2014-0373-F [ ] Wednesday, May 13, 2015

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Newstead, Jennifer (Jen)

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W	20	20	5	2	9825	22688	2230	2318

Folder Title:

Sarbanes Passed Bill [1]

Withdrawn/Redacted Material
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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Bill	Biden's Amendment from His Counsel [with attachments]	4	07/15/2002	P5;
002	Email	FW: Urgent Help [with attachments] - To: Jennifer Newstead - From: Adam Charnes	5	07/12/2002	P5;
003	Email	FW: Urgent WH Request for Help [with attachments] - To: Adam Charnes, et al. - From: Gregory Katsas	4	07/11/2002	P5;

COLLECTION TITLE:
Counsel's Office, White House

SERIES:
Newstead, Jennifer (Jen)

FOLDER TITLE:
Sarbanes Passed Bill [1]

FRC ID:
9825

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

A. Closed by Executive Order 13526 governing access to national security information.
B. Closed by statute or by the agency which originated the document.
C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.

Withdrawal Marker
The George W. Bush Library

FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Bill	Biden's Amendment from His Counsel [with attachments]	4	07/15/2002	P5;

This marker identifies the original location of the withdrawn item listed above. For a complete list of items withdrawn from this folder, see the Withdrawal/Redaction Sheet at the front of the folder.

COLLECTION:
Counsel's Office, White House
SERIES:
Newstead, Jennifer (Jen)
FOLDER TITLE:
Sarbanes Passed Bill [1]
FRC ID:
9825
OA Num.:
2318
NARA Num.:
2230

FOIA ID and Segment:
2014-0373-F

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

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Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.

This Document was withdrawn on 5/19/2015 by erl

107TH CONGRESS
2D SESSION

S. ______

IN THE SENATE OF THE UNITED STATES

Mr. BIDEN introduced the following bill; which was read twice and referred to the Committee on ______________________

A BILL

To increase criminal penalties relating to conspiracy, mail fraud, wire fraud, certain ERISA violations, tax fraud, and tax evasion.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "White-Collar Crime Penalty Enhancement Act of 2002".

SEC. 2. CRIMINAL PENALTIES FOR CONSPIRACY TO COMMIT OFFENSE OR TO DEFRAUD THE UNITED STATES.

Section 371 of title 18, United States Code, is amended by striking "each shall be fined under this title or imprisoned not more than five years, or both." and inserting "each person shall be fined or imprisoned, or both, in accordance with the specific substantive offense which was the object of the conspiracy, or if such penalty does not apply, each person shall be fined under this title or imprisoned for not more than 10 years, or both.".

SEC. 3. FRAUD.

(a) Mail Fraud.—Section 1341 of title 18, United States Code, is amended by striking "five years" and inserting "10 years".

(b) Wire Fraud.—Section 1343 of title 18, United States Code, is amended by striking "five years" and inserting "10 years".

SEC. 4. CRIMINAL PENALTIES FOR VIOLATIONS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

Section 501 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131) is amended—

(1) by striking "$5,000" and inserting "$100,000";

(1) by striking "one year" and inserting "10 years"; and

(3) by striking "$100,000" and inserting "$500,000".

SEC. 5. TAX EVASION AND TAX FRAUD PENALTIES.

The Internal Revenue Code of 1986 is amended—

(1) in section 7201, by striking "5 years" and inserting "10 years";

(2) in section 7203—

(A) by striking "misdemeanor" and inserting "felony";

(B) by striking "1 year" and inserting "10 years"; and

(C) by striking "In the case of a willful violation of any provision of section 6050I" and all that follows through the period at the end; and

(3) in section 7206, by striking "3 years" and inserting "5 years".

SEC. 6. SENTENCING GUIDELINES.

Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and policy statements to provide for increased penalties to reflect the increases in maximum penalties provided under this Act.

SEC. 7. CORPORATE RESPONSIBILITY FOR FINANCIAL REPORTS.

(a) Certification of Periodic Financial Reports.—Each periodic report containing financial statements filed by an issuer with the Commission pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)) shall be accompanied by a written statement by the chairman of the board, chief executive officer, and chief financial officer (or equivalent thereof) of the issuer.

(b) Content.—The statement required under subsection (a) shall certify the appropriateness of the financial statements and disclosures contained in the periodic report or financial report, and that those financial statements and disclosures fairly present, in all material respects, the operations and financial condition of the issuer.

