

# FOIA Marker

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Counsel's Office, White House

Newstead, Jennifer (Jen)

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Folder Title:

Sarbanes Passed Bill [8]

# Withdrawn/Redacted Material

## The George W. Bush Library

DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Talking Points	Points for Corporate Governance Briefing	2	07/16/2002	P5;
002	List	[Modifications to Legislation]	6	N.D.	P5;

**COLLECTION TITLE:**  
Counsel's Office, White House

**SERIES:**  
Newstead, Jennifer (Jen)

**FOLDER TITLE:**  
Sarbanes Passed Bill [8]

**FRC ID:**  
9825

### RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.

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**OA Num.:**

2318

**NARA Num.:**

2230

**FOIA IDs and Segments:**

2014-0373-F

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# OFFICE OF THE CHIEF OF STAFF



(202) 456-6798 – Phone  
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June 28, 2002

✓ Kirk 6-2130  
 TO: Jennifer 6-5053  
 Kevin 6-2223

Matt SH-9412  
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PHONE NUMBER:

FROM: Kingston

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Original Signature of Member

**SUSPEND THE RULES AND PASS THE BILL, HR. 5118, WITH AN AMENDMENT**

(The amendment strikes out all after the enacting clause and inserts a new text)

107th CONGRESS  
2D SESSION

**H. R. 5118**

**IN THE HOUSE OF REPRESENTATIVES**

Mr. SENSENBENDER (for himself, [see attached list of cosponsors]) introduced the following bill; which was referred to the Committee on

**A BILL**

To provide for enhanced penalties for accounting and auditing improprieties at publicly traded companies, 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,*



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1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the "Corporate Fraud Ac-  
3 countability Act of 2002".

4 **SEC. 2. HIGHER MAXIMUM PENALTIES FOR MAIL AND WIRE**  
5 **FRAUD.**

6 (a) MAIL FRAUD.—Section 1341 of title 18, United  
7 States Code, is amended by striking "five" and inserting  
8 "20".

9 (b) WIRE FRAUD.—Section 1343 of title 18, United  
10 States Code, is amended by striking "five" and inserting  
11 "20".

12 (c) SECURITIES FRAUD.—Chapter 63 of title 18,  
13 United States Code, is amended by adding at the end the  
14 following:

15 **"§ 1348. Securities fraud**

16 "Whoever knowingly executes a scheme or artifice—

17 "(1) to defraud any person in connection with  
18 any security registered under section 12 or 15(d) of  
19 the Securities Exchange Act of 1934 (15 U.S.C. 78j,  
20 78o(d)) or section 6 of the Securities Act of 1933  
21 (15 U.S.C. 77f); or

22 "(2) to obtain, by means of false or fraudulent  
23 pretenses, representations, or promises, any money  
24 or property in connection with the purchase or sale  
25 of any security registered under section 12 or 15(d)  
26 of the Securities Exchange Act of 1934 (15 U.S.C.



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1 78, 78o(d) or section 6 of the Securities Act of  
2 1933 (15 U.S.C. 77f),  
3 shall be fined under this title, or imprisoned not more than  
4 25 years, or both."

5 (d) CLERICAL AMENDMENT.—The table of sections  
6 at the beginning of chapter 63 of title 18, United States  
7 Code, is amended by adding at the end the following:

—18 U.S. Securities Fraud.

8 **SEC. 3. TAMPERING WITH A RECORD OR OTHERWISE IM-**  
9 **PEDING AN OFFICIAL PROCEEDING.**

10 Section 1512 of title 18, United States Code, is  
11 amended—

12 (1) by redesignating subsections (c) through (i)  
13 as subsections (d) through (j), respectively; and

14 (2) by inserting after subsection (b) the fol-  
15 lowing new subsection:

16 "(c) Whoever corruptly—

17 "(1) alters, destroys, mutilates, or conceals a  
18 record, document, or other object, or attempts to do  
19 so, with the intent to impair the object's integrity or  
20 availability for use in an official proceeding; or

21 "(2) otherwise obstructs, influences, or impedes  
22 any official proceeding, or attempts to do so,

23 shall be fined under this title or imprisoned not more than  
24 20 years, or both."





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2 **SEC. 4. AMENDMENT TO THE FEDERAL SENTENCING**  
3 **GUIDELINES.**

4 (a) REQUEST FOR IMMEDIATE CONSIDERATION BY  
5 THE UNITED STATES SENTENCING COMMISSION.—Pur-  
6 suant to its authority under section 994(p) of title 28,  
7 United States Code, and in accordance with this section,  
8 the United States Sentencing Commission is requested  
9 to—

10 (1) promptly review the sentencing guidelines  
11 applicable to securities and accounting fraud and re-  
12 lated offenses;

13 (2) expeditiously consider the promulgation of  
14 new sentencing guidelines or amendments to existing  
15 sentencing guidelines to provide an enhancement for  
16 officers or directors of publicly traded corporations  
17 who commit fraud and related offenses; and

18 (3) submit to Congress an explanation of ac-  
19 tions taken by the Sentencing Commission pursuant  
20 to paragraph (2) and any additional policy rec-  
21 ommendations the Sentencing Commission may have  
22 for combating offenses described in paragraph (1).

