

107TH CONGRESS  
2D SESSION

# S. 2010

To provide for criminal prosecution of persons who alter or destroy evidence in certain Federal investigations or defraud investors of publicly traded securities, to disallow debts incurred in violation of securities fraud laws from being discharged in bankruptcy, to protect whistleblowers against retaliation by their employers, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 12, 2002

Mr. LEAHY (for himself, Mr. DASCHLE, Mr. DURBIN, and Mr. HARKIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To provide for criminal prosecution of persons who alter or destroy evidence in certain Federal investigations or defraud investors of publicly traded securities, to disallow debts incurred in violation of securities fraud laws from being discharged in bankruptcy, to protect whistleblowers against retaliation by their employers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Corporate and Crimi-  
3 nal Fraud Accountability Act of 2002”.

4 **SEC. 2. CRIMINAL PENALTIES FOR ALTERING DOCUMENTS.**

5 (a) IN GENERAL.—Chapter 73 of title 18, United  
6 States Code, is amended by adding at the end the fol-  
7 lowing:

8 **“§ 1519. Destruction, alteration, or falsification of**  
9 **records in Federal investigations and**  
10 **bankruptcy**

11 “Whoever knowingly alters, destroys, mutilates, con-  
12 ceals, covers up, falsifies, or makes a false entry in any  
13 record, document, or tangible object with the intent to im-  
14 pede, obstruct, or influence the investigation or proper ad-  
15 ministration of any matter within the jurisdiction of any  
16 department or agency of the United States or any case  
17 filed under title 11, or in relation to or contemplation of  
18 any such matter or case, shall be fined under this title,  
19 imprisoned not more than 5 years, or both.

20 **“§ 1520. Destruction of corporate audit records**

21 “(a) Any accountant who conducts an audit of an  
22 issuer of securities to which section 10A(a) of the Securi-  
23 ties Exchange Act of 1934 (15 U.S.C. 78j–1(a)) applies,  
24 shall maintain all documents (including electronic docu-  
25 ments) sent, received, or created in connection with any  
26 audit, review, or other engagement for such issuer for a

1 period of 5 years from the end of the fiscal period in which  
 2 the audit, review, or other engagement was concluded.

3 “(b) Whoever knowingly and willfully violates sub-  
 4 section (a) shall be fined under this title, imprisoned not  
 5 more than 5 years, or both.

6 “(c) Nothing in this section shall be deemed to dimin-  
 7 ish or relieve any person of any other duty or obligation,  
 8 imposed by Federal or State law or regulation, to main-  
 9 tain, or refrain from destroying, any document.”.

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

“1519. Destruction, alteration, or falsification of records in Federal investiga-  
 tions and bankruptcy.

“1520. Destruction of corporate audit records.”.

14 **SEC. 3. ENHANCED ENFORCEMENT OF LAWS AFFECTING**  
 15 **RACKETEER-INFLUENCED AND CORRUPT OR-**  
 16 **GANIZATIONS.**

17 Section 1964 of title 18, United States Code, is  
 18 amended—

19 (1) in subsection (b), by inserting after “The  
 20 Attorney General” the following: “, the Attorney  
 21 General of any State, or the Securities and Ex-  
 22 change Commission”; and

23 (2) in subsection (d), by inserting before the pe-  
 24 riod the following: “or any State”.

1 **SEC. 4. DEBTS NONDISCHARGEABLE IF INCURRED IN VIO-**  
2 **LATION OF SECURITIES FRAUD LAWS.**

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

5 (1) in paragraph (17), by striking “or” after  
6 the semicolon;

7 (2) in paragraph (18), by striking the period at  
8 the end and inserting “; or”; and

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

10 “(19) that—

11 “(A) arises under a claim relating to—

12 “(i) the violation of any of the Fed-  
13 eral securities laws (as that term is defined  
14 in section 3(a)(47) of the Securities Ex-  
15 change Act of 1934 (15 U.S.C.  
16 78c(a)(47)), any State securities laws, or  
17 any regulations or orders issued under  
18 such Federal or State securities laws; or

19 “(ii) common law fraud, deceit, or  
20 manipulation in connection with the pur-  
21 chase or sale of any security; and

22 “(B) results, in relation to any claim de-  
23 scribed in subparagraph (A), from—

24 “(i) any judgment, order, consent  
25 order, or decree entered in any Federal or  
26 State judicial or administrative proceeding;

1                   “(ii) any settlement agreement en-  
2                   tered into by the debtor; or

3                   “(iii) any court or administrative  
4                   order for any damages, fine, penalty, cita-  
5                   tion, restitutionary payment, disgorgement  
6                   payment, attorney fee, cost, or other pay-  
7                   ment owed by the debtor.”.

