

The JOBS Act 4.0

Section-by-Section

Title I: Encouraging companies to be publicly-traded

Sec. 101: S.3980 - Middle Market IPO Cost Underwriting Act. Requires an SEC study of middle-market IPO underwriting costs to determine how to encourage more middle-market IPOs. Senators Cynthia Lummis (R-WY), Mark Warner (D-VA), Kyrsten Sinema (D-AZ), and Bill Hagerty (R-TN).

Sec. 102: Emerging Growth Company Extension Act. Extends the JOBS Act emerging growth company (EGC) status from five to ten years. This gives regulatory relief to small and newly public companies looking to grow and expand their operations – critical drivers of economic growth and job creation.

Sec. 103: S.3923 - Dodd-Frank Material Disclosure Improvement Act. Companies must already disclose material information that would be important to the reasonable investor. This bill repeals Dodd-Frank’s duplicative securities disclosure provisions on conflict minerals, mine safety, resource extraction, and pay ratio, thus reducing unnecessary costs for many public companies. Senators Kevin Cramer (R-ND) and Thom Tillis (R-NC).

Sec. 104: S.3919 - Reporting Requirements Reduction Act of 2022. Permits public companies to choose to file reports semiannually rather than quarterly, to reduce short-term thinking by public companies and reduce expensive, unnecessary regulatory filings. Senator Thom Tillis (R-NC).

Sec. 105: S.3945 - Restoring Shareholder Transparency Act. Protects public companies from bad proxy advice by ensuring that advice given by proxy advisors (e.g., ISS & Glass Lewis) is subject to SEC regulation. Further limits frivolous shareholder proposals by raising the 14a-8 threshold to 1%, rescinding the significant social policy exception in 14a-8, and requiring companies to opt-in to Rule 14a-8. This bill is similar to regulations made under former SEC chairman Jay Clayton meant to cut down on proxy abuse but not enforced by the current SEC regime. Senators Bill Hagerty (R-TN), Thom Tillis (R-NC), Cynthia Lummis (R-WY), and Steve Daines (R-MT).

Sec. 106: S.3965 - Increasing Access to Adviser Information Act. Permanently allows brokers to receive payments for research without registering as investment advisers; EU regulations now mandate separate payments from research rather than through commissions. This will help encourage investment research into smaller public companies. Senator Jerry Moran (R-KS).

Sec. 107: S.3097 - The Main Street Growth Act. Provides for the creation of venture exchanges so that small issuers can concentrate trading on one exchange rather than spread out across multiple exchanges. This will improve capital formation for small issuers. Senator John Kennedy (R-LA).

Sec. 108: S.3947 - The Intelligent Tick Study Act. Requires the SEC to study whether it would enhance capital formation to allow small issuers to trade in increments (tick sizes) other than one penny, like five cents or in sub-penny increments. Further, authorizes, but does not require, the SEC to mandate trading of wider tick sizes to encourage capital formation for emerging growth companies. Senator John Kennedy (R-LA).

Title II: Improving the market for private capital

Sec 201: S.3503 - Expanding Access to Capital for Rural Job Creators Act. Requires the SEC Small Business Advocate to consider access to capital in rural areas. This will help ensure that the SEC continues to work towards improving access to capital for rural areas. Senators John Kennedy (R-LA), Tina Smith (D-MN), Gary Peters (D-MI), and Jacky Rosen (D-NV).

Sec. 202: S.3976 - Expanding American Entrepreneurship Act. Increase permitted size of angel funds that can only have fewer than 250 investors to 500 investors, and from \$10 million to \$50 million. This will expand access to angel capital to small and medium-sized companies and improve investment opportunities for smaller dollar investors. Senators Jerry Moran (R-KS) and Tim Scott (R-SC).

Sec. 203: S.3914 - Developing and Empowering our Aspiring Leaders Act of 2022. Allows VC funds not registered with SEC to acquire eligible portfolio investments through the secondary market (indirectly) instead of directly expanding access to capital for small and medium-sized companies. Senator Mike Rounds (R-SD).

Sec 204: S.3939 - Small Entrepreneurs' Empowerment and Development (SEED) Act of 2022. Enacts a micro-offering safe harbor that would exempt specific offerings of up to \$500,000 from state and federal securities registration requirements. This will help small companies raise capital by reducing the associated burdens of regulatory red tape, paperwork, and the threat of lawsuits. Senators Tim Scott (R-SC) and Jerry Moran (R-KS).

Sec. 205: S.3922 - Unlocking Capital for Small Businesses Act of 2022. Exempt “finders,” meaning individuals who help companies – like a local dry cleaner, café, or bookstore – identify investors but don’t handle funds or securities from SEC broker registration. This will make it easier for small companies to find investors. Senator Kevin Cramer (R-ND).

Sec. 206: S.3391 - Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act of 2021. Exempts from SEC registration persons who help buy and sell small companies (less than \$25 million in gross revenue) as a whole (i.e., M&A brokers) and don’t handle any funds or securities. This will help small companies use professional services to sell their company or expand their operations by purchasing another one. Senator John Kennedy (R-LA).

Title III: Enhancing retail investor access to investment opportunities

Sec. 301: Small Business Audit Correction Act. Exempts small non-custodial broker-dealers from the requirement to use a PCAOB-registered audit firm for their annual audits, which will help small investment brokers find auditors better suited for their size and operations.

Sec. 302: S.3961 - Access to Small Business Investor Capital Act. Eliminates acquired fund fees and expense line item for BDCs from prospectus fee tables to expand capital access for small and medium-sized companies. Senators Steve Daines (R-MT) and Robert Menendez (D-NJ).

Sec. 303: S.3931 - Gig Worker Equity Compensation Act. Exempt from SEC registration securities offerings made to “gig workers” for compensatory purposes. This will let “gig workers” receive compensation in the form of equity in the company they work for. Senators Cynthia Lummis (R-WY) and Tim Scott (R-SC).

Sec. 304: S.3948 - Increasing Investor Opportunities Act. Allows certain types of publicly available investment funds to invest in private funds. This allows retail investors to invest in potentially high-yield private funds by investing in a fund with all the protections of being traded publicly. Senator Steve Daines (R-MT).

Sec. 305: S.3967 - Improving Crowdfunding Opportunities Act. Improves the crowdfunding statute by preempting state securities law registration for secondary transactions and reducing unnecessary and costly regulations on crowdfunding portals (state securities law registration is already preempted for primary transactions). This will expand access to capital for small companies by making crowdfunding more workable. Senator Jerry Moran (R-KS).

Sec. 306: S.3921 - Equal Opportunity for all Investors Act. Permits self-certification of accredited investor status under Rule 506(c) and expands the definition of an accredited investor by (1) requiring the SEC to establish an examination to allow an individual to obtain accredited investor status regardless of their income level and (2) allowing anyone to invest in Regulation D securities up to 10% of their income. This will ensure that all Americans can access high-growth investment opportunities and expand access to capital for private companies. Senators Thom Tillis (R-NC) and Tim Scott (R-SC).

Sec. 307: S.3966 - Facilitating Main Street Offerings Act. Preempt state securities law registration for secondary transactions for Regulation A Tier 2 securities (state securities law registration is already preempted for primary transactions). This will help companies raise money through Reg. A+ by improving the secondary market for Reg A+ securities. Senator Jerry Moran (R-KS).

Sec. 308: Retirement Savings Modernization Act. Amends the Employee Retirement Income Security Act of 1974 to clarify that retirement plan sponsors may offer diversified plans with alternative assets, including private equity. This legislation will give defined contribution plan savers, including 401(k) savers, access to the same asset classes that are already offered in most defined benefit plans—asset classes that have been shown to increase participant balances at retirement when appropriately diversified.

Title IV: Improving regulatory oversight

Sec. 401: Small Entity SEC Update Act. Directs the SEC to update the definitions of “small entities” under the Regulatory Flexibility Act. This would update the low asset size limits in these definitions, so SEC would need to consider regulatory impacts on more small companies.

Sec. 402: S.3916 - Increasing Opportunities for Retail Investors Act. Authorize the SEC to increase any statutory exemption ceiling, such as those governing offering sizes, if the SEC determines it appropriate. This clarification would make it easier for the SEC to reduce the regulatory burden on smaller entities. For example, the SEC could increase the small issues exemption (Section 3(b)(1) of the Securities Act) beyond the \$5 million statutory limit. Senator Mike Rounds (R-SD).

Sec. 403: S.3716 - Tracking Bad Actors Act of 2022. Requires the SEC to create a public database of persons (bad actors) subject to criminal, civil, and administrative actions relating to financial services to make it easier to protect average investors from financial fraud. Senators John Kennedy (R-LA) and Cynthia Lummis (R-WY).

Sec. 404: S.1209 - Protecting Investors’ Personally Identifiable Information Act. Prohibits the Consolidated Audit Trail (CAT) – a database of trades in equities and listed options – from having personally identifiable information (PII) to protect the PII of all retail investors. Senators John Kennedy (R-LA), Cynthia Lummis (R-WY), Mike Rounds (R-SD), Jerry Moran (R-KS), Steve Daines (R-MT), Kevin Cramer (R-ND), and John Boozman (R-AR).

Sec. 405: S.3930 - Administrative Enforcement Fairness Act of 2022. Revises SEC administrative law proceedings to permit defendants (except for registered entities like broker-dealers, investment advisers, transfer agents) to elect a traditional Article III federal court. This will protect the rights of those being sued by the SEC. Senators Cynthia Lummis (R-WY) and Bill Hagerty (R-TN).

Sec. 406: S.3198 - Registration for Index Linked Annuities Act. Requires the SEC to adopt a new registration form for index-linked annuities, which have returns based on underlying index or indexes. This will enable the SEC to better tailor regulatory filings for index-linked annuities. Senators Tina Smith (D-MN) and Thom Tillis (R-NC).

Sec. 407: Alleviating Stress Test Burdens to Help Investors Act. Amends the Dodd-Frank Act stress test requirement, so that bank capital tests are not applied to mutual funds to reduce unnecessary costs on mutual funds.