

S 2673

Public Company Accounting Reform and Investor Protection Act of 2002

Congress: 107 (2001–2003, Ended)

Chamber: Senate

Policy Area: Finance and Financial Sector

Introduced: Jun 25, 2002

Current Status: Returned to the Calendar. Calendar No. 442.

Latest Action: Returned to the Calendar. Calendar No. 442. (Jul 15, 2002)

Official Text: <https://www.congress.gov/bill/107th-congress/senate-bill/2673>

Sponsor

Name: Sen. Sarbanes, Paul S. [D-MD]

Party: Democratic • **State:** MD • **Chamber:** Senate

Cosponsors

No cosponsors are listed for this bill.

Committee Activity

Committee	Chamber	Activity	Date
Banking, Housing, and Urban Affairs Committee	Senate	Reported Original Measure	Jun 25, 2002

Subjects & Policy Tags

Policy Area:

Finance and Financial Sector

Related Bills

Bill	Relationship	Last Action
107 HR 5070	Identical bill	Aug 19, 2002: Referred to the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises.
107 HR 3763	Procedurally related	Jul 30, 2002: Became Public Law No: 107-204.

Public Company Accounting Reform and Investor Protection Act of 2002 - Title I: Public Company Accounting Oversight Board - Establishes the Public Company Accounting Oversight Board to: (1) oversee the audit of public companies that are subject to the securities laws; (2) establish audit report standards and rules; and (2) investigate, inspect, and enforce compliance relating to registered public accounting firms, associated persons, and the obligations and liabilities of accountants.

(Sec. 101) Prohibits Board membership from including more than two certified public accountants.

(Sec. 102) Mandates registration with the Board by any public accounting firm that performs or participates in any audit report with respect to any issuer.

(Sec. 105) Empowers the Board to impose disciplinary or remedial sanctions upon registered public accounting firms and their associated persons who are in violation of this Act, including the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect to them.

Restricts liability to intentional conduct, or repeated instances of negligent conduct.

Authorizes Board sanctions upon a registered accounting firm or its supervisory personnel for failure to supervise.

(Sec. 106) Places within the purview of this Act: (1) foreign public accounting firms that prepare or furnish an audit report with respect to any issuer; and (2) audit workpapers.

(Sec. 107) Grants the Securities and Exchange Commission (SEC) general oversight of the Board and the power to review Board actions, including general modification and rescission of Board authority.

(Sec. 108) Amends the Securities Act of 1933 to: (1) authorize the SEC to recognize, as "generally accepted" for purposes of the securities laws, any accounting principles established by a standard setting body; and (2) direct the SEC to study and report to Congress on the adoption by the U.S. financial reporting system of a principles-based accounting system.

Title II: Auditor Independence - Amends the Securities Exchange Act of 1934 to prohibit a registered public accounting firm from performing specified non-audit services contemporaneously with a mandatory audit. Requires preapproval for non-audit services not expressly forbidden by statute.

(Sec. 203) Mandates: (1) audit partner rotation on a five-year basis; and (2) auditor reports to audit committees of the issuer.

(Sec. 206) Prohibits a registered public accounting firm from performing statutorily mandated audit services for an issuer if the issuer's senior management officials had been employed by such firm and participated in the audit of that issuer during the one-year period preceding the audit initiation date.

(Sec. 209) States that it is the intention of this Act that, in supervising nonregistered public accounting firms and their associated persons, appropriate State regulatory authorities should make an independent determination of the proper standards applicable, particularly taking into consideration the size and nature of the business of the accounting firms they supervise.

Title III: Corporate Responsibility - Vests the audit committee of an issuer with responsibility for the appointment,

compensation, and oversight of any registered public accounting firm employed to perform audit services. Requires committee members to be a member of the board of directors of the issuer, and to be otherwise independent.

(Sec. 302) Requires the chief executive officer and chief financial officer of an issuer to: (1) certify that periodic financial statements filed with the SEC fairly present, in all material respects, the operations and financial condition of the issuer; and (2) forfeit certain bonuses and compensation received following an issuer's accounting restatement owing to noncompliance with securities laws.

(Sec. 305) Authorizes a court to prohibit a violator of certain SEC rules from serving as an officer or director of an issuer if the person's conduct demonstrates unfitness to serve (the current standard is "substantial unfitness").

(Sec. 306) Prohibits insider trades during pension fund blackout periods. States that profits realized from such trades shall inure to and be recoverable by the issuer irrespective of the intent of the parties to the transaction.

Title IV: Enhanced Financial Disclosures - Instructs the SEC to require by rule: (1) disclosure of all material off-balance sheet transactions and relationships that may have a material effect upon the financial status of an issuer; and (2) the presentation of pro forma financial information in a manner that is not misleading, and which is reconcilable with the financial condition of the issuer under generally accepted accounting principles.

(Sec. 401) Directs the SEC to study and report to Congress on: (1) the extent of off-balance sheet transactions and the use of special purpose entities; and (2) whether generally accepted accounting rules result in financial statements that reflect the economics of such off-balance sheet transactions in a transparent fashion to investors; and (3) the extent to which special purpose entities are used to facilitate off-balance sheet transactions.

