

Union Calendar No. 426

104TH CONGRESS
2D Session

H. R. 3723

[Report No. 104-788]

A BILL

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

SEPTEMBER 16, 1996

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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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

SEPTEMBER 16, 1996

Additional sponsor: Mr. HAMILTON

SEPTEMBER 16, 1996

Reported with an amendment, committed to the Committee of the Whole
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italics]

[For text of introduced bill, see copy of bill as introduced on June 26, 1996]

A BILL

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,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Economic Espionage*
 3 *Act of 1996”.*

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

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

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

8 “(a) *OFFENSE.*—Whoever—

9 “(1) *with the intent to, or with reason to believe*
 10 *that the offense will, benefit any foreign government,*
 11 *foreign instrumentality, or foreign agent; or*

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

19 *wrongfully copies or otherwise controls a trade secret, or*
 20 *attempts or conspires to do so shall be punished as provided*
 21 *in subsection (b).*

22 “(b) *PUNISHMENT.*—

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

1 “(A) in the case of an offense under sub-
 2 section (a)(1), a fine under this title or impris-
 3 onment for not more than 25 years, or both; and

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

7 “(2) *INCREASED MAXIMUM FINE FOR ORGANIZA-*
 8 *TIONS.—If an organization commits an offense—*

9 “(A) under subsection (a)(1), the maximum
 10 *fine, if not otherwise larger, that may be im-*
 11 *posed is \$10,000,000; and*

12 “(B) under subsection (a)(2), the maximum
 13 *fine, if not otherwise larger, that may be im-*
 14 *posed is \$5,000,000.*

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

16 “(1) the term ‘foreign instrumentality’ means
 17 *any agency, bureau, ministry, component, institution,*
 18 *association, or any legal, commercial, or business or-*
 19 *ganization, corporation, firm, or entity that is sub-*
 20 *stantially owned, controlled, sponsored, commanded,*
 21 *managed, or dominated by a foreign government;*

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

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

10 “(A) the owner thereof has taken reasonable
11 measures to keep such information secret; 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 through proper means by, the pub-
16 lic; and

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

21 “(d) *CRIMINAL FORFEITURE.*—

22 “(1) Notwithstanding any other provision of
23 State law, any person convicted of a violation under
24 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 prop-
10 erty 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 for-
14 feit to the United States all property described in this
15 section.

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

24 “(e) *ORDERS TO PRESERVE CONFIDENTIALITY.*—In
25 any prosecution or other proceeding under this section, the

1 *court shall enter such orders and take such other action as*
 2 *may be necessary and appropriate to preserve the confiden-*
 3 *tiality of trade secrets, consistent with the requirements of*
 4 *the Federal Rules of Criminal and Civil Procedure, the Fed-*
 5 *eral Rules of Evidence, and all other applicable laws. An*
 6 *interlocutory appeal by the United States shall lie from a*
 7 *decision or order of a district court authorizing or directing*
 8 *the disclosure of any trade secret.*

9 “(f) *CIVIL PROCEEDINGS TO ENJOIN VIOLATIONS.*—

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

13 “(2) *EXCLUSIVE JURISDICTION.*—*The district*
 14 *courts of the United States shall have exclusive origi-*
 15 *nal jurisdiction of civil actions under this subsection.*

16 “(g) *TERRITORIAL APPLICATION.*—

17 “(1) *This section applies to conduct occurring*
 18 *within the United States.*

19 “(2) *This section also applies to conduct occur-*
 20 *ring outside the United States if—*

21 “(A) *the offender is—*

22 “(i) *a United States citizen or perma-*
 23 *nent resident alien; or*

24 “(ii) *an organization substantially*
 25 *owned or controlled by United States citi-*

1 *zens or permanent resident aliens, or incor-*
 2 *porated in the United States; or*

3 *“(B) an act in furtherance of the offense*
 4 *was committed in the United States.*

5 *“(h) NONPREEMPTION OF OTHER REMEDIES.—This*
 6 *section shall not be construed to preempt or displace any*
 7 *other remedies, whether civil or criminal, provided by Unit-*
 8 *ed States Federal, State, commonwealth, possession, or ter-*
 9 *ritory law for the misappropriation of a trade secret.*

10 *“(i) EXCEPTIONS TO PROHIBITION.—*

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

15 *“(2) This section does not prohibit the reporting*
 16 *of any suspected criminal activity to any law enforce-*
 17 *ment agency or instrumentality of the United States,*
 18 *a State, or a political subdivision of a State, to any*
 19 *intelligence agency of the United States, or to Con-*
 20 *gress.”.*

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

“670. Protection of trade secrets.”.

1 **SEC. 3. WIRE AND ELECTRONIC COMMUNICATIONS INTER-**
2 **CEPTION AND INTERCEPTION OF ORAL COM-**
3 **MUNICATIONS.**

4 *Section 2516(1)(c) of title 18, United States Code, is*
5 *amended by inserting “section 670 (relating to economic es-*
6 *pionage),” after “(bribery in sporting contests),”.*