

HOUSE BILL 2224

By Stewart

AN ACT to amend Tennessee Code Annotated, Title 2; Title 28; Title 38; Title 39; Title 40; Title 45 and Title 47 to enact the "Main Street Recovery and Wall Street Accountability Act of 2012".

WHEREAS, the United States of America is the strongest, most successful nation on earth in part because it has a free market economy that allows hard working, talented persons to start businesses and produce products and inventions and sell them at a profit; and

WHEREAS, in a properly functioning free market economy the role of government is to provide an environment in which all Americans can thrive based on their own hard work and ingenuity by providing good roads, just courts of law, effective public schools and other services that serve all Americans; and

WHEREAS, the use of taxpayer funds to bail out individuals and companies that have made unwise decisions reflects a serious failure of existing government and private institutions, since such bailouts waste taxpayer money that should be devoted to traditional government services and unfairly reward failed enterprises for their bad decisions and mismanagement; and

WHEREAS, in 2008 the poor investment decisions of some of the most prominent financial firms in the United States led to the bankruptcy of Lehman Brothers Holdings, Inc. and the ensuing precipitous crash of world financial markets, an event referred to herein as the 2008 Crash; and

WHEREAS, in the midst of the 2008 Crash, Congress, at the request of then President George Bush, passed the Troubled Assets Relief Program, more commonly referred to as "TARP", as an emergency measure intended to rescue certain prominent financial institutions from the consequences of their own unwise decisions in order to prevent a catastrophic collapse of financial markets; and

WHEREAS, the TARP program ultimately became just one component of a broad-based government effort to assist America's most prominent financial institutions - an effort that has cost the American taxpayer trillions of dollars; and

WHEREAS, the financial crisis prompted government officials with the United States Treasury Department and other agencies to view certain businesses as "systematically important institutions", also known as "Too Big to Fail" financial institutions, and to intervene in the affairs of such private companies to prevent their bankruptcy; and

WHEREAS, to cite just one representative example, in November 2008, the United States Department of Treasury guaranteed three hundred and six billion dollars (\$306,000,000,000) in assets to shore up just one Too Big to Fail financial institution – Citigroup Inc. - a guarantee by the American taxpayer amounting to nearly two percent of the United States gross domestic product, and approximately equivalent to the combined budgets of the United States Departments of Agriculture, Energy, Homeland Security, Housing and Urban Development, and Transportation – a guarantee one commentator has accurately described as "an undisguised gift" to Citigroup; and

WHEREAS, it was necessary for officials of the United States government to provide taxpayer funds, in the form of TARP payments, tax incentives and other things of value, to certain businesses to induce them to acquire certain Too Big to Fail financial institutions to prevent the bankruptcy of those institutions; and

WHEREAS, to further bolster Too Big to Fail financial institutions, the United States Treasury Department bought more than a trillion dollars of bad subprime mortgages from these institutions, transferring the burden of these bad investments from the Too Big to Fail financial institutions to the American taxpayer; and

WHEREAS, the six largest Too Big to Fail financial institutions were lent half a trillion dollars at critical periods following the 2008 Crash by the Federal Reserve Bank of the United States as part of the taxpayer-funded effort to rescue those institutions; and

WHEREAS, many individuals who, and institutions that, profited significantly from the reckless trading at Wall Street institutions that led to the 2008 Crash have been permitted to retain the millions of dollars that they earned from their reckless behavior. To cite just one representative example, Joseph J. Cassano, who as an officer of AIG Financial Products oversaw the sale of mortgage related derivatives that effectively bankrupted American International Group, necessitating a two hundred billion dollar (\$200,000,000,000) taxpayer funded bailout, personally earned three hundred fifteen million dollars (\$315,000,000) for his reckless and incompetent behavior; and

WHEREAS, the Center for Economic and Policy Research has found that after the 2008 Crash the gap in cost of funds between Too Big to Fail financial institutions and those with less than \$100 billion in assets widened dramatically, creating what amounted to a \$34.1 billion government subsidy to the eighteen largest U.S. banks; and

