

In the Senate of the United States,

December 19, 2012.

Resolved, That the bill from the House of Representatives (H.R. 6029) entitled “An Act to amend title 18, United States Code, to provide for increased penalties for foreign and economic espionage, and for other purposes.”, do pass with the following

AMENDMENT:

Strike all after the enacting clause and insert the following:

1 ***SECTION 1. SHORT TITLE.***

2 *This Act may be cited as the “Foreign and Economic*
3 *Espionage Penalty Enhancement Act of 2012”.*

4 ***SEC. 2. PROTECTING U.S. BUSINESSES FROM FOREIGN ES-***
5 ***PIONAGE.***

6 *(a) FOR OFFENSES COMMITTED BY INDIVIDUALS.—*
7 *Section 1831(a) of title 18, United States Code, is amended,*
8 *in the matter after paragraph (5), by striking “not more*
9 *than \$500,000” and inserting “not more than \$5,000,000”.*

1 **(b) FOR OFFENSES COMMITTED BY ORGANIZATIONS.**—
 2 *Section 1831(b) of such title is amended by striking “not*
 3 *more than \$10,000,000” and inserting “not more than the*
 4 *greater of \$10,000,000 or 3 times the value of the stolen*
 5 *trade secret to the organization, including expenses for re-*
 6 *search and design and other costs of reproducing the trade*
 7 *secret that the organization has thereby avoided”.*

8 **SEC. 3. REVIEW BY THE UNITED STATES SENTENCING COM-**
 9 **MISSION.**

10 **(a) IN GENERAL.**—*Pursuant to its authority under*
 11 *section 994(p) of title 28, United States Code, the United*
 12 *States Sentencing Commission shall review and, if appro-*
 13 *priate, amend the Federal sentencing guidelines and policy*
 14 *statements applicable to persons convicted of offenses relat-*
 15 *ing to the transmission or attempted transmission of a sto-*
 16 *len trade secret outside of the United States or economic*
 17 *espionage, in order to reflect the intent of Congress that pen-*
 18 *alties for such offenses under the Federal sentencing guide-*
 19 *lines and policy statements appropriately, reflect the seri-*
 20 *ousness of these offenses, account for the potential and ac-*
 21 *tual harm caused by these offenses, and provide adequate*
 22 *deterrence against such offenses.*

23 **(b) REQUIREMENTS.**—*In carrying out this section, the*
 24 *United States Sentencing Commission shall—*

1 (1) *consider the extent to which the Federal sen-*
2 *tencing guidelines and policy statements appro-*
3 *priately account for the simple misappropriation of a*
4 *trade secret, including the sufficiency of the existing*
5 *enhancement for these offenses to address the serious-*
6 *ness of this conduct;*

7 (2) *consider whether additional enhancements in*
8 *the Federal sentencing guidelines and policy state-*
9 *ments are appropriate to account for—*

10 (A) *the transmission or attempted trans-*
11 *mission of a stolen trade secret outside of the*
12 *United States; and*

13 (B) *the transmission or attempted trans-*
14 *mission of a stolen trade secret outside of the*
15 *United States that is committed or attempted to*
16 *be committed for the benefit of a foreign govern-*
17 *ment, foreign instrumentality, or foreign agent;*

18 (3) *ensure the Federal sentencing guidelines and*
19 *policy statements reflect the seriousness of these of-*
20 *fenses and the need to deter such conduct;*

21 (4) *ensure reasonable consistency with other rel-*
22 *evant directives, Federal sentencing guidelines and*
23 *policy statements, and related Federal statutes;*

1 (5) *make any necessary conforming changes to*
2 *the Federal sentencing guidelines and policy state-*
3 *ments; and*

4 (6) *ensure that the Federal sentencing guidelines*
5 *adequately meet the purposes of sentencing as set*
6 *forth in section 3553(a)(2) of title 18, United States*
7 *Code.*

8 (c) *CONSULTATION.—In carrying out the review re-*
9 *quired under this section, the Commission shall consult*
10 *with individuals or groups representing law enforcement,*
11 *owners of trade secrets, victims of economic espionage of-*
12 *fenses, the United States Department of Justice, the United*
13 *States Department of Homeland Security, the United*
14 *States Department of State and the Office of the United*
15 *States Trade Representative.*

16 (d) *REVIEW.—Not later than 180 days after the date*
17 *of enactment of this Act, the Commission shall complete its*
18 *consideration and review under this section.*

Attest:

Secretary.

112TH CONGRESS
2^D SESSION

H.R. 6029

AMENDMENT