

Calendar No. 366

107TH CONGRESS
2^D SESSION

S. 2010**[Report No. 107-146]**

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.

IN THE SENATE OF THE UNITED STATES

MARCH 12, 2002

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

MAY 6, 2002

Reported by Mr. LEAHY, from the Committee on the Judiciary, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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,*

3 **SECTION 1. SHORT TITLE.**

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

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

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

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

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

22 **“§ 1520. Destruction of corporate audit records**

23 “(a) Any accountant who conducts an audit of an
 24 issuer of securities to which section 10A(a) of the Securi-
 25 ties Exchange Act of 1934 (15 U.S.C. 78j-1(a)) applies,

1 shall maintain all documents (including electronic docu-
 2 ments) sent, received, or created in connection with any
 3 audit, review, or other engagement for such issuer for a
 4 period of 5 years from the end of the fiscal period in which
 5 the audit, review, or other engagement was concluded.

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

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

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

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

“1520. Destruction of corporate audit records.”.

17 **SEC. 3. ENHANCED ENFORCEMENT OF LAWS AFFECTING**
 18 **RACKETEER-INFLUENCED AND CORRUPT OR-**
 19 **GANIZATIONS.**

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

22 (1) in subsection (b), by inserting after “The
 23 Attorney General” the following: “, the Attorney

1 General of any State, or the Securities and Ex-
 2 change Commission”; and

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

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

7 Section 523(a) of title 11, United States Code, is
 8 amended—

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

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

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

14 “(19) that—

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

16 “(i) the violation of any of the Fed-
 17 eral securities laws (as that term is defined
 18 in section 3(a)(47) of the Securities Ex-
 19 change Act of 1934 (15 U.S.C.
 20 78c(a)(47)), any State securities laws, or
 21 any regulations or orders issued under
 22 such Federal or State securities laws; or

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

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

3 “(i) any judgment, order, consent
4 order, or decree entered in any Federal or
5 State judicial or administrative proceeding;

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

8 “(iii) any court or administrative
9 order for any damages, fine, penalty, cita-
10 tion, restitutionary payment, disgorgement
11 payment, attorney fee, cost, or other pay-
12 ment owed by the debtor.”.

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

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

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

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

18 “(b) Notwithstanding subsection (a), a private right
19 of action that involves a claim of fraud, deceit, manipula-
20 tion, or deliberate or reckless disregard of a regulatory re-
21 quirement concerning the securities laws, as defined in
22 section 3(a)(47) of the Securities Exchange Act of 1934
23 (15 U.S.C. 78e(a)(47)), may be brought not later than
24 the earlier of—

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

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

5 (b) EFFECTIVE DATE.—The limitations period pro-
 6 vided by section 1658(b) of title 28, United States Code,
 7 as added by this section, shall apply to all proceedings ad-
 8 dressed by this section that are commenced on or after
 9 the date of enactment of this Act.

10 **SEC. 6. REVIEW OF FEDERAL SENTENCING GUIDELINES**
 11 **FOR OBSTRUCTION OF JUSTICE AND EXTEN-**
 12 **SIVE CRIMINAL FRAUD.**

13 Pursuant to section 994 of title 28, United States
 14 Code, and in accordance with this section, the United
 15 States Sentencing Commission shall review and amend, as
 16 appropriate, the Federal Sentencing Guidelines and re-
 17 lated policy statements to ensure that—

18 ~~(1) the guideline offense levels and enhance-~~
 19 ~~ments for an obstruction of justice offense are ade-~~
 20 ~~quate in cases where documents or other physical~~
 21 ~~evidence are actually destroyed or fabricated;~~

22 ~~(2) the guideline offense levels and enhance-~~
 23 ~~ments for violations of section 1519 or 1520 of title~~
 24 ~~18, United States Code, as added by this Act, are~~
 25 ~~sufficient to deter and punish that activity;~~

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

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

13 **SEC. 7. PROTECTION FOR EMPLOYEES OF PUBLICLY TRAD-**
 14 **ED COMPANIES WHO PROVIDE EVIDENCE OF**
 15 **FRAUD.**

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

19 **“§ 1514A. Civil action to protect against retaliation in**
 20 **fraud cases**

21 “(a) WHISTLEBLOWER PROTECTION FOR EMPLOY-
 22 EES OF PUBLICLY TRADED COMPANIES.—No company
 23 with securities registered under section 6 of the Securities
 24 Act of 1933 (15 U.S.C. 77f) or section 12 or 15(d) of
 25 the Securities Exchange Act of 1934 (15 U.S.C. 78l,

