

118TH CONGRESS
1ST SESSION

S. 1181

To amend the Federal Deposit Insurance Act to improve financial stability,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 18, 2023

Mr. REED (for himself and Mr. GRASSLEY) introduced the following bill;
which was read twice and referred to the Committee on Banking, Hous-
ing, and Urban Affairs

A BILL

To amend the Federal Deposit Insurance Act to improve
financial stability, 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 “Bank Management Ac-
5 countability Act”.

6 **SEC. 2. SYSTEMIC RISK DETERMINATION.**

7 (a) IN GENERAL.—Section 13(c)(4)(G) of the Fed-
8 eral Deposit Insurance Act (12 U.S.C. 1823(c)(4)(G)) is
9 amended by adding at the end the following:

1 “(vi) RECOUPMENT OF COMPENSA-
2 TION FROM SENIOR EXECUTIVES AND DI-
3 RECTORS.—

4 “(I) IN GENERAL.—The Corpora-
5 tion, as receiver or conservator of an
6 insured depository institution under
7 clause (i), may recover from any cur-
8 rent or former senior executive or di-
9 rector of the insured depository insti-
10 tution, or of a covered affiliate with
11 respect to the insured depository insti-
12 tution, who is substantially respon-
13 sible for the failed condition of the in-
14 sured depository institution, any com-
15 pensation received during the 2-year
16 period preceding the date on which
17 the Corporation was appointed as the
18 receiver or conservator of the insured
19 depository institution, except that, in
20 the case of fraud, no time limit shall
21 apply.

22 “(II) COST CONSIDERATIONS.—
23 In seeking to recover any compensa-
24 tion under subclause (I), the Corpora-
25 tion shall weigh the financial and de-

1 terrent benefits of that recovery
2 against the cost of executing the re-
3 covery.

4 “(III) PERSONAL LIABILITY.—

5 Any liability insurance policy for a
6 senior executive or director described
7 in subclause (I) shall exclude from
8 coverage any liability under this
9 clause.

10 “(vii) PROHIBITION AUTHORITY.—

11 “(I) IN GENERAL.—The Corpora-
12 tion may take any action authorized
13 by subclause (II), if the Corporation
14 determines that—

15 “(aa) a senior executive or a
16 director of an insured depository
17 institution with respect to which
18 the Corporation has taken action
19 or provided assistance under
20 clause (i), or of a covered affiliate
21 with respect to such an insured
22 depository institution, before the
23 appointment of the Corporation
24 as receiver or conservator, has,
25 directly or indirectly—

1 “(AA) violated any law
2 or regulation;

3 “(BB) violated any
4 cease-and-desist order that
5 has become final;

6 “(CC) violated any con-
7 dition imposed in writing by
8 a Federal agency in connec-
9 tion with any action on any
10 application, notice, or re-
11 quest by the insured deposi-
12 tory institution or covered
13 affiliate (as applicable) or
14 the senior executive or direc-
15 tor (as applicable);

16 “(DD) violated any
17 written agreement between
18 the insured depository insti-
19 tution or covered affiliate
20 (as applicable) and the Fed-
21 eral agency described in
22 subitem (CC);

23 “(EE) engaged or par-
24 ticipated in any unsafe or
25 unsound practice; or

1 “(FF) committed or en-
2 gaged in any act, omission,
3 or practice that constitutes a
4 breach of the fiduciary duty
5 of that senior executive or
6 director; and

7 “(bb) by reason of the viola-
8 tion, practice, or breach de-
9 scribed in any subitem of item
10 (aa), that senior executive or di-
11 rector has received financial gain
12 or other benefit, and that viola-
13 tion, practice, or breach contrib-
14 uted to the failure of the insured
15 depository institution.

16 “(II) AUTHORIZED ACTIONS.—
17 The Corporation may serve upon a
18 senior executive or director with re-
19 spect to whom the Corporation has
20 made a determination under subclause
21 (I) a written notice of the intention of
22 the Corporation to prohibit any fur-
23 ther participation by that individual,
24 in any manner, in the conduct of the
25 affairs of any financial company for a

1 period of time determined by the Cor-
2 poration to be commensurate with
3 that violation, practice, or breach, ex-
4 cept that such period shall be not less
5 than 2 years.

