

113TH CONGRESS
1ST SESSION

S. 652

To protect investors by fostering transparency and accountability of attorneys
in private securities litigation.

IN THE SENATE OF THE UNITED STATES

MARCH 22, 2013

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

A BILL

To protect investors by fostering transparency and
accountability of attorneys in private securities litigation.

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 “Securities Litigation
5 Attorney Accountability and Transparency Act”.

1 **SEC. 2. DISCLOSURES OF PAYMENTS, FEE ARRANGEMENTS,**
2 **CONTRIBUTIONS, AND OTHER POTENTIAL**
3 **CONFLICTS OF INTEREST BETWEEN PLAIN-**
4 **TIFF AND ATTORNEYS.**

5 (a) SECURITIES EXCHANGE ACT OF 1934.—Section
6 21D(a) of the Securities Exchange Act of 1934 (15 U.S.C.
7 78u-4(a)) is amended by adding at the end the following:

8 “(10) DISCLOSURES REGARDING PAYMENTS.—

9 “(A) SWORN CERTIFICATIONS RE-
10 QUIRED.—

11 “(i) IN GENERAL.—In any private ac-
12 tion arising under this title, each plaintiff
13 and any attorney for such plaintiff shall
14 provide sworn certifications, which shall—

15 “(I) be personally signed by such
16 plaintiff and each such attorney, re-
17 spectively;

18 “(II) be filed with the complaint;
19 and

20 “(III) identify any direct or indi-
21 rect payment, or promise of any pay-
22 ment, by such attorney, or any person
23 affiliated with such attorney, to such
24 plaintiff, or any person affiliated with
25 such plaintiff, beyond the pro rata
26 share of any recovery received by the

1 plaintiff, except as ordered or ap-
2 proved by the court in accordance
3 with paragraph (4).

4 “(ii) COURT ACTIONS.—Upon disclo-
5 sure of any payment or promise of pay-
6 ment described in clause (i), the court shall
7 disqualify the attorney from representing
8 the plaintiff.

9 “(B) DEFINITION.—For purposes of this
10 paragraph, the term ‘payment’ includes the
11 transfer of money and any other thing of value,
12 including the provision of services, other than
13 representation of the plaintiff in the private ac-
14 tion arising under this title.

15 “(11) DISCLOSURES REGARDING LEGAL REP-
16 RESENTATIONS.—

17 “(A) IN GENERAL.—In any private action
18 arising under this title, each plaintiff and any
19 attorney for such plaintiff shall provide sworn
20 certifications, which shall—

21 “(i) be personally signed by such
22 plaintiff and each such attorney, respec-
23 tively;

24 “(ii) be filed with the complaint; and

1 “(iii) identify the nature and terms of
2 any legal representation provided by such
3 attorney, or any person affiliated with such
4 attorney, to such plaintiff, or any person
5 affiliated with such plaintiff, other than
6 the representation of the plaintiff in the
7 private action arising under this title.

8 “(B) COURT ACTIONS.—The court—

9 “(i) may allow certifications under
10 subparagraph (A) to be made under seal;

11 “(ii) shall review such certifications to
12 determine whether cause exists to believe
13 that the nature or terms of the fee ar-
14 rangement for any other matter influenced
15 the selection and retention of counsel in
16 the private action arising under this title;

17 “(iii) may conduct a factual inquiry or
18 refer the question to a magistrate, if the
19 court makes a finding described in clause
20 (ii); and

21 “(iv) shall disqualify the attorney
22 from representing the plaintiff in any ac-
23 tion arising under this title, if the court
24 finds, after such inquiry, that the nature
25 or terms of the fee arrangement for any

1 other matter influenced the selection and
2 retention of counsel in any such action.

3 “(12) DISCLOSURES REGARDING CONTRIBU-
4 TIONS.—In any private action arising under this
5 title, each plaintiff and any attorney for such plain-
6 tiff shall provide sworn certifications, which shall—

7 “(A) be personally signed by such plaintiff
8 and each such attorney, respectively;

9 “(B) be filed with the complaint; and

10 “(C) identify any contribution made during
11 the 5-year period preceding the date of filing of
12 the complaint by such attorney, any person af-
13 filiated with such attorney, or any political ac-
14 tion committee controlled by such attorney, to
15 any elected official with real or apparent au-
16 thority to retain counsel for such plaintiff or to
17 select or appoint, influence the selection or ap-
18 pointment of, or oversee any individual or group
19 of individuals with that authority.”.

20 (b) SECURITIES ACT OF 1933.—Section 27(a) of the
21 Securities Act of 1933 (15 U.S.C. 77z-1(a)) is amended
22 by adding at the end the following:

23 “(9) DISCLOSURES REGARDING PAYMENTS.—

24 “(A) SWORN CERTIFICATIONS RE-
25 QUIRED.—

1 “(i) IN GENERAL.—In any private ac-
2 tion arising under this title, each plaintiff
3 and any attorney for such plaintiff shall
4 provide sworn certifications, which shall—

5 “(I) be personally signed by such
6 plaintiff and each such attorney, re-
7 spectively;

8 “(II) be filed with the complaint;
9 and

10 “(III) identify any direct or indi-
11 rect payment, or promise of any pay-
12 ment, by such attorney, or any person
13 affiliated with such attorney, to such
14 plaintiff, or any person affiliated with
15 such plaintiff, beyond the pro rata
16 share of any recovery received by the
17 plaintiff, except as ordered or ap-
18 proved by the court in accordance
19 with paragraph (4).

