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(Original Signature of Member)

119TH CONGRESS
1ST SESSION

H. R. _____

To amend title 18, United States Code, to enhance prosecution of corporate
crime.

IN THE HOUSE OF REPRESENTATIVES

Ms. SCANLON introduced the following bill; which was referred to the
Committee on _____

A BILL

To amend title 18, United States Code, to enhance
prosecution of corporate crime.

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 “Corporate Prosecution
5 Reform Act”.

6 **SEC. 2. SENSE OF CONGRESS.**

7 It is the sense of Congress that—

1 (1) the prosecution of corporate crimes should
2 be conducted with the same rigor and commitment
3 as the prosecution of individual crimes;

4 (2) deferred prosecution agreements and non-
5 prosecution agreements should only be used when
6 they serve the public interest and are likely to result
7 in meaningful reforms; and

8 (3) the penalties and terms imposed by deferred
9 prosecution agreements and non-prosecution agree-
10 ments should be sufficient to hold the defendant ac-
11 countable for misconduct, compensate victims, pre-
12 vent corporate recidivism, and deter future corporate
13 offenses.

14 **SEC. 3. DEFERRED PROSECUTION AGREEMENTS.**

15 (a) DEFINITIONS.—Section 3172 of title 18, United
16 States Code, is amended—

17 (1) in paragraph (1), by striking “, and” at the
18 end and inserting at semicolon;

19 (2) in paragraph (2), by striking the period at
20 the end and inserting a semicolon; and

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

22 “(3) the term ‘business entity’ means a cor-
23 poration, association, partnership, limited liability
24 company, limited liability partnership, or other legal
25 commercial entity; and

1 “(4) the term ‘corporate offense’ means—
2 “(A) a violation or alleged violation of Fed-
3 eral law committed by—
4 “(i) a business entity; or
5 “(ii) an individual employed by a busi-
6 ness entity within the conduct of the indi-
7 vidual’s occupational role; and
8 “(B) any other violation or alleged viola-
9 tion of Federal law determined by the Attorney
10 General to be a corporate offense.”.

11 (b) PERIODS OF DELAY.—Section 3161(h)(2) of title
12 18, United States Code, is amended—

13 (1) by striking “Any period of” and inserting
14 “(A) Any period of”;

15 (2) by inserting “ of an offense that is not a
16 corporate offense” after “prosecution”; and

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

18 “(B)(i) Any period of delay during which
19 prosecution of a corporate offense is deferred by
20 the attorney for the Government pursuant to
21 written agreement with the defendant, with the
22 approval of the court of the terms of such
23 agreement, for the purpose of allowing the de-
24 fendant to demonstrate his good conduct.

1 “(ii) In making the determination
2 under clause (i), the court may not ap-
3 prove an agreement—

4 “(I) in the case of an offense re-
5 sulting in—

6 “(aa) loss of life; or

7 “(bb) serious bodily injury
8 (as such term is defined in sec-
9 tion 1365);

10 “(II) in the case of an offense re-
11 lating to treason, espionage, ter-
12 rorism, money laundering, slavery,
13 forced labor, or human trafficking; or

14 “(III) if the defendant has pre-
15 viously—

16 “(aa) been convicted of a
17 similar corporate offense;

18 “(bb) entered into an agree-
19 ment under this subparagraph
20 related to a similar corporate of-
21 fense (as well as any agreement
22 under section 3161(h)(2), as in
23 effect on the day before the date
24 of enactment of the Corporate

1 Prosecution Reform Act, related
2 to a similar corporate offense); or

3 “(cc) entered into an agree-
4 ment described in section
5 3784(b)(2) related to a similar
6 corporate offense.

7 “(iii) In making the determination
8 under clause (i), the court may not ap-
9 prove an agreement unless the court deter-
10 mines that—

11 “(I) the agreement is in the pub-
12 lic interest;

13 “(II) the terms and penalties
14 under the agreement are sufficient to
15 hold the defendant accountable for
16 misconduct, compensate each victim,
17 prevent unlawful behavior by the de-
18 fendant, and deter similar corporate
19 offenses; and

20 “(III) each victim of an offense
21 alleged in the agreement has been af-
22 farded the rights described in section
23 3771, and has been afforded the right
24 to—

1 “(aa) confer with the attor-
2 ney for the Government no less
3 than 15 days before such agree-
4 ment is offered to the defendant;
5 and

6 “(bb) be heard by the court
7 or provide the court with written
8 testimony, prior to the court
9 making a determination under
10 clause (i).

