



# California Corporate & Securities Law

## **“It must be confessed! It WILL be confessed! There is no refuge from confession . . .”**

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In 2003, California Senator [Martha Escutia](#) introduced a bill to make “technical nonsubstantive changes” to a provision of the California Civil Code dealing with construction defects. The bill passed out of the Senate and the Assembly without attracting a single vote of opposition.

However, a funny thing happened on the bill’s journey downstairs to the Governor’s office – it was called back. The author then gutted and amended the bill (see my discussion of gutting and amending in this [post](#) from last July). As amended, the bill authorizes the imposition of civil penalties of up to \$1 million on issuers (as defined in the Sarbanes–Oxley Act of 2002) that fail to report specified misconduct to the Attorney General (or other appropriate government agency) and the issuer’s shareholders. Cal. Corp. Code § 2207. I discussed this new requirement at some length in an article that I wrote for the May, 2004 issue of *Insights*: “California Legislature Tells Sarbanes–Oxley Issuers to Confess or Else”.

Because it has been a few years since this “fess–up or pay” statute was enacted, I decided to check with the California Attorney General and the other state regulators named in the statute to see whether they have received any corporate confessions. The other state regulators are: Department of Corporations; Department of Insurance; Department of Financial Institutions; and the Department of Managed Health Care. I’ve heard back from all of these regulators and none reports having received so much as a single notice pursuant to Corporations Code § 2207. The Securities and Exchange Commission is also designated as an appropriate government agency in the statute, but I have not submitted a Freedom of Information Act request to it.

For those interested in the quotation of Daniel Webster above, see *State v. Mann*, 625 A. 2d 1102 (NJ 1993).

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