

104TH CONGRESS
2D SESSION

S. 1557

To prohibit economic espionage, to provide for the protection of United States vital proprietary economic information, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 1, 1996

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

A BILL

To prohibit economic espionage, to provide for the protection of United States vital proprietary economic information, 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 Security Act
5 of 1996”.

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

7 (a) FINDINGS.—Congress finds that—

8 (1) economic security is an integral part of na-
9 tional security;

1 (2) the development of new ideas and technical
2 innovation is critical to sustaining a healthy and
3 competitive national economy;

4 (3) encouraging innovation and creativity re-
5 quires adequate protection of vital economic propri-
6 etary information, both tangible and intangible;

7 (4) over 50 countries have covertly tried to ob-
8 tain advanced technologies from United States in-
9 dustries;

10 (5) the theft, wrongful destruction or alteration,
11 misappropriation, or wrongful conversion by foreign
12 governments or their agents of vital economic pro-
13 prietary information belonging to United States
14 owners directly and substantially threatens the
15 health and competitiveness of critical segments of
16 the United States economy and, consequently, the
17 Nation's security; and

18 (6) current laws are inadequate to protect
19 against economic espionage by foreign governments
20 or those acting on their behalf.

21 (b) PURPOSE.—The purpose of this Act is to protect
22 the national security by preventing economic espionage
23 and furthering the development and lawful utilization of
24 United States vital proprietary economic information by
25 protecting it from theft, wrongful destruction or alter-

1 ation, misappropriation, and conversion by foreign govern-
 2 ments and their agents or instrumentalities. This Act is
 3 intended to protect the vital proprietary economic informa-
 4 tion of the United States Government and United States
 5 firms, businesses, industries, and individuals both domes-
 6 tically and abroad by punishing individuals, corporations,
 7 and institutions that engage in economic espionage with
 8 the intent or purpose of aiding foreign nations or govern-
 9 ments and their instrumentalities and agents.

10 **SEC. 3. PREVENTION OF ECONOMIC ESPIONAGE AND PRO-**
 11 **TECTION OF VITAL PROPRIETARY ECONOMIC**
 12 **INFORMATION.**

13 (a) IN GENERAL.—The National Security Act of
 14 1947 (50 U.S.C. 421 et seq.) is amended by adding at
 15 the end the following new title:

16 **“TITLE IX—ECONOMIC ESPIO-**
 17 **NAGE AND PROTECTION OF**
 18 **VITAL PROPRIETARY ECO-**
 19 **NOMIC INFORMATION**

20 **“SEC. 901. DEFINITIONS.**

21 “As used in this title:

22 “(1) The term ‘foreign corporation, institution,
 23 or instrumentality’ means any corporation, agency,
 24 component, institution, association, instrumentality,
 25 or legal, commercial, or business entity that is sub-

1 stantially owned, controlled, sponsored, commanded,
2 managed, or dominated by a foreign government or
3 subdivision of a foreign government.

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

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

10 “(4) The term ‘vital proprietary economic infor-
11 mation’ means all forms and types of financial, busi-
12 ness, scientific, technical, economic, or engineering
13 information, including data, plans, tools, mecha-
14 nisms, compounds, formulas, designs, prototypes,
15 processes, procedures, programs, codes, or commer-
16 cial strategies, whether tangible or intangible, and
17 however stored, compiled, or memorialized, if—

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

20 “(B) the information derives independent
21 economic value, actual or potential, from not
22 being generally known to, and not being readily
23 ascertainable, acquired, or developed by legal
24 means by the public.

1 “(5) The term ‘owner’ means the United States
2 person or persons in whom, or United States Gov-
3 ernment component, department, or agency in
4 which, rightful legal, beneficial, or equitable title to,
5 or license in, vital proprietary economic information
6 is reposed.

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

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

11 “(B) in the case of a nonnatural person,
12 an entity substantially owned or controlled by
13 the United States Government or by United
14 States citizens or permanent resident aliens, or
15 incorporated in the United States.

16 **“SEC. 902. ENGAGING IN ECONOMIC ESPIONAGE TO AID**
17 **FOREIGN NATIONS, GOVERNMENTS, COR-**
18 **PORATIONS, INSTITUTIONS, INSTRUMENTAL-**
19 **ITIES, OR AGENTS.**

20 “(a) IN GENERAL.—Any person who, with intent to,
21 or reason to believe that it will, injure any owner and bene-
22 fit any foreign nation, government, corporation, institu-
23 tion, instrumentality, or agent—

24 “(1) steals, wrongfully appropriates, takes, car-
25 ries away, or conceals, or by fraud, artifice, or de-

1 ception obtains vital proprietary economic informa-
2 tion;

3 “(2) wrongfully copies, duplicates, sketches,
4 draws, photographs, downloads, uploads, alters, de-
5 stroys, photocopies, replicates, transmits, delivers,
6 sends, mails, communicates, or conveys vital propri-
7 etary economic information;

8 “(3) receives, buys, or possesses vital propri-
9 etary economic information, knowing the vital pro-
10 prietary economic information to have been obtained
11 by any of the means described in paragraph (1) or
12 (2);

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

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

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

21 shall, except as provided in subsection (b), be fined not
22 more than \$500,000 or imprisoned not more than 25
23 years, or both.

