

Legislative Bulletin.....December 18, 2012

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**H.R. 6504 – Small Business Investment Company Modernization Act
(Chabot, R-OH)**

Order of Business: The bill is scheduled to be considered on Tuesday, December 18, 2012, under a motion to suspend the rules requiring two thirds majority vote for passage.

Summary: H.R. 6504 increases the maximum amount of outstanding leverage the Small Business Administration (SBA) can make available to two or more commonly-controlled small business investment companies (SBICs) from \$225 million to \$350 million. According to the House Committee on Small Business, successful fund managers in the SBIC program are permitted to obtain a second SBIC license. Each fund manager is limited under current law to invest in domestic small businesses up to a \$225 million cap in leverage. This bill increases the leverage cap to \$350 million to provide SBIC fund managers additional funding to small businesses.

Additional Background: In 1958, Congress created the [SBIC Program](#) as a public-private, government-backed venture capital program that is statutorily mandated to operate on a zero-subsidy basis, thus requiring no appropriation from the taxpayer. Fees obtained by the SBA from participants as well as any recoveries on failed loans provide for any expected losses.

After raising sufficient private capital (\$5 million) and having their business plans approved by SBA, fund managers utilize an SBA guaranteed instrument sold into the commercial market. Funds “leverage” the government guaranteed to provide additional capital to small businesses. The SBIC repays the federal government out of the proceeds

from the investments it makes. To mitigate potential losses, SBA imposes a dollar cap on the size of funds and the amount of leverage. SBIC program recipients include: Apple, Costco, Callaway Golf, Outback Steakhouse, and Staples. The SBA oversees more than 300 licensed funds with over \$18 billion in capital (\$8.8 billion of SBA leverage commitments and \$9.4 billion of commitments from private investors

In FY 2012, SBICs provided approximately \$3 billion to more than 1,000 small businesses. The [Small Business Investors Alliance](#) states that SBICs have invested more than \$58 billion to over 100,000 domestic small businesses since 1958.

Committee Action: Representative Steve Chabot (R-OH) introduced H.R. 6504 on September 21, 2012, which was referred to the House Committee on Small Business. No further committee action has occurred on the bill.

Administration Position: No Statement of Administration Policy is available.

Outside Groups Supporting the bill: The Small Business Investor Alliance and the US Chamber of Commerce.

Cost to Taxpayers: No Congressional Budget Office (CBO) cost estimate for the bill has been released.

Does the Bill Expand the Size and Scope of the Federal Government?: The bill increases the maximum amount of outstanding leverage made available by the SBA to two or more commonly controlled SBICs from \$225 million to \$350 million.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: No.

Constitutional Authority: The Constitutional Authority Statement published in the Congressional Record upon introduction of the bill states, “Congress has the power to enact this legislation pursuant to the following: Article I Section 8 clause 3 ‘To regulate commerce with foreign nations, and among the several states and with the Indian tribes.’”

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Concur in the Senate Amendment to H.R. 3783 - Countering Iran in the Western Hemisphere Act of 2012, as amended (Duncan, R-SC)

Order of Business: The legislation is expected to be considered on December 18, 2012, under a motion to suspend the rules and pass the bill.

Summary of the Senate Amendment: The Senate Amendment makes a change to the report that is required by the Secretary of State. The Senate Amendment states that this report may be submitted in a classified form, but it shall contain an unclassified summary of policy recommendations to address the growing Iranian threat in the Western Hemisphere. The text of the amendment can be [viewed here](#).

Summary of House Passed Version: H.R. 3783 states that it is the policy of the United States “to use a comprehensive government-wide strategy to counter Iran’s growing hostile presence and activity in the Western Hemisphere by working together with United States allies and partners in the region to mutually deter threats to United States interests by the Government of Iran, the Iranian Islamic Revolutionary Guard Corps (IRGC), the IRGC’s Qods Force, and Hezbollah.”

The legislation requires the Secretary of State to conduct an assessment of the threats posed to the U.S. by Iran’s growing presence and activity in the Western Hemisphere. The results of this assessment will be submitted in a report to Congress.