8 **SEC. 5. STATUTE OF LIMITATIONS FOR SECURITIES FRAUD.**

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

11                   (1) by inserting “(a)” before “Except”; and

12                   (2) by adding at the end the following:

13           “(b) Notwithstanding subsection (a), a private right  
14 of action that involves a claim of fraud, deceit, manipula-  
15 tion, or deliberate or reckless disregard of a regulatory re-  
16 quirement concerning the securities laws, as defined in  
17 section 3(a)(47) of the Securities Exchange Act of 1934  
18 (15 U.S.C. 78c(a)(47)), may be brought not later than  
19 the earlier of—

20                   “(1) 5 years after the date on which the alleged  
21 violation occurred; or

22                   “(2) 3 years after the date on which the alleged  
23 violation was discovered.”.

24           (b) EFFECTIVE DATE.—The limitations period pro-  
25 vided by section 1658(b) of title 28, United States Code,

1 as added by this section, shall apply to all proceedings ad-  
2 dressed by this section that are commenced on or after  
3 the date of enactment of this Act.

4 **SEC. 6. REVIEW OF FEDERAL SENTENCING GUIDELINES**  
5 **FOR OBSTRUCTION OF JUSTICE AND EXTEN-**  
6 **SIVE CRIMINAL FRAUD.**

7 Pursuant to section 994 of title 28, United States  
8 Code, and in accordance with this section, the United  
9 States Sentencing Commission shall review and amend, as  
10 appropriate, the Federal Sentencing Guidelines and re-  
11 lated policy statements to ensure that—

12 (1) the guideline offense levels and enhance-  
13 ments for an obstruction of justice offense are ade-  
14 quate in cases where documents or other physical  
15 evidence are actually destroyed or fabricated;

16 (2) the guideline offense levels and enhance-  
17 ments for violations of section 1519 or 1520 of title  
18 18, United States Code, as added by this Act, are  
19 sufficient to deter and punish that activity;

20 (3) the guideline offense levels and enhance-  
21 ments under United States Sentencing Guideline  
22 2B1.1 (as in effect on the date of enactment of this  
23 Act) are sufficient for a fraud offense when the  
24 number of victims adversely involved is significantly  
25 greater than 50; and

1           (4) a specific offense characteristic enhancing  
 2           sentencing is provided under United States Sen-  
 3           tencing Guideline 2B1.1 (as in effect on the date of  
 4           enactment of this Act) for a fraud offense that en-  
 5           dangers the solvency or financial security of 1 or  
 6           more victims.

7   **SEC. 7. PROTECTION FOR EMPLOYEES OF PUBLICLY TRAD-**  
 8                           **ED COMPANIES WHO PROVIDE EVIDENCE OF**  
 9                           **FRAUD.**

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

13   **“§ 1514A. Civil action to protect against retaliation in**  
 14                           **fraud cases**

15          “(a) WHISTLEBLOWER PROTECTION FOR EMPLOY-  
 16       EES OF PUBLICLY TRADED COMPANIES.—No company  
 17       with securities registered under section 6 of the Securities  
 18       Act of 1933 (15 U.S.C. 77f) or section 12 or 15(d) of  
 19       the Securities Exchange Act of 1934 (15 U.S.C. 78l,  
 20       78o(d)), or any officer, employee, contractor, subcon-  
 21       tractor, or agent of such company, may discharge, demote,  
 22       suspend, threaten, harass, or in any other manner dis-  
 23       criminate against an employee in the terms and conditions  
 24       of employment because of any lawful act done by the  
 25       employee—

1           “(1) to provide information, cause information  
2 to be provided, or otherwise assist in an investiga-  
3 tion regarding any conduct which the employee rea-  
4 sonably believes constitutes a violation of section  
5 1341, 1343, 1344, or 1348, any rule or regulation  
6 of the Securities and Exchange Commission, or any  
7 provision of Federal law relating to fraud against  
8 shareholders, when the information or assistance is  
9 provided to or the investigation is conducted by—

10           “(A) a Federal regulatory or law enforce-  
11 ment agency;

12           “(B) any Member of Congress or any com-  
13 mittee of Congress; or

14           “(C) a person with supervisory authority  
15 over the employee (or such other person work-  
16 ing for the employer who has the authority to  
17 investigate, discover, or terminate misconduct);  
18 or

19           “(2) to file, cause to be filed, testify, participate  
20 in, or otherwise assist in a proceeding filed or about  
21 to be filed (with any knowledge of the employer) re-  
22 lating to an alleged violation of section 1341, 1343,  
23 1344, or 1348, any rule or regulation of the Securi-  
24 ties and Exchange Commission, or any provision of  
25 Federal law relating to fraud against shareholders.