20 “(ii) COURT ACTIONS.—Upon disclo-
21 sure of any payment or promise of pay-
22 ment described in clause (i), the court shall
23 disqualify the attorney from representing
24 the plaintiff.

1 “(B) DEFINITION.—For purposes of this
 2 paragraph, the term ‘payment’ shall include the
 3 transfer of money and any other thing of value,
 4 including the provision of services, other than
 5 representation of the plaintiff in the private ac-
 6 tion arising under this title.

7 “(10) DISCLOSURES REGARDING LEGAL REP-
 8 RESENTATIONS.—

9 “(A) IN GENERAL.—In any private action
 10 arising under this title, each plaintiff and any
 11 attorney for such plaintiff shall provide sworn
 12 certifications, which shall—

13 “(i) be personally signed by such
 14 plaintiff and each such attorney, respec-
 15 tively;

16 “(ii) be filed with the complaint; and

17 “(iii) identify the nature and terms of
 18 any legal representation provided by such
 19 attorney, or any person affiliated with such
 20 attorney, to such plaintiff, or any person
 21 affiliated with such plaintiff, other than
 22 the representation of the plaintiff in the
 23 private action arising under this title.

24 “(B) COURT ACTIONS.—The court—

1 “(i) may allow certifications under
2 subparagraph (A) to be made under seal;

3 “(ii) shall review such certifications to
4 determine whether cause exists to believe
5 that the nature or terms of the fee ar-
6 rangement for any other matter influenced
7 the selection and retention of counsel in
8 the private action arising under this title;

9 “(iii) may conduct a factual inquiry or
10 refer the question to a magistrate, if the
11 court makes a finding described in clause
12 (ii); and

13 “(iv) shall disqualify the attorney
14 from representing the plaintiff in any ac-
15 tion arising under this title, if the court
16 finds, after such inquiry, that the nature
17 or terms of the fee arrangement for any
18 other matter influenced the selection and
19 retention of counsel in the private action
20 arising under this title.

21 “(11) DISCLOSURES REGARDING CONTRIBU-
22 TIONS.—In any private action arising under this
23 title, each plaintiff and any attorney for such plain-
24 tiff shall provide sworn certifications, which shall—

1 “(A) be personally signed by such plaintiff
2 and each such attorney, respectively;

3 “(B) be filed with the complaint; and

4 “(C) identify any contribution made during
5 the 5-year period preceding the date of filing of
6 the complaint by such attorney, any person af-
7 filiated with such attorney, or any political ac-
8 tion committee controlled by such attorney, to
9 any elected official with real or apparent au-
10 thority to retain counsel for such plaintiff or to
11 select or appoint, influence the selection or ap-
12 pointment of, or oversee any individual or group
13 of individuals with that authority.”.

14 **SEC. 3. SELECTION OF LEAD COUNSEL.**

15 (a) SECURITIES EXCHANGE ACT OF 1934.—Section
16 21D(a)(3)(B)(v) of the Securities Exchange Act of 1934
17 (15 U.S.C. 78u–4(a)(3)(B)(v)) is amended by adding at
18 the end the following: “In exercising the discretion of the
19 court over the approval of lead counsel, the court shall
20 employ a competitive bidding process as one of the criteria
21 in the selection and retention of counsel for the most ade-
22 quate plaintiff, unless the court determines on the record
23 that such a process is not feasible.”.

24 (b) SECURITIES ACT OF 1933.—Section
25 27(a)(3)(B)(v) of the Securities Act of 1933 (15 U.S.C.

1 77z-1(a)(3)(B)(v)) is amended by adding at the end the
2 following: “In exercising the discretion of the court over
3 the approval of lead counsel, the court shall employ a com-
4 petitive bidding process as one of the criteria in the selec-
5 tion and retention of counsel for the most adequate plain-
6 tiff, unless the court determines on the record that such
7 a process is not feasible.”.

8 **SEC. 4. STUDY OF AVERAGE HOURLY FEES IN SECURITIES**
9 **CLASS ACTIONS.**

10 (a) **STUDY AND REVIEW REQUIRED.**—The Comp-
11 troller General of the United States (in this section re-
12 ferred to as the “Comptroller General”) shall conduct a
13 study and review of fee awards to lead counsel in securities
14 class actions during the 7-year period preceding the date
15 of enactment of this Act, to determine the effective aver-
16 age hourly rate for lead counsel in such actions. Such
17 study and review shall also consider lead counsel per-
18 quisites, including travel and accommodation.

19 (b) **REPORT REQUIRED.**—Not later than 1 year after
20 the date of enactment of this Act, the Comptroller General
21 shall submit a report to the Committee on Banking, Hous-
22 ing, and Urban Affairs of the Senate and the Committee
23 on Financial Services of the House of Representatives on
24 the results of the study and review required by this sec-

1 tion. The Comptroller General shall submit an updated re-
2 port every 3 years thereafter.

3 (c) DEFINITION.—For purposes of this section, the
4 term “securities class action” means a private class action
5 arising under the Securities Act of 1933 (15 U.S.C. 77
6 et seq.) or the Securities Exchange Act of 1934 (15 U.S.C.
7 78 et seq.) that is brought as a plaintiff class action pur-
8 suant to the Federal Rules of Civil Procedure.

○