

104TH CONGRESS  
2D SESSION

# S. 1525

To amend title 18 of the United States Code to prevent economic espionage and to provide for the protection of United States proprietary economic information in interstate and foreign commerce, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 25, 1996

Mr. COHEN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend title 18 of the United States Code to prevent economic espionage and to provide for the protection of United States proprietary economic information in interstate and foreign commerce, and for other purposes.

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 “Economic Espionage  
5       and Protection of Proprietary Economic Information Act  
6       of 1995”.

7       **SEC. 2. FINDINGS AND PURPOSE.**

8       (a) FINDINGS.—Congress finds that—

1           (1) sustaining a healthy and competitive na-  
2           tional economy is imperative to maintaining the se-  
3           curity of the Nation;

4           (2) the development and production of propri-  
5           etary economic information is an integral part of vir-  
6           tually every aspect of United States trade, com-  
7           merce, and business;

8           (3) the development, production, protection,  
9           and lawful exchange, sale, and transfer of propri-  
10          etary economic information is essential to maintain-  
11          ing the health and competitiveness of critical seg-  
12          ments of United States business and industry, and  
13          hence to the national economy and the national se-  
14          curity;

15          (4) much proprietary economic information  
16          moves in interstate and foreign commerce, and pro-  
17          prietary economic information that does not move in  
18          interstate or foreign commerce directly affects that  
19          which does;

20          (5) the theft, misappropriation, and wrongful  
21          receipt, transfer, exchange, and use of stolen or mis-  
22          appropriated proprietary economic information by  
23          foreign governments and their agents or instrumen-  
24          talities costs the United States Government and

1 United States firms, businesses, industries, and con-  
2 sumers millions of dollars each year;

3 (6) the theft, misappropriation, and wrongful  
4 receipt, transfer, and use of proprietary economic in-  
5 formation belonging to the United States Govern-  
6 ment and United States firms, businesses, and in-  
7 dustry by foreign governments and their agents or  
8 instrumentalities directly and substantially threatens  
9 the health and competitiveness of critical segments  
10 of the United States economy and, consequently, the  
11 Nation's security; and

12 (7) enforcement of existing State laws protect-  
13 ing proprietary economic information is frustrated  
14 by the ease with which stolen or wrongfully appro-  
15 priated proprietary economic information is trans-  
16 ferred across State and national boundaries.

17 (b) PURPOSES.—

18 (1) PRIMARY PURPOSE.—The primary purpose  
19 of this Act is to protect the national security by pre-  
20 venting economic espionage and furthering the devel-  
21 opment and lawful use of United States proprietary  
22 economic information by protecting it from theft,  
23 wrongful destruction or alteration, misappropriation,  
24 and conversion by foreign governments and their  
25 agents or instrumentalities. This Act is intended to

1 protect the proprietary economic information of the  
 2 United States Government and United States firms,  
 3 businesses, industries, and individuals both domesti-  
 4 cally and abroad by punishing individuals, corpora-  
 5 tions, and institutions which engage in economic es-  
 6 pionage with the intent or purpose of aiding foreign  
 7 nations or governments and their instrumentalities.

8 (2) SECONDARY PURPOSE.—The secondary pur-  
 9 pose of this Act is to affirm that proprietary eco-  
 10 nomic information is included in the term “goods,  
 11 wares, or merchandise” as that term is used in Fed-  
 12 eral laws relating to stolen property.

13 **SEC. 3. PREVENTION OF ECONOMIC ESPIONAGE AND PRO-**  
 14 **TECTION OF PROPRIETARY ECONOMIC IN-**  
 15 **FORMATION IN INTERSTATE AND FOREIGN**  
 16 **COMMERCE.**

17 (a) ECONOMIC ESPIONAGE.—Part I of title 18, Unit-  
 18 ed States Code, is amended by adding after chapter 27  
 19 the following new chapter:

20 **“CHAPTER 28—ECONOMIC ESPIONAGE**  
 21 **AND PROTECTION OF PROPRIETARY**  
 22 **ECONOMIC INFORMATION**

“Sec.

“570. Definitions.

“571. Engaging in economic espionage to aid foreign governments, corporations,  
 institutions, or instrumentalities.

“572. Vicarious liability.

“573. Forfeiture.

“574. Extraterritoriality.

“575. Construction with other laws.

“576. Preservation of confidentiality.

“577. Nonapplicability to lawfully authorized law enforcement or intelligence activities.

1 **“§ 570. Definitions**

2 “As used in this chapter:

3 “(1) The term ‘foreign corporation, institution,  
4 or instrumentality’ means any corporation, agency,  
5 component, institution, association, instrumentality,  
6 or legal, commercial, or business entity that is sub-  
7 stantially owned, controlled, sponsored, commanded,  
8 managed, patronized, dominated, or chartered by a  
9 foreign government or subdivision of a foreign gov-  
10 ernment.

11 “(2) The term ‘foreign agent’ means any offi-  
12 cer, employee, proxy, servant, delegate, or represent-  
13 ative of a foreign nation or government.

14 “(3) The term ‘person’ means a natural person,  
15 corporation, agency, association, institution, or any  
16 other legal, commercial, or business entity.

