

One Hundred Twelfth Congress
of the
United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Tuesday,
the third day of January, two thousand and twelve*

An Act

To amend title 18, United States Code, to provide for increased penalties for foreign and economic espionage, and for other purposes.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

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

SEC. 2. PROTECTING U.S. BUSINESSES FROM FOREIGN ESPIONAGE.

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

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

SEC. 3. REVIEW BY THE UNITED STATES SENTENCING COMMISSION.

(a) **IN GENERAL.**—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall review and, if appropriate, amend the Federal sentencing guidelines and policy statements applicable to persons convicted of offenses relating to the transmission or attempted transmission of a stolen trade secret outside of the United States or economic espionage, in order to reflect the intent of Congress that penalties for such offenses under the Federal sentencing guidelines and policy statements appropriately, reflect the seriousness of these offenses, account for the potential and actual harm caused by these offenses, and provide adequate deterrence against such offenses.

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

(1) consider the extent to which the Federal sentencing guidelines and policy statements appropriately account for the simple misappropriation of a trade secret, including the sufficiency of the existing enhancement for these offenses to address the seriousness of this conduct;

(2) consider whether additional enhancements in the Federal sentencing guidelines and policy statements are appropriate to account for—

(A) the transmission or attempted transmission of a stolen trade secret outside of the United States; and

(B) the transmission or attempted transmission of a stolen trade secret outside of the United States that is committed or attempted to be committed for the benefit of a foreign government, foreign instrumentality, or foreign agent;

(3) ensure the Federal sentencing guidelines and policy statements reflect the seriousness of these offenses and the need to deter such conduct;

(4) ensure reasonable consistency with other relevant directives, Federal sentencing guidelines and policy statements, and related Federal statutes;

(5) make any necessary conforming changes to the Federal sentencing guidelines and policy statements; and

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

(c) CONSULTATION.—In carrying out the review required under this section, the Commission shall consult with individuals or groups representing law enforcement, owners of trade secrets, victims of economic espionage offenses, the United States Department of Justice, the United States Department of Homeland Security, the United States Department of State and the Office of the United States Trade Representative.

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

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*