Possible Floor Amendments to S. 2673

1) Pensions
   - => Kenney ERISA Remedies
   - => <u>Possible 2nd Degree Amendments</u>
     - – Finance/HELP 2nd Degree Pension Amendment (being negotiated)

2) Securities Litigation Reform
   - => Leahy bill, S. 2010, either as reported out unanimously OR as introduced (i.e., with aiding and abetting liability and civil RICO provisions).
   - => Shelby amendment re: aiding and abetting liability, repeal of proportionate liability, and repeal of 1998 Uniform Standards Act (applies PLSRA to states).
   - => Nelson (FL) amendment re: aiding and abetting liability
   - => Unspecified amendment re: Civil RICO

3) Tax and Accounting Treatment of Stock Options
   - => McCain amendment re: taxation of options (see below)
   - => Enzi/Lieberman et. al. 2nd Degree re: SEC Study (see below)

4) Regulation of Derivatives Trading
   - => Re-draft of Feinstein amendment
   - => The Senate voted 48-50 against invoking cloture on an earlier version of this amendment on April 10 (<u>www.senate.gov/legislative/vote1072/vote_00061.html</u>).

5) Regulation of Lawyers
   - => Edwards/Enzi/Corzine amendment re: SEC setting standards of conduct for lawyers practicing before the Commission.

6) McCain Amendments (See Attached)

7) Grassley Amendments (See Attached)

8) Multiple Levin Amendments Re: Executive Compensation (See Attached)

Grassley Amendments

1) Whistleblowers -- Provides whistleblower protection to auditors and other privates sector persons to facilitate reporting of business or accounting wrongdoing.

2) Bankruptcy preferential transfers to insiders -- Amends the bankruptcy law to pull back into the bankruptcy estate improper bonuses and other compensation paid before bankruptcy. This amendment is directed at insiders who engage in improper, fraudulent, or illegal behavior.

3) Expand SEC's disgorgement remedy -- SEC staff proposal that would provide the SEC an equitable remedy to protect investors from the effect of financial benefits derived from a violation of securities laws.

4) Oversight auditors -- establishes a team of auditors, charged with periodic audits of financial statements. Team of auditors would be based in the SEC and report to the Chief Accountant. Chief Accountant would become a confirmable position.

5) Limitation on auditors selling tax products -- Auditors could not opine on financial effects of tax shelter transactions that they have sold to the firm. An independent audit would be required for these kinds of transactions.

McCain Amendments

1) Prohibit top executives from selling company stock while managing the company. Options could still be exercised to avoid their expiration, but any after tax gains must be held in company stock until 90 days after the executive has left the company.

2) Prohibit accounting firms from providing any non-audit services to their accounting clients.

3) Require all members, except the CEO, of a company's board to be completely independent. Independent directors cannot receive any remuneration of any kind from the company, any affiliated persons, or any subsidiaries of the company.

4) Require options to be expensed on public financial filings if the company takes advantage of the tax benefits of granting the option (identical to Levin-McCain Stock Options bill).

5) Require disciplinary hearings of the new public oversight board to be open to the public.

6) Supplement the requirement of the underlying bill requiring top executives to certify the accuracy of their filings by requiring, in addition to such certification, a brief narrative describing why the filing is accurate and identifying any "close calls."

Levin Amendments

Amendment #1

- Provides the SEC the authority to ban officers and directors through administrative proceedings
- Allows the SEC to impose civil fines on companies and other individuals not registered as a broker/dealer for violations of SEC rules
- Allows the Commission to obtain copies of financial records without providing notice to the company. This provision would require an actual vote from the Commissioners
- Allows the U.S. Attorney, state Attorneys General, and state securities regulators to prosecute officers and directors who coerce or mislead an auditor

Amendment #2

Require auditors to offer statement to attest the quality of financial statement.

Amendment #3

Requires the auditor to discuss with the audit committee the quality and clarity of the financial statements and the aggressiveness of the accounting principles the company uses.

Amendment #4

Requires that the provision in the legislation which requires disclosure of corporate loans be given a regulatory deadline.

Amendment #5

Requires that, if a sanction is imposed by the Board, the sanction is public unless a stay is imposed by the SEC.

Enzi, Allen, Boxer, Bayh, Dodd, Kerry, Lieberman 2nd Degree Stock Options Amendment

NOTE: The following is a summary of what is under consideration, rather than the final shape of the negotiations:

SEC study, due 180 days after date of enactment, analyzing:

1) Accounting treatment of options under current law

2) Adequacy of current law disclosure requirements regarding stock options

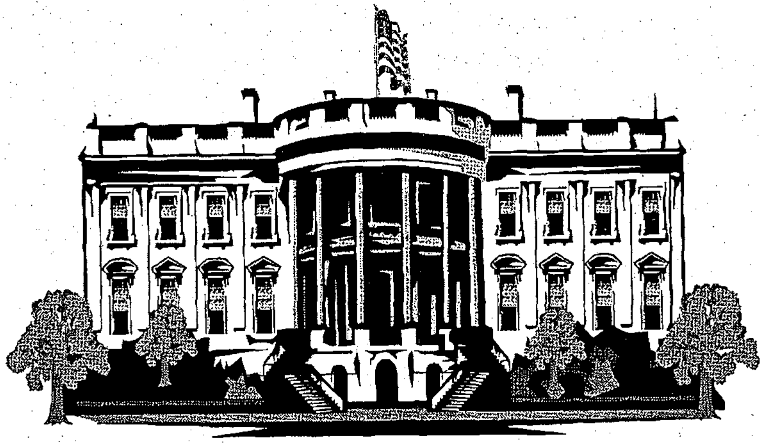
3) Adequacy of current law corporate governance/shareholder approval requirements for stock options

4) The need, if any, for new holding requirements for senior executives receiving options

5) Effect of new expensing rules on small, medium, and large businesses

6) Effect of new expensing rules on the ability of businesses to hire and retain skilled workers.

7) Effect of new expensing rules on low, middle, and high income employees and on female employees.



FAX COVER SHEET

KEVIN WARSH

NATIONAL ECONOMIC COUNCIL
THE WHITE HOUSE
WASHINGTON, DC 20502
PHONE: 202/456-2800 FAX: 202/456-2223

DATE: JULY 15, 2002 NUMBER OF PAGES (INCL. COVER):
TO: JEN NEWSTEAD

FAX: 65053

COMMENTS:

O:\CUL\CUL02.452

S.L.C.

Joe Biden

Pending

AMENDMENT NO. ____ Calendar No. ____

Purpose: To increase criminal penalties relating to conspiracy, mail fraud, wire fraud, and certain ERISA violations, and for other purposes.

IN THE SENATE OF THE UNITED STATES—107th Cong., 2d Sess.

S. 2673

AMENDMENT No. 4190

By Daschle for Biden

To: Amdt. No. 4186, as modified

7

Page(s)

GPO: 2000 58-330 (mac)

To impr g
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for other purposes.

Referred to the Committee on ____________
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. BIDEN

Viz: ~~In lieu of the matter proposed to be~~

1 ~~At the end add the following:~~ Strike all after the first word and inserted insert the following:

~~TITLE~~ VIII—WHITE-COLLAR CRIME PENALTY ENHANCEMENTS.

SEC. 801 SHORT TITLE.

This title may be cited as the "White-Collar Crime Penalty Enhancement Act of 2002".

SEC. 802. CRIMINAL PENALTIES FOR CONSPIRACY TO COMMIT OFFENSE OR TO DEFRAUD THE UNITED STATES.

Section 371 of title 18, United States Code, is amended by striking "If two or more" and all that follows through "If, however," and inserting the following:

"(a) IN GENERAL.—If 2 or more persons—

"(1) conspire to commit any offense against the United States, in any manner or for any purpose, and 1 or more of such persons do any act to effect the object of the conspiracy, each person shall be fined or imprisoned, or both, as set forth in the specific substantive offense which was the object of the conspiracy; or

"(2) conspire to defraud the United States, or any agency thereof in any manner or for any purpose, and 1 or more of such persons do any act to effect the object of the conspiracy, each person shall be fined under this title, or imprisoned not more than 10 years, or both.

"(b) MISDEMEANOR OFFENSE.—If, however,".

SEC. 803. CRIMINAL PENALTIES FOR MAIL AND WIRE FRAUD.

(a) MAIL FRAUD.—Section 1341 of title 18, United States Code, is amended by striking "five years" and inserting "10 years".

(b) WIRE FRAUD.—Section 1343 of title 18, United States Code, is amended by striking "five years" and inserting "10 years".

SEC. 804. CRIMINAL PENALTIES FOR VIOLATIONS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

Section 501 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131) is amended—

(1) by striking "$5,000" and inserting "$100,000";

(1) by striking "one year" and inserting "10 years"; and

(3) by striking "$100,000" and inserting "$500,000".

SEC. 805. AMENDMENT TO SENTENCING GUIDELINES RELATING TO CERTAIN WHITE-COLLAR OFFENSES.

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and related policy statements to implement the provisions of this title.