11 “(iv) Any period of delay during
12 which the court is making the determina-
13 tion under clause (i) shall be included in
14 the period of delay described in such
15 clause.

16 “(v) In the case of an agreement that
17 the court approved under clause (i), the
18 court may not approve a proposed change
19 to such agreement unless the court deter-
20 mines that the change meets the require-
21 ments under clause (iii). If the court deter-
22 mines that the change does not meet such
23 requirements, the terms and penalties of
24 the approved agreement shall remain in ef-
25 fect.

1 “(vi) The court may—

2 “(I) on its own, or on motion of
3 any party, review the implementation
4 or termination of the agreement, and
5 take any appropriate action to assure
6 that the implementation or termi-
7 nation is in the public interest; and

8 “(II) order a party or an inde-
9 pendent monitor to file evidence with
10 the court to aid the court in making
11 the determination under clause (i).”.

12 **SEC. 4. ENFORCEMENT OF CORPORATE AND WHITE-COL-**
13 **LAR CRIME.**

14 (a) IN GENERAL.—Part II of title 18, United States
15 Code, is amended adding at the end the following:

16 **“CHAPTER 239—CORPORATE AND WHITE-**
17 **COLLAR CRIME**

“3781. Prosecution of corporate crimes.

“3782. Office of Corporate Enforcement.

“3783. Functions and duties of the Director of the Office of Corporate Enforce-
ment.

“3784. Transparency in corporate enforcement.

“3785. Prohibition of non-prosecution agreements.

“3786. Report to Congress.

“3787. Definitions.

18 **“§ 3781. Prosecution of corporate crimes**

19 “(a) ESTABLISHMENT OF GUIDANCE.—The Attorney
20 General shall establish guidance, and as necessary revise

1 the internal policies and procedures of the Department of
2 Justice, for the use of—

3 “(1) an agreement described in section
4 3161(h)(2)(B);

5 “(2) an agreement described in section
6 3784(b)(2) related to an alleged corporate offense;
7 or

8 “(3) an agreement related to any voluntary dis-
9 closure policy of the Department of Justice involving
10 an alleged corporate offense.

11 “(b) DESCRIPTION.—The guidance established under
12 subsection (a) shall—

13 “(1) improve the use of, and compliance with,
14 the agreements described in such subsection;

15 “(2) standardize the enforcement of and com-
16 pliance with, such agreements;

17 “(3) to the extent practicable, maintain parity
18 between the use of, and terms and penalties included
19 in, such agreements with respect to substantively
20 similar corporate offenses; and

21 “(4) ensure that such agreements—

22 “(A) achieve substantial justice, including
23 for victims and the public;

24 “(B) prevent corporate recidivism; and

25 “(C) deter future corporate offenses;

1 “(c) PUBLICATION.—The Attorney General shall
2 publish the guidance described in paragraph (1) on the
3 website of the Department of Justice.

4 **“§ 3782. Office of Corporate Enforcement**

5 “(a) IN GENERAL.—There is hereby established with-
6 in the Department of Justice, under the general authority
7 of the Attorney General, an Office of Corporate Enforce-
8 ment (in this chapter referred to as the ‘Office’).

9 “(b) SEPARATE OFFICE.—The Office shall be a sepa-
10 rate and distinct office within the Department of Justice,
11 not subsumed by any other office, headed by a Director,
12 who shall report to the Deputy Attorney General.

13 “(c) APPOINTMENT.—The Attorney General shall ap-
14 point the Director.

15 “(d) STAFF.—The Attorney General is authorized to
16 provide the Office of Corporate Enforcement with such
17 full-time professional and clerical staff and with the serv-
18 ices of such consultants as may be necessary for it to carry
19 out its duties and functions.