23 (b) CONSIDERATIONS IN REVIEW.—In carrying out  
24 this section, the Sentencing Commission is requested to—

25 (1) ensure that the sentencing guidelines and  
26 policy statements reflect the serious nature of securi-  
ties, pensions, and accounting fraud and the need for



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1 aggressive and appropriate law enforcement action  
2 to prevent such offenses;

3 (2) assure reasonable consistency with other  
4 relevant directives and with other guidelines;

5 (3) account for any aggravating or mitigating  
6 circumstances that might justify exceptions, includ-  
7 ing circumstances for which the sentencing guide-  
8 lines currently provide sentencing enhancements;

9 (4) ensure that guideline offense levels and en-  
10 hancements for an obstruction of justice offense are  
11 adequate in cases where documents or other physical  
12 evidence are actually destroyed or fabricated;

13 (5) ensure that the guideline offense levels and  
14 enhancements under United States Sentencing  
15 Guideline 2B1.1 (as in effect on the date of enact-  
16 ment of this Act) are sufficient for a fraud offense  
17 when the number of victims adversely involved is sig-  
18 nificantly greater than 50;

19 (6) make any necessary conforming changes to  
20 the sentencing guidelines; and

21 (7) assure that the guidelines adequately meet  
22 the purposes of sentencing as set forth in section  
23 3553 (a)(2) of title 18, United States Code.

24 (c) EMERGENCY AUTHORITY AND DEADLINE FOR  
25 COMMISSION ACTION.—The United States Sentencing



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1 Commission is requested to promulgate the guidelines or  
2 amendments provided for under this sections as soon as  
3 practicable, and in any event not later than the 120 days  
4 after the date of enactment of this Act, in accordance with  
5 the procedures set forth in section 21(a) of the Sen-  
6 tencing Reform Act of 1987, as though the authority  
7 under that Act had not expired.

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

10 Section 523(a) of title 11, United States Code, is  
11 amended--

12 (1) in paragraph (17), by striking "or" after  
13 the semicolon

14 (2) in paragraph (18), by striking the period at  
15 the end and inserting "; or"; and

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

17 "(19) that--

18 "(A) is a claim for

19 "(1) the violation of any of the Fed-  
20 eral securities laws (as that term is defined  
21 in section 3(a)(47) of the Securities Ex-  
22 change Act of 1934), any of the State se-  
23 curities laws, or any regulation or order  
24 issued under such Federal or State securi-  
25 ties laws; or



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

4                   “(B) results, in relation to any claim de-  
5                   scribed in subparagraph (A), from:

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

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

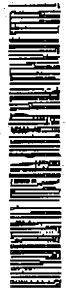
11                  “(iii) any court or administrative  
12                  order for any damages, fine, penalty, cita-  
13                  tion, restitutionary payment, disgorgement,  
14                  payment, attorney fee, cost, or other pay-  
15                  ment owed by the debtor.”

16 **SEC. 6. CORPORATE RESPONSIBILITY FOR FINANCIAL RE-**  
17 **PORTS.**

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

21 **“§ 1349. Failure of corporate officers to certify finan-**  
22 **cial reports**

23                  “(a) CERTIFICATION OF PERIODIC FINANCIAL RE-  
24                  PORTS. —Each periodic report containing financial state-  
25                  ments filed by an issuer with the Securities Exchange



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1 Commission pursuant to section 13(a) or 15(d) of the Sec-  
2 urities Exchange Act of 1934 (15 U.S.C. 78m(a) or  
3 78o(d)) shall be accompanied by a written statement by  
4 the chairman of the board, chief executive officer, and  
5 chief financial officer (or equivalent thereof) of the issuer.

6 "(b) **CONTEXT.**—The statement required under sub-  
7 section (a) shall certify that those financial statements  
8 fairly and accurately represent, in all material respects,  
9 the operations and financial condition of the issuer.

10 "(c) **CRIMINAL PENALTIES.**—Whoever—

11 "(1) knowingly violates this section shall be  
12 fined not more than \$1,000,000, or imprisoned not  
13 more than 10 years, or both; or

14 "(2) willfully violates this section shall be fined  
15 not more than \$5,000,000, or imprisoned not more  
16 than 20 years, or both."

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

"1310. Failure of corporate officers to certify financial reports."