1 78o(d)), or any officer, employee, contractor, subcon-
 2 tractor, or agent of such company, may discharge, demote,
 3 suspend, threaten, harass, or in any other manner dis-
 4 criminate against an employee in the terms and conditions
 5 of employment because of any lawful act done by the
 6 employee—

7 “(1) to provide information, cause information
 8 to be provided, or otherwise assist in an investiga-
 9 tion regarding any conduct which the employee rea-
 10 sonably believes constitutes a violation of section
 11 1341, 1343, 1344, or 1348, any rule or regulation
 12 of the Securities and Exchange Commission, or any
 13 provision of Federal law relating to fraud against
 14 shareholders, when the information or assistance is
 15 provided to or the investigation is conducted by—

16 “(A) a Federal regulatory or law enforce-
 17 ment agency;

18 “(B) any Member of Congress or any com-
 19 mittee of Congress; or

20 “(C) a person with supervisory authority
 21 over the employee (or such other person work-
 22 ing for the employer who has the authority to
 23 investigate, discover, or terminate misconduct);
 24 or

1 ~~“(2) to file, cause to be filed, testify, participate~~
 2 ~~in, or otherwise assist in a proceeding filed or about~~
 3 ~~to be filed (with any knowledge of the employer) re-~~
 4 ~~lating to an alleged violation of section 1341, 1343,~~
 5 ~~1344, or 1348, any rule or regulation of the Securi-~~
 6 ~~ties and Exchange Commission, or any provision of~~
 7 ~~Federal law relating to fraud against shareholders.~~

8 ~~“(b) ELECTION OF ACTION.—~~

9 ~~“(1) IN GENERAL.—A person who alleges dis-~~
 10 ~~charge or other discrimination by any person in vio-~~
 11 ~~lation of subsection (a) may seek relief under sub-~~
 12 ~~section (c), by—~~

13 ~~“(A) filing a complaint with the Secretary~~
 14 ~~of Labor; or~~

15 ~~“(B) bringing an action at law or equity in~~
 16 ~~the appropriate district court of the United~~
 17 ~~States.~~

18 ~~“(2) PROCEDURE.—~~

19 ~~“(A) IN GENERAL.—An action under para-~~
 20 ~~graph (1)(A) shall be governed under the rules~~
 21 ~~and procedures set forth in section 42121(b) of~~
 22 ~~title 49, United States Code.~~

23 ~~“(B) EXCEPTION.—Notification made~~
 24 ~~under section 42121(b)(1) of title 49, United~~

1 States Code, shall be made to the person named
 2 in the complaint and to the employer.

3 “(C) BURDENS OF PROOF.—An action
 4 brought under paragraph (1)(B) shall be gov-
 5 erned by the legal burdens of proof set forth in
 6 section 42121(b) of title 49, United States
 7 Code.

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

12 “(e) REMEDIES.—

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

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

19 “(A) reinstatement with the same seniority
 20 status that the employee would have had, but
 21 for the discrimination;

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

24 “(C) compensation for any special damages
 25 sustained as a result of the discrimination, in-

cluding litigation costs, expert witness fees, and
reasonable attorney fees.

~~“(3) PUNITIVE DAMAGES.—~~

~~“(A) IN GENERAL.—~~In a case in which the
finder of fact determines that the protected
conduct of the employee under subsection (a)
involved a substantial risk to the health, safety,
or welfare of shareholders of the employer or
the public, the finder of fact may award punit-
tive damages to the employee.

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

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

~~“(ii) the nature and extent of both the
actual and potential discrimination to~~

1 which the employee was subjected as a re-
 2 sult of the protected conduct of the em-
 3 ployee under subsection (a); and

4 “(iii) the nature and extent of the risk
 5 to the health, safety, or welfare of share-
 6 holders or the public under subparagraph
 7 (A).

8 “(d) RIGHTS RETAINED BY EMPLOYEE.—

9 “(1) OTHER REMEDIES UNAFFECTED.—Noth-
 10 ing in this section shall be deemed to diminish the
 11 rights, privilege, or remedies of any employee under
 12 any Federal or State law, or under any collective
 13 bargaining agreement.

14 “(2) VOLUNTARY ADJUDICATION.—No em-
 15 ployee may be compelled to adjudicate his or her
 16 rights under this section pursuant to an arbitration
 17 agreement.”.