20 **“§ 3783. Functions and duties of the Director of the**
21 **Office of Corporate Enforcement**

22 “(a) MONITORING.—The Director shall monitor the
23 implementation of and compliance with each agreement
24 that is approved pursuant to section 3161(h)(2)(B) or de-
25 scribed in section 3784(b)(2).

1 “(b) REPORTING VIOLATIONS.—If the Director de-
2 termines that any individual or business entity subject to
3 an agreement under section 3161(h)(2)(B) or described
4 in section 3784(b)(2) has violated the terms of that agree-
5 ment, the Director shall report such violation to the Dep-
6 uty Attorney General.

7 **“§ 3784. Transparency in corporate enforcement**

8 “(a) DEFERRED PROSECUTION AGREEMENTS.—

9 “(1) IN GENERAL.—Not later than 30 days
10 after the court approves an agreement under section
11 3161(h)(2)(B), the Attorney General shall make
12 available on the public website of the Department of
13 Justice—

14 “(A) the text of the agreement;

15 “(B) the defendant;

16 “(C) any offense or alleged offense identi-
17 fied by the agreement;

18 “(D) the terms of the agreement, including
19 any fines or penalties;

20 “(E) all the terms and conditions of any
21 agreement or understanding between—

22 “(i) an independent monitor appointed
23 pursuant to the agreement; and

24 “(ii) the defendant or the Department
25 of Justice; and

1 “(F) any reference to—

2 “(i) any other such agreement ap-
3 proved between the United States and the
4 individual or business entity, including
5 such an agreement that is no longer in ef-
6 fect as of the date of publication;

7 “(ii) any agreement described in sub-
8 section (b)(2), including such an agree-
9 ment that is not in effect as of the date of
10 publication; and

11 “(iii) any prior conviction of the indi-
12 vidual or business entity for a similar Fed-
13 eral offense.

14 “(2) AGREEMENTS IN EFFECT AND PRIOR
15 AGREEMENTS.—The Attorney General shall make
16 available on the public website of the Department of
17 Justice the information described in paragraph
18 (1)—

19 “(A) not later than one year after the date
20 of enactment of this Act, for each agreement
21 approved under subparagraph (B) of section
22 3161(h)(2) (as well as any agreement under
23 section 3161(h)(2), as in effect on the day be-
24 fore the date of enactment of the Corporate
25 Prosecution Reform Act, related to any cor-

1 porate offense) that is in effect on the date of
2 enactment; and

3 “(B) not later than 3 years after the date
4 of enactment of this Act, for each agreement
5 described in subparagraph (A) that was in ef-
6 fect during the period beginning on January 1,
7 1993, and ending on the date of enactment of
8 this Act.

9 “(b) NON-PROSECUTION AGREEMENTS.—

10 “(1) PUBLICATION.—Not later than 30 days
11 after an agreement described in paragraph (2) is fi-
12 nalized, the Attorney General shall make available
13 on the public website of the Department of Jus-
14 tice—

15 “(A) the text of the agreement;

16 “(B) the identified individual or business
17 entity;

18 “(C) any offense or alleged offense identi-
19 fied by the agreement;

20 “(D) the terms of the agreement, including
21 any fines or penalties; and

22 “(E) a reference to—

23 “(i) any other agreement described in
24 paragraph (2) between the United States
25 and the individual or business entity, in-

1 cluding such an agreement that is no
2 longer in effect as of the date of publica-
3 tion;

4 “(ii) any agreement approved under
5 subparagraph (B) of section 3161(h)(2)
6 (as well as any agreement under section
7 3161(h)(2), as in effect on the day before
8 the date of enactment of the Corporate
9 Prosecution Reform Act, related to any
10 corporate offense) between the United
11 States and the individual or business enti-
12 ty, including such an agreement that is no
13 longer in effect as of the date of publica-
14 tion; and

15 “(iii) any prior conviction of the indi-
16 vidual or business entity for a similar Fed-
17 eral offense.

18 “(2) AGREEMENT DESCRIBED.—An agreement
19 described in this paragraph is a written agreement—

20 “(A) in which the United States agrees
21 to—

22 “(i) stop, pause, defer, or resolve an
23 investigation or prosecution of a corporate
24 offense; or

1 “(ii) decline to or otherwise not pros-
2 ecute a corporate offense; and

3 “(B) that is not an agreement described in
4 section 3161(h)(2)(B).

