

109TH CONGRESS  
2D SESSION

# S. 2824

To reduce the burdens of the implementation of section 404 of the Sarbanes-Oxley Act of 2002.

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IN THE SENATE OF THE UNITED STATES

MAY 17, 2006

Mr. DEMINT (for himself, Mr. ENSIGN, Mr. MARTINEZ, Mr. INHOFE, Mr. BURNS, and Mr. ALLEN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To reduce the burdens of the implementation of section 404 of the Sarbanes-Oxley Act of 2002.

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 “Competitive and Open  
5 Markets that Protect and Enhance the Treatment of En-  
6 trepreneurs Act” or the “COMPETE Act”.

1 **SEC. 2. IMPLEMENTATION OF INTERNAL CONTROL RE-**  
2 **PORTING AND ASSESSMENT.**

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

5 (1) in subsection (a), by striking “The Commis-  
6 sion” and inserting “Subject to subsections (c) and  
7 (d), the Commission”;

8 (2) in subsection (b), by inserting “, subject to  
9 subsections (c) and (d),” after “for the issuer shall”;  
10 and

11 (3) by adding at the end the following new sub-  
12 sections:

13 “(c) **SMALLER PUBLIC COMPANY EXEMPTION.**—The  
14 rules of the Commission under subsection (a) shall permit  
15 an issuer to elect voluntarily not to provide the assessment  
16 described in subsection (a)(2) and the attestation thereof  
17 described in subsection (b), if the issuer—

18 “(1) has a total market capitalization for the  
19 relevant reporting period of less than \$700,000,000;

20 “(2) has total product revenue for that report-  
21 ing period of less than \$125,000,000;

22 “(3) has fewer than 1500 record beneficial  
23 holders of securities;

24 “(4) has been subject to the requirements of  
25 sections 13(a) or 15(d) of the Securities Exchange

1 Act of 1934 for a period of less than 12 calendar  
2 months; or

3 “(5) has not filed, and was not required to file,  
4 an annual report pursuant to section 13(a) or 15(d)  
5 of the Securities Exchange Act of 1934.

6 “(d) DE MINIMUS STANDARD; ADDITIONAL GUID-  
7 ANCE; INDEPENDENCE.—In implementing the require-  
8 ments of this section, the Commission and the Board—

9 “(1) shall alter the standard for review from a  
10 remote likelihood standard for noting weaknesses  
11 under this section to a 5 percent de minimus mate-  
12 rial weakness criteria (based on 5 percent of net  
13 profits);

14 “(2) shall establish specific guidelines for meas-  
15 uring the terms ‘reasonable’, ‘significant’, and ‘suffi-  
16 cient’ in the context of internal control over financial  
17 reporting for issuers, including—

18 “(A) reference to specific examples of the  
19 appropriate application of those terms; and

20 “(B) establishment of a means for timely  
21 response by the Commission or the Board, as  
22 applicable, to requests by issuers and registered  
23 public accounting firms for guidance as to the  
24 appropriate application of those terms; and

