

HR 2179

Securities Fraud Deterrence and Investor Restitution Act of 2004

Congress: 108 (2003–2005, Ended)

Chamber: House

Policy Area: Finance and Financial Sector

Introduced: May 21, 2003

Current Status: Placed on the Union Calendar, Calendar No. 298.

Latest Action: Placed on the Union Calendar, Calendar No. 298. (Jun 1, 2004)

Official Text: <https://www.congress.gov/bill/108th-congress/house-bill/2179>

Sponsor

Name: Rep. Baker, Richard H. [R-LA-6]

Party: Republican • State: LA • Chamber: House

Cosponsors (5 total)

Cosponsor	Party / State	Role	Date Joined
Rep. Kelly, Sue W. [R-NY-19]	R · NY		May 21, 2003
Rep. Ose, Doug [R-CA-3]	R · CA		May 21, 2003
Rep. Oxley, Michael G. [R-OH-4]	R · OH		May 21, 2003
Rep. Tiberi, Patrick J. [R-OH-12]	R · OH		May 21, 2003
Rep. Scott, David [D-GA-13]	D · GA		Jul 22, 2003

Committee Activity

Committee	Chamber	Activity	Date
Financial Services Committee	House	Reported by	Jul 10, 2003
Judiciary Committee	House	Discharged From	Jun 2, 2004

Subjects & Policy Tags

Policy Area:

Finance and Financial Sector

Related Bills

No related bills are listed.

Securities Fraud Deterrence and Investor Restitution Act of 2004 - (Sec. 2) Amends the Sarbanes-Oxley Act of 2002 to declare that the authority of the Securities and Exchange Commission (SEC) to satisfy a judgment or administrative order based upon an alleged fraudulent, deceptive, or manipulative act or practice in violation of securities laws is not subject to: (1) a debtor's election under Federal law to exempt property under State or local law; or (2) any State homestead provisions (thus preempting State homestead exemptions which protect property from foreclosure and forced sale for the payment of debts).

(Sec. 3) Amends the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, and the Investment Advisers Act of 1940 to: (1) authorize the SEC to impose civil penalties in cease and desist proceedings; (2) increase maximum civil money penalties; and (3) authorize nationwide service of process in any proceeding instituted by the SEC.

Amends the Securities Exchange Act of 1934 to revise conditions under which the SEC is authorized to: (1) access financial records held by a financial institution without notice to the affected client if the SEC acts pursuant to an administrative or judicial subpoena to enforce the securities laws; and (2) transfer such records or the information contained therein to any government authority.

(Sec. 5) Amends the Sarbanes-Oxley Act of 2002 to authorize disclosure of grand jury matters to the SEC for use in relation to any matter within its jurisdiction if the court finds a substantial need in the public interest.

(Sec. 7) Amends the Securities Exchange Act of 1934 to authorizes the SEC to retain private legal counsel for services for any claim of indebtedness resulting from a judgment or order it has obtained in a judicial or administrative proceeding.

(Sec. 8) Amends the Sarbanes-Oxley Act of 2002 to provide that civil penalty monies obtained by the SEC pursuant to judicial or administrative action shall, upon SEC motion or direction, be added to a fund for the benefit of victims of securities laws violations. (Under current law such monies may be added only if the SEC obtains a court order for disgorgement, or if a person agrees in settlement of a disgorgement action to make such a disgorgement).

Directs the SEC to seek to produce a joint study with representatives of State governments concerning improved coordination, cooperation and communication between the SEC and State securities regulators.

Authorizes the SEC to allow a State that has received penalty or disgorgement payments for securities fraud to contribute those payments to a fund administered by the SEC for the purpose of making restitution payments to investors, whether or not the SEC was a party to the agreement or settlement, or had established such fund prior to the State's contribution. (The bill as introduced requires that civil penalties and disgorgement proceeds obtained in State actions for securities laws violations be remitted to the SEC for distribution to such victims' benefit fund.)

Cites procedural guidelines for the SEC to use certain undistributed funds or disgorgement proceeds for certain investor education programs, including financial literacy.

(Sec. 9) Directs the SEC to prohibit as unreasonable or deceptive any fee under a 12b-1 plan (to use assets to pay distribution-related costs) charged by a registered open-end investment company for any activity other than shareholder servicing activities whose costs are collected directly and transparently from the investor.