5 “(3) AGREEMENTS IN EFFECT AND PRIOR
6 AGREEMENTS.—The Attorney General shall make
7 available on the public website of the Department of
8 Justice the information described in paragraph
9 (1)—

10 “(A) not later than one year after the date
11 of enactment of this Act, for each agreement
12 described in paragraph (2) that is in effect on
13 the date of enactment; and

14 “(B) not later than 3 years after the date
15 of enactment of this Act, for each agreement
16 described in paragraph (2) that was in effect
17 during the period beginning on January 1,
18 1993, and ending on the date of enactment of
19 this Act.

20 **“§ 3785. Prohibition of non-prosecution agreements**

21 “(a) IN GENERAL.—Except in the case of an agree-
22 ment under section 3162(h)(2) that is approved by an ap-
23 propriate district court of the United States in accordance
24 with such section, the Government may not enter into any
25 agreement with a business entity or an individual in which

1 the Government agrees to decline prosecution of, or other-
2 wise not prosecute, a corporate offense, in exchange for
3 payment of a fine, penalty, or other monetary consider-
4 ation.

5 “(b) VOID.—Any agreement entered into in violation
6 of this section shall be void and unenforceable.

7 “(c) RULE OF CONSTRUCTION.—Nothing in this sec-
8 tion shall be construed to—

9 “(1) prevent the Government from issuing advi-
10 sory opinions, entering into immunity agreements,
11 entering into civil consent decrees filed in a court,
12 or entering plea bargaining agreements governed by
13 Rule 11 of the Federal Rule of Criminal Procedure;
14 or

15 “(2) affect any agreement that is in effect on
16 the date of enactment of this section.

17 **“§ 3786. Report to Congress**

18 “Not later than 1 year after the date of enactment
19 of the Corporate Prosecution Reform Act, and annually
20 thereafter, the Attorney General shall submit to the Com-
21 mittees on the Judiciary of the House of Representatives
22 and of the Senate a report that includes—

23 “(1) each agreement entered into under section
24 3161(h)(2)(B) or described in section 3784(b)(2)
25 during the preceding year;

1 “(2) any instance of non-compliance by a de-
2 fendant with an agreement entered into under sec-
3 tion 3161(h)(2)(B) or described in section
4 3784(b)(2) during the preceding year;

5 “(3) a list of each agreement under section
6 3161(h)(2)(B) (as well as any agreement under sec-
7 tion 3161(h)(2), as in effect on the day before the
8 date of enactment of the Corporate Prosecution Re-
9 form Act, related to any corporate offense) or de-
10 scribed in section 3784(b)(2) that is still in effect as
11 of the date of the report;

12 “(4) any changes to an agreement described in
13 paragraph (3), including any extensions to the term
14 of such an agreement; and

15 “(5) a list of each agreement under section
16 3161(h)(2)(B) (as well as any agreement under sec-
17 tion 3161(h)(2), as in effect on the day before the
18 date of enactment of the Corporate Prosecution Re-
19 form Act, related to any corporate offense) or de-
20 scribed in section 3784(b)(2) that was terminated
21 during the preceding year, including a description of
22 the defendant’s compliance with terms of the agree-
23 ment.

1 **“§ 3787. Definitions**

2 “In this chapter, the terms have the meanings given
3 such terms in section 3172.”.

4 (b) TABLE OF CHAPTERS AMENDMENT.—The table
5 of chapters for part II of title 18, United States Code,
6 is amended by adding at the end the following:

“239. Corporate and White-Collar Crime 3781”.

7 **SEC. 5. REFERENCES TO WHITE COLLAR CRIME.**

8 Part MM of title I of the Omnibus Crime Control
9 and Safe Streets Act of 1968 (34 U.S.C. 10721 et seq.),
10 is amended—

11 (1) in the part heading, by striking “**WHITE**
12 **COLLAR CRIME**” and inserting “**CYBER AND FI-**
13 **NANCIAL CRIME**”; and

14 (2) by striking “white collar crime” each place
15 such term appears and inserting “cyber and finan-
16 cial crime”.