17 “(4) The term ‘proprietary economic informa-  
18 tion’ means all forms and types of financial, busi-  
19 ness, scientific, technical, economic, or engineering  
20 information including, but not limited to data, plans,  
21 tools, mechanisms, compounds, formulas, designs,  
22 prototypes, processes, procedures, programs, codes,  
23 or commercial strategies, whether tangible or intan-

1 gible, and whether stored, compiled, or memorialized  
2 physically, electronically, graphically, photographi-  
3 cally, or in writing provided that:

4 “(A) the owner thereof has taken reason-  
5 able measures to keep such information con-  
6 fidential; and

7 “(B) the information is not available gen-  
8 erally to, or accessible by, the public.

9 “(5) The term ‘owner’ means the United States  
10 person or persons in whom, or United States Gov-  
11 ernment component, department, or agency in  
12 which, rightful legal, beneficial, or equitable title to,  
13 or license in, proprietary economic information is  
14 reposed.

15 “(6) The term ‘United States person’ means—

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

19 “(B) in the case of a non-natural person,  
20 an entity substantially owned or controlled by  
21 the United States Government or by United  
22 States citizens or permanent resident aliens, or  
23 incorporated in the United States.

1 **“§571. Engaging in economic espionage to aid for-**  
2 ****foreign nations governments, corporations,****  
3 ****institutions, or instrumentalities****

4       “(a) Any person who, with intent to, or reason to be-  
5 lieve that it will injure or disadvantage any owner and ben-  
6 efit or advantage any foreign nation, government, corpora-  
7 tion, institution, or instrumentality who—

8               “(1) steals, wrongfully appropriates, takes, car-  
9 ries away, or conceals, or by fraud, artifice, or de-  
10 ception obtains proprietary economic information;

11              “(2) wrongfully copies, duplicates, sketches,  
12 draws, photographs, downloads, uploads, alters, de-  
13 stroys, photocopies, replicates, transmits, delivers,  
14 sends, mails, communicates, or conveys proprietary  
15 economic information;

16              “(3) being entrusted with, or having lawful pos-  
17 session or control of, or access to, proprietary eco-  
18 nomic information, wrongfully copies, duplicates,  
19 sketches, draws, photographs, downloads, uploads,  
20 alters, destroys, photocopies, replicates, transmits,  
21 delivers, sends, mails, communicates, or conveys the  
22 same;

23              “(4) receives, buys, or possesses proprietary  
24 economic information, knowing the same to have  
25 been stolen or wrongfully appropriated, obtained, or  
26 converted;

1           “(5) attempts to commit any offense described  
2           in paragraph (1), (2), (3), or (4);

3           “(6) wrongfully solicits another to commit any  
4           offense described in paragraph (1), (2), (3), or (4);  
5           or

6           “(7) conspires with one or more other persons  
7           to commit any offense described in paragraph (1),  
8           (2), (3), or (4), and one or more of such persons do  
9           any act to effect the object of the conspiracy,  
10          shall, except as provided in subsection (b), be fined not  
11          more than \$1,000,000, imprisoned not more than 25  
12          years, or both.

13          “(b) Any corporation that commits any offense de-  
14          scribed in subsection (a) shall be fined not more than  
15          \$50,000,000.

16          **“§ 572. Vicarious liability**

17          “Any officer, director, manager, or other person occu-  
18          pying a position of authority and responsibility for the ac-  
19          quisition, use, or management of proprietary economic in-  
20          formation for any corporation or other business or com-  
21          mercial entity who—

22                 “(1) knows or has reason to know that agents  
23                 or employees of the corporation or entity have  
24                 wrongfully acquired or manipulated proprietary eco-  
25                 nomic information in violation of section 571(a); and

1           “(2) directly or indirectly authorizes, permits,  
2           or suffers the information wrongfully acquired or  
3           manipulated to be used to injure or disadvantage  
4           any owner and benefit or advantage any foreign na-  
5           tion, government, corporation, institution, or instru-  
6           mentality,

7 shall be fined not more than \$5,000,000, imprisoned not  
8 more than 25 years, or both.

9 **“§ 573. Forfeiture**

10           “(a) Notwithstanding any provision of State law, any  
11 person convicted of a violation of this chapter shall forfeit  
12 to the United States—

13           “(1) any property constituting, or derived from,  
14 any proceeds the person obtained, directly or indi-  
15 rectly, as a result of such violation; and

16           “(2) any of the person’s property used, or in-  
17 tended to be used, in any manner or part, to com-  
18 mit, or to facilitate the commission of a violation of  
19 this chapter.

20           “(b) The court, in imposing sentence on a defendant  
21 for the conviction of a violation of this chapter, shall order  
22 that the defendant forfeit to the United States all property  
23 described in subsection (a).

24           “(c) Except as provided in subsection (d), the provi-  
25 sions of subsections (b), (c), and (e) through (p) of section

1 413 of the Comprehensive Drug Abuse Prevention and  
2 Control Act of 1970 (21 U.S.C. 853 (b), (c), and (e)–(p))  
3 shall apply to—

4 “(1) property subject to forfeiture under this  
5 section;

6 “(2) any seizure or disposition of such property;  
7 and

8 “(3) any administrative or judicial proceeding  
9 in relation to such property, if consistent with this  
10 section.

