

104TH CONGRESS
2D SESSION

H. R. 3723

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 18, 1996

Received

AN ACT

To amend title 18, United States Code, to protect 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 Espionage
5 Act of 1996”.

1 **SEC. 2. PROTECTION OF TRADE SECRETS.**

2 (a) IN GENERAL.—Chapter 31 of title 18, United
3 States Code, is amended by adding at the end the follow-
4 ing:

5 **“§ 670. Protection of trade secrets**

6 “(a) OFFENSE.—Whoever—

7 “(1) with the intent to, or with reason to be-
8 lieve that the offense will, benefit any foreign gov-
9 ernment, foreign instrumentality, or foreign agent;
10 or

11 “(2) with the intent to divert a trade secret,
12 that is related to or is included in a product that is
13 produced for or placed in interstate or foreign com-
14 merce, to the economic benefit of anyone other than
15 the owner thereof, and with the intent to, or with
16 reason to believe that the offense will, disadvantage
17 any owner of that trade secret;

18 wrongfully copies or otherwise controls a trade secret, or
19 attempts or conspires to do so shall be punished as pro-
20 vided in subsection (b).

21 “(b) PUNISHMENT.—

22 “(1) GENERALLY.—The punishment for an of-
23 fense under this section is—

24 “(A) in the case of an offense under sub-
25 section (a)(1), a fine under this title or impris-

1 onment for not more than 25 years, or both;
2 and

3 “(B) in the case of an offense under sub-
4 section (a)(2), a fine under this title or impris-
5 onment for not more than 15 years.

6 “(2) INCREASED MAXIMUM FINE FOR ORGANI-
7 ZATIONS.—If an organization commits an offense—

8 “(A) under subsection (a)(1), the maxi-
9 mum fine, if not otherwise larger, that may be
10 imposed is \$10,000,000; and

11 “(B) under subsection (a)(2), the maxi-
12 mum fine, if not otherwise larger, that may be
13 imposed is \$5,000,000.

14 “(c) DEFINITIONS.—As used in this section—

15 “(1) the term ‘foreign instrumentality’ means
16 any agency, bureau, ministry, component, institu-
17 tion, association, or any legal, commercial, or busi-
18 ness organization, corporation, firm, or entity that is
19 substantially owned, controlled, sponsored, com-
20 manded, managed, or dominated by a foreign gov-
21 ernment;

22 “(2) the term ‘foreign agent’ means any officer,
23 employee, proxy, servant, delegate, or representative
24 of a foreign government;

1 “(3) the term ‘trade secret’ means all forms
2 and types of financial, business, scientific, technical,
3 economic, or engineering information, including pat-
4 terns, plans, compilations, program devices, for-
5 mulas, designs, prototypes, methods, techniques,
6 processes, procedures, programs, or codes, whether
7 tangible or intangible, and whether or how stored,
8 compiled, or memorialized physically, electronically,
9 graphically, photographically, or in writing if—

10 “(A) the owner thereof has taken reason-
11 able measures to keep such information secret;
12 and

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

18 “(4) the term ‘owner’, with respect to a trade
19 secret, means the person or entity in whom or in
20 which rightful legal or equitable title to, or license
21 in, the trade secret is reposed.

22 “(d) CRIMINAL FORFEITURE.—

23 “(1) Notwithstanding any other provision of
24 State law, any person convicted of a violation under
25 this section shall forfeit to the United States—

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

4 “(B) any of the person’s property used, or
5 intended to be used, in any manner or part, to
6 commit or facilitate the commission of such vio-
7 lation, if the court in its discretion so deter-
8 mines, taking into consideration the nature,
9 scope, and proportionality of the use of the
10 property in the offense.

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

16 “(3) Property subject to forfeiture under this
17 section, any seizure and disposition thereof, and any
18 administrative or judicial proceeding in relation
19 thereto, shall be governed by the provisions of sec-
20 tion 413 of the Comprehensive Drug Abuse Preven-
21 tion and Control Act of 1970 (21 U.S.C. 853), ex-
22 cept for subsections (d) and (j) of such section,
23 which shall not apply to forfeitures under this sec-
24 tion.

1 “(e) ORDERS TO PRESERVE CONFIDENTIALITY.—In
2 any prosecution or other proceeding under this section, the
3 court shall enter such orders and take such other action
4 as may be necessary and appropriate to preserve the con-
5 fidentiality of trade secrets, consistent with the require-
6 ments of the Federal Rules of Criminal and Civil Proce-
7 dure, the Federal Rules of Evidence, and all other applica-
8 ble laws. An interlocutory appeal by the United States
9 shall lie from a decision or order of a district court author-
10 izing or directing the disclosure of any trade secret.

11 “(f) CIVIL PROCEEDINGS TO ENJOIN VIOLATIONS.—

12 “(1) GENERALLY.—The Attorney General may,
13 in a civil action, obtain appropriate injunctive relief
14 against any violation of this section.

15 “(2) EXCLUSIVE JURISDICTION.—The district
16 courts of the United States shall have exclusive
17 original jurisdiction of civil actions under this sub-
18 section.

19 “(g) TERRITORIAL APPLICATION.—

20 “(1) This section applies to conduct occurring
21 within the United States.

22 “(2) This section also applies to conduct occur-
23 ring outside the United States if—

24 “(A) the offender is—

1 “(i) a United States citizen or perma-
2 nent resident alien; or

3 “(ii) an organization substantially
4 owned or controlled by United States citi-
5 zens or permanent resident aliens, or in-
6 corporated in the United States; or

7 “(B) an act in furtherance of the offense
8 was committed in the United States.

9 “(h) NONPREEMPTION OF OTHER REMEDIES.—This
10 section shall not be construed to preempt or displace any
11 other remedies, whether civil or criminal, provided by
12 United States Federal, State, commonwealth, possession,
13 or territory law for the misappropriation of a trade secret.

14 “(i) EXCEPTIONS TO PROHIBITION.—

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

19 “(2) This section does not prohibit the report-
20 ing of any suspected criminal activity to any law en-
21 forcement agency or instrumentality of the United
22 States, a State, or a political subdivision of a State,
23 to any intelligence agency of the United States, or
24 to Congress.”.

1 (b) CLERICAL AMENDMENT.—The table of sections
 2 at the beginning of chapter 31, United States Code, is
 3 amended by adding at the end the following new item:

“670. Protection of trade secrets.”.

4 **SEC. 3. WIRE AND ELECTRONIC COMMUNICATIONS INTER-**
 5 **CEPTION AND INTERCEPTION OF ORAL COM-**
 6 **MUNICATIONS.**

7 Section 2516(1)(c) of title 18, United States Code, is
 8 amended by inserting “section 670 (relating to economic
 9 espionage),” after “(bribery in sporting contests),”.

Passed the House of Representatives September 17,
 1996.

Attest:

ROBIN H. CARLE,
Clerk.