(b) REQUIREMENTS.—In carrying out this section, the Sentencing Commission shall—

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses and the penalties set forth in this title, the growing incidence of serious fraud offenses which are identified above, and the need to modify the sentencing guidelines and policy statements to deter, prevent, and punish such offenses;

(2) consider the extent to which the guidelines and policy statements adequately address—

(A) whether the guideline offense levels and enhancements for violations of the sections amended by this title are sufficient to deter and punish such offenses, and specifically, are adequate in view of the statutory increases in penalties contained in this title; and

(B) whether a specific offense characteristic should be added in United States Sentencing Guideline section 2B1.1 in order to provide for stronger penalties for fraud when the crime is committed by a corporate officer or director;

(3) assure reasonable consistency with other relevant directives and sentencing guidelines;

(4) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(5) make any necessary conforming changes to the sentencing guidelines; and

(6) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

SEC. 806. CORPORATE RESPONSIBILITY FOR FINANCIAL REPORTS.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"§ 1348. Failure of corporate officers to certify financial reports

"(a) CERTIFICATION OF PERIODIC FINANCIAL REPORTS.—Each periodic report containing financial statements filed by an issuer with the Securities Exchange Commission pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)) shall be accompanied by a written statement by the chairman of the board, chief executive officer, and chief financial officer (or equivalent thereof) of the issuer.

"(b) CONTENT.—The statement required under subsection (a) shall certify the appropriateness of the financial statements and disclosures contained in the periodic report or financial report, and that those financial statements and disclosures fairly present, in all material respects, the operations and financial condition of the issuer.

"(c) CRIMINAL PENALTIES.—Notwithstanding any other provision of law—

"(1) any person who recklessly and Knowingly violates any provision of this section shall upon conviction be fined not more than $500,000, or imprisoned not more than 5 years, or both; or

"(2) any person who willfully violates any provision of this section shall upon conviction be fined not more than $1,000,000, or imprisoned not more than 10 years, or both.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The section analysis for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"1348. Failure of corporate officers to certify financial reports.".

This Section shall take effect one day after date of the bill's enactment.

O:\MDM\MDM02.397

LEAHY

Patrick Leahy

S.L.C.

Tony ~~Sutton~~ Jody Hunt 4-1259.

PENDING

AMENDMENT NO. ____ Calendar No. ____

Purpose: To provide for criminal prosecution of persons who alter or destroy evidence in certain Federal investigations or defraud investors of publicly traded securities, and for other purposes.

IN THE SENATE OF THE UNITED STATES—107th Cong., 2d Sess.

S. 2673

AMENDMENT No 4174

By Daschle for Leahy

To: S. 2673

13

Page(s)

GPO: 2000 68-330 (mac)

To in ting a sub- l ting (proc- e end- e ease c rate f nde- p ities a and for other purposes.

Referred to the Committee on ____________
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. LEAHY (for himself, Mr. MCCAIN, Mr. DASCHLE, Mr. DURBIN, Mr. HARKIN, Mr. CLELAND, Mr. LEVIN, Mr. KENNEDY, Mr. BIDEN, Mr. FEINGOLD, Mr. MILLER, Mr. EDWARDS, Mrs. BOXER, Mr. Corzine and Mr. KERRY)

Viz:

On page 117, after line 12, add the following:

TITLE VIII—CORPORATE AND CRIMINAL FRAUD ACCOUNTABILITY

SEC. 801. SHORT TITLE.

This title may be cited as the "Corporate and Criminal Fraud Accountability Act of 2002".

SEC. 802. CRIMINAL PENALTIES FOR ALTERING DOCUMENTS.

(a) IN GENERAL.—Chapter 73 of title 18, United States Code, is amended by adding at the end the following:

"§ 1519. Destruction, alteration, or falsification of records in Federal investigations and bankruptcy

"Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 10 years, or both.

"§ 1520. Destruction of corporate audit records

"(a)(1) Any accountant who conducts an audit of an issuer of securities to which section 10A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(a)) applies, shall maintain all audit or review workpapers for a period of 5 years from the end of the fiscal period in which the audit or review was concluded.

"(2) The Securities and Exchange Commission shall promulgate, within 180 days, after adequate notice and an opportunity for comment, such rules and regulations, as are reasonably necessary, relating to the retention of relevant records such as workpapers, documents that form the basis of an audit or review, memoranda, correspondence, communications, other documents, and records (including electronic records) which are created, sent, or received in connection with an audit or review and contain conclusions, opinions, analyses, or financial data relating to such an audit or review, which is conducted by any accountant who conducts an audit of an issuer of securities to which section 10A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(a)) applies.

"(b) Whoever knowingly and willfully violates subsection (a)(1), or any rule or regulation promulgated by the Securities and Exchange Commission under subsection (a)(2), shall be fined under this title, imprisoned not more than 5 years, or both.

"(c) Nothing in this section shall be deemed to diminish or relieve any person of any other duty or obligation, imposed by Federal or State law or regulation, to maintain, or refrain from destroying, any document.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 of title 18, United States Code, is amended by adding at the end the following new items:

"1519. Destruction, alteration, or falsification of records in Federal investigations and bankruptcy.
"1520. Destruction of corporate audit records.".