6 “(viii) DEFINITIONS.—In this sub-
7 paragraph:

8 “(I) COMPENSATION.—The term
9 ‘compensation’ means any direct or
10 indirect financial remuneration re-
11 ceived from an insured depository in-
12 stitution, or from a covered affiliate
13 with respect to an insured depository
14 institution, including salary, bonuses,
15 incentives, benefits, severance pay, de-
16 ferred compensation, golden parachute
17 benefits, benefits derived from an em-
18 ployment contract or other compensa-
19 tion or benefit arrangement, per-
20 quisites, stock option plans, post-em-
21 ployment benefits, profits realized
22 from a sale of securities in the insured
23 depository institution or the covered
24 affiliate (as applicable), or any cash or
25 noncash payments or benefits granted

1 to or for the benefit of a senior execu-
2 tive or director.

3 “(II) COVERED AFFILIATE.—The
4 term ‘covered affiliate’ means, with
5 respect to an insured depository insti-
6 tution, any—

7 “(aa) bank holding company
8 (as defined in section 2(a) of the
9 Bank Holding Company Act of
10 1956 (12 U.S.C. 1841(a))) that
11 controls the insured depository
12 institution;

13 “(bb) savings and loan hold-
14 ing company (as defined in sec-
15 tion 10(a) of the Home Owners’
16 Loan Act (12 U.S.C. 1467a(a)))
17 that directly or indirectly controls
18 the insured depository institu-
19 tion;

20 “(cc) subsidiary of the in-
21 sured depository institution; or

22 “(dd) affiliate (as defined in
23 section 2 of the Bank Holding
24 Company Act of 1956 (12 U.S.C.

1 1841(k))) of the insured deposi-
2 tory institution.

3 “(III) DIRECTOR.—The term ‘di-
4 rector’ means a member of the board
5 of directors of a company, or of a
6 board or committee performing a
7 similar function to a board of direc-
8 tors, who has authority to vote on
9 matters before the board or com-
10 mittee.

11 “(IV) FINANCIAL COMPANY.—
12 The term ‘financial company’ has the
13 meaning given the term in section
14 201(a) of the Dodd-Frank Wall Street
15 Reform and Consumer Protection Act
16 (12 U.S.C. 5381(a)).

17 “(V) SENIOR EXECUTIVE.—The
18 term ‘senior executive’—

19 “(aa) means any individual
20 who participates or has authority
21 to participate (other than in the
22 capacity of a director) in major
23 policymaking functions of a com-
24 pany, regardless of whether the
25 individual has an official title or

1 the title of the individual des-
2 ignates the individual as an as-
3 sistant; and

4 “(bb) includes the chairman
5 of the board, the president, any
6 vice president, the secretary, the
7 treasurer or chief financial offi-
8 cer, the general partner, and any
9 manager of a company, unless
10 the individual—

11 “(AA) is excluded, by
12 resolution of the board of di-
13 rectors, the bylaws, the op-
14 erating agreement, or the
15 partnership agreement of
16 the company, from partici-
17 pation (other than in the ca-
18 pacity of a director) in
19 major policymaking func-
20 tions of the company; and

21 “(BB) does not actually
22 participate in major policy-
23 making functions of the
24 company.”.

1 (b) REGULATIONS.—The Federal Deposit Insurance
 2 Corporation shall promulgate regulations to administer
 3 and carry out this section, in a manner that is not less
 4 stringent than the manner set forth in section 380.7 of
 5 title 12, Code of Federal Regulations (as in effect on the
 6 date of enactment of this Act).

7 **SEC. 3. ORDERLY LIQUIDATION AUTHORITY.**

8 Title II of the Dodd-Frank Wall Street Reform and
 9 Consumer Protection Act (12 U.S.C. 5381 et seq.) is
 10 amended—

11 (1) in section 210(s) (12 U.S.C. 5390(s)), by
 12 adding at the end the following:

13 “(4) PERSONAL LIABILITY.—Any liability insur-
 14 ance policy for a senior executive or director de-
 15 scribed in paragraph (1) shall exclude from coverage
 16 any liability under this subsection.”; and

17 (2) in section 213(b) (12 U.S.C. 5393(b))—

18 (A) in paragraph (1)(C), by inserting
 19 “and” at the end;

20 (B) in paragraph (2), by striking “; and”
 21 and inserting a period; and

22 (C) by striking paragraph (3).

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