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

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

1 **SEC. 8. CRIMINAL PENALTIES FOR DEFRAUDING SHARE-**
 2 **HOLDERS OF PUBLICLY TRADED COMPANIES.**

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

6 **“§ 1348. Securities fraud**

7 “Whoever knowingly executes, or attempts to execute,
 8 a scheme or artifice—

9 “(1) to defraud any person in connection with
 10 any security registered under section 12 or 15(d) of
 11 the Securities Exchange Act of 1934 (15 U.S.C. 78l,
 12 78o(d)) or section 6 of the Securities Act of 1933
 13 (15 U.S.C. 77f); or

14 “(2) to obtain, by means of false or fraudulent
 15 pretenses, representations, or promises, any money
 16 or property in connection with the purchase or sale
 17 of any security registered under section 12 or 15(d)
 18 of the Securities Exchange Act of 1934 (15 U.S.C.
 19 78l, 78o(d)) or section 6 of the Securities Act of
 20 1933 (15 U.S.C. 77f);

21 shall be fined under this title, or imprisoned not more than
 22 10 years, or both.”.

23 (b) **CLERICAL AMENDMENT.**—The table of sections
 24 at the beginning of chapter 63 of title 18, United States
 25 Code, is amended by adding at the end the following new

1 ~~item:~~

~~“1348. Securities fraud.”~~

2 **SECTION 1. SHORT TITLE.**

3 *This Act may be cited as the “Corporate and Criminal*
 4 *Fraud Accountability Act of 2002”.*

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

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

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 filed*
 17 *under title 11, or in relation to or contemplation of any*
 18 *such matter or case, shall be fined under this title, impris-*
 19 *oned not more than 10 years, or both.*

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

21 *“(a)(1) Any accountant who conducts an audit of an*
 22 *issuer of securities to which section 10A(a) of the Securities*
 23 *Exchange Act of 1934 (15 U.S.C. 78j–1(a)) applies, shall*
 24 *maintain all audit or review workpapers for a period of*

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

3 “(2) The Securities and Exchange Commission shall
4 promulgate, within 180 days, after adequate notice and an
5 opportunity for comment, such rules and regulations, as are
6 reasonably necessary, relating to the retention of relevant
7 records such as workpapers, documents that form the basis
8 of an audit or review, memoranda, correspondence, commu-
9 nications, other documents, and records (including elec-
10 tronic records) which are created, sent, or received in con-
11 nection with an audit or review and contain conclusions,
12 opinions, analyses, or financial data relating to such an
13 audit or review, which is conducted by any accountant who
14 conducts an audit of an issuer of securities to which section
15 10A(a) of the Securities Exchange Act of 1934 (15 U.S.C.
16 78j-1(a)) applies.

17 “(b) Whoever knowingly and willfully violates sub-
18 section (a)(1), or any rule or regulation promulgated by
19 the Securities and Exchange Commission under subsection
20 (a)(2), shall be fined under this title, imprisoned not more
21 than 5 years, or both.

22 “(c) Nothing in this section shall be deemed to dimin-
23 ish or relieve any person of any other duty or obligation,
24 imposed by Federal or State law or regulation, to maintain,
25 or refrain from destroying, any document.”.

4 **SEC. 3. DEBTS NONDISCHARGEABLE IF INCURRED IN VIO-**
5 **LATION OF SECURITIES FRAUD LAWS.**

22 “(ii) common law fraud, deceit, or ma-
23 nipulation in connection with the purchase
24 or sale of any security; and

“(B) results, in relation to any claim described in subparagraph (A), from—

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

“(ii) any settlement agreement entered into by the debtor; or

“(iii) any court or administrative order for any damages, fine, penalty, citation, restitutionary payment, disgorgement payment, attorney fee, cost, or other payment owed by the debtor.”.

SEC. 4. STATUTE OF LIMITATIONS FOR SECURITIES FRAUD.

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

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

(2) by adding at the end the following:

“(b) Notwithstanding subsection (a), a private right of action that involves a claim of fraud, deceit, manipulation, or contrivance in contravention of a regulatory requirement concerning the securities laws, as defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), may be brought not later than the earlier of—

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

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

5 (b) *EFFECTIVE DATE.*—The limitations period pro-
6 vided by section 1658(b) of title 28, United States Code,
7 as added by this section, shall apply to all proceedings ad-
8 dressed by this section that are commenced on or after the
9 date of enactment of this Act.

