

**AMENDMENT TO H.R. 4790
OFFERED BY MRS. BIGGERT**

Strike all after the enacting clause and insert the following:

1 SEC. 1. SHORT TITLE.

2 This Act may be cited as the “Codification of the
3 Business Judgment Rule Act of 2010”.

4 SEC. 2. FINDINGS.

5 Congress finds the following:

6 (1) Management of a corporation’s affairs is
7 placed by law in the hands of its board of directors.

8 (2) Performance of the directors’ management
9 function consists of the making of economic choices
10 and the weighing of the potential of risk against the
11 potential of reward, and attentiveness to corporate
12 affairs.

13 (3) Corporate directors are not guarantors of
14 the financial success of their management efforts.

15 (4) Though not guarantors, directors as fidu-
16 ciaries should be held legally accountable to the cor-
17 poration and its stockholders when their perform-
18 ance falls short of meeting appropriate standards.

1 (5) Such culpability occurs when directors
2 breach their fiduciary duty or fail to supervise cor-
3 porate affairs with the appropriate level of skill.

4 **SEC. 3. ACCOUNTABILITY OF CORPORATE DIRECTORS.**

5 The Securities Exchange Act of 1934 is amended by
6 inserting after section 14A the following new section:

7 **“SEC. 14B. BUSINESS JUDGMENT RULE.**

8 “(a) **DIRECTOR ACCOUNTABILITY.**—A director of a
9 corporation shall not be liable to the shareholders of the
10 corporation for business decisions made—

11 “(1) in good faith;

12 “(2) where the director is not interested in the
13 subject of the business judgment;

14 “(3) where the director is informed with respect
15 to the subject of the business judgment to the extent
16 the director reasonably believes to be appropriate
17 under the circumstances; and

18 “(4) where the director or officer rationally be-
19 lieves that the business judgment in question is in
20 the best interests of the corporation.

21 “(b) **EXCEPTIONS.**—Subsection (a) shall not apply
22 where it is shown that the business decision—

23 “(1) arises from the fraud, oppression, dishon-
24 esty, or illegality of any director;

1 “(2) arises from the failure of any director to
2 become sufficiently informed to make an inde-
3 pendent decision; or

4 “(3) involves any self-interest on the part of the
5 director in the transaction at issue.”.