(Sec. 10) Amends the Investment Company Act of 1940 to expand disclosure duties of investment advisers and principal

underwriters at contract renewal procedures to: (1) provide the independent directors of a registered investment company with all material information about any business practice that may conflict with the best interests of the shareholders of such company; and (2) specify and commit to implement procedures designed to ensure services are provided in the best interests of such shareholders.

States that an additional duty of independent directors is to determine whether the specified procedures of the investment adviser and the principal underwriter offer a reasonable likelihood of protecting the best interests of the shareholders of the registered investment company.

States it is unlawful for directors of a registered investment company, when evaluating contract terms for regular service as investment adviser, to take into account the purchase price or other consideration paid in connection with specified transactions.

(Sec. 11) Amends the Securities Exchange Act of 1934 to require a registered securities association to: (1) maintain registration, disciplinary, and other data; (2) adopt rules for making inquiries and the type, scope, and presentation of information provided in response them; and (3) establish a process for disputing the accuracy of information provided in response to inquiries.

(Sec. 12) Amends the Investment Advisers Act of 1940 to mandate that the SEC require specified designees to respond to inquiries regarding information on registration of investment advisers and their associates (including disciplinary actions, regulatory, judicial, and arbitration proceedings, and other information required by law to be reported).

Amends the National Securities Markets Improvement Act of 1996 to repeal the mandate that the SEC establish and maintain an electronic system providing investor access to that information.

(Sec. 13) Amends the Investment Company Act of 1940 to require the board of directors of a registered company to select a lead independent director who is not an interested person and who shall: (1) have authority to place items on the agenda for consideration, call meetings, and obtain outside advice on behalf of the independent directors; and (2) have such other authority as the SEC determines necessary or useful. States that this requirement does not apply if the chairman of the board is an independent director.

(Sec. 14) Directs the SEC to conduct a thorough review of the financial statements contained in the most recent periodic disclosures filed by the largest 250 reporting issuers (and as many other reporting issuers as it finds appropriate).

Authorizes the SEC to require that an issuer's response be accompanied by an auditor's opinion as to whether: (1) that response presents information in accordance with generally accepted accounting principles, and (2) the auditor reached that conclusion after applying generally accepted auditing standards to the response.

(Sec. 15) Expresses the sense of Congress that the Administrator of the Investor Education Fund of the 2003 Global Research Analyst Settlement should award: (1) \$5 million of the Investor Education Fund in the form of competitive grants to economic education programs administered by national non-profit educational organizations whose primary purpose is improving the quality of minority and low-income individuals' understanding of personal finance and economics; and (2) \$5 million of the Investor Education Fund in the form of competitive grants to economic education programs administered by national non-profit educational organizations whose primary purpose is improving the quality of elementary and secondary students' understanding of personal finance and economics.

Actions Timeline

- **Jun 1, 2004:** Committee on Judiciary discharged.
- **Jun 1, 2004:** Committee on Judiciary discharged.
- **Jun 1, 2004:** Placed on the Union Calendar, Calendar No. 298.
- **May 12, 2004:** Committee Consideration and Mark-up Session Held.
- **Apr 27, 2004:** Reported (Amended) by the Committee on Financial Services. H. Rept. 108-475, Part I.
- **Apr 27, 2004:** Reported (Amended) by the Committee on Financial Services. H. Rept. 108-475, Part I.
- **Apr 27, 2004:** Referred sequentially to the House Committee on the Judiciary for a period ending not later than June 1, 2004 for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(k), rule X.
- **Feb 25, 2004:** Committee Consideration and Mark-up Session Held.
- **Feb 25, 2004:** Ordered to be Reported (Amended) by Voice Vote.
- **Jul 10, 2003:** Subcommittee Consideration and Mark-up Session Held.
- **Jul 10, 2003:** Forwarded by Subcommittee to Full Committee (Amended) by Voice Vote.
- **Jun 9, 2003:** Referred to the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises.
- **Jun 9, 2003:** Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises Held Hearings Prior to Referral (6/9/2003).
- **May 21, 2003:** Introduced in House
- **May 21, 2003:** Introduced in House
- **May 21, 2003:** Referred to the House Committee on Financial Services.