(Sec. 402) Prohibits a corporation from making personal loans to its corporate executives. Cites exceptions for home improvement and manufactured home loans made in the ordinary course of the consumer credit business of such issuer and made on terms that are no more favorable than those offered to the general public.

(Sec. 403) Reduces the mandatory period for principal stockholders or senior executives to disclose changes in ownership of securities or security-based swap agreements to two business days after changes were executed (presently ten days after the close of a calendar month). Includes electronic filing within such mandate to disclose.

(Sec. 404) Directs the SEC to prescribe rules mandating inclusion of an internal control report and assessment within requisite annual reports. Requires a public accounting firm that issues the audit report to attest to, and report on, the assessment made by corporate management.

(Sec. 406) Directs the SEC to issue rules requiring a code of ethics for senior financial officers of an issuer applicable to the principal financial officer, comptroller or principal accounting officer.

(Sec. 407) Sets a deadline for the SEC to promulgate rules mandating issuer disclosure whether its audit committee comprises at least one member who is a financial expert.

Title V: Analyst Conflicts of Interest - Requires the SEC to adopt rules governing securities analysts' potential conflicts of interest, including: (1) restricting the prepublication clearance or approval of research reports by persons either engaged in investment banking activities, or not directly responsible for investment research; (2) limiting the supervision and compensatory evaluation of securities analysts to officials who are not engaged in investment banking activities; (3) prohibiting a broker or dealer involved with investment banking activities from retaliating against a securities analyst as a result of an unfavorable research report that may adversely affect the investment banking relationship of the broker or

dealer with the subject of the research report; and (4) establishing 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.

Directs the SEC to adopt rules requiring securities analysts and broker/dealers to disclose specified conflicts of interest.

Title VI: Commission Resources and Authority - Authorizes appropriations for FY 2003 to the SEC for: (1) additional compensation, salaries and benefits; (2) enhanced oversight of auditors and audit services; and (3) additional professional staff for fraud prevention, risk management, market regulation, and investment management.

(Sec. 602) Grants the SEC censure authority in connection with appearance and practice before the Commission. Sets forth rules of professional responsibility for attorneys representing public companies before the SEC, including: (1) requiring an attorney to report evidence of a material violation of securities law or breach of fiduciary duty to the chief legal counsel or the chief executive officer of the company; and (2) if corporate executives do not respond appropriately, requiring the attorney to report to the audit committee of the board of directors.

(Sec. 603) Amends the Securities Exchange Act of 1934 and the Securities Act of 1933 to grant Federal court authority to prohibit specified brokers, dealers, or issuers from participating in offerings of penny stock.

(Sec. 604) Amends the Securities Exchange Act of 1934 and the Investment Advisers Act of 1940 to authorize SEC censure or restriction of associated persons of brokers and dealers who are subject to any final order of certain State regulatory entities barring them from engaging in the business under their regulatory purviews.

Title VII: Studies and Reports - Mandates studies and reports to Congress by: (1) the Comptroller General regarding the consolidation of public accounting firms, and the impact upon the capital formation and securities markets; and (2) the SEC regarding the role and function of credit rating agencies in the operation of the securities market.

Title VIII: Corporate and Criminal Fraud Accountability - Corporate and Criminal Fraud Accountability Act of 2002 - Amends Federal criminal law to prohibit: (1) knowingly destroying, altering, concealing, or falsifying records with the intent to obstruct or influence an investigation in a matter in Federal jurisdiction or 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. Directs the SEC to promulgate regulations regarding the retention of audit records containing conclusions, opinions, analyses, or financial data.

(Sec. 803) Amends Federal bankruptcy law to make non-dischargeable in bankruptcy certain debts that result from a violation relating to Federal or State securities law, or of common law fraud pertaining to securities sales or purchases.

(Sec. 804) Amends the Federal judicial code to permit a private right of action for a securities-fraud claim to be brought not later than the earlier of: (1) five years after the date of the alleged violation; or (2) two years after its discovery.

(Sec. 805) Directs the United States Sentencing Commission to review and amend Federal sentencing guidelines to ensure that the offense levels, existing enhancements, and/or offense characteristics are sufficient to deter and punish violations involving: (1) obstruction of justice; (2) record destruction; (3) fraud when the number of victims adversely involved is significantly greater than 50 or when it endangers the solvency or financial security of a substantial number of victims; and (4) organizational criminal misconduct.

(Sec. 806) Prohibits a publicly traded company from discharging or otherwise discriminating against an employee because of any lawful act by the employee to: (1) assist in an investigation of prohibited conduct by Federal regulators,

Congress, or supervisors; or (2) file or participate in a proceeding relating to fraud against shareholders.

Delineates remedies for such aggrieved employee, including reinstatement, back pay, and compensatory damages.

(Sec. 807) Subjects to a fine and imprisonment any person who defrauds shareholders of publicly traded companies.

Title IX: White-Collar Crime Penalty Enhancements - White-Collar Crime Penalty Enhancement Act of 2002 - Amends Federal criminal law to increase criminal penalties for: (1) conspiracy to commit offense or to defraud the United States, including its agencies; and (2) mail and wire fraud.

