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104TH CONGRESS
2D SESSION

H. R. 3723

To amend title 18, United States Code, to protect proprietary economic information, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 26, 1996

Mr. MCCOLLUM (for himself and Mr. SCHUMER) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend title 18, United States Code, to protect proprietary economic information, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Economic Espionage Act of 1996''.

SEC. 2. PROTECTION OF PROPRIETARY ECONOMIC INFORMATION.

(a) IN GENERAL.—Chapter 31 of title 18, United States Code, is amended by adding at the end the following:

"§ 669. Protection of proprietary economic information

"(a) OFFENSE.—Whoever—

"(1) with the intent to, or with reason to believe that the offense will, benefit any foreign government, foreign instrumentality, or foreign agent; or

"(2) with the intent to divert that information to the use or benefit of anyone other than the owner thereof, and with the intent to, or with reason to believe that the offense will, disadvantage any owner of proprietary economic information that is related to or is included in a product that is produced for or placed in interstate or foreign commerce;

wrongfully copies or otherwise controls any economic proprietary information, or attempts or conspires to do so shall be punished as provided in subsection (b).

"(b) PUNISHMENT.—

"(1) GENERALLY.—The punishment for an offense under this section is—

"(A) in the case of an offense under subsection (a)(1), a fine under this title or imprisonment for not more than 25 years, or both; and

"(B) in the case of an offense under subsection (a)(2), a fine under this title or imprisonment for not more than 15 years.

"(2) INCREASED MAXIMUM FINE FOR ORGANIZATIONS.—If an organization commits an offense—

"(A) under subsection (a)(1), the maximum fine, if not otherwise larger, that may be imposed is $10,000,000; and

"(B) under subsection (a)(2), the maximum fine, if not otherwise larger, that may be imposed is $5,000,000.

"(c) DEFINITIONS.—As used in this section—

"(1) the term 'foreign instrumentality' means any agency, bureau, ministry, component, institution, association, or any legal, commercial, or business organization, corporation, firm, or entity that is substantially owned, controlled, sponsored, commanded, managed, or dominated by a foreign government or subdivision thereof;

"(2) the term 'foreign agent' means any officer, employee, proxy, servant, delegate, or representative of a foreign nation or government;

"(3) the term 'proprietary economic information' means all forms and types of financial, business, scientific, technical, economic, or engineering

information including data, plans, tools, mechanisms, compounds, formulas, designs, prototypes, processes, procedures, programs, codes, or commercial strategies, whether tangible or intangible, and whether stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if—

"(A) the owner thereof has taken reasonable measures to keep such information confidential; and

"(B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public;

"(4) the term 'owner' means the person in whom, or United States Government component, department, or agency in which, rightful legal, beneficial, or equitable title to, or license in, proprietary economic information is reposed; and

"(5) the term 'United States person' means—

"(A) in the case of a natural person, a United States citizen or permanent resident alien; and

"(B) in the case of an organization, an entity substantially owned or controlled by United States citizens or permanent resident aliens, or incorporated in the United States.

"(d) CRIMINAL FORFEITURE.—

"(1) Notwithstanding any other provision of State law, any person convicted of a violation under this chapter shall forfeit to the United States—

"(A) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation; and

"(B) any of the person's property used, or intended to be used, in any manner or part, to commit or facilitate the commission of such violation, if the court in its discretion so determines, taking into consideration the nature, scope, and proportionality of the use of the property in the offense.

"(2) The court, in imposing sentence on such person, shall order, in addition to any other sentence imposed pursuant to this section, that the person forfeit to the United States all property described in this section.

"(3) Property subject to forfeiture under this section, any seizure and disposition thereof, and any

administrative or judicial proceeding in relation thereto, shall be governed by the provisions of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), except for subsection 413(d) which shall not apply to forfeitures under this section.

''(e) TERRITORIAL APPLICATION.—

''(1) This section applies to conduct occurring within the United States.

''(2) This section also applies to conduct occurring outside the United States if—

''(A) the offender is a United States person; or

''(B) an act in furtherance of the offense was committed in the United States.

''(f) NONPREEMPTION OF OTHER REMEDIES.—This section shall not be construed to preempt or displace any other remedies, whether civil or criminal, provided by United States Federal, State, commonwealth, possession, or territory law for the misappropriation of proprietary economic information.

''(g) ORDERS TO PRESERVE CONFIDENTIALITY.—In any prosecution or other proceeding under this section, the court shall enter such orders and take such other action as may be necessary and appropriate to preserve the con-

fidentiality of proprietary economic information, consistent with the requirements of the Federal Rules of Criminal and Civil Procedure, the Federal Rules of Evidence, and all other applicable laws. An interlocutory appeal by the United States shall lie from a decision or order of a district court authorizing or directing the disclosure of proprietary economic information.

"(h) EXCEPTIONS TO PROHIBITION.—

"(1) This section does not prohibit and shall not impair any otherwise lawful activity conducted by an agency or instrumentality of the United States, a State, or a political subdivision of a State.

"(2) This section does not prohibit the reporting of any suspected criminal activity to any law enforcement agency or instrumentality of the United States, a State, or a political subdivision of a State, to any intelligence agency of the United States, or to Congress.".

SEC. 3. WIRE AND ELECTRONIC COMMUNICATIONS INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS.

Section 2516(1)(c) of title 18, United States Code, is amended by inserting "section 669 (relating to economic espionage)," after "(bribery in sporting contests),".

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