The legislation sets requirements for the strategy, including that it take into account:

- “A description of the presence, activities, and operations of Iran, the Iranian Islamic Revolutionary Guard Corps (IRGC), its Qods Force, Hezbollah, and other terrorist organizations linked to Iran that may be present in the Western Hemisphere, including information about their leaders, objectives, and areas of influence and information on their financial networks, trafficking activities, and safe havens;
- “A description of the relationship of Iran, the IRGC, its Qods Force, and Hezbollah with transnational criminal organizations linked to Iran and other terrorist organizations in the Western Hemisphere, including information on financial networks and trafficking activities;
- “A description of the Federal law enforcement capabilities, military forces, State and local government institutions, and other critical elements, such as nongovernmental organizations, in the Western Hemisphere that may organize to counter the threat posed by Iran, the IRGC, its Qods Force, Hezbollah, and other terrorist organizations linked to Iran that may be present in the Western Hemisphere;
- As well as a plan to:
 - “To address any efforts by foreign persons, entities, and governments in the region to assist Iran in evading United States and international sanctions;
 - “To protect United States interests and assets in the Western Hemisphere, including embassies, consulates, businesses, energy pipelines, and cultural organizations, including threats to United States allies; and
 - “To address the vital national security interests of the United States in ensuring energy supplies from the Western Hemisphere that are free from the influence of any foreign government that would attempt to manipulate or disrupt global energy markets.”

Committee Action: H.R. 3783 was introduced on January 18, 2012, and was referred to the House Foreign Affairs Subcommittee on Terrorism, Nonproliferation, and Trade, the Subcommittee on Middle East and South Asia, and the Subcommittee on Western Hemisphere. A full committee markup was held on March 7, 2012, and the legislation was reported by unanimous consent. The legislation passed the House on September 19, 2012, by a voice vote. The legislation then passed the Senate on December 12, 2012, with an amendment, by a voice vote.

Administration Position: No Statement of Administration Policy is available.

Cost to Taxpayers: CBO estimates that implementing the bill would have discretionary costs (subject to appropriation) of \$18 million over the 2013-2017 period. CBO's report does not address the Senate Amendment and can be [viewed here](#).

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. The legislation increases discretionary spending (subject to appropriation) of \$18 million over the 2013-2017 period.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: The legislation does not contain earmarks, limited tax benefits, or limited tariff benefits.

Constitutional Authority: Rep. Duncan states that Congress has the power to enact this legislation pursuant to the following: "This bill follows the Constitutional prerogatives of Congress under Article I, Section 8, pertaining to the clauses to 'provide for the common Defense' and 'make Rules for the Government.'" The statement can be [found here](#).

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S. 3331 - Intercountry Adoption Universal Accreditation Act of 2012 (*Sen. Kerry, D-MA*)

Order of Business: The legislation is expected to be considered on December 18, 2012, under a motion to suspend the rules and pass the bill.

Summary: The legislation applies the requirements of the Intercountry Adoption Act of 2000, and all related implemented regulations, to any person offering or providing adoption services in connection with a Convention on Protection of Children and Co-operation in Respect of Intercountry adoption (described below).

This portion of the legislation will take effect 18 months after the date of enactment.

The legislation sets exemptions to this requirement, including that it does apply to a person offering or providing adoption services in cases where:

- “An application for advance processing of an orphan petition or petition to classify an orphan as an immediate relative for a child is filed before the date that is 180 days after the date of the enactment of this Act; or
- “The prospective adoptive parents of a child have initiated the adoption process with the filing of an appropriate application in a foreign country sufficient such that the Secretary of State is satisfied before the date that is 180 days after the date of the enactment of this Act.”

The legislation requires a report, within 90 days of an entity receiving federal funding, that describes the amount of the funding and how the funding was used by the entity. This report will be sent to the House Foreign Affairs Committee and the Senate Foreign Relations Committee.

Additional Information: The Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (Convention) establishes uniform standards and procedures for the international adoption of children. The United States became a signatory to the Convention on March 31, 1994.

According to CBO, the legislation would expand the accreditation standards in the Intercountry Adoption Act of 2000 to cover all international adoptions. Currently, those standards apply only to adoptions from countries that are parties to the Convention.

Committee Action: S. 3331 was introduced on June 21, 2012, and was referred to the Senate Committee on Foreign Relations. On September 19, 2012, the committee ordered the bill to be reported favorably by voice vote. The legislation passed the Senate on December 5, 2012, with an amendment, by voice vote. The legislation was then referred to the House Committee on Foreign Affairs, which took no public action.

Administration Position: No Statement of Administration Policy is available.

Cost to Taxpayers: CBO estimates that the bill would have insignificant discretionary costs over the 2013-2017 period, assuming the availability of appropriated funds. CBO’s report can be [viewed here](#).

