of Labor shall conduct and
16 complete a joint study on the economic impact of the man-
17 datory expensing of all employee stock options, including
18 the impact upon—

19 (1) the use of broad-based stock option plans in
20 expanding employee corporate ownership to workers
21 at a wide range of income levels, with particular
22 focus upon non-executive employees;

23 (2) the role of such plans in the recruitment
24 and retention of skilled workers;

1 (3) the role of such plans in stimulating re-
2 search and innovation;

3 (4) the effect of such plans in stimulating the
4 economic growth of the United States; and

5 (5) the role of such plans in strengthening the
6 international competitiveness of businesses organized
7 under the laws of the United States.

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