

coalition that wanted to fix it, and we came together to find a solution.

I thank former Senator Kohl, with whom I first discussed this issue when I came to the Senate. I thank him for his early interest and involvement in trade secret protections. Of course, I am particularly grateful to Senator HATCH for his championship of this bill and leadership in finding consensus. I wish to join him in thanking Chairman GRASSLEY and Ranking Member LEAHY for their critical support and commend my colleagues for their focus on this issue. I wish to specifically thank Senators WHITEHOUSE, FEINSTEIN, GRAHAM, and FLAKE for their contributions to this bill that has strengthened it.

I would be remiss if I didn't recognize and thank the tremendous efforts our staff contributed together to get this bill to where it is today. Senator HATCH has thanked many of the floor staff, leadership staff, and staff in the House, and I would like to add to my thanks to Matt Sandgren in Senator HATCH's office and to my tireless, dedicated, and recently departed from my office chief counsel, Ted Schroeder, as well as Jonathan Stahler, Andrew Crawford, and Erica Songer on my staff.

This major achievement is the product of many contributions, and that is how the Senate is supposed to work. Given the wide support this bill enjoys today in the Senate and the fact that there is already an identical House version with bipartisan support, I am hopeful the House will act and pass this bill without delay.

I was pleased to learn earlier today that the administration has issued a Statement of Administration Policy urging the passage of this bill and its rapid enactment into law. The sooner this bill becomes law, the sooner American businesses and companies can get back to creating jobs and producing new, life-changing products and services. Our country's legacy of innovation depends on it.

With that, I yield the floor and thank my colleague Senator HATCH.

THE PRESIDING OFFICER. The Senator from Tennessee.

REMEMBERING JUSTIN AND STEPHANIE SHULTS

Mr. CORKER. Mr. President, I rise to honor the lives of Tennessean Justin Shults and his wife Stephanie, who were killed in the attacks in Brussels, Belgium, on the morning of March 22.

I thank our senior Senator LAMAR ALEXANDER for joining me this afternoon.

We are heartbroken by this tragedy, which once again hit too close to home. Not long ago, Senator ALEXANDER and I came to this body to mourn the loss of five American heroes we lost in a terror attack in my hometown of Chattanooga. We are here again today, heartbroken that two more outstanding individuals were taken by evil, and we are reminded that terrorism knows no borders or boundaries.

Justin Shults was a native of Gatlinburg, TN. He attended Gatlinburg-Pitt-

man High School, where he was valedictorian of his class. A bright young man, Justin received an undergraduate degree from Vanderbilt University before attending