

104TH CONGRESS  
2D SESSION

# S. 1556

To prohibit economic espionage, 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

FEBRUARY 1, 1996

Mr. KOHL (for himself and Mr. SPECTER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To prohibit economic espionage, 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 “Industrial Espionage  
5 Act of 1996”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

8 (1) sustaining a healthy and competitive na-  
9 tional economy is imperative;

1           (2) the development and production of propri-  
2           etary economic information involves every aspect of  
3           interstate commerce and business;

4           (3) the development, production, protection,  
5           and lawful exchange, sale, and transfer of propri-  
6           etary economic information is essential to maintain-  
7           ing the health and competitiveness of interstate com-  
8           merce and the national economy;

9           (4) much proprietary economic information  
10          moves in interstate and foreign commerce and pro-  
11          prietary economic information that does not move in  
12          interstate or foreign commerce directly and substan-  
13          tially affects proprietary economic information that  
14          does;

15          (5) the theft, wrongful destruction or alteration,  
16          misappropriation, and wrongful conversion of propri-  
17          etary economic information substantially affects and  
18          harms interstate commerce, costing United States  
19          firms, businesses, industries, and consumers millions  
20          of dollars each year; and

21          (6) enforcement of existing State laws protect-  
22          ing proprietary economic information is frustrated  
23          by the ease with which stolen or wrongfully appro-  
24          priated proprietary economic information is trans-  
25          ferred across State and national boundaries.

1 (b) PURPOSE.—The purpose of this Act is to promote  
 2 the development and lawful utilization of United States  
 3 proprietary economic information produced for, or placed  
 4 in, interstate and foreign commerce by protecting it from  
 5 theft, wrongful destruction or alteration, misappropria-  
 6 tion, and conversion.

7 **SEC. 3. PREVENTION OF ECONOMIC ESPIONAGE AND PRO-**  
 8 **TECTION OF PROPRIETARY ECONOMIC IN-**  
 9 **FORMATION IN INTERSTATE AND FOREIGN**  
 10 **COMMERCE.**

11 (a) IN GENERAL.—Title 18, United States Code, is  
 12 amended by inserting after chapter 89 the following new  
 13 chapter:

14 **“CHAPTER 90—PROTECTION OF**  
 15 **PROPRIETARY ECONOMIC INFORMATION**

“Sec.

“1831. Definitions.

“1832. Criminal activities affecting proprietary economic information.

“1833. Criminal forfeiture.

“1834. Import and export sanctions.

“1835. Extraterritoriality.

“1836. Construction with other laws.

“1837. Preservation of confidentiality.

“1838. Law enforcement and intelligence activities.

16 **“§ 1831. Definitions**

17 “As used in this chapter:

18 “(1) The term ‘person’ means a natural person,  
 19 corporation, agency, association, institution, or any  
 20 other legal, commercial, or business entity.

1           “(2) The term ‘proprietary economic informa-  
2           tion’ means all forms and types of financial, busi-  
3           ness, scientific, technical, economic, or engineering  
4           information, including, but not limited to, data,  
5           plans, tools, mechanisms, compounds, formulas, de-  
6           signs, prototypes, processes, procedures, programs,  
7           codes, or commercial strategies, whether tangible or  
8           intangible, and however stored, compiled, or memori-  
9           alized, if—

10                   “(A) the owner has taken reasonable meas-  
11                   ures to keep such information confidential; and

12                   “(B) the information derives independent  
13                   economic value, actual or potential, from not  
14                   being generally known to, and not being readily  
15                   ascertainable, acquired, or developed by legal  
16                   means by the public.

17           “(3) The term ‘owner’ means the United States  
18           person or persons in whom, or United States Gov-  
19           ernment component, department, or agency in  
20           which, rightful legal, beneficial, or equitable title to,  
21           or license in, proprietary economic information is re-  
22           posed.

23           “(4) The term ‘United States person’ means—

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

4           “(B) in the case of a nonnatural person,  
5           an entity substantially owned or controlled by  
6           the United States Government or by United  
7           States citizens or permanent resident aliens, or  
8           incorporated in the United States.

9   **“§ 1832. Criminal activities affecting proprietary eco-**  
10           **nom ic information**

11           “(a) Any person, with intent to, or reason to believe  
12           that it will, injure any owner of proprietary economic in-  
13           formation having a value of not less than \$100,000 that  
14           is produced for, or placed in, interstate commerce, and  
15           with intent to convert it to his or her own direct use or  
16           benefit or the direct use or benefit of another, knowingly—

17           “(1) steals, wrongfully appropriates, takes, car-  
18           ries away, or conceals, or by fraud, artifice, or de-  
19           ception obtains such information;

20           “(2) wrongfully copies, duplicates, sketches,  
21           draws, photographs, downloads, uploads, alters, de-  
22           stroys, photocopies, or replicates such information;

23           “(3) receives, buys, or possesses such informa-  
24           tion, knowing the same to have been stolen or  
25           wrongfully appropriated, obtained, or converted;

1           “(4) attempts to commit any offense described  
2           in paragraphs (1) through (3);

3           “(5) wrongfully solicits another to commit any  
4           offense described in paragraphs (1) through (3); or

5           “(6) conspires with one or more other persons  
6           to commit any offense described in paragraphs (1)  
7           through (3), and one or more of such persons do any  
8           act to effect the object of the conspiracy,

9 shall, except as provided in subsection (b), be fined not  
10 more than \$250,000 or imprisoned not more than 15  
11 years, or both.

