

107TH CONGRESS  
2D SESSION

# H. R. 4098

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.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 9, 2002

Mr. CONYERS (for himself, Mr. FRANK, Mr. BERMAN, Ms. JACKSON-LEE of Texas, Ms. WATERS, Mr. GEPHARDT, Mr. LAFALCE, Mr. ENGEL, Mr. DINGELL, Mr. JACKSON of Illinois, Mrs. CHRISTENSEN, Mr. DAVIS of Illinois, Mr. CUMMINGS, Mr. SANDERS, Ms. SOLIS, Mrs. CLAYTON, Ms. BROWN of Florida, Mr. LYNCH, Mr. HOEFFEL, Mr. GUTIERREZ, and Ms. SCHAKOWSKY) introduced the following bill; which was referred to the Committee on the Judiciary

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## 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,*

1 **SECTION 1. SHORT TITLE.**

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

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

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

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  
17 filed under title 11, or in relation to or contemplation of  
18 any such matter or case, shall be fined under this title,  
19 imprisoned not more than 5 years, or both.

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

21 “(a) Any accountant who conducts an audit of an  
22 issuer of securities to which section 10A(a) of the Securi-  
23 ties Exchange Act of 1934 (15 U.S.C. 78j–1(a)) applies,  
24 shall maintain all documents (including electronic docu-  
25 ments) sent, received, or created in connection with any  
26 audit, review, or other engagement for such issuer for a

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

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

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

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

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

“1520. Destruction of corporate audit records.”.

14 **SEC. 3. CRIMINAL PENALTIES FOR DEFRAUDING SHARE-**  
 15 **HOLDERS OF PUBLICLY TRADED COMPANIES.**

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

19 **“§ 1348. Securities fraud**

20 “Whoever knowingly executes, or attempts to execute,  
 21 a scheme or artifice—

22 “(1) to defraud any person in connection with  
 23 any security registered under section 12 or 15(d) of  
 24 the Securities Exchange Act of 1934 (15 U.S.C. 78l,

1 78o(d)) or section 6 of the Securities Act of 1933  
2 (15 U.S.C. 77f); or

3 “(2) to obtain, by means of false or fraudulent  
4 pretenses, representations, or promises, any money  
5 or property in connection with the purchase or sale  
6 of any security registered under section 12 or 15(d)  
7 of the Securities Exchange Act of 1934 (15 U.S.C.  
8 78l, 78o(d)) or section 6 of the Securities Act of  
9 1933 (15 U.S.C. 77f),  
10 shall be fined under this title, or imprisoned not more than  
11 10 years, or both.”.

12 (b) CLERICAL AMENDMENT.—The table of sections  
13 at the beginning of chapter 63 of title 18, United States  
14 Code, is amended by adding at the end the following new  
15 item:

“1348. Securities fraud.”.

16 **SEC. 4. REVIEW OF FEDERAL SENTENCING GUIDELINES**  
17 **FOR OBSTRUCTION OF JUSTICE AND EXTEN-**  
18 **SIVE CRIMINAL FRAUD.**

19 Pursuant to section 994 of title 28, United States  
20 Code, and in accordance with this section, the United  
21 States Sentencing Commission shall review and amend, as  
22 appropriate, the Federal Sentencing Guidelines and re-  
23 lated policy statements to ensure that—

24 (1) the guideline offense levels and enhance-  
25 ments for an obstruction of justice offense are ade-

1       quate in cases where documents or other physical  
2       evidence are actually destroyed or fabricated;

3           (2) the guideline offense levels and enhance-  
4       ments for violations of section 1519 or 1520 of title  
5       18, United States Code, as added by this Act, are  
6       sufficient to deter and punish that activity;

7           (3) the guideline offense levels and enhance-  
8       ments under United States Sentencing Guideline  
9       2B1.1 (as in effect on the date of enactment of this  
10      Act) are sufficient for a fraud offense when the  
11      number of victims adversely involved is significantly  
12      greater than 50; and

13          (4) a specific offense characteristic enhancing  
14      sentencing is provided under United States Sen-  
15      tencing Guideline 2B1.1 (as in effect on the date of  
16      enactment of this Act) for a fraud offense that en-  
17      dangers the solvency or financial security of 1 or  
18      more victims.