10 (c) *NO CREATION OF ACTIONS.*—Nothing in this sec-
11 tion shall create a new, private right of action.

12 **SEC. 5. REVIEW OF FEDERAL SENTENCING GUIDELINES**
13 **FOR OBSTRUCTION OF JUSTICE AND EXTEN-**
14 **SIVE CRIMINAL FRAUD.**

15 Pursuant to section 994 of title 28, United States Code,
16 and in accordance with this section, the United States Sen-
17 tencing Commission shall review and amend, as appro-
18 priate, the Federal Sentencing Guidelines and related pol-
19 icy statements to ensure that—

20 (1) the base offense level and existing enhance-
21 ments contained in United States Sentencing Guide-
22 line 2J1.2 relating to obstruction of justice are suffi-
23 cient to deter and punish that activity;

1 (2) *the enhancements and specific offense charac-*
 2 *teristics relating to obstruction of justice are adequate*
 3 *in cases where—*

4 (A) *documents and other physical evidence*
 5 *are actually destroyed, altered or fabricated;*

6 (B) *the destruction, alteration, or fabrica-*
 7 *tion of evidence involves—*

8 (i) *a large amount of evidence, a large*
 9 *number of participants, or is otherwise ex-*
 10 *tensive;*

11 (ii) *the selection of evidence that is*
 12 *particularly probative or essential to the in-*
 13 *vestigation; or*

14 (iii) *more than minimal planning; or*

15 (C) *the offense involved abuse of a special*
 16 *skill or a position of trust;*

17 (3) *the guideline offense levels and enhancements*
 18 *for violations of section 1519 or 1520 of title 18,*
 19 *United States Code, as added by this Act, are suffi-*
 20 *cient to deter and punish that activity;*

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

1 (5) *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 endan-*
 5 *gers the solvency or financial security of a substantial*
 6 *number of victims; and*

7 (6) *the guidelines that apply to organizations in*
 8 *United States Sentencing Guidelines, Chapter 8, are*
 9 *sufficient to deter and punish organizational criminal*
 10 *misconduct.*

11 **SEC. 6. PROTECTION FOR EMPLOYEES OF PUBLICLY TRAD-**
 12 **ED COMPANIES WHO PROVIDE EVIDENCE OF**
 13 **FRAUD.**

14 (a) *IN GENERAL.*—Chapter 73 of title 18, United
 15 States Code, is amended by inserting after section 1514 the
 16 following:

17 **“§ 1514A. Civil action to protect against retaliation in**
 18 **fraud cases**

19 “(a) *WHISTLEBLOWER PROTECTION FOR EMPLOYEES*
 20 *OF PUBLICLY TRADED COMPANIES.*—No company with a
 21 class of securities registered under section 12 of the Securi-
 22 ties Exchange Act of 1934 (15 U.S.C. 78l), or that is re-
 23 quired to file reports under section 15(d) of the Securities
 24 Exchange Act of 1934 (15 U.S.C. 78o(d)), or any officer,
 25 employee, contractor, subcontractor, or agent of such com-

1 pany, may discharge, demote, suspend, threaten, harass, or
 2 in any other manner discriminate against an employee in
 3 the terms and conditions of employment because of any law-
 4 ful act done by the employee—

5 “(1) to provide information, cause information
 6 to be provided, or otherwise assist in an investigation
 7 regarding any conduct which the employee reasonably
 8 believes constitutes a violation of section 1341, 1343,
 9 1344, or 1348, any rule or regulation of the Securities
 10 and Exchange Commission, or any provision of Fed-
 11 eral law relating to fraud against shareholders, when
 12 the information or assistance is provided to or the
 13 investigation is conducted by—

14 “(A) a Federal regulatory or law enforce-
 15 ment agency;

16 “(B) any Member of Congress or any com-
 17 mittee of Congress; or

18 “(C) a person with supervisory authority
 19 over the employee (or such other person working
 20 for the employer who has the authority to inves-
 21 tigate, discover, or terminate misconduct); or

22 “(2) to file, cause to be filed, testify, participate
 23 in, or otherwise assist in a proceeding filed or about
 24 to be filed (with any knowledge of the employer) relat-
 25 ing to an alleged violation of section 1341, 1343,

1 1344, or 1348, any rule or regulation of the Securities
 2 and Exchange Commission, or any provision of Fed-
 3 eral law relating to fraud against shareholders.