11 “(d) Notwithstanding section 524(c) of title 28, there  
12 shall be deposited in the Crime Victims Fund established  
13 under section 1402 of the Victims of Crime Act of 1984  
14 (42 U.S.C. 10601) all amounts from the forfeiture of  
15 property under this section remaining after the payment  
16 of expenses and sale authorized by law.

17 **“§ 574. Extraterritoriality**

18 “(a) This chapter applies to conduct occurring within  
19 the territorial and special maritime jurisdiction of the  
20 United States, its territories, and possessions.

21 “(b) This chapter applies to conduct occurring out-  
22 side the territorial and special maritime jurisdiction of the  
23 United States, its territories, and possessions if—

24 “(1) the offender is a United States citizen; or

1           “(2) the victim of the offense is an ‘owner,’ as  
2           defined in section 570, and the offense was intended  
3           to have, or had, an effect in the United States.

4   **“§ 575. Construction with other laws**

5           “‘This chapter shall not be construed to preempt or  
6           displace any other Federal or State remedies, whether civil  
7           or criminal, for the misappropriation of proprietary eco-  
8           nomic information.

9   **“§ 576. Preservation of confidentiality**

10          “‘In any prosecution under this chapter, the court  
11          shall preserve the confidentiality of alleged proprietary  
12          economic information by any reasonable and lawful means  
13          including, but not limited to—

14                 “(1) the granting of protective orders in con-  
15                 nection with discovery proceedings; and

16                 “(2) the holding of in camera hearings, sealing  
17                 relevant portions of the record, and the ordering of  
18                 any person involved in the proceedings not to dis-  
19                 close the alleged proprietary economic information  
20                 without prior court approval. Any owner of the pro-  
21                 prietary economic information which is the subject  
22                 of the offense may request the prosecution to seek  
23                 such protective action.

1 **“§577. Nonapplicability to lawfully authorized law**  
 2 **enforcement or intelligence activities**

3 “Any act in which information is seized, taken, trans-  
 4 ported, transmitted, or transferred pursuant to or in fur-  
 5 therance of any lawfully authorized investigative, protec-  
 6 tive, or intelligence activity of a law enforcement agency  
 7 of the United States, a State, or a political subdivision  
 8 of a State, or an intelligence agency of the United States,  
 9 shall not be considered a violation of section 571(a) or  
 10 572.”.

11 (b) TABLE OF CHAPTERS.—The table of chapters for  
 12 part I of title 18, United States Code, is amended by in-  
 13 serting after the item for chapter 27 the following:

**“28. Economic Espionage ..... 570”.**

14 **SEC. 4. RELATED AMENDMENTS.**

15 (a) STOLEN PROPERTY.—Section 2311 of title 18,  
 16 United States Code, is amended by inserting between the  
 17 items for “Cattle” and “livestock” the following:

18 “‘Goods, wares, or merchandise’ means all forms and  
 19 types of personal property and chattels—

20 “(1) including all forms and types of financial,  
 21 business, scientific, technical, economic, or engineer-  
 22 ing information including data, plans, tools, mecha-  
 23 nisms, compounds, formulas, designs, prototypes,  
 24 processes, procedures, programs, codes, or commer-  
 25 cial strategies, whether tangible or intangible, and

1 whether stored, compiled, or memorialized phys-  
2 ically, electronically, graphically, photographically, or  
3 in writing if—

4 “(A) the owner thereof has taken reason-  
5 able measures to keep such property confiden-  
6 tial, and

7 “(B) the property is not available generally  
8 to, or accessible by, the public; and

9 “(2) not including any property or chattel  
10 seized, taken, transported, transmitted, or trans-  
11 ferred pursuant to or in furtherance of any lawfully  
12 authorized investigative, protective, or intelligence  
13 activity of a law enforcement agency of the United  
14 States, a State, or a political subdivision of a State,  
15 or of an intelligence agency of the United States.”.

16 (b) RACKETEER INFLUENCED AND CORRUPT ORGA-  
17 NIZATIONS.—Section 1961(1)(B) of title 18, United  
18 States Code, is amended by inserting between “sections  
19 471, 472, and 473 (relating to counterfeiting),” and “sec-  
20 tion 659 (relating to theft from interstate shipment)” the  
21 following: “sections 571 and 572 (relating to economic es-  
22 pionage and protection of proprietary economic informa-  
23 tion in interstate and foreign commerce),”.

24 (c) WIRE AND ELECTRONIC COMMUNICATIONS  
25 INTERCEPTION AND INTERCEPTION OF ORAL COMMU-

1 NICATIONS.—Section 2516(1)(a) of title 18, United States  
2 Code, is amended by inserting the following between “or  
3 under the following chapters of this title:” and “chapter  
4 37 (relating to espionage)” the following: “chapter 28 (re-  
5 lating to economic espionage and protection of proprietary  
6 economic information in interstate and foreign com-  
7 merce),”.

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