

107TH CONGRESS
2D SESSION

S. 2717

To increase criminal penalties relating to conspiracy, mail fraud, wire fraud,
and certain ERISA violations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 10, 2002

Mr. BIDEN (for himself and Mr. HATCH) introduced the following bill; which
was read twice and referred to the Committee on the Judiciary

A BILL

To increase criminal penalties relating to conspiracy, mail
fraud, wire fraud, and certain ERISA violations, 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 “White-Collar Crime
5 Penalty Enhancement Act of 2002”.

1 **SEC. 2. CRIMINAL PENALTIES FOR CONSPIRACY TO COM-**
2 **MIT OFFENSE OR TO DEFRAUD THE UNITED**
3 **STATES.**

4 Section 371 of title 18, United States Code, is
5 amended by striking “If two or more” and all that follows
6 through “If, however,” and inserting the following:

7 “(a) IN GENERAL.—If 2 or more persons—

8 “(1) conspire to commit any offense against the
9 United States, in any manner or for any purpose,
10 and 1 or more of such persons do any act to effect
11 the object of the conspiracy, each person shall be
12 fined or imprisoned, or both, as set forth in the spe-
13 cific substantive offense which was the object of the
14 conspiracy; or

15 “(2) conspire to defraud the United States, or
16 any agency thereof in any manner or for any pur-
17 pose, and 1 or more of such persons do any act to
18 effect the object of the conspiracy, each person shall
19 be fined under this title, or imprisoned not more
20 than 10 years, or both.

21 “(b) MISDEMEANOR OFFENSE.—If, however,”.

22 **SEC. 3. CRIMINAL PENALTIES FOR MAIL AND WIRE FRAUD.**

23 (a) MAIL FRAUD.—Section 1341 of title 18, United
24 States Code, is amended by striking “five years” and in-
25 serting “10 years”.

1 (b) WIRE FRAUD.—Section 1343 of title 18, United
 2 States Code, is amended by striking “five years” and in-
 3 serting “10 years”.

4 **SEC. 4. CRIMINAL PENALTIES FOR VIOLATIONS OF THE EM-**
 5 **EMPLOYEE RETIREMENT INCOME SECURITY**
 6 **ACT OF 1974.**

7 Section 501 of the Employee Retirement Income Se-
 8 curity Act of 1974 (29 U.S.C. 1131) is amended—

9 (1) by striking “\$5,000” and inserting
 10 “\$100,000”;

11 (2) by striking “one year” and inserting “10
 12 years”; and

13 (3) by striking “\$100,000” and inserting
 14 “\$500,000”.

15 **SEC. 5. AMENDMENT TO SENTENCING GUIDELINES RELAT-**
 16 **ING TO CERTAIN WHITE-COLLAR OFFENSES.**

17 (a) DIRECTIVE TO THE UNITED STATES SEN-
 18 TENCING COMMISSION.—Pursuant to its authority under
 19 section 994(p) of title 18, United States Code, and in ac-
 20 cordance with this section, the United States Sentencing
 21 Commission shall review and, as appropriate, amend the
 22 Federal Sentencing Guidelines and related policy state-
 23 ments to implement the provisions of this Act.

24 (b) REQUIREMENTS.—In carrying out this section,
 25 the Sentencing Commission shall—

1 (1) ensure that the sentencing guidelines and
2 policy statements reflect the serious nature of the of-
3 fenses and the penalties set forth in this Act, the
4 growing incidence of serious fraud offenses which
5 are identified above, and the need to modify the sen-
6 tencing guidelines and policy statements to deter,
7 prevent, and punish such offenses;

8 (2) consider the extent to which the guidelines
9 and policy statements adequately address—

10 (A) whether the guideline offense levels
11 and enhancements for violations of the sections
12 amended by this Act are sufficient to deter and
13 punish such offenses, and specifically, are ade-
14 quate in view of the statutory increases in pen-
15 alties contained in this Act; and

16 (B) whether a specific offense char-
17 acteristic should be added in United States
18 Sentencing Guideline section 2B1.1 in order to
19 provide for stronger penalties for fraud when
20 the crime is committed by a corporate officer or
21 director;

22 (3) assure reasonable consistency with other
23 relevant directives and sentencing guidelines;

1 (4) account for any additional aggravating or
2 mitigating circumstances that might justify excep-
3 tions to the generally applicable sentencing ranges;

4 (5) make any necessary conforming changes to
5 the sentencing guidelines; and

6 (6) assure that the guidelines adequately meet
7 the purposes of sentencing as set forth in section
8 3553(a)(2) of title 18, United States Code.

9 **SEC. 6. CORPORATE RESPONSIBILITY FOR FINANCIAL RE-**
10 **PORTS.**

11 (a) IN GENERAL.—Chapter 63 of title 18, United
12 States Code, is amended by adding at the end the fol-
13 lowing:

14 **“§ 1348. Failure of corporate officers to certify finan-**
15 **cial reports**

16 “(a) CERTIFICATION OF PERIODIC FINANCIAL RE-
17 PORTS.—Each periodic report containing financial state-
18 ments filed by an issuer with the Securities Exchange
19 Commission pursuant to section 13(a) or 15(d) of the Se-
20 curities Exchange Act of 1934 (15 U.S.C. 78m(a) or
21 78o(d)) shall be accompanied by a written statement by
22 the chairman of the board, chief executive officer, and
23 chief financial officer (or equivalent thereof) of the issuer.

24 “(b) CONTENT.—The statement required under sub-
25 section (a) shall certify the appropriateness of the finan-

1 cial statements and disclosures contained in the periodic
 2 report or financial report, and that those financial state-
 3 ments and disclosures fairly present, in all material re-
 4 spects, the operations and financial condition of the issuer.

5 “(c) CRIMINAL PENALTIES.—Notwithstanding any
 6 other provision of law—

7 “(1) any person who recklessly and knowingly
 8 violates any provision of this section shall upon con-
 9 viction be fined not more than \$500,000, or impris-
 10 oned not more than 5 years, or both; or

11 “(2) any person who willfully violates any provi-
 12 sion of this section shall upon conviction be fined not
 13 more than \$1,000,000, or imprisoned not more than
 14 10 years, or both.”.

15 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 16 The section analysis for chapter 63 of title 18, United
 17 States Code, is amended by adding at the end the fol-
 18 lowing:

“1348. Failure of corporate officers to certify financial reports.”.

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