1 “(b) CORPORATIONS.—Any corporation that commits
2 any offense described in subsection (a) shall be fined not
3 more than \$10,000,000.

4 **“SEC. 903. CRIMINAL FORFEITURE.**

5 “(a) IN GENERAL.—Notwithstanding any provision
6 of State law, any person convicted of a violation under
7 this title shall forfeit to the United States—

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

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

14 “(b) COURT ORDER.—The court, in imposing a sen-
15 tence on such person, shall order, in addition to any other
16 sentence imposed pursuant to this title, that the person
17 forfeit to the United States all property described in this
18 section.

19 “(c) APPLICABLE LAW.—Property subject to forfeit-
20 ure under this section, any seizure and disposition thereof,
21 and any administrative or judicial proceeding in relation
22 thereto, shall be governed by section 413 of the Com-
23 prehensive Drug Abuse Prevention and Control Act of
24 1970 (21 U.S.C. 853), except for subsection 413(d) which
25 shall not apply to forfeitures under this section.

1 “(d) CRIME VICTIMS FUND.—Notwithstanding sec-
2 tion 524(e) of title 28, United States Code, there shall
3 be deposited in the Crime Victims Fund established under
4 section 1402 of the Victims of Crime Act of 1984 (42
5 U.S.C. 10601) all amounts from the forfeiture of property
6 under this section remaining after the payment of the ex-
7 penses for forfeiture and sale authorized by law.

8 **“SEC. 904. IMPORT AND EXPORT SANCTIONS.**

9 “(a) IN GENERAL.—The President may prohibit, for
10 a period of up to 5 years, the importation into, or expor-
11 tation from, the United States of any product produced,
12 made, assembled, or manufactured by a person convicted
13 of any offense described in section 902.

14 “(b) CIVIL PENALTIES.—The Attorney General may
15 impose a civil penalty not to exceed 5 times the value of
16 the exports or imports involved or \$100,000, whichever is
17 greater, against any person who knowingly violates any
18 order of the President issued under the authority of this
19 title. Such penalty may be imposed only after notice and
20 opportunity for a hearing on the record in accordance with
21 sections 554 through 557 of title 5.

22 **“SEC. 905. EXTRATERRITORIALITY.**

23 “(a) CONDUCT OCCURRING IN THE UNITED
24 STATES.—This title applies to conduct occurring within

1 the territorial and special maritime jurisdiction of the
2 United States.

3 “(b) CONDUCT OCCURRING OUTSIDE THE UNITED
4 STATES.—This title applies to conduct occurring outside
5 the United States if—

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

7 “(2) the victim of the offense is an owner, as
8 defined in section 901, and the offense was intended
9 to have or had a substantial or direct effect on the
10 United States.

11 **“SEC. 906. CONSTRUCTION WITH OTHER LAWS.**

12 “This title shall not be construed to preempt or dis-
13 place any other Federal or State remedies, whether civil
14 or criminal, for the misappropriation of vital proprietary
15 economic information, or to affect the otherwise lawful dis-
16 closure of information by any government employee under
17 section 552 of title 5 (commonly known as the Freedom
18 of Information Act).

19 **“SEC. 907. PRESERVATION OF CONFIDENTIALITY.**

20 “In any prosecution under this title, the court may
21 enter such orders and take such other action as may be
22 necessary and appropriate to preserve the confidentiality
23 of vital proprietary economic information, consistent with
24 rule 16 of the Federal Rules of Criminal Procedure, the
25 Federal Rules of Evidence, and other applicable laws. An

1 interlocutory appeal by the United States shall lie from
 2 a decision or order of a district court authorizing the dis-
 3 closure of vital proprietary economic information.

4 **“SEC. 908. LAW ENFORCEMENT AND INTELLIGENCE ACTIVI-**
 5 **TIES.**

6 “This title does not prohibit any lawfully authorized
 7 investigative, protective, or intelligence activity of a law
 8 enforcement agency of the United States, a State, or a
 9 political subdivision of a State, or an intelligence agency
 10 of the United States.”.

11 (b) TECHNICAL AMENDMENT.—The table of contents
 12 of the National Security Act of 1947 is amended by add-
 13 ing at the end the following:

“TITLE IX—ECONOMIC ESPIONAGE AND PROTECTION OF VITAL
 PROPRIETARY ECONOMIC INFORMATION

“Sec. 901. Definitions.

“Sec. 902. Engaging in economic espionage to aid foreign nations, govern-
 ments, corporations, institutions, instrumentalities, or agents.

“Sec. 903. Criminal forfeiture.

“Sec. 904. Import and export sanctions.

“Sec. 905. Extraterritoriality.

“Sec. 906. Construction with other laws.

“Sec. 907. Preservation of confidentiality.

“Sec. 908. Law enforcement and intelligence activities.”.

14 **SEC. 4. WIRE AND ELECTRONIC COMMUNICATIONS INTER-**
 15 **CEPTION AND INTERCEPTION OF ORAL COM-**
 16 **MUNICATIONS.**

17 Section 2516(1)(a) of title 18, United States Code,
 18 is amended by inserting “title IX of the National Security
 19 Act of 1947 (relating to economic espionage and protec-

- 1 tion of vital proprietary economic information in interstate
- 2 and foreign commerce),” after “fuel),”.

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