20 **SEC. 7. ATTEMPTS AND CONSPIRACIES TO COMMIT CRIMI-**  
21 **NAL OFFENSES.**

22 (a) **IN GENERAL.**—Chapter 4 of title 18, United  
23 States Code, is amended by inserting before section 2 the  
24 following:





21 (A) IS GENERAL. SECTION 21(C) OF THE SECURITIES  
22 Exchange Act of 1934 (15 U.S.C. 78o-3(c)) is amended  
23 by adding at the end the following:  
24 "(C) TEMPORARY FREEZE.—  
25 "(A) IS GENERAL.—

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“(iii) EFFECTIVE PERIOD.— A temporary order issued under clause (i) shall—

“(I) become effective immediately;

“(II) be served upon the parties subject to it; and

“(III) unless set aside, limited or suspended by a court of competent jurisdiction, shall remain effective and enforceable for 45 days.

“(iv) EXTENSIONS AUTHORIZED.—

The effective period of an order under this subparagraph may be extended by the court upon good cause shown for not longer than 15 additional days, provided that the combined period of the order shall not exceed 90 days.

“(B) PROCESS ON DETERMINATION OF VIOLATIONS.—

“(i) VIOLATIONS CHARGED.— If the issuer or other person described in subparagraph (A) is charged with any violation of the Federal securities laws before the expiration of the effective period of a



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1 temporary order under subparagraph (A)  
2 (including any applicable extension period),  
3 the order shall remain in effect, subject to  
4 court approval, until the conclusion of any  
5 legal proceedings related thereto, and the  
6 affected issuer or other person, shall have  
7 the right to petition the court for review of  
8 the order.

9       “(ii) VIOLATIONS NOT CHARGED. If  
10 the issuer or other person described in sub-  
11 paragraph (A) is not charged with any vio-  
12 lation of the Federal securities laws before  
13 the expiration of the effective period of a  
14 temporary order under subparagraph (A)  
15 (including any applicable extension period),  
16 the escrow shall terminate at the expira-  
17 tion of the 45-day effective period (or the  
18 expiration of any extension period, as ap-  
19 plicable), and the disputed payments (with  
20 accrued interest) shall be returned to the  
21 issuer or other affected person.”

22       “(b) TECHNICAL AMENDMENT.— Section 21C(e)(2)  
23 of the Securities Exchange Act of 1934 (15 U.S.C. 78u-  
24 3(e)(2)) is amended by striking “This” and inserting  
25 “paragraph (1)”.





EXPLANATION OF CHANGES

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1 SEC. 10. AUTHORITY OF THE COMMISSION TO PROHIBIT  
2 PERSONS FROM SERVING AS OFFICERS OR  
3 DIRECTORS.

4 (a) SECURITIES EXCHANGE ACT OF 1934.—Section  
5 210 of the Securities Exchange Act of 1934 (15 U.S.C.  
6 78j-3) is amended by adding at the end the following:

7 "(f) AUTHORITY OF THE COMMISSION TO PROHIBIT  
8 PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—

9 In any cease-and-desist proceeding under subsection (a),  
10 the Commission may issue an order to prohibit, condi-  
11 tionally or unconditionally, and permanently or for such  
12 period of time as it shall determine, any person who has  
13 violated section 10(b) or the rules or regulations there-  
14 under, from acting as an officer or director of any issuer  
15 that has a class of securities registered pursuant to sec-  
16 tion, or that is required to file reports pursuant to section  
17 (d), if the conduct of that person demonstrates unfitness  
18 to serve as an officer or director of any such issuer."

19 (b) SECURITIES ACT OF 1933.—Section 8A of the  
20 Securities Act of 1933 (15 U.S.C. 77h-1) is amended by  
21 adding at the end of the following:

22 "(f) AUTHORITY OF THE COMMISSION TO PROHIBIT  
23 PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—

24 In any cease-and-desist proceeding under subsection (a),  
25 the Commission may issue an order to prohibit, condi-  
26 tionally or unconditionally, and permanently or for such



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1 period of time as it shall determine, any person who has  
2 violated section 17(a)(1) or the rules or regulations there-  
3 under, from acting as an officer or director of any issuer  
4 that has a class of securities registered pursuant to section  
5 of the Securities Exchange Act of 1934, or that is required  
6 to file reports pursuant to section 15(d) of that Act, if  
7 the conduct of that person demonstrates unfitness to serve  
8 as an officer or director of any such issuer."

9 **SEC. 11. RETALIATION AGAINST INFORMANT.**

10 (a) IN GENERAL.—Section 1514 of title 18, United  
11 States Code, is amended by adding at the end the fol-  
12 lowing:

13 "(c) Whoever knowingly, with the intent to retaliate,  
14 takes any action harmful to any person, including inter-  
15 ference with the lawful employment or livelihood of any  
16 person, for providing to a law enforcement officer any  
17 truthful information relating to the commission or possible  
18 commission of any Federal offense, shall be fined under  
19 this title or imprisoned not more than 10 years, or both."