4 “(b) *ENFORCEMENT ACTION*.—

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

9 “(A) filing a complaint with the Secretary
 10 of Labor; or

11 “(B) if the Secretary has not issued a final
 12 decision within 180 days of the filing of the com-
 13 plaint and there is no showing that such delay
 14 is due to the bad faith of the claimant, bringing
 15 an action at law or equity for *de novo* review in
 16 the appropriate district court of the United
 17 States, which shall have jurisdiction over such
 18 an action without regard to the amount in con-
 19 troversy.

20 “(2) *PROCEDURE*.—

21 “(A) *IN GENERAL*.—An action under para-
 22 graph (1)(A) shall be governed under the rules
 23 and procedures set forth in section 42121(b) of
 24 title 49, United States Code.

1 “(B) *EXCEPTION.*—Notification made under
 2 section 42121(b)(1) of title 49, United States
 3 Code, shall be made to the person named in the
 4 complaint and to the employer.

5 “(C) *BURDENS OF PROOF.*—An action
 6 brought under paragraph (1)(B) shall be gov-
 7 erned by the legal burdens of proof set forth in
 8 section 42121(b) of title 49, United States Code.

9 “(D) *STATUTE OF LIMITATIONS.*—An action
 10 under paragraph (1) shall be commenced not
 11 later than 90 days after the date on which the
 12 violation occurs.

13 “(c) *REMEDIES.*—

14 “(1) *IN GENERAL.*—An employee prevailing in
 15 any action under subsection (b)(1) shall be entitled to
 16 all relief necessary to make the employee whole.

17 “(2) *COMPENSATORY DAMAGES.*—Relief for any
 18 action under paragraph (1) shall include—

19 “(A) reinstatement with the same seniority
 20 status that the employee would have had, but for
 21 the discrimination;

22 “(B) the amount of back pay, with interest;
 23 and

24 “(C) compensation for any special damages
 25 sustained as a result of the discrimination, in-

1 *cluding litigation costs, expert witness fees, and*
 2 *reasonable attorney fees.*

3 “(d) *RIGHTS RETAINED BY EMPLOYEE.*—*Nothing in*
 4 *this section shall be deemed to diminish the rights, privilege,*
 5 *or remedies of any employee under any Federal or State*
 6 *law, or under any collective bargaining agreement.”.*

7 (b) *CLERICAL AMENDMENT.*—*The table of sections at*
 8 *the beginning of chapter 73 of title 18, United States Code,*
 9 *is amended by inserting after the item relating to section*
 10 *1514 the following new item:*

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

11 ***SEC. 7. CRIMINAL PENALTIES FOR DEFRAUDING SHARE-***
 12 ***HOLDERS OF PUBLICLY TRADED COMPANIES.***

13 (a) *IN GENERAL.*—*Chapter 63 of title 18, United*
 14 *States Code, is amended by adding at the end the following:*

15 ***“§ 1348. Securities fraud***

16 *“Whoever knowingly executes, or attempts to execute,*
 17 *a scheme or artifice—*

18 *“(1) to defraud any person in connection with*
 19 *any security of an issuer with a class of securities*
 20 *registered under section 12 of the Securities Exchange*
 21 *Act of 1934 (15 U.S.C. 78l) or that is required to file*
 22 *reports under section 15(d) of the Securities Exchange*
 23 *Act of 1934 (15 U.S.C. 78o(d)); or*

24 *“(2) to obtain, by means of false or fraudulent*
 25 *pretenses, representations, or promises, any money or*

1 *property in connection with the purchase or sale of*
2 *any security of an issuer with a class of securities*
3 *registered under section 12 of the Securities Exchange*
4 *Act of 1934 (15 U.S.C. 78l) or that is required to file*
5 *reports under section 15(d) of the Securities Exchange*
6 *Act of 1934 (15 U.S.C. 78o(d));*

7 *shall be fined under this title, or imprisoned not more than*
8 *10 years, or both.”.*

9 *(b) CLERICAL AMENDMENT.—The table of sections at*
10 *the beginning of chapter 63 of title 18, United States Code,*
11 *is amended by adding at the end the following new item:*

“1348. Securities fraud.”.

Calendar No. 366

107TH CONGRESS
2D SESSION

S. 2010

[Report No. 107-146]

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.

MAY 6, 2002

Reported with an amendment