1 “(b) ELECTION OF ACTION.—

2 “(1) IN GENERAL.—A person who alleges dis-  
3 charge or other discrimination by any person in vio-  
4 lation of subsection (a) may seek relief under sub-  
5 section (c), by—

6 “(A) filing a complaint with the Secretary  
7 of Labor; or

8 “(B) bringing an action at law or equity in  
9 the appropriate district court of the United  
10 States.

11 “(2) PROCEDURE.—

12 “(A) IN GENERAL.—An action under para-  
13 graph (1)(A) shall be governed under the rules  
14 and procedures set forth in section 42121(b) of  
15 title 49, United States Code.

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

20 “(C) BURDENS OF PROOF.—An action  
21 brought under paragraph (1)(B) shall be gov-  
22 erned by the legal burdens of proof set forth in  
23 section 42121(b) of title 49, United States  
24 Code.

1           “(D) STATUTE OF LIMITATIONS.—An ac-  
2           tion under paragraph (1) shall be commenced  
3           not later than 180 days after the date on which  
4           the violation occurs.

5           “(c) REMEDIES.—

6           “(1) IN GENERAL.—An employee prevailing in  
7           any action under subsection (b)(1) (A) or (B) shall  
8           be entitled to all relief necessary to make the em-  
9           ployee whole.

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

12               “(A) reinstatement with the same seniority  
13               status that the employee would have had, but  
14               for the discrimination;

15               “(B) 2 times the amount of back pay, with  
16               interest; and

17               “(C) compensation for any special damages  
18               sustained as a result of the discrimination, in-  
19               cluding litigation costs, expert witness fees, and  
20               reasonable attorney fees.

21          “(3) PUNITIVE DAMAGES.—

22               “(A) IN GENERAL.—In a case in which the  
23               finder of fact determines that the protected  
24               conduct of the employee under subsection (a)  
25               involved a substantial risk to the health, safety,

1 or welfare of shareholders of the employer or  
2 the public, the finder of fact may award puni-  
3 tive damages to the employee.

4 “(B) FACTORS.—In determining the  
5 amount, if any, to be awarded under this para-  
6 graph, the finder of fact shall take into  
7 account—

8 “(i) the significance of the informa-  
9 tion or assistance provided by the employee  
10 under subsection (a) and the role of the  
11 employee in advancing any investigation,  
12 proceeding, congressional inquiry or action,  
13 or internal remedial process, or in pro-  
14 tecting the health, safety, or welfare of  
15 shareholders of the employer or of the pub-  
16 lic;

17 “(ii) the nature and extent of both the  
18 actual and potential discrimination to  
19 which the employee was subjected as a re-  
20 sult of the protected conduct of the em-  
21 ployee under subsection (a); and

22 “(iii) the nature and extent of the risk  
23 to the health, safety, or welfare of share-  
24 holders or the public under subparagraph  
25 (A).

1 “(d) RIGHTS RETAINED BY EMPLOYEE.—

2 “(1) OTHER REMEDIES UNAFFECTED.—Noth-  
3 ing in this section shall be deemed to diminish the  
4 rights, privilege, or remedies of any employee under  
5 any Federal or State law, or under any collective  
6 bargaining agreement.

7 “(2) VOLUNTARY ADJUDICATION.—No em-  
8 ployee may be compelled to adjudicate his or her  
9 rights under this section pursuant to an arbitration  
10 agreement.”.

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

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

15 **SEC. 8. CRIMINAL PENALTIES FOR DEFRAUDING SHARE-**  
16 **HOLDERS OF PUBLICLY TRADED COMPANIES.**

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

20 **“§ 1348. Securities fraud**

21 “Whoever knowingly executes, or attempts to execute,  
22 a scheme or artifice—

23 “(1) to defraud any person in connection with  
24 any security registered under section 12 or 15(d) of  
25 the Securities Exchange Act of 1934 (15 U.S.C. 78l,

1 78o(d)) or section 6 of the Securities Act of 1933  
2 (15 U.S.C. 77f); or

3 “(2) to obtain, by means of false or fraudulent  
4 pretenses, representations, or promises, any money  
5 or property in connection with the purchase or sale  
6 of any security registered under section 12 or 15(d)  
7 of the Securities Exchange Act of 1934 (15 U.S.C.  
8 78l, 78o(d)) or section 6 of the Securities Act of  
9 1933 (15 U.S.C. 77f),  
10 shall be fined under this title, or imprisoned not more than  
11 10 years, or both.”.

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

“1348. Securities fraud.”.

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