

105TH CONGRESS
2D SESSION

S. 1692

To amend the Internal Revenue Code of 1986 to provide software trade secrets protection.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 27, 1998

Mr. NICKLES (for himself, Mr. BAUCUS, Mrs. HUTCHISON, and Mr. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide software trade secrets protection.

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 “Software Trade Se-
5 crets Protection Act”.

6 **SEC. 2. SOFTWARE TRADE SECRETS PROTECTION.**

7 (a) IN GENERAL.—Subchapter A of chapter 78 of the
8 Internal Revenue Code of 1986 (relating to examination
9 and inspection) is amended by redesignating section 7612
10 as section 7613 and by inserting after 7611 the following:

1 **“SEC. 7612. SPECIAL PROCEDURES FOR SUMMONSES FOR**
2 **COMPUTER SOFTWARE.**

3 “(a) LIMITATION ON AUTHORITY TO REQUIRE PRO-
4 Duction OF COMPUTER SOFTWARE SOURCE CODE.—

5 “(1) IN GENERAL.—No summons may be
6 issued under this title, and the Secretary may not
7 begin any action under section 7604 to enforce any
8 summons, to produce or examine any computer soft-
9 ware source code or related customer communica-
10 tions, and training materials.

11 “(2) EXCEPTION WHERE INFORMATION NOT
12 OTHERWISE AVAILABLE TO VERIFY CORRECTNESS
13 OF ITEM ON RETURN.—Paragraph (1) shall not
14 apply to any portion, item, or component of com-
15 puter software source code if—

16 “(A) the Secretary, without examining the
17 computer software source code, is unable to
18 otherwise ascertain with reasonable accuracy
19 the correctness of any item on a return after
20 employing auditing procedures and practices
21 otherwise used pursuant to this title,

22 “(B) the Secretary identifies with reason-
23 able specificity the portion, item, or component
24 of such code needed to verify the correctness of
25 such item on the return, and

1 “(C) the Secretary demonstrates that with
2 respect to the issue under examination the need
3 for the portion, item, or component of the com-
4 puter software source code requested outweighs
5 the burdens of production imposed on the sum-
6 moned person and the risks of disclosure of
7 trade secrets.

8 “(3) OTHER EXCEPTIONS.—Paragraph (1) shall
9 not apply to—

10 “(A) any inquiry into any offense con-
11 nected with the administration or enforcement
12 of the internal revenue laws, and

13 “(B) any computer software developed by
14 the taxpayer or a related person (within the
15 meaning of section 267 or 707(b)) for internal
16 use by the taxpayer or such person and not for
17 commercial purposes.

18 “(4) ENFORCEMENT PROCEEDING.—In any
19 proceeding brought under section 7604 to enforce a
20 summons issued under this section, the court shall
21 hold a hearing to determine whether the Secretary
22 has met the requirements of paragraph (2).

23 “(5) COMPLIANCE WITH SUMMONS FOR COM-
24 PUTER SOFTWARE SOURCE CODE.—Any person to
25 whom a summons for a portion, item, or component

1 of computer software source code is issued shall be
2 deemed to have complied with such summons by pro-
3 ducing a hard-copy printout of such code.

4 “(b) PROTECTION OF TRADE SECRETS AND OTHER
5 CONFIDENTIAL INFORMATION.—

6 “(1) ENTRY OF PROTECTIVE ORDER.—In any
7 court proceeding to enforce a summons for any por-
8 tion of software, the court may receive evidence and
9 issue any order necessary to prevent undue burdens
10 or the disclosure of trade secrets or other confiden-
11 tial information with respect to such software, in-
12 cluding providing that any information be placed
13 under seal to be opened only as directed by the
14 court.