WHEREAS, according to a Pew Trust Study, the impact of the 2008 Crash in total costs in losses from declining stock and home values approximates \$108,000.00 per U.S. household because of the financial crisis created by the Wall Street banks' poor investment decisions; and

WHEREAS, executives from certain bailed out Too Big to Fail financial institutions have publicly claimed to have "paid back" bailout funds, giving the false impression that they have repaid the American taxpayers for the extraordinary economic losses caused by the reckless actions of such institutions; and

WHEREAS, many Too Big to Fail financial institutions remain larger than Lehman Brothers Holdings, Inc., was at the time of its bankruptcy and are larger in 2011 in terms of market share than they were prior to the 2008 Wall Street Crash. Such Too Big to Fail financial

institutions accordingly present an even larger risk to the American taxpayer than they did in 2008, when the American taxpayer began bailing out those institutions at great cost; and

WHEREAS, prominent economists have confirmed that the 2008 Crash of stock prices caused the rapid decline of economic output and an increase in unemployment now known as the "Great Recession"; and

WHEREAS, the unemployment rate in Tennessee has increased from 6.9% in August 2008, just prior to the 2008 Crash, to 9.1% at present; and

WHEREAS, the number of Tennessee counties with 10% or greater unemployment has increased from ten in August 2008, just prior to the 2008 Crash, to sixty-one counties in December, 2011; and

WHEREAS, prominent financial experts such as Richard W. Fischer, President of the Federal Reserve Bank of Dallas, have called for the breaking up of Too Big to Fail financial institutions, criticizing the regulatory approach that "coddles survival of the fattest rather than promoting survival of the fittest," and observing that such Too Big to Fail financial institutions, because they are implicitly protected from bankruptcy by the American taxpayer, are, in the words of financial commentator Gretchen Morganstern, "being paid for taking risks that generate lush bonuses when things go well but that require taxpayer bailouts when the tide turns"; and

WHEREAS, it has been necessary for news organizations to go to court to obtain documents revealing the extent of the vast taxpayer subsidies that have been extended to Too Big to Fail financial institutions in the wake of the 2008 Crash; and

WHEREAS, on April 13, 2011, the bi-partisan United States Senate Permanent Subcommittee on Investigations issued a six hundred and twenty-nine page report (the "Levin-Coburn Report") revealing to the public many of the root causes of the 2008 Crash; and

WHEREAS, in 2011 the Levin-Coburn Report revealed to the public the process whereby Washington Mutual Bank, along with many other financial institutions, engaged in

practices that “led to the acquisition and securitization of hundreds of billions of dollars in high risk, poor quality mortgages that ultimately plummeted in value, hurting investors, the bank and the U.S. financial system”; and

WHEREAS, in 2011 the Levin-Coburn Report revealed to the public the process whereby ratings agencies, including Moody’s Investor Services, Inc. and Standard and Poor’s Financial Services, LLC., the nation’s two largest credit ratings agencies, issued “[i]naccurate AAA credit ratings [which] induced risk into the U.S. financial system and constituted a key cause of the financial crisis,” noting that “it was not in the short term economic interest of either Moody’s or S&P... to provide accurate credit ratings for high risk... securities because... credit rating agencies’ profits became increasingly reliant on the fees generated by issuing a large volume of structured financial ratings.”; and

WHEREAS, in 2011 the Levin-Coburn Report revealed to the public the process whereby investment banks, such as Deutsche Bank, “were the driving force behind the structured financial products that provided a steady stream of funding for lenders originating high risk, poor quality loans and that magnified risk throughout the U.S. financial system [such that] the investment banks that sold, traded, and profited from mortgage related structured financial products were a major cause of the financial crisis.”; and