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

21       Section 523(a) of title 11, United States Code, is  
22   amended—

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

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

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

4           “(19) that—

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

6                           “(i) the violation of any of the Fed-  
7 eral securities laws (as that term is defined  
8 in section 3(a)(47) of the Securities Ex-  
9 change Act of 1934 (15 U.S.C.  
10 78c(a)(47)), any State securities laws, or  
11 any regulations or orders issued under  
12 such Federal or State securities laws; or

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

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

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

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

23                           “(iii) any court or administrative  
24 order for any damages, fine, penalty, cita-  
25 tion, restitutionary payment, disgorgement

1 payment, attorney fee, cost, or other pay-  
2 ment owed by the debtor.”.

3 **SEC. 6. INCREASED PROTECTION OF EMPLOYEES WAGES**  
4 **UNDER CHAPTER 11 PROCEEDINGS.**

5 Section 507(a) of title 11, United States Code, is  
6 amended—

7 (1) in paragraph (3) by striking “90” and in-  
8 serting “180”, and

9 (2) in paragraphs (3) and (4) by striking  
10 “\$4,000” each place it appears and inserting  
11 “\$10,000”.

12 **SEC. 7. STATUTE OF LIMITATIONS FOR SECURITIES FRAUD.**

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

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

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

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

24 “(1) 5 years after the date on which the alleged  
25 violation occurred; or

1           “(2) 3 years after the date on which the alleged  
2 violation was discovered.”.

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

8 **SEC. 8. PROTECTION FOR EMPLOYEES OF PUBLICLY TRAD-**  
9 **ED COMPANIES WHO PROVIDE EVIDENCE OF**  
10 **FRAUD.**

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

14 **“§ 1514A. Civil action to protect against retaliation in**  
15 **fraud cases**

16           “(a) WHISTLEBLOWER PROTECTION FOR EMPLOY-  
17 EES OF PUBLICLY TRADED COMPANIES.—No company  
18 with securities registered under section 6 of the Securities  
19 Act of 1933 (15 U.S.C. 77f) or section 12 or 15(d) of  
20 the Securities Exchange Act of 1934 (15 U.S.C. 78l,  
21 78o(d)), or any officer, employee, contractor, subcon-  
22 tractor, or agent of such company, may discharge, demote,  
23 suspend, threaten, harass, or in any other manner dis-  
24 criminate against an employee in the terms and conditions



1 of employment because of any lawful act done by the  
2 employee—

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

12 “(A) a Federal regulatory or law enforce-  
13 ment agency;

14 “(B) any Member of Congress or any com-  
15 mittee of Congress; or

16 “(C) a person with supervisory authority  
17 over the employee (or such other person work-  
18 ing for the employer who has the authority to  
19 investigate, discover, or terminate misconduct);  
20 or

21 “(2) to file, cause to be filed, testify, participate  
22 in, or otherwise assist in a proceeding filed or about  
23 to be filed (with any knowledge of the employer) re-  
24 lating to an alleged violation of section 1341, 1343,  
25 1344, or 1348, any rule or regulation of the Securi-

1 ties and Exchange Commission, or any provision of  
2 Federal law relating to fraud against shareholders.

3 “(b) ELECTION OF ACTION.—

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

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

10 “(B) bringing an action at law or equity in  
11 the appropriate district court of the United  
12 States.

13 “(2) PROCEDURE.—

14 “(A) IN GENERAL.—An action under para-  
15 graph (1)(A) shall be governed under the rules  
16 and procedures set forth in section 42121(b) of  
17 title 49, United States Code.

18 “(B) EXCEPTION.—Notification made  
19 under section 42121(b)(1) of title 49, United  
20 States Code, shall be made to the person named  
21 in the complaint and to the employer.

22 “(C) BURDENS OF PROOF.—An action  
23 brought under paragraph (1)(B) shall be gov-  
24 erned by the legal burdens of proof set forth in

1 section 42121(b) of title 49, United States  
2 Code.

3 “(D) STATUTE OF LIMITATIONS.—An ac-  
4 tion under paragraph (1) shall be commenced  
5 not later than 180 days after the date on which  
6 the violation occurs.

7 “(c) REMEDIES.—

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

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

14 “(A) reinstatement with the same seniority  
15 status that the employee would have had, but  
16 for the discrimination;

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

19 “(C) compensation for any special damages  
20 sustained as a result of the discrimination, in-  
21 cluding litigation costs, expert witness fees, and  
22 reasonable attorney fees.

23 “(3) PUNITIVE DAMAGES.—

24 “(A) IN GENERAL.—In a case in which the  
25 finder of fact determines that the protected

1           conduct of the employee under subsection (a)  
2           involved a substantial risk to the health, safety,  
3           or welfare of shareholders of the employer or  
4           the public, the finder of fact may award puni-  
5           tive damages to the employee.