SEC. 803. DEBTS NONDISCHARGEABLE IF INCURRED IN VIOLATION OF SECURITIES FRAUD LAWS.

Section 523(a) of title 11, United States Code, is amended—

(1) in paragraph (17), by striking "or" after the semicolon;

(2) in paragraph (18), by striking the period at the end and inserting "; or"; and

(3) by adding at the end, the following:

"(19) that—

"(A) arises under a claim relating to—

"(i) the violation of any of the Federal securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), any State securities laws, or any regulations or orders issued under such Federal or State securities laws; or

"(ii) common law fraud, deceit, or manipulation in connection with the purchase or sale of any security; and

"(B) results, in relation to any claim described in subparagraph (A), from—

"(i) any judgment, order, consent order, or decree entered in any Federal or State judicial or administrative proceeding;

"(ii) any settlement agreement entered into by the debtor; or

"(iii) any court or administrative order for any damages, fine, penalty, citation, restitutionary payment, disgorgement payment, attorney fee, cost, or other payment owed by the debtor.".

SEC. 804. STATUTE OF LIMITATIONS FOR SECURITIES FRAUD.

(a) IN GENERAL.—Section 1658 of title 28, United States Code, is amended—

(1) by inserting "(a)" before "Except"; and

(2) by adding at the end the following:

"(b) Notwithstanding subsection (a), a private right of action that involves a claim of fraud, deceit, manipulation, or contrivance in contravention of a regulatory requirement concerning the securities laws, as defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), may be brought not later than the earlier of—

"(1) 5 years after the date on which the alleged violation occurred; or

"(2) 2 years after the date on which the alleged violation was discovered.".

(b) EFFECTIVE DATE.—The limitations period provided by section 1658(b) of title 28, United States Code, as added by this section, shall apply to all proceedings addressed by this section that are commenced on or after the date of enactment of this Act.

(c) NO CREATION OF ACTIONS.—Nothing in this section shall create a new, private right of action.

SEC. 805. REVIEW OF FEDERAL SENTENCING GUIDELINES FOR OBSTRUCTION OF JUSTICE AND EXTENSIVE CRIMINAL FRAUD.

Pursuant to section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and amend, as appropriate, the Federal Sentencing Guidelines and related policy statements to ensure that—

(1) the base offense level and existing enhancements contained in United States Sentencing Guideline 2J1.2 relating to obstruction of justice are sufficient to deter and punish that activity;

(2) the enhancements and specific offense characteristics relating to obstruction of justice are adequate in cases where—

(A) documents and other physical evidence are actually destroyed, altered, or fabricated;

(B) the destruction, alteration, or fabrication of evidence involves—

(i) a large amount of evidence, a large number of participants, or is otherwise extensive;

(ii) the selection of evidence that is particularly probative or essential to the investigation; or

(iii) more than minimal planning; or

(C) the offense involved abuse of a special skill or a position of trust;

(3) the guideline offense levels and enhancements for violations of section 1519 or 1520 of title 18, United States Code, as added by this title, are sufficient to deter and punish that activity;

(4) the guideline offense levels and enhancements under United States Sentencing Guideline 2B1.1 (as in effect on the date of enactment of this Act) are sufficient for a fraud offense when the number of victims adversely involved is significantly greater than 50;

(5) a specific offense characteristic enhancing sentencing is provided under United States Sentencing Guideline 2B1.1 (as in effect on the date of enactment of this Act) for a fraud offense that endangers the solvency or financial security of a substantial number of victims; and

(6) the guidelines that apply to organizations in United States Sentencing Guidelines, chapter 8, are sufficient to deter and punish organizational criminal misconduct.

SEC. 806. PROTECTION FOR EMPLOYEES OF PUBLICLY TRADED COMPANIES WHO PROVIDE EVIDENCE OF FRAUD.

(a) IN GENERAL.—Chapter 73 of title 18, United States Code, is amended by inserting after section 1514 the following:

"§ 1514A. Civil action to protect against retaliation in fraud cases

"(a) WHISTLEBLOWER PROTECTION FOR EMPLOYEES OF PUBLICLY TRADED COMPANIES.—No company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*), or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)), or any officer, employee, contractor, subcontractor, or agent of such company, may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee—

"(1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by—

"(A) a Federal regulatory or law enforcement agency;

"(B) any Member of Congress or any committee of Congress; or

"(C) a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); or

"(2) to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed (with any knowledge of the employer) relating to an alleged violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.

"(b) ENFORCEMENT ACTION.—

"(1) IN GENERAL.—A person who alleges discharge or other discrimination by any person in violation of subsection (a) may seek relief under subsection (c), by—

"(A) filing a complaint with the Secretary of Labor; or

"(B) if the Secretary has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for de novo review in the appropriate district court of the

United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

"(2) PROCEDURE.—

"(A) IN GENERAL.—An action under paragraph (1)(A) shall be governed under the rules and procedures set forth in section 42121(b) of title 49, United States Code.

