

103D CONGRESS
1ST SESSION

S. 630

To facilitate the detection and disclosure by auditors of financial fraud in connection with securities issues, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 23 (legislative day, MARCH 3), 1993

Mr. KERRY introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To facilitate the detection and disclosure by auditors of financial fraud in connection with securities issues, 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 “Financial Fraud De-
5 tection and Disclosure Act”.

6 **SEC. 2. AMENDMENT TO SECURITIES EXCHANGE ACT OF**
7 **1934.**

8 (a) AMENDMENTS TO THE SECURITIES EXCHANGES
9 ACT OF 1934.—The Securities Exchange Act of 1934 is

1 amended by inserting after section 10 (15 U.S.C. 78j) the
2 following new section:

3 “FRAUD DETECTION AND DISCLOSURE

4 “SEC. 10A. (a) AUDIT REQUIREMENTS.—Each audit
5 required pursuant to this title of an issuer’s financial
6 statements by an independent public accountant shall in-
7 clude, in accordance with generally accepted auditing
8 standards, as may be modified or supplemented from time
9 to time by the Commission, the following:

10 “(1) procedures designed to provide reasonable
11 assurance of detecting illegal acts that would have a
12 direct and material effect on the determination of fi-
13 nancial statement amounts;

14 “(2) procedures designed to identify related
15 party transactions which are material to the finan-
16 cial statements or otherwise require disclosure there-
17 in; and

18 “(3) an evaluation of whether there is substan-
19 tial doubt about the issuer’s ability to continue as a
20 going concern over the ensuing fiscal year.

21 “(b) REQUIRED RESPONSE TO AUDIT DISCOV-
22 ERIES.—

23 “(1) INVESTIGATION AND REPORT TO MANAGE-
24 MENT.—If, in the course of conducting any audit
25 pursuant to this title to which subsection (a) applies,
26 the independent public accountant detects or other-

1 wise becomes aware of information indicating that
2 an illegal act (whether or not perceived to have a
3 material effect on the issuer's financial statements)
4 has or may have occurred, the accountant shall, in
5 accordance with generally accepted auditing stand-
6 ards, as may be modified or supplemented from time
7 to time by the Commission—

8 “(A)(i) determine whether it is likely that
9 an illegal act has occurred, and (ii) if so, deter-
10 mine and consider the possible effect of the ille-
11 gal act on the financial statements of the is-
12 suer, including any contingent monetary effects,
13 such as fines, penalties, and damages; and

14 “(B) as soon as practicable inform the ap-
15 propriate level of the issuer's management and
16 assure that the issuer's audit committee, or the
17 issuer's board of directors in the absence of
18 such a committee, is adequately informed with
19 respect to illegal acts that have been detected or
20 otherwise come to the attention of such ac-
21 countant in the course of the audit, unless the
22 illegal act is clearly inconsequential.

23 “(2) RESPONSE TO FAILURE TO TAKE REME-
24 DIAL ACTION.—If, having first assured itself that
25 the audit committee of the board of directors of the

1 issuer or the board (in the absence of an audit com-
2 mittee) is adequately informed with respect to illegal
3 acts that have been detected or otherwise come to
4 the accountant's attention in the course of such ac-
5 countant's audit, the independent public accountant
6 concludes that—

7 “(A) any such illegal act has a material ef-
8 fect on the financial statements, of the issuer,

9 “(B) senior management has not taken,
10 and the board of directors has not caused sen-
11 ior management to take, timely and appropriate
12 remedial actions with respect to such illegal act,
13 and

14 “(C) the failure to take remedial action is
15 reasonably expected to warrant departure from
16 a standard auditor's report, when made, or
17 warrant resignation from the audit engagement,
18 the independent public accountant shall, as soon as
19 practicable, directly report its conclusions to the
20 board of directors.

21 “(3) NOTICE TO COMMISSION; RESPONSE TO
22 FAILURE TO NOTIFY.—An issuer whose board of di-
23 rectors has received a report pursuant to paragraph
24 (2) shall inform the Commission by notice within
25 one business day of receipt of such report and shall

1 furnish the independent public accountant making
2 such report with a copy of the notice furnished the
3 Commission. If the independent public accountant
4 making such report shall fail to receive a copy of
5 such notice within the required one-business-day pe-
6 riod, the independent public accountant shall—

7 “(A) resign from the engagement; or

8 “(B) furnish to the Commission a copy of
9 its report (or the documentation of any oral re-
10 port given) within the next business day follow-
11 ing such failure to receive notice.

12 “(4) REPORT AFTER RESIGNATION.—An inde-
13 pendent public accountant electing resignation shall,
14 within the one business day following a failure by an
15 issuer to notify the Commission under paragraph
16 (3), furnish to the Commission a copy of the ac-
17 countant’s report (or the documentation of any oral
18 report given).

19 “(c) AUDITOR LIABILITY LIMITATION.—No inde-
20 pendent public accountant shall be liable in a private ac-
21 tion for any finding, conclusion, or statement expressed
22 in a report made pursuant to paragraph (3) or (4) of sub-
23 section (b), including any rules promulgated pursuant
24 thereto.

1 “(d) CIVIL PENALTIES IN CEASE-AND-DESIST PRO-
2 CEEDINGS.—If the Commission finds, after notice and op-
3 portunity for hearing in a proceeding instituted pursuant
4 to section 21C of this title, that an independent public
5 accountant has willfully violated paragraph (3) or (4) of
6 subsection (b) of this section, then the Commission may,
7 in addition to entering an order under section 21C, impose
8 a civil penalty against the independent public accountant
9 and any other person that the Commission finds was a
10 cause of such violation. The determination whether to im-
11 pose a civil penalty, and the amount of any such penalty,
12 shall be governed by the standards set forth in section 21B
13 of this title.

14 “(e) PRESERVATION OF EXISTING AUTHORITY.—Ex-
15 cept for subsection (d), nothing in this section limits or
16 otherwise affects the authority of the Commission under
17 this title.

18 “(f) DEFINITIONS.—As used in this section, the term
19 ‘illegal act’ means any action of omission to act this vio-
20 lates any law, or any rule or regulation having the force
21 of law.”.

22 (b) EFFECTIVE DATES.—As to any registrant that
23 is required to file selected quarterly financial data pursu-
24 ant to item 302(a) of Regulation S-K (17 CFR
25 229.302(a)) of the Securities and Exchange Commission,

1 the amendments made by subsection (a) of this section
2 shall apply to any annual report for any period beginning
3 on or after January 1, 1994. As to any other registrant,
4 such amendment shall apply for any period beginning on
5 or after January 1, 1995.

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