

**Corporate Fraud Responsibility:
A Legislative History of the
Sarbanes-Oxley Act of 2002**

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Edited by

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INTRODUCTION

Described by President Bush as the most far-reaching reform of American business practices since the Great Depression, adding the Sarbanes-Oxley Act is intended to change the way corporations do business. It provides new standards of corporate responsibility, enhances disclosure requirements, provides for heightened criminal penalties and creates rights of action. It creates a new regulatory body for accountants, the Public Company Oversight Board, and provides tougher disclosure requirements for public companies. As President Bush stated when signing the Act into law, “The era of low standards and false profits is over; no boardroom in America is above or beyond the law. No more easy money for corporate criminals—just hard time.”

Title I of Sarbanes-Oxley establishes the Public Company Accounting Oversight Board (Board) to oversee the audit of public companies that are subject to the securities laws, establish audit report standards and rules, and inspect, investigate, and enforce compliance on the part of registered public accounting firms, and certified public accountants. Its sanctions and penalties are limited to intentional conduct or to repeated instances of negligent conduct. Title II, intended to assure auditor independence, prohibits auditors from performing certain non-audit services contemporaneously with an audit. It also requires pre-approval by the audit committee of the issuer for those non-audit services that are not expressly forbidden by the Act. Title III makes audit committees of public companies responsible for the appointment, compensation, and oversight of any registered public accounting firm employed to perform audit services. It also limits actions to recover profits to two years after the date on which such profits were realized. To protect employees, it requires plan administrators to notify workers 30 days before the start of any blackout period affecting their pensions. It also bars company insiders from selling their own stock during blackout periods when workers can’t make changes to their 401(k)s.

Title IV requires financial reports filed with the SEC to reflect all material correcting adjustments that have been identified by a registered public accounting firm in accordance with SEC rules and generally

accepted accounting principles (GAAP). Title V requires the SEC to adopt rules governing securities analysts' potential conflicts of interest, to establish safeguards to assure that securities analysts are separated within the investment firm from the review, pressure, or oversight of those whose involvement in investment banking activities might potentially bias their judgment or supervision. It also directs the SEC to adopt rules requiring securities analysts and broker/dealers to disclose specified conflicts of interest. Title VI deems a registered public accounting firm to be engaged in "improper professional conduct" if the SEC finds "intentional or knowing conduct, including reckless conduct, that results in a violation of applicable professional standards."

Title VIII, the Corporate and Criminal Fraud Accountability Act of 2002, imposes criminal penalties for: (1) knowingly destroying, altering, concealing, or falsifying records with intent to obstruct or influence either a federal investigation or a matter in bankruptcy; and (2) auditor failure to maintain for a five-year period all audit or review work papers pertaining to an issuer of securities. The Act protects whistleblowers by prohibiting '34 Act issuers from discharging, demoting, suspending, threatening, harassing or discriminating against any employee for lawfully providing information to, or assisting in a federal investigation. It also bans retaliation against employees for testifying, participating or assisting in a proceeding relating to an alleged violation of criminal provisions or SEC rule or regulation relating to fraud against shareholders. Employees who allege a violation of this provision may file a complaint with the Department of Labor, and may begin a civil action if the administrative claim is not decided within 180 days.

Title IX, the White-Collar Crime Penalty Enhancement Act of 2002, requires a written statement by the CEO and CFO, who must certify that the report containing the financial statements fully complies with the '34 Act and that the "information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of the issuer." It also creates additional criminal and civil penalties and rights of action against corporate officers and directors. Crimes created by the Act include securities fraud, whereby any person who knowingly executes or attempts to defraud any person or obtain money or property in connection with the sale or purchase of securities of an issuer is subject to imprisonment of up to twenty-five years. It also requires accountants to maintain audit or review workpapers for five years, and provides that the destruction of records in knowing and willful violation of the Act or rules promulgated

thereunder is subject to fine and imprisonment of up to ten years. It is now also a crime, punishable by imprisonment up to twenty years, to “knowingly alter, destroy, mutilate, conceal, cover up, falsify or make a false entry in any record or document with the intent to impede, obstruct or influence a federal government investigation or a bankruptcy case....”

Finally, new criminal penalties are also provided by Title XI, the Corporate Fraud Accountability Act of 2002. This section amends federal criminal law to establish criminal liability for corporate officers who fail to certify financial reports. Penalties include maximum terms of ten years imprisonment for certifying a periodic report while knowing it does not comport with the terms of the Act, and up to twenty years for the willful certification of a statement with the knowledge that it does not comport with the Act. It also establishes a maximum twenty-year prison term for tampering with records or otherwise impeding official proceedings. It makes it a crime punishable by up to twenty years imprisonment to “corruptly” alter, destroy, mutilate or conceal, or attempt to do so, with the intent to impair their integrity or availability in an official proceeding, or to obstruct, influence or impede any official proceeding. It is now also a crime punishable by up to ten years imprisonment of up to ten years to retaliate, by taking any action harmful to anyone for providing a law enforcement officer with any truthful information relating to the commission or possible commission of any federal offense.

William H. Manz
Rockville Centre, NY
January 2003

LEGISLATIVE CHRONOLOGY

Feb. 14, 2002

Referred to the House Committee on Financial Services.

Mar. 4, 2002

Referred to the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises.

Mar. 13, 2002

Committee hearings held.

Mar. 20, 2002

Committee hearings held.

Apr. 4, 2002

Committee hearings held.

Apr. 11, 2002

Committee consideration and mark-up session held.

Apr. 16, 2002

Committee consideration and mark-up session held; ordered to be reported (amended): 49–12.

Apr. 22, 2002

Reported (amended) by the Committee on Financial Services.

Apr. 24, 2002

Amendments offered; passed by House: 334–90.

Apr. 25, 2002

Received in the Senate; Senate struck all after the Enacting Clause and substituted the language of S.2673 as amended.

July 15, 2002

Passed Senate with an amendment by voice vote; Senate insisted on its amendment, requested a conference; House agreed to a conference.

July 19, 2002

Conference held.

July 24, 2002

Conference report filed.

July 25, 2002

House agreed to conference report: 423–3; Senate agreed to conference report: 99–0.

July 16, 2002

Presented to President.

July 30, 2002

Signed by President; became Public Law No: 107-204.

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- Doc. No. 3.** Providing for Consideration of H.R. 3763. House Report No. 107-418.
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Doc. No. 45. Executive Order 13271—Establishment of the Corporate Fraud Task Force, Weekly Compilation of Presidential Documents 1162–64 (July 15, 2002).

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- Doc. No. 117** *Enron's Credit Rating: Enron's Bankers' Contacts with Moody's and Government Officials*. Sen. Committee Print 107-83 (2003).

* Includes selected documents only. The complete hearings had not been published by the GPO at the time of the compilation of this set.

Editor's Note: Not included in this set is the *Report of Investigation of Enron Corporation and Related Entities Regarding Federal Tax and Compensation Issues, and Policy Recommendations*, a three-volume set of more than 2,700 pages, prepared by the Staff of the Joint Committee on Taxation, and published in 2003.