"(B) EXCEPTION.—Notification made under section 42121(b)(1) of title 49, United States Code, shall be made to the person named in the complaint and to the employer.

"(C) BURDENS OF PROOF.—An action brought under paragraph (1)(B) shall be governed by the legal burdens of proof set forth in section 42121(b) of title 49, United States Code.

"(D) STATUTE OF LIMITATIONS.—An action under paragraph (1) shall be commenced not later than 90 days after the date on which the violation occurs.

"(c) REMEDIES.—

"(1) IN GENERAL.—An employee prevailing in any action under subsection (b)(1) shall be entitled to all relief necessary to make the employee whole.

"(2) COMPENSATORY DAMAGES.—Relief for any action under paragraph (1) shall include—

"(A) reinstatement with the same seniority status that the employee would have had, but for the discrimination;

"(B) the amount of back pay, with interest; and

"(C) compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

"(d) RIGHTS RETAINED BY EMPLOYEE.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law, or under any collective bargaining agreement.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 of title 18, United States Code, is amended by inserting after the item relating to section 1514 the following new item:

"1514A. Civil action to protect against retaliation in fraud cases.".

SEC. 807. CRIMINAL PENALTIES FOR DEFRAUDING SHAREHOLDERS OF PUBLICLY TRADED COMPANIES.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"§ 1348. Securities fraud

"Whoever knowingly executes, or attempts to execute, a scheme or artifice—

"(1) to defraud any person in connection with any security of an issuer with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*) or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)); or

"(2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any money or property in connection with the purchase or sale of any security of an issuer with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*) or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d));

shall be fined under this title, or imprisoned not more than 10 years, or both.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 63 of title 18, United States Code, is amended by adding at the end the following new item:

"1348. Securities fraud.".

Withdrawal Marker
The George W. Bush Library

FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Email	FW: Urgent Help [with attachments] - To: Jennifer Newstead - From: Adam Charnes	5	07/12/2002	P5;

This marker identifies the original location of the withdrawn item listed above. For a complete list of items withdrawn from this folder, see the Withdrawal/Redaction Sheet at the front of the folder.

COLLECTION:
Counsel's Office, White House

SERIES:
Newstead, Jennifer (Jen)

FOLDER TITLE:
Sarbanes Passed Bill [1]

FRC ID:
9825

OA Num.:
2318

NARA Num.:
2230

FOIA ID and Segment:
2014-0373-F

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

A. Closed by Executive Order 13526 governing access to national security information.
B. Closed by statute or by the agency which originated the document.
C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.

This Document was withdrawn on 5/19/2015 by erl

	Rule 10b-5	**Section 1348**
Scienter requirement	**"willful"** violation (15 U.S.C. § 78ff(a)); see also Ernst & Ernst v. Hochfelder, 425 U.S. 185 (1975)	**"knowingly"** execute/attempt to execute fraudulent scheme
Prohibited acts	[1] employ device/scheme/artifice to defraud, or [2] untrue statements of material fact or material omissions, or [3] any act of fraud or deceit upon any person, in connection with **purchase/sale** of securities (see Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723 (1975))	Executing or attempting to execute a scheme/artifice to: [1] defraud any person **in connection with securities** or [2] obtain by false/fraudulent pretenses money/property **in connection with purchase/sale of securities**
Covered securities	Any security	Any security of an issuer [1] who has a class of securities registered under Securities Exchange Act § 12 or [2] who is required to file reports under § 15(d)
Other	Materiality requirement for false statements and omissions (see Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988), for standard) Explicit "commerce" jurisdictional requirement: means/instrumentality of interstate commerce, mails, national securities exchange facilities	No explicit materiality requirement (assuming that 1348's general anti-fraud language reaches false statements/omissions) No explicit requirement

Withdrawal Marker
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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Email	FW: Urgent WH Request for Help [with attachments] - To: Adam Charnes, et al. - From: Gregory Katsas	4	07/11/2002	P5;

This marker identifies the original location of the withdrawn item listed above. For a complete list of items withdrawn from this folder, see the Withdrawal/Redaction Sheet at the front of the folder.

