

110TH CONGRESS
1ST SESSION

H. R. 1049

To reduce the unintended costs and burdens that the Sarbanes-Oxley Act of 2002 imposes on United States businesses, while maintaining that Act's goals of bolstering confidence in the integrity of publicly held companies.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 14, 2007

Mr. GARRETT of New Jersey (for himself, Mr. HENSARLING, Mr. FEENEY, Mr. PRICE of Georgia, Mr. PAUL, Mr. GINGREY, Mr. WESTMORELAND, Mr. CARTER, Mr. GOODE, Mrs. MYRICK, Mr. GOHMERT, Mr. LAMBORN, Mr. FLAKE, Mr. AKIN, Mr. ROYCE, and Mr. NEUGEBAUER) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To reduce the unintended costs and burdens that the Sarbanes-Oxley Act of 2002 imposes on United States businesses, while maintaining that Act's goals of bolstering confidence in the integrity of publicly held 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 “Amend Misinterpreted
5 Excessive Regulation In Corporate America Act”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) The stated intent of the Sarbanes-Oxley Act
4 of 2002 was to restore confidence and integrity in
5 our nation's financial markets through increased
6 transparency and accountability.

7 (2) The regulatory interpretation of section 404
8 of that Act has led to many unintended con-
9 sequences, such as—

10 (A) diverting valuable resources away from
11 other legitimate business needs;

12 (B) creating massive and tedious docu-
13 mentation requirements; and

14 (C) discouraging the public listing of both
15 international and domestic companies on
16 United States markets.

17 (3) Nine out of ten complaints about the Sar-
18 banes-Oxley Act of 2002 are related to section 404.

19 (4) Ninety percent of international small com-
20 panies have listed in international markets and not
21 in the United States markets.

22 (5) The out-of-pocket costs have been \$4 mil-
23 lion to \$6 million per accelerated filer, more than 50
24 times original Securities and Exchange Commission
25 estimates.

1 (6) Total economic costs including opportunity
2 costs and social implications are up to \$1.4 trillion.

3 **SEC. 3. CREATION OF OMBUDSMAN FOR THE PCAOB.**

4 Title I of the Sarbanes-Oxley Act of 2002 (15 U.S.C.
5 7211 et seq.) is amended by adding at the end the fol-
6 lowing new section:

7 **“SEC. 110. OMBUDSMAN.**

8 “(a) ESTABLISHMENT REQUIRED.—Not later than
9 180 days after the date of enactment of the Amend Mis-
10 interpreted Excessive Regulation In Corporate America
11 Act, the Board shall appoint an ombudsman for the
12 Board. The Ombudsman shall report directly to the Chair-
13 man.

14 “(b) DUTIES OF OMBUDSMAN.—The ombudsman ap-
15 pointed in accordance with subsection (a) for the Board
16 shall—

17 “(1) act as a liaison between the Board and—

18 “(A) any registered public accounting firm
19 or issuer with respect to issues or disputes con-
20 cerning the preparation or issuance of any audit
21 report with respect to that issuer; and

22 “(B) any affected registered public ac-
23 counting firm or issuer with respect to—

24 “(i) any problem such firm or issuer
25 may have in dealing with the Board result-

1 ing from the regulatory activities of the
 2 Board, particularly with regard to the im-
 3 plementation of section 404; and

4 “(ii) issues caused by the relationships
 5 of registered public accounting firms and
 6 issuers generally; and

7 “(2) assure that safeguards exist to encourage
 8 complainants to come forward and to preserve con-
 9 fidentiality; and

10 “(3) carry out such activities, and any other ac-
 11 tivities assigned by the Board, in accordance with
 12 guidelines prescribed by the Board.”.

13 **SEC. 4. REORGANIZATION OF THE BOARD OF THE PCAOB.**

14 (a) APPOINTMENT TO THE BOARD.—

15 (1) AMENDMENT.—Subparagraph (A) of sec-
 16 tion 101(e)(4) of the Sarbanes-Oxley Act of 2002
 17 (15 U.S.C. 7211(e)(4)(B)) is amended to read as
 18 follows:

19 “(A) PRESIDENTIAL APPOINTMENT.—The
 20 members of the Board shall be appointed by the
 21 President, by and with the advice and consent
 22 of the Senate.”.

