

104TH CONGRESS
1ST SESSION

H. R. 725

To amend the Securities Exchange Act of 1934 to impose additional fraud detection and disclosure obligations on auditors of public companies.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 30, 1995

Mr. WYDEN (for himself, Mr. DINGELL, and Mr. MARKEY) introduced the following bill; which was referred to the Committee on Commerce

A BILL

To amend the Securities Exchange Act of 1934 to impose additional fraud detection and disclosure obligations on auditors of public companies.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Financial Fraud De-
5 tection and Disclosure Act of 1995”.

6 **SEC. 2. FINANCIAL FRAUD DETECTION AND DISCLOSURE.**

7 (a) AMENDMENTS TO THE SECURITIES EXCHANGE
8 ACT OF 1934.—The Securities Exchange Act of 1934 is
9 amended by inserting after section 13 (15 U.S.C. 78m)
10 the following new section:

1 **“SEC. 13A. FRAUD DETECTION AND DISCLOSURE.**

2 “(a) **AUDIT REQUIREMENTS.**—Each audit required
3 pursuant to this title of an issuer’s financial statements
4 by an independent public accountant shall include, in ac-
5 cordance with generally accepted auditing standards, as
6 may be modified or supplemented from time to time by
7 the Commission, the following:

8 “(1) procedures designed to provide reasonable
9 assurance of detecting illegal acts that would have a
10 direct and material effect on the determination of fi-
11 nancial statement amounts;

12 “(2) procedures designed to identify related
13 party transactions which are material to the finan-
14 cial statements or otherwise require disclosure there-
15 in; and

16 “(3) an evaluation of whether there is substan-
17 tial doubt about the issuer’s ability to continue as a
18 going concern over the ensuing fiscal year.

19 “(b) **REQUIRED RESPONSE TO AUDIT DISCOV-**
20 **ERIES.**—

21 “(1) **INVESTIGATION AND REPORT TO MANAGE-**
22 **MENT.**—If, in the course of conducting any audit
23 pursuant to this title to which subsection (a) applies,
24 the independent public accountant detects or other-
25 wise becomes aware of information indicating that
26 an illegal act (whether or not perceived to have a

1 material effect on the issuer’s financial statements)
2 has or may have occurred, the accountant shall, in
3 accordance with generally accepted auditing stand-
4 ards, as may be modified or supplemented from time
5 to time by the Commission—

6 “(A)(i) determine whether it is likely that
7 an illegal act has occurred, and (ii) if so, deter-
8 mine and consider the possible effect of the ille-
9 gal act on the financial statements of the is-
10 suer, including any contingent monetary effects,
11 such as fines, penalties, and damages; and

12 “(B) as soon as practicable inform the ap-
13 propriate level of the issuer’s management and
14 assure that the issuer’s audit committee, or the
15 issuer’s board of directors in the absence of
16 such a committee, is adequately informed with
17 respect to illegal acts that have been detected or
18 otherwise come to the attention of such ac-
19 countant in the course of the audit, unless the
20 illegal act is clearly inconsequential.

21 “(2) RESPONSE TO FAILURE TO TAKE REME-
22 DIAL ACTION.—If, having first assured itself that
23 the audit committee of the board of directors of the
24 issuer or the board (in the absence of an audit com-
25 mittee) is adequately informed with respect to illegal

1 acts that have been detected or otherwise come to
2 the accountant's attention in the course of such ac-
3 countant's audit, the independent public accountant
4 concludes that—

5 “(A) any such illegal act has a material ef-
6 fect on the financial statements of the issuer,

7 “(B) senior management has not taken,
8 and the board of directors has not caused sen-
9 ior management to take, timely and appropriate
10 remedial actions with respect to such illegal act,
11 and

12 “(C) the failure to take remedial action is
13 reasonably expected to warrant departure from
14 a standard auditor's report, when made, or
15 warrant resignation from the audit engagement,
16 the independent public accountant shall, as soon as
17 practicable, directly report its conclusions to the
18 board of directors.

19 “(3) NOTICE TO COMMISSION; RESPONSE TO
20 FAILURE TO NOTIFY.—An issuer whose board of di-
21 rectors has received a report pursuant to paragraph
22 (2) shall inform the Commission by notice within
23 one business day of receipt of such report and shall
24 furnish the independent public accountant making
25 such report with a copy of the notice furnished the

1 Commission. If the independent public accountant
2 making such report shall fail to receive a copy of
3 such notice within the required one-business-day pe-
4 riod, the independent public accountant shall—

5 “(A) resign from the engagement; or

6 “(B) furnish to the Commission a copy of
7 its report (or the documentation of any oral re-
8 port given) within the next business day follow-
9 ing such failure to receive notice.

10 “(4) REPORT AFTER RESIGNATION.—An inde-
11 pendent public accountant electing resignation shall,
12 within the one business day following a failure by an
13 issuer to notify the Commission under paragraph
14 (3), furnish to the Commission a copy of the ac-
15 countant’s report (or the documentation of any oral
16 report given).

17 “(c) AUDITOR LIABILITY LIMITATION.—No inde-
18 pendent public accountant shall be liable in a private ac-
19 tion for any finding, conclusion, or statement expressed
20 in a report made pursuant to paragraph (3) or (4) of sub-
21 section (b), including any rules promulgated pursuant
22 thereto.

23 “(d) CIVIL PENALTIES IN CEASE-AND-DESIST PRO-
24 CEEDINGS.—If the Commission finds, after notice and op-
25 portunity for hearing in a proceeding instituted pursuant

1 to section 21C of this title, that an independent public
2 accountant has willfully violated paragraph (3) or (4) of
3 subsection (b) of this section, then the Commission may,
4 in addition to entering an order under section 21C, impose
5 a civil penalty against the independent public accountant
6 and any other person that the Commission finds was a
7 cause of such violation. The determination whether to im-
8 pose a civil penalty, and the amount of any such penalty,
9 shall be governed by the standards set forth in section 21B
10 of this title.

11 “(e) PRESERVATION OF EXISTING AUTHORITY.—Ex-
12 cept for subsection (d), nothing in this section limits or
13 otherwise affects the authority of the Commission under
14 this title.

15 “(f) DEFINITIONS.—As used in this section, the term
16 ‘illegal act’ means any action or omission to act that vio-
17 lates any law, or any rule or regulation having the force
18 of law.”.

19 (b) EFFECTIVE DATES.—As to any registrant that
20 is required to file selected quarterly financial data pursu-
21 ant to item 302(a) of Regulation S-K (17 CFR
22 229.302(a)) of the Securities and Exchange Commission,
23 the amendments made by subsection (a) of this section
24 shall apply to any annual report for any period beginning
25 on or after January 1, 1996. As to any other registrant,

1 such amendment shall apply for any period beginning on
2 or after January 1, 1997.

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