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FOLDER TITLE:
Sarbanes Passed Bill [1]
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This Document was withdrawn on 5/19/2015 by erl

THE WHITE HOUSE
WASHINGTON

OFFICE OF LEGISLATIVE AFFAIRS
HOUSE LIAISON

112 East Wing
(202) 456-6620 Phone
(202) 456-3501 Fax

FACSIMILE TRANSMISSION

DATE: 7/16/2

TO: Jennifer Newstead

PAGES: ____ (Including Cover Sheet)

FAX: 62146 **PHONE:** ____

FROM:

___ DAVID HOBBS	___ BOB MARSH
X BRIAN CONKLIN	___ DAN KENIRY
___ KIRSTEN CHADWICK	___ NELSON LITTERST
X ADAM INGOLS	___ CHRISTAL WEST
___ DAVID HOLT	

MESSAGE:

....
(Original Signature of Member)

SUSPEND THE RULES AND PASS THE BILL, H.R. 5118, WITH AN AMENDMENT

(The amendment strikes out all after the enacting clause and inserts a new text)

107TH CONGRESS
2D SESSION

H. R. 5118

IN THE HOUSE OF REPRESENTATIVES

Mr. SENSENBRENNER (for himself, [see attached list of cosponsors]) introduced the following bill; which was referred to the Committee on ______

A BILL

To provide for enhanced penalties for accounting and auditing improprieties at publicly traded companies, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Corporate Fraud Accountability Act of 2002".

SEC. 2. HIGHER MAXIMUM PENALTIES FOR MAIL AND WIRE FRAUD.

(a) MAIL FRAUD.—Section 1341 of title 18, United States Code, is amended by striking "five" and inserting "20".

(b) WIRE FRAUD.—Section 1343 of title 18, United States Code, is amended by striking "five" and inserting "20".

(c) SECURITIES FRAUD.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"§ 1348. Securities fraud

"Whoever knowingly executes a scheme or artifice—

"(1) to defraud any person in connection with any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78l, 78o(d)) or section 6 of the Securities Act of 1933 (15 U.S.C. 77f); or

"(2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any money or property in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C.

78*l*, 78o(d)) or section 6 of the Securities Act of 1933 (15 U.S.C. 77f),

shall be fined under this title, or imprisoned not more than 25 years, or both.”.

(d) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 63 of title 18, United States Code, is amended by adding at the end the following:

“1348. Securities fraud.”.

SEC. 3. TAMPERING WITH A RECORD OR OTHERWISE IMPEDING AN OFFICIAL PROCEEDING.

Section 1512 of title 18, United States Code, is amended—

(1) by redesignating subsections (c) through (i) as subsections (d) through (j), respectively; and

(2) by inserting after subsection (b) the following new subsection:

“(c) Whoever corruptly—

“(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or

“(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so,

shall be fined under this title or imprisoned not more than 20 years, or both.”

SEC. 4. AMENDMENT TO THE FEDERAL SENTENCING GUIDELINES.

(a) REQUEST FOR IMMEDIATE CONSIDERATION BY THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission is requested to—

(1) promptly review the sentencing guidelines applicable to securities and accounting fraud and related offenses;

(2) expeditiously consider the promulgation of new sentencing guidelines or amendments to existing sentencing guidelines to provide an enhancement for officers or directors of publicly traded corporations who commit fraud and related offenses; and

(3) submit to Congress an explanation of actions taken by the Sentencing Commission pursuant to paragraph (2) and any additional policy recommendations the Sentencing Commission may have for combating offenses described in paragraph (1).

(b) CONSIDERATIONS IN REVIEW.—In carrying out this section, the Sentencing Commission is requested to—

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of securities, pension, and accounting fraud and the need for

aggressive and appropriate law enforcement action to prevent such offenses;

(2) assure reasonable consistency with other relevant directives and with other guidelines;

(3) account for any aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the sentencing guidelines currently provide sentencing enhancements;

(4) ensure that guideline offense levels and enhancements for an obstruction of justice offense are adequate in cases where documents or other physical evidence are actually destroyed or fabricated;

(5) ensure that the guideline offense levels and enhancements under United States Sentencing Guideline 2B1.1 (as in effect on the date of enactment of this Act) are sufficient for a fraud offense when the number of victims adversely involved is significantly greater than 50;

(6) make any necessary conforming changes to the sentencing guidelines; and

(7) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

(c) EMERGENCY AUTHORITY AND DEADLINE FOR COMMISSION ACTION.—The United States Sentencing

Commission is requested to promulgate the guidelines or amendments provided for under this sections as soon as practicable, and in any event not later than the 120 days after the date of enactment of this Act, in accordance with the procedures sent forth in section 21(a) of the Sentencing Reform Act of 1987, as though the authority under that Act had not expired.

SEC. 5. DEBTS NONDISCHARGEABLE IF INCURRED IN VIOLATION OF SECURITIES FRAUD LAWS.