WHEREAS, the 2008 Crash has caused great damage to Tennessee families, businesses and local governments, all of which may retain causes of action against companies the behavior of which contributed to the occurrence, scope and/or severity of the 2008 Crash; and

WHEREAS, subsequent investigations of the causes of the 2008 Crash continue to turn up evidence of wrongdoing at major financial institutions and present a great financial risk to all American taxpayers, who are expected to guarantee the debts of these institutions; and

WHEREAS, it is right and just that Tennessee citizens and businesses be permitted the opportunity to fully exercise their rights to take action against the institutions that caused or contributed to the 2008 Crash and to recover losses caused by those institutions; now, therefore;

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Main Street Recovery and Wall Street Accountability Act of 2012".

SECTION 2. As used in this act,

(1) "TARP" means the Troubled Assets Relief Program established in the Emergency Economic Stabilization Act of 2008, Public Law 110-343, 122 Stat. 3765, enacted October 3, 2008; and

(2) "Too Big to Fail financial institutions" means financial institutions and insurance companies that possessed in excess of one hundred billion dollars (\$100,000,000,000) in assets at any time during the period beginning on January 1, 2007 and ending on December 31, 2010.

SECTION 3. The provisions of this act shall be applicable to "Too Big to Fail" financial institutions.

SECTION 4. The general assembly hereby makes a factual finding that Too Big to Fail financial institutions represent a special class of financial institutions that present a unique risk to Tennessee's economy and that bear an outsized portion of the responsibility for causing the 2008 Crash that has inflicted severe damage on Tennessee's citizens, businesses and local governments.

SECTION 5. Tennessee Code Annotated, Title 2, Chapter 10, Part 10, is amended by adding the following language as a new, appropriately designated section:

(a) Notwithstanding any other provision of law to the contrary, no Too Big to Fail financial institution that received TARP bailout funds shall be permitted to make campaign contributions to members of the Tennessee General Assembly. This subsection (a) shall apply to a Too Big to Fail financial institution until the fifth anniversary of the date that the Too Big to Fail financial institution has paid back all bail out funds to the government institutions that provided them or January 31, 2018, whichever is later.

(b) Notwithstanding any other provision of law to the contrary, no political action committee that provides campaign contributions to any elected official in the state of Tennessee shall accept financial support, directly or indirectly, from a Too Big to Fail financial institution that received TARP bailout funds until the fifth anniversary of the date that the Too Big to Fail financial institution has paid back all bail out funds to the government institutions that provided them or January 31, 2018, whichever is later.

SECTION 6. Tennessee Code Annotated, Section 47-18-110, is amended by designating the current language as subsection (a) and by adding the following language to be designated as subsection (b):

(b) The statute of limitations in subsection (a), shall be tolled for all Too Big to Fail financial institutions that received TARP bailout funds for a period ending five (5) years after all such funds have been paid back to the federal government institution that provided them or January 31, 2018, whichever is later.

SECTION 7. Tennessee Code Annotated, Section 40-2-101, is amended by adding the following language as a new, appropriately designated subdivision:

() The statute of limitations in this section shall be tolled for any act declared by law to be a felony pursuant to title 45, chapter 2, part 17, or any other law that is performed by a Too Big to Fail financial institution that received TARP bailout funds for a

period ending five (5) years after all such funds have been paid back to the federal government institution that provided them or January 31, 2018, whichever is later.

SECTION 8. Tennessee Code Annotated, Section 40-2-102(a), is amended by designating the existing language as subdivision (1) and by adding the following language to be designated as subdivision (2):

(2) The statute of limitations in subdivision (1), shall be tolled for any act declared by law to be a misdemeanor pursuant to title 45, chapter 2, part 17, or any other law that is performed by a Too Big to Fail financial institution that received TARP bailout funds for a period ending five (5) years after all such funds have been paid back to the federal government institution that provided them or January 31, 2018, whichever is later.