15 “(2) PROTECTION OF SOFTWARE.—Notwith-
16 standing any other provision of this section, and in
17 addition to any protections ordered pursuant to
18 paragraph (1), in the case of software that comes
19 into the possession or control of the Secretary in the
20 course of any examination with respect to any tax-
21 payer—

22 “(A) the software may be examined only in
23 connection with the examination of such tax-
24 payer’s return,

1 “(B) the software may be disclosed only to
2 persons conducting such examination whose du-
3 ties or responsibilities require access to the soft-
4 ware,

5 “(C) the software shall be maintained in a
6 secure area or place, and, in the case of com-
7 puter software source code and related docu-
8 ments, shall not be removed from the owner’s
9 place of business,

10 “(D) the software may not be copied ex-
11 cept as necessary to perform such examination,

12 “(E) at the end of the examination (and
13 any judicial review of the summons issued
14 under this section), the software and all copies
15 thereof shall be returned to the person from
16 whom they were obtained and any copies there-
17 of made under subparagraph (D) on the hard
18 drive of a machine or other mass storage device
19 shall be permanently deleted and any notes or
20 other memoranda made with regard to such
21 software shall be destroyed,

22 “(F) the software may not be decompiled,
23 disassembled, or reverse engineered, and

24 “(G) the Secretary shall provide to the tax-
25 payer and the owner of any interest in such

1 software, as the case may be, a written agree-
2 ment between the Secretary and any person
3 who will examine or otherwise have access to
4 such software, in which such person agrees—

5 “(i) not to disclose such software to
6 any person other than authorized employ-
7 ees or agents of the Secretary during and
8 after employment by the Secretary, and

9 “(ii) not to compete with the owner of
10 the software for a period of 2 years after
11 disclosure to such person of such software.

12 “The owner of any interest in the software shall be
13 considered a party to any agreement described in
14 subparagraph (G).

15 “(c) COMPLIANCE WITH SUMMONS FOR CERTAIN
16 COMPUTER SOFTWARE EXECUTABLE CODE.—Any tax-
17 payer to whom is issued a summons for commercially
18 available computer software executable code used to pre-
19 pare such taxpayer’s return or to account for the tax-
20 payer’s transactions with others shall be deemed to have
21 complied with such summons by producing a read-only
22 version of such code.

23 “(d) DEFINITIONS.—For purposes of this section—

1 “(1) SOFTWARE.—The term ‘software’ includes
2 computer software source code and computer soft-
3 ware executable code.

4 “(2) COMPUTER SOFTWARE SOURCE CODE.—
5 The term ‘computer software source code’ means—

6 “(A) the code written by a programmer
7 using a programming language which is com-
8 prehensible to appropriately trained persons, is
9 not machine readable, and is not capable of di-
10 rectly being used to give instructions to a com-
11 puter, and

12 “(B) related programmers’ notes, design
13 documents, memoranda, and similar docu-
14 mentation, excluding customer communications
15 and training materials.

16 “(3) COMPUTER SOFTWARE EXECUTABLE
17 CODE.—The term ‘computer software executable
18 code’ means—

19 “(A) any object code, machine code, or
20 other code readable by a computer when loaded
21 into its memory and used directly by such com-
22 puter to execute instructions, and

23 “(B) any related user manuals.”.

24 (b) UNAUTHORIZED DISCLOSURE OF SOFTWARE.—

25 Section 7213 of the Internal Revenue Code of 1986 (relat-

ing to unauthorized disclosure of information) is amended
by redesignating subsection (d) as subsection (e) and by
inserting after subsection (c) the following:

“(d) DISCLOSURE OF SOFTWARE.—Any person who
divulges or makes known in any manner whatever not pro-
vided under section 7612 to any other person software (as
defined in section 7612(d)(1)) shall be guilty of a felony
and, upon conviction thereof, shall be fined not more than
\$5,000, or imprisoned not more than 5 years, or both, to-
gether with the costs of prosecution.”.

(c) CONFORMING AMENDMENT.—The table of sec-
tions for subchapter A of chapter 78 of the Internal Reve-
nue Code of 1986 is amended by striking the item relating
to section 7612 and by inserting the following:

“Sec. 7612. Special procedures for summonses for computer software.

“Sec. 7613. Cross references.”.

(d) EFFECTIVE DATE.—The amendments made by
this section shall take effect on the date of enactment of
this Act.

○