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. The legislation expands the accreditation standards in the Intercountry Adoption Act of 2000 to cover all international adoptions.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes. According to Senate Report 112-234:

“S. 3331 would impose a private-sector mandate by requiring all providers of placement services for intercountry adoptions to be compliant with the accreditation standards of the

Hague Convention. Providers would be required to obtain accreditation through a designated accrediting agency, pay fees associated with obtaining and maintaining accreditation, and purchase insurance to cover potential liabilities associated with conducting adoption services. The initial fees for obtaining accreditation can range between \$10,000 and \$16,000 depending on the size and annual revenue of the entity seeking accreditation. Annual fees to maintain accreditation are less than \$1,000 on average, but are also subject to change based on the revenue of the entity. The cost of liability insurance for adoption agencies varies from state to state and can range between \$10,000 and \$50,000 per year. Based on information gathered from industry professionals, the Department of Health and Human Services, and an accreditation agency, the number of entities that would be affected is relatively small. Therefore, CBO estimates that the aggregate cost of the mandate to the private sector would fall below the annual threshold established in UMRA (\$146 million in 2012, adjusted annually for inflation).”

Does the Bill Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: The legislation does not contain earmarks, limited tax benefits, or limited tariff benefits.

Constitutional Authority: The rules of the Senate do not require a statement of constitutional authority to accompany legislation upon introduction. Additionally, [Senate Report 112-234](#) does not contain a statement of constitutional authority.

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H.R. 6621 – To correct and improve certain provisions of the Leahy-Smith America Invents Act and title 35, United States Code, as amended (Smith, R-TX)

Order of Business: The bill is scheduled to be considered on Tuesday, December 18, 2012, under a motion to suspend the rules requiring two thirds majority vote for passage.

Summary: H.R. 6621 makes technical and conforming changes to current patent law enacted last year by the [Leahy-Smith America Invents Act](#) (AIA, Public Law 112-29). The changes created in last year’s H.R. 1249 were the most significant patent reform reforms in nearly 60 years. Some of its changes included moving from a first to invent to a first-inventor-to-file patent filing system; creating a new patent review process for financial service “business method patents”; and authorizing the U.S. Patent and Trademark Office (USPTO) to set its own fees for services. A brief description of some of the changes H.R. 6221 makes is below¹:

- *Advice of Counsel* – The AIA bars the use of evidence of an accused patent infringer’s failure to obtain advice of counsel, or his failure to waive privilege and introduce such opinion, to prove either willfulness or intent to induce infringement. The AIA neglected to specify when this new authority became effective. Consequently, the default effective date applies only to patents issued

¹ The House Judiciary Committee provided background on these provisions of the bill.

- one year or later after enactment of the AIA. H.R. 6621 make such applicable to all civil actions commenced after the enactment of H.R. 6621;
- *Dead Zones* – The bill eliminates the nine-month time frame barring a party from seeking inter partes review for any first to invent patents or reissued patent;
 - *Travel Expenses and Payment of Administrative Judges* –makes the effective date upon enactment of the AIA (AIA’s Section 21). This section addresses compensation of USPTO employees travel expenses and administrative judges;
 - *Improper Applicant* – It repeals a limitation on who may file an international application designating the United States;
 - *Financial Management Clarifications* – It ensures that the rule requiring that patent fees be spent for patent purposes also applies to patent continuation fees as well as that USPTO administrative costs are covered by either patent fees or trademark fees;
 - *Derivation Proceedings* – The third sentence of § 135(a) of the AIA will allow a derivation proceeding to be sought only within the year after the victim’s claim that has been the target of derivation has published. It is possible, however, that a deriver could file first, but delay *claiming* the derived material until more than a year has elapsed after the victim’s claims have published (that is, until after the current deadline has lapsed). The changes made by this subsection preclude such a scenario by requiring the proceeding to be sought during the year after the publication of the deriver’s claim to the invention. These changes also add a definition of “earlier application” to § 135(a), correct inconsistencies in the AIA’s version of § 135(a), and authorize the PTAB to conduct, and the courts to hear appeals of, interferences commenced after the effective date of the AIA’s amendments to § 135(a);
 - *Terms of Public Advisory Committee Members* – The bill makes the terms Public Advisory Committee members run for 3 years from a fixed date (rather than from the date that they are appointed), and requires Chairmen and Vice Chairmen to be designated from among existing members. Current law designates only a Chairman and gives him a 3-year term. According to the Judiciary Committee, these changes will produce better coordination of members’ terms, will allow experienced Chairmen to be appointed without requiring such individuals to serve two 3-year terms, and will provide for automatic replacement of a Chairman who does not complete his term of service; and
 - *Default Effective Date* – provides that the changes in this bill apply to proceedings commenced on or after the enactment of the bill, except where the provisions of the bill include their own effective date or modify an existing law’s effective date.

Committee Action: Judiciary Committee Chairman Lamar Smith (R-TX) introduced H.R. 6621 on November 30, 2012. No further committee action has occurred on the bill.