Section 523(a) of title 11, United States Code, is amended—

(1) in paragraph (17), by striking "or" after the semicolon;

(2) in paragraph (18), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(19) that—

"(A) is a claim for

"(i) the violation of any of the Federal securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), any of the State securities laws, or any regulation or order issued under such Federal or State securities laws; or "(ii) common law fraud, deceit, or manipulation in connection with the purchase or sale of any security; and

"(B) results, in relation to any claim described in subparagraph (A), from—

"(i) any judgment, order, consent order, or decree entered in any Federal or State judicial or administrative proceeding;

"(ii) any settlement agreement entered into by the debtor; or

"(iii) any court or administrative order for any damages, fine, penalty, citation, restitutionary payment, disgorgement payment, attorney fee, cost, or other payment owed by the debtor.".

SEC. 6. CORPORATE RESPONSIBILITY FOR FINANCIAL REPORTS.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"§ 1349. Failure of corporate officers to certify financial reports

"(a) CERTIFICATION OF PERIODIC FINANCIAL REPORTS.—Each periodic report containing financial statements filed by an issuer with the Securities Exchange

Commission pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)) shall be accompanied by a written statement by the chairman of the board, chief executive officer, and chief financial officer (or equivalent thereof) of the issuer.

"(b) CONTENT.—The statement required under subsection (a) shall certify that those financial statements fairly and accurately represent, in all material respects, the operations and financial condition of the issuer.

"(c) CRIMINAL PENALTIES.—Whoever—

"(1) knowingly violates this section shall be fined not more than $1,000,000, or imprisoned not more than 10 years, or both; or

"(2) willfully violates this section shall be fined not more than $5,000,000, or imprisoned not more than 20 years, or both.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"1349. Failure of corporate officers to certify financial reports.".

SEC. 7. ATTEMPTS AND CONSPIRACIES TO COMMIT CRIMINAL OFFENSES.

(a) IN GENERAL.—Chapter 1 of title 18, United States Code, is amended by inserting before section 2 the following:

(a) IN GENERAL.—Section 21C(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78u-3(c)) is amended by adding at the end the following:

"(3) TEMPORARY FREEZE.—

"(A) IN GENERAL.—

July 16, 2002
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"(iii) EFFECTIVE PERIOD.—A temporary order issued under clause (i) shall—

"(I) become effective immediately;

"(II) be served upon the parties subject to it; and

"(III) unless set aside, limited or suspended by a court of competent jurisdiction, shall remain effective and enforceable for 45 days.

"(iv) EXTENSIONS AUTHORIZED.—The effective period of an order under this subparagraph may be extended by the court upon good cause shown for not longer than 45 additional days, provided that the combined period of the order shall not exceed 90 days.

"(B) PROCESS ON DETERMINATION OF VIOLATIONS.—

"(i) VIOLATIONS CHARGED.—If the issuer or other person described in subparagraph (A) is charged with any violation of the Federal securities laws before the expiration of the effective period of a temporary order under subparagraph (A) (including any applicable extension period), the order shall remain in effect, subject to court approval, until the conclusion of any legal proceedings related thereto, and the affected issuer or other person, shall have the right to petition the court for review of the order.

"(ii) VIOLATIONS NOT CHARGED.—If the issuer or other person described in subparagraph (A) is not charged with any violation of the Federal securities laws before the expiration of the effective period of a temporary order under subparagraph (A) (including any applicable extension period), the escrow shall terminate at the expiration of the 45-day effective period (or the expiration of any extension period, as applicable), and the disputed payments (with accrued interest) shall be returned to the issuer or other affected person."

"(b) TECHNICAL AMENDMENT.—Section 21C(c)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–3(c)(2)) is amended by striking "This" and inserting "paragraph (1)".

SEC. 10. AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.

(a) SECURITIES EXCHANGE ACT OF 1934.—Section 21C of the Securities Exchange Act of 1934 (15 U.S.C. 78u–3) is amended by adding at the end the following:

"(f) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 10(b) or the rules or regulations thereunder, from acting as an officer or director of any issuer that has a class of securities registered pursuant to section, or that is required to file reports pursuant to section (d), if the conduct of that person demonstrates unfitness to serve as an officer or director of any such issuer.".

(b) SECURITIES ACT OF 1933.—Section 8A of the Securities Act of 1933 (15 U.S.C. 77h–1) is amended by adding at the end of the following:

"(f) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 17(a)(1) or the rules or regulations thereunder, from acting as an officer or director of any issuer that has a class of securities registered pursuant to section of the Securities Exchange Act of 1934, or that is required to file reports pursuant to section 15(d) of that Act, if the conduct of that person demonstrates unfitness to serve as an officer or director of any such issuer.".

SEC. 11. RETALIATION AGAINST INFORMANT.

(a) IN GENERAL.—Section 1513 of title 18, United States Code, is amended by adding at the end the following:

"(e) Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both.".