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

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

19                   “(ii) the nature and extent of both the  
20                   actual and potential discrimination to  
21                   which the employee was subjected as a re-  
22                   sult of the protected conduct of the em-  
23                   ployee under subsection (a); and

24                   “(iii) the nature and extent of the risk  
25                   to the health, safety, or welfare of share-

1 holders or the public under subparagraph  
2 (A).

3 “(d) RIGHTS RETAINED BY EMPLOYEE.—

4 “(1) OTHER REMEDIES UNAFFECTED.—Noth-  
5 ing in this section shall be deemed to diminish the  
6 rights, privilege, or remedies of any employee under  
7 any Federal or State law, or under any collective  
8 bargaining agreement.

9 “(2) VOLUNTARY ADJUDICATION.—No em-  
10 ployee may be compelled to adjudicate his or her  
11 rights under this section pursuant to an arbitration  
12 agreement.”.

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 inserting after the item relating to  
16 section 1514 the following new item:

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

17 **SEC. 9. ESTABLISHMENT OF A RETIREMENT SECURITY**  
18 **FRAUD BUREAU.**

19 (a) IN GENERAL.—Part II of title 28, United States  
20 Code, is amended by adding at the end the following:

1   **“CHAPTER 40A—RETIREMENT SECURITY**  
2                                   **FRAUD BUREAU**

3   **“§ 600. Retirement Security Fraud Bureau**

4           “(a) IN GENERAL.—The Attorney General shall es-  
5   tablish a Retirement Security Fraud Bureau which shall  
6   be a bureau in the Department of Justice.

7           “(b) DIRECTOR.—

8                   “(1) APPOINTMENT.—The head of the Retire-  
9           ment Security Fraud Bureau shall be the Director  
10          who shall be appointed by the Attorney General.

11                   “(2) DUTIES AND POWERS.—The duties and  
12          powers of the Director are as follows:

13                           “(A) Advise and make recommendations  
14                           on matters relating to pension and securities  
15                           fraud, in general, to the Assistant Attorney  
16                           General of the Criminal Division.

17                           “(B) Maintain a government-wide data ac-  
18                           cess service, with access, in accordance with ap-  
19                           plicable legal requirements, to the following:

20                                   “(i) Information collected by the De-  
21                                   partment of Justice, the Department of  
22                                   the Treasury, and the Securities Exchange  
23                                   Commission on pension and securities  
24                                   fraud matters.

1           “(ii) Other privately and publicly  
2           available information on pension and secu-  
3           rities fraud-related activities.

4           “(C) Analyze and disseminate the available  
5           data in accordance with applicable legal require-  
6           ments, policies, and guidelines established by  
7           the Attorney General to—

8                   “(i) identify possible criminal activity  
9                   to appropriate Federal, State, local, and  
10                  foreign law enforcement agencies;

11                  “(ii) support ongoing criminal pension  
12                  and securities fraud investigations;

13                  “(iii) determine emerging trends and  
14                  methods in pension and securities fraud  
15                  matters; and

16                  “(iv) support government initiatives  
17                  against pension and securities fraud-re-  
18                  lated activities.

19           “(D) Furnish research, analytical, and in-  
20           formational services to financial institutions, to  
21           appropriate Federal regulatory agencies with  
22           regard to financial institutions, and to appro-  
23           priate Federal, State, local, and foreign law en-  
24           forcement authorities, in accordance with poli-  
25           cies and guidelines established by the Depart-

1           ment of Justice, in the interest of detection,  
2           prevention, and prosecution of pension and se-  
3           curities fraud-related crimes.

4                   “(E) Establish and maintain a special unit  
5           dedicated to assisting Federal, State, local, and  
6           foreign law enforcement and regulatory authori-  
7           ties in combating pension and securities fraud.

8                   “(F) Such other duties and powers as the  
9           Attorney General may delegate or prescribe.

10           “(c) AUTHORIZATION OF APPROPRIATIONS.—There  
11   are authorized to be appropriated for the Retirement Se-  
12   curity Fraud Bureau such sums as may be necessary for  
13   fiscal years 2003, 2004, 2005, and 2006.”.

14           (b) CLERICAL AMENDMENT.—The table of chapters  
15   at the beginning of part II of title 28, United States Code,  
16   is amended by adding at the end the following new item:

**“40A. Retirement Security Fraud Bureau ..... 600”.**