SECTION 9. Tennessee Code Annotated, Title 28, Chapter 1, Part 1, is amended by adding the following language as a new appropriately designated section:

28-1-1____. Notwithstanding any other provision of this title to the contrary, any statute of limitations pursuant to this title shall be tolled for the commencement of an action against a Too Big to Fail financial institution that received TARP bailout funds for a period ending five (5) years after all such funds have been paid back to the federal government institution that provided them or January 31, 2018, whichever is later.

SECTION 10. Notwithstanding any other provision of law to the contrary, any statute of limitations for common law actions shall be tolled for the commencement of an action against a Too Big to Fail financial institution that received TARP bailout funds for a period ending five (5) years after all such funds have been paid back to the federal government institution that provided them or January 31, 2018, whichever is later.

SECTION 11.

(a) The comptroller of the treasury shall investigate the systemic risk posed by the continued existence of Too Big to Fail financial institutions for Tennessee's retirement funds and other funds of public entities held, owned, or maintained by other public entities operating within the state of Tennessee.

(b) The comptroller of the treasury shall file the report together with any findings and recommendations, including any proposed legislation, with the governor and the chairmen of the House Commerce Committee and the Senate Commerce, Labor and Agriculture Committee no later than January 1, 2013.

SECTION 12.

(a) There is created a special joint bi-partisan study committee, herein referred to as "the committee" to consist of three (3) members of the house of representatives and three (3) members of the senate, to be appointed by the respective speakers. The committee shall study:

(1) Whether during the 2008 Crash and ensuing financial crisis crimes were committed by financial institutions or executive officers in financial institutions that are subject to prosecution in Tennessee;

(2) Whether Tennessee citizens have sufficient power under current law to obtain redress against financial institutions or executive officers of financial institutions that commit tortuous or criminal acts affecting these citizens;

(3) Whether Tennessee needs to impose requirements on Too Big to Fail financial institutions seeking to do business in Tennessee to protect Tennessee citizens from the systemic economic threat posed by such institutions, such as the request that they post a bond or other security with the office of the Treasurer prior to doing business in this state;

(4) Whether the ratings agencies that, as described in the Levin-Coburn Report, failed to properly evaluate risks posed by mortgage based securities, should be relied on by the state of Tennessee and its political subdivisions with respect to the conduct of public business;

(5) Whether the rating of financial instruments would be more effectively performed by a public sector or not-for-profit institution funded and controlled by participating states pursuant to uniform state laws; and

(6) Any other issues deemed necessary by the committee.

(b) All appropriate state agencies shall provide assistance to the committee upon request of the chair.

(c) All members of the committee shall remain members of such committee until the committee reports its findings and recommendations to the general assembly.

(d) The committee shall be convened by the member with the most years of continuous service in the general assembly, and at its first meeting shall elect a chair, vice-chair and such other officers the committee deems necessary.

(e) The committee shall timely report its findings and recommendations, including any proposed legislation, to the One Hundred Eighth General Assembly no later than February 1, 2013, at which time the committee shall cease to exist.

SECTION 13.

(a) The Treasurer and Comptroller of the Treasury are directed to conduct a study to determine whether private sector credit agencies such as Moody's and Standard and Poor's that assign bond credit ratings have taken proper steps to evaluate and remedy the causes of their broad failure to evaluate the risks associated with financial instruments.

(b) A report shall be filed by the Treasurer and the Comptroller of the Treasury together with any findings and recommendations, including any proposed legislation, with the governor and the chairmen of the Finance Ways and Means Committees of each house no later than January 1, 2013.

SECTION 14. For purposes of this act, a derivative action by a shareholder or other person on behalf of a Too Big to Fail financial institution shall be deemed an action against that Too Big to Fail financial institution.

SECTION 15. Nothing in this act shall be construed to revive a cause of action that has already been extinguished by a statute of limitation or statute of repose as of the effective date of this act.

SECTION 16. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 17. This act shall take effect upon becoming a law, the public welfare requiring it.