Administration Position: No Statement of Administration Policy is available.

Cost to Taxpayers: No Congressional Budget Office (CBO) cost estimate has been released.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: No.

Constitutional Authority: The Constitutional Authority Statement accompanying the bill upon introduction states, “Congress has the power to enact this legislation pursuant to the following: clause 8 of section 8 of Article I of the Constitution.” (The Intellectual Property Clause)

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H.R. 6671 – To amend section 2710 of title 18, United States Code, to clarify that a video tape service provider may obtain a consumer’s informed, written consent on an ongoing basis and that consent may be obtained through the Internet (Goodlatte, R-VA)

Order of Business: The bill is scheduled to be considered on Tuesday, December 18, 2012, under a motion to suspend the rules requiring two thirds majority vote for passage.

Summary: H.R. 6671 amends current law to permit a video tape service provider to obtain the consumer’s required consent to disclose personal information through use of the internet and social media with renewed consent required every two years. The original version of this bill ([H.R. 2471](#)), which [passed](#) the House on December 6, 2011, allowed this consent in perpetuity until such consent would be withdrawn. Also, this amended version requires video tape service providers to offer consumers a mechanism to withdraw their ongoing consent.

Additional Background: Under the Video Privacy Protection Act (VPPA, 18 U.S.C. section 2710), video service providers are prohibited from disclosing personally identifiable information except in circumstances where the video consumer provides prior, written consent. This consent must be obtained each time the video store provider seeks to disclose. Congress passed this law in 1988 in the aftermath of a Washington, DC weekly-newspaper article that listed the titles of 146 films that then Supreme Court nominee, Robert H. Bork, and his family had rented from a video store.

In response to changes since Congress enacted the VPPA in how consumers access video content over the internet and other platforms, H.R. 6671 permits consumers to provide their informed, written consent so they can—if they choose—to continuously share their movie or TV show preferences through their social media sites. The bill continues the requirement that consumer’s opt in to this information sharing and preserves the ability of

a consumer to opt out of this sharing requirement at any time. A consumer's consent is required every two years.

Committee Action: Representative Bob Goodlatte (R-VA) introduced HR 6671 on December 17, 2012. He introduced the original version of H.R. 2471 on July 8, 2011. That bill was referred to the House Committee on the Judiciary, which reported the amended bill favorably, by a voice vote, on October 13, 2011. HR 2471 passed the House on December 6, 2011.

Administration Position: No Statement of Administration Policy is available.

Outside Groups Supporting the bill: Apple, Facebook, Future of Privacy Forum, Google, Hulu, Microsoft, Netflix, and IAC/InterActive Corp.

Cost to Taxpayers: The Congressional Budget Office (CBO) has not issued a cost estimate for H.R. 6671. It did issue a [cost estimate](#) for the original H.R. 2471 on October 25, 2011. The estimate states that implementing H.R. 2471 would have no significant cost to the federal government.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: The CBO report for H.R. 2471 explains that the bill imposes a private sector mandate by requiring providers of video tape services and other entities to use distinct and separate forms when obtaining a consumer's consent to disclose personally identifiable information. However, CBO estimates that there would be no significant costs to comply with this private sector mandate, and therefore, the annual threshold established in the Unfunded Mandates Reform Act would not apply (\$142 million 2011, adjusted for inflation).

Does the Bill Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: No.

Constitutional Authority: The Constitutional Authority Statement published in the Congressional Record upon introduction of the bill states, "Congress has the power to enact this legislation pursuant to the following: Article I, Section 8."

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**H.R. 6014 – Katie Sepich Enhanced DNA Collection Act of 2012,
as amended (*Schiff, D-CA*)**

Order of Business: The bill is scheduled to be considered on Tuesday, December 18, 2012, under a motion to suspend the rules requiring two thirds majority vote for passage.

Summary: H.R. 6014 creates a new federal grant purpose area from existing federal grants to assist states with the costs associated with implementing their DNA arrestee collection processes. It permits up to \$10 million to be appropriated for each fiscal year (FY2013, FY2014, and FY2015) from previously authorizations of appropriations from subsection (j) of section 2 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135)² aka, the Debbie Smith Act. The Attorney General determines the amount of each grant amount to eligible states, and a state can receive up to 100% of the first-year costs to the state of implementing such DNA arrestee collection processes.

Currently, [26 states](#) collect DNA from arrestees.