12           “(b) Any corporation that commits any offense de-  
13 scribed in paragraphs (1) through (6) of subsection (a)  
14 shall be fined not more than \$10,000,000.

15 **“§ 1833. Criminal forfeiture**

16           “(a) Notwithstanding any provision of State law, any  
17 person convicted of a violation under this chapter shall for-  
18 feit to the United States—

19           “(1) any property constituting or derived from,  
20 any proceeds the person obtained, directly or indi-  
21 rectly, as the result of such violation; and

22           “(2) any of the person’s property used, or in-  
23 tended to be used, in any manner or part to commit  
24 or facilitate the commission of such violation.

1       “(b) The court, in imposing a sentence on such per-  
2 son, shall order, in addition to any other sentence imposed  
3 pursuant to this chapter, that the person forfeit to the  
4 United States all property described in this section.

5       “(c) Property subject to forfeiture under this section,  
6 any seizure and disposition thereof, and any administra-  
7 tive or judicial proceeding in relation thereto, shall be gov-  
8 erned by section 413 of the Comprehensive Drug Abuse  
9 Prevention and Control Act of 1970 (21 U.S.C. 853), ex-  
10 cept for subsection 413(d) which shall not apply to forfeit-  
11 ures under this section.

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

18       **“§ 1834. Import and export sanctions**

19       “(a) The President may prohibit for a period of up  
20 to 3 years, the importation into, or exportation from, the  
21 United States of any product produced, made, assembled,  
22 or manufactured by a person convicted of any offense de-  
23 scribed in section 1832.

24       “(b) The Attorney General may impose a civil penalty  
25 not to exceed 5 times the value of the exports or imports

1 involved or \$100,000, whichever is greater, against any  
2 person who knowingly violates any order of the President  
3 issued under the authority of this section. Such penalty  
4 may be imposed only after notice and opportunity for a  
5 hearing on the record in accordance with sections 554  
6 through 557 of title 5.

7 **“§ 1835. Extraterritoriality**

8 “(a) This chapter applies to conduct occurring within  
9 the United States.

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

13 “(1) the offender is a United States person; or

14 “(2) the victim of the offense is an owner (as  
15 defined in section 1831), and the offense was in-  
16 tended to have, or had, an effect in the United  
17 States.

18 **“§ 1836. Construction with other laws**

19 “This chapter shall not be construed to preempt or  
20 displace any other Federal or State remedies, whether civil  
21 or criminal, for the misappropriation of proprietary eco-  
22 nomic information, or to affect the otherwise lawful disclo-  
23 sure of information by any government employee under  
24 section 552 of title 5 (commonly known as the Freedom  
25 of Information Act).

1 **“§ 1837. Preservation of confidentiality**

2 “In any prosecution under this chapter, the court  
3 may enter such orders and take such other action as may  
4 be necessary and appropriate to preserve the confidential-  
5 ity of proprietary economic information, consistent with  
6 rule 16 of the Federal Rules of Criminal Procedure, the  
7 Federal Rules of Evidence, and other applicable laws. An  
8 interlocutory appeal by the United States shall lie from  
9 a decision or order of a district court authorizing the dis-  
10 closure of proprietary economic information.

11 **“§ 1838. Law enforcement and intelligence activities**

12 “This chapter does not prohibit any lawfully author-  
13 ized investigative, protective, or intelligence activity of a  
14 law enforcement agency of the United States, a State, or  
15 a political subdivision of a State, or an intelligence agency  
16 of the United States.”.

17 (b) TECHNICAL AMENDMENT.—The table of chapters  
18 for title 18, United States Code, is amended by inserting  
19 after the item relating to chapter 89 the following new  
20 item:

**“90. Protection of Proprietary Economic Information ..... 1831”.**

21 **SEC. 4. WIRE AND ELECTRONIC COMMUNICATIONS INTER-**  
22 **CEPTION AND INTERCEPTION OF ORAL COM-**  
23 **MUNICATIONS.**

24 Section 2516(1)(a) of title 18, United States Code,  
25 is amended by inserting “chapter 90 (relating to economic

1 espionage and protection of proprietary economic informa-  
2 tion in interstate and foreign commerce),” after “title:”.

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