(Sec. 904) Amends the Employee Retirement Income Security Act of 1974 to increase the criminal penalties for violations of such Act.

(Sec. 905) Directs the United States Sentencing Commission to review Federal Sentencing Guidelines to: (1) ensure that they reflect the serious nature of the offenses and the penalties set forth in this Act, the growing incidence of serious fraud offenses, and the need to deter and punish such offenses; and (2) consider whether a specific offense characteristic should be added in order to provide stronger penalties for fraud committed by a corporate officer or director.

(Sec.906) Amends Federal criminal law to require senior corporate officers to certify in writing that financial statements and the disclosures therein fairly present in all material aspects the operations and financial condition of the issuer.

Subjects to criminal liability any person who recklessly and knowingly violates such requirement, including maximum imprisonment of: (1) ten years for willful violation; and (2) five years for reckless and knowing violation.

(Sec. 908) Subjects to a maximum ten-year prison term anyone who corruptly tampers with a record with intent to impair the object's integrity or availability for use in an official proceeding, or otherwise impedes an official proceeding.

(Sec. 909) Amends the Securities Exchange Act of 1934 to authorize the SEC to seek a temporary injunction to freeze extraordinary payments earmarked for designated persons or corporate staff under investigation for possible violations of Federal securities laws.

(Sec. 910) Requests the United States Sentencing Commission to: (1) promptly review sentencing guidelines applicable to securities and accounting fraud; and (2) expeditiously consider promulgation of new sentencing guidelines to provide an enhancement concerning senior corporate officers who commit fraud and related offenses. Prescribes guidelines for Commission consideration, including a request that it 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. Sets a deadline for promulgation of such guidelines.

(Sec. 911) Amends the Securities Exchange Act of 1934 and the Securities Act of 1933 to authorize the SEC to prohibit a violator of rules governing manipulative and deceptive devices, and fraudulent interstate transactions, respectively, from serving as officer or director of a publicly traded corporation if such person's conduct demonstrates unfitness to serve.

Title X: Corporate Tax Returns - Expresses the sense of the Senate that the Federal income tax return of a corporation should be signed by the chief executive officer of such corporation.

Actions Timeline

- **Jul 15, 2002:** Considered by Senate. (consideration: CR S6734-6779)
- **Jul 15, 2002:** Passed/agreed to in Senate: Passed Senate with amendments by Yea-Nay Vote. 97 - 0. Record Vote Number: 176.
- **Jul 15, 2002:** Passed Senate with amendments by Yea-Nay Vote. 97 - 0. Record Vote Number: 176.
- **Jul 15, 2002:** Senate incorporated this measure in H.R. 3763 as an amendment.
- **Jul 15, 2002:** Senate vitiated previous passage.
- **Jul 15, 2002:** Returned to the Calendar. Calendar No. 442.
- **Jul 12, 2002:** Considered by Senate. (consideration: CR S6683-6685, S6687-6700)
- **Jul 12, 2002:** Cloture on the bill invoked in Senate by Yea-Nay Vote. 91 - 2. Record Vote Number: 173. (consideration: CR S6685)
- **Jul 12, 2002:** Motion by Senator McCain to recommit to Senate Committee on Aging ruled out of order in Senate. (consideration: CR S6685)
- **Jul 11, 2002:** Considered by Senate. (consideration: CR S6603-6616, S6617-6633, S6636-6643)
- **Jul 11, 2002:** Motion by Senator McCain to recommit to Senate Committee on Banking, Housing, and Urban Affairs with instructions to report back forthwith with an amendment (SA 4270) made in Senate. (consideration: CR S6625)
- **Jul 10, 2002:** Considered by Senate. (consideration: CR S6524-6560)
- **Jul 10, 2002:** Cloture motion on the bill presented in Senate. (consideration: CR S6559)
- **Jul 9, 2002:** Considered by Senate. (consideration: CR S6436-6444, S6491-6496)
- **Jul 8, 2002:** Measure laid before Senate. (consideration: CR S6327-6347)
- **Jul 3, 2002:** By Senator Sarbanes from Committee on Banking, Housing, and Urban Affairs filed written report under authority of the order of the Senate of 06/26/2002. Report No. 107-205. Additional views filed.
- **Jul 3, 2002:** By Senator Sarbanes from Committee on Banking, Housing, and Urban Affairs filed written report under authority of the order of the Senate of 06/26/2002. Report No. 107-205. Additional views filed.
- **Jun 25, 2002:** Introduced in Senate
- **Jun 25, 2002:** Committee on Banking, Housing, and Urban Affairs. Original measure reported to Senate by Senator Sarbanes. Without written report.
- **Jun 25, 2002:** Committee on Banking, Housing, and Urban Affairs. Original measure reported to Senate by Senator Sarbanes. Without written report.
- **Jun 25, 2002:** Placed on Senate Legislative Calendar under General Orders. Calendar No. 442.
- **Jun 18, 2002:** Committee on Banking, Housing, and Urban Affairs ordered to be reported an original measure.