23 (2) TRANSITION.—The members of the Public
 24 Company Accounting Oversight Board serving on
 25 the date of enactment of this Act may continue to

1 serve until a successor is appointed pursuant to the
2 amendment made by paragraph (1) of this sub-
3 section. The term of office of any such successor
4 shall expire at the time of the expiration of the term
5 of his or her predecessor, as designated by the Presi-
6 dent at the time of the appointment.

7 (3) COMPENSATION.—Section 5312 of title 5,
8 United States Code, is amended by adding at the
9 end the following:
10 “Chairman and Members, Public Company Account-
11 ing Oversight Board.”.

12 (4) CONFORMING AMENDMENTS.—

13 (A) Sections 101(e) of the Sarbanes-Oxley
14 Act of 2002 (15 U.S.C. 7211(e)) is amended by
15 striking paragraph (6).

16 (B) Section 107(d) of such Act (15 U.S.C.
17 7217(d)) is amended by striking paragraph (3).

18 (b) FUNDING.—Section 109(f) of such Act is amend-
19 ed by adding at the end the following new sentence: “The
20 Congress reserves the authority to establish annual or
21 other periodic limits upon the amount of fees which may
22 be collected under this section on behalf of the Board.”.

1 **SEC. 5. REDUCTIONS OF INTERNAL CONTROL IMPLEMEN-**
2 **TATION COSTS.**

3 (a) REVISIONS REQUIRED.—Not later than Decem-
4 ber 31, 2007—

5 (1) the Securities and Exchange Commission
6 shall adopt revisions to its rules under section
7 404(a) of the Sarbanes-Oxley Act of 2002 (15
8 U.S.C. 7211(a)) relating to management’s assess-
9 ment of an issuer’s internal control structure and
10 procedures; and

11 (2) the Public Company Accounting Oversight
12 Board shall adopt revisions to its standards under
13 section 404(b) of such Act for auditor attestation to
14 and reporting on such management assessment.

15 (b) COST OF IMPLEMENTATION REDUCTION.—In
16 adopting the revisions required by subsection (a), the
17 Commission and the Board shall reduce the costs of the
18 implementation of section 404, consistent with the inten-
19 tion of the Congress that such section not increase signifi-
20 cantly the cost of the annual audits of financial statements
21 under section 13(a) and 15(d) of the Securities Exchange
22 Act of 1934 (15 U.S.C. 78m(a), 78o(d)).

23 (c) RISK-BASED IMPLEMENTATION.—In adopting the
24 revisions required by subsection (a), the Commission shall
25 adopt a more risk-based statement on internal control re-
26 porting that focuses internal control review on financial

1 controls having significant risk of failing to prevent finan-
2 cial damages that would be material to the financial state-
3 ments of the issuer.

4 **SEC. 6. SEPARATE ENGAGEMENTS FOR INTERNAL CON-**
5 **TROL EVALUATIONS.**

6 Section 404(b) of the Sarbanes-Oxley Act of 2002
7 (15 U.S.C. 7262(b)) is amended—

8 (1) by inserting before the period at the end of
9 the first sentence the following: “, or the issuer shall
10 separately engage a different registered public ac-
11 counting firm which shall attest to and report on
12 such assessment”; and

13 (2) by striking the last sentence.

14 **SEC. 7. PRIVATE RIGHTS OF ACTION.**

15 Section 404 of the Sarbanes-Oxley Act of 2002 (15
16 U.S.C. 7262) is amended by adding at the end the fol-
17 lowing new subsection:

18 “(c) NO PRIVATE RIGHTS OF ACTION.—No private
19 right of action may be brought against any registered pub-
20 lic accounting firm in any Federal or State court on the
21 basis of a violation or alleged violation of the requirements
22 of this section or standards issued by the Board under
23 or for purposes of implementing this section.”.

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