

# iNET Legislative Review

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SB 10 (Palmer II, Blevins, Boswell, Herron Jr., Jackson, Jones II, Karem, Mongiardo, Neal, Pendleton, Saunders, Scorsone, Shaughnessy, Turner, Worley)

AN ACT proposing amendments to KRS §§517.050; 367.175; 66.480; 271B.14-300; and to create new sections in KRS §§42.400 to 42.420; and 434.320 to 434.340 relating to financial practices.

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**KEYWORDS:** CORPORATE GOVERNANCE, FINANCIAL REFORM, SECURITIES, INVESTMENT, BLUE SKY LAWS

Available at: <http://www.lrc.state.ky.us/record/03rs/SB10.htm>

Purpose of the bill:

The bill responds to recent corporate finance scandals by increasing the penalties for corporate financial irregularities, providing courts with additional remedies in such instances, and requiring additional disclosures to investors.

Summary of provisions:

The bill amends various provisions of KRS to enhance the severity of crimes relating to falsifying business records, to punish inaccurate descriptions of business organizations' financial conditions, to provide investors with a "bill of rights," and to give courts power to dissolve corporations for financial misconduct. The bill amends KRS 517.050 to change from an A misdemeanor to a D felony the crime of falsification of business records where businesses hold assets over \$1,000,000. The bill amends KRS 367.175 to prohibit knowing and inaccurate written descriptions of the financial conditions of a business or corporation. The bill adds new sections of KRS 42.400 to 42.420 to create investment principles for financial organizations that provide investment and money management services to the Commonwealth and makes a conforming amendment to KRS 66.480. The bill amends KRS 271B.14-300 to allow the Circuit Court to dissolve corporations if either the corporation has been convicted of a felony or has had its authority to conduct business revoked in another jurisdiction. Finally, the bill adds new sections to KRS 434.320 to 434.340 to establish the Investor Bill of Rights.

Effects of current law bill would alter:

KRS 517.050 provides that any falsification of business records, regardless of the corporation's size, is a Class A misdemeanor. The Kentucky Consumer Protection Act makes it a Class C felony to restrain trade and commerce, but providing an inaccurate written description relating to the financial condition of a business is not currently within its reach. The new sections proposed in KRS Chapter 42 would establish investment principles for companies who provide investment and money management services to the Commonwealth. KRS 271B-14.300 allows a Circuit Court to dissolve a corporation if it obtained its articles of incorporation through fraud or if the corporation has continually abused its powers. As amended, this section would also allow the Circuit Court dissolve corporations if the corporation has been convicted of a felony or if the corporation has had its authority to conduct business revoked in another jurisdiction. The provisions in KRS 434.320 to 434.340 establishing an Investor's Bill of Rights are new law, patterned after the work of the North American Securities Administrator's Association.

Justification:

After Enron and WorldCom imploded, legislators in many states talked about the importance of business ethics and accounting standards. However, there has been comparatively little legislation. Instead, attorneys general and pension fund managers have taken the lead in addressing issues related to corporate governance. The instant legislation steps into that gap.

Technological impact:

The bill addresses the general business climate in the Commonwealth. It is not addressed to technological issues specifically, and it affects technology-based businesses in the same way as other businesses. On the one hand, the bill enhances state penalties for certain corporate wrongdoing and may discourage some companies from locating here. On the other hand, it promotes business integrity and may encourage other companies to locate here. The bill's most prominent feature, the new section of KRS 42.400 to 42.420, codifies reforms already being adopted voluntarily by the securities industry or being adopted in response to federal regulation.

*iNET Legislative Review* is a joint project of the Institute for New Economy Technology and Salmon P. Chase College of Law at Northern Kentucky University.