

108TH CONGRESS
1ST SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. ENZI (for himself, Mr. REID, Mr. ENSIGN, Mrs. BOXER, and Mr. ALLEN)
introduced the following bill; which was read twice and referred to the
Committee on _____

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”.

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

8 Section 13 of the Securities Exchange Act of 1934
9 (15 U.S.C. 78m) is amended by adding at the end the
10 following:

1 “(m) MANDATORY EXPENSING OF STOCK OP-
2 TIONS.—

3 “(1) NAMED EXECUTIVE OFFICER.—As used in
4 this subsection, the term ‘named executive officer’
5 means—

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

10 “(B) the 4 most highly compensated execu-
11 tive officers, other than an individual identified
12 under subparagraph (A), that were serving as
13 executive officers of an issuer at the end of the
14 most recent fiscal year.

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

22 “(3) FAIR VALUE.—

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

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

5 “(ii) shall take into account all of the
6 characteristics and restrictions imposed
7 upon the option.

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

14 “(4) EXEMPTIONS.—

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

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

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

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

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

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

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

19 **SEC. 3. PROHIBITION ON EXPENSING AND ECONOMIC IM-**
20 **PACT STUDY.**

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

24 “(3) PROHIBITION ON EXPENSING STAND-
25 ARDS.—

1 “(A) IN GENERAL.—The Commission shall
2 not recognize as “generally accepted” any ac-
3 counting principle established by a standard
4 setting body relating to the expensing of stock
5 options unless—

6 “(i) it complies with the requirements
7 of subparagraph (B); and

8 “(ii) the economic impact study re-
9 quired under section 3(b) of the Stock Op-
10 tion Accounting Reform Act of 2003 has
11 been completed.

12 “(B) REQUIREMENTS.—A standard re-
13 ferred to in subparagraph (A) shall require
14 that—

15 “(i) if an option to purchase the stock
16 of an issuer that is subject to the require-
17 ments of section 13(m) of the Securities
18 Exchange Act of 1934 is exercised, for-
19 feited, or expires unexercised, any expense
20 that had been reported under that section
21 13(m) with respect to such option shall be
22 reported in the fiscal year in which the op-
23 tion expires or is forfeited as a reduction
24 of the total expense required to be reported

1 under that section 13(m) during that fiscal
2 year; and

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

9 (b) ECONOMIC IMPACT STUDY.—The Secretary of
10 Commerce and the Secretary of Labor shall conduct and
11 complete a joint study on the economic impact of the man-
12 datory expensing of all employee stock options, including
13 the impact upon—

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

18 (2) the role of such plans in the recruitment
19 and retention of skilled workers;

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

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

1 (5) the role of such plans in strengthening the
2 international competitiveness of businesses organized
3 under the laws of the United States.