The bill defines the term “DNA arrestee collection process” as “a process under which the State provides for the collection and uploading into the [National DNA Index System](#)...of DNA profiles or DNA data from the following individuals who are at least 18 years of age and who commit serious crimes including:

- Individuals who are arrested for or charged with a criminal offense under State law that consists of a homicide;
- Individuals who are arrested for or charged with a criminal offense under State law that has an element involving a sexual act or sexual contact with another and that is punishable by imprisonment for more than 1 year;
- Individuals who are arrested or charged with a criminal offense under State law that has an element of kidnapping or abduction and that is punishable by imprisonment for more than 1 year;
- Individuals who are arrested for or charged with a criminal offense under State law that consists of burglary punishable by imprisonment for more than 1 year; and
- Individuals who are arrested for or charged with a criminal offense under State law that consists of aggravated assault punishable by imprisonment for more than 1 year.”

To be eligible to receive grant funding, a State is required to apply to the Attorney General and demonstrate that:

- it has the state statutory authority to implement a DNA arrestee collection process;
- such grant funding shall “supplement, not supplant” state funds otherwise available for DNA arrestee collection processes;
- it will document how much the grant is used to meet expenses associated with a state’s implementation or planned implementation of a DNA arrestee collection process;
- it will provide written notification of expungement provisions and instructions for requesting expungement to all persons who submit a DNA profile or DNA data for inclusion in the index;

² This section authorized to be appropriated \$151 million to the Attorney General for the Debbie Smith DNA Backlog Grant Program for each FY2009 through FY2014.

- it will provide the eligibility criteria for expungement and instructions for requesting expungement on an appropriate public website; and
- it will make a determination on all expungement requests not later than 90 days after receipt and provide a written response of the determination to the requesting party.

Some conservatives believe that the intent envisioned in H.R. 6014 creates a dependency by state and local law enforcement on funding from the federal government for crime control, which is traditionally a state and local responsibility. However, a similar bill ([H.R. 4614](#)) did pass the House in 2010 by a vote of [357-32](#).

Committee Action: Representative Adam Schiff (*D-CA*) introduced H.R. 6014 on June 21, 2012. No further committee action has occurred on the bill.

Administration Position: No Statement of Administration Policy is available.

Cost to Taxpayers: No Congressional Budget Office (CBO) cost estimate has been released.

Does the Bill Expand the Size and Scope of the Federal Government?: The bill creates a new federal grant purpose area from an existing grant program to assist states in implementing a DNA collection process for certain arrestees of serious crimes.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: No.

Constitutional Authority: The Constitutional Authority Statement accompanying the bill upon introduction states, “Congress has the power to enact this legislation pursuant to the following: The Katie Sepich Enhanced DNA Collection Act is constitutionally authorized under Article I, Section 8, Clause 18, the Necessary and Proper Clause. The Necessary and Proper Clause supports the expansion of congressional authority beyond the explicit authorities that are directly discernible from the text. Additionally, the Preamble to the Constitution provides support of the authority to enact legislation to promote the General Welfare.”

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S. 3642 – Theft of Trade Secrets Clarification Act of 2012 (*Leahy, D-VI*)

Order of Business: The bill is scheduled to be considered on Tuesday, December 18, 2012, under a motion to suspend the rules requiring two thirds majority vote for passage.

Summary: S. 3462 amends the Economic Espionage Act of 1996 to clarify that the law intended to protect trade secrets that include proprietary computer source code that is related to a product or service used or intended for use in interstate or foreign commerce.

Additional Background: This legislation is in response to a federal appellate court [decision](#) earlier this year involving the protection of intellectual property trade secrets. Earlier this year, the United States Court of Appeals for the Second Circuit overturned a criminal conviction of a former [Goldman Sachs employee](#) who reportedly stole encrypted source code from the firm's proprietary software system and uploaded the data to a remote server located abroad. He later downloaded the source code to his home computer in New Jersey. The Court ruled that the federal National Stolen Property Act or Economic Espionage Act did not apply to the proprietary code in question because the source code was not a product that was "produced for" or "placed in" interstate commerce.

Committee Action: Senate Judiciary Committee Patrick Leahy (*D-VI*) introduced S. 3642 on November 27, 2012. On the same day, the full Senate passed the bill by unanimous consent. No further House committee action has occurred on the bill.

Administration Position: No Statement of Administration Policy is available.

Cost to Taxpayers: No Congressional Budget Office (CBO) has been released

Does the Bill Expand the Size and Scope of the Federal Government?: The bill clarifies the intent of the Economic Espionage Act of 1996 to apply to products or services used in or intended for use in interstate or foreign commerce.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: No.

Constitutional Authority: The rules of the Senate do not require a statement of constitutional authority to accompany legislation upon introduction. Additionally, Senate Report 112-207 does not contain a statement of constitutional authority. It is worth noting that Article I, Section 8, Clause 3 of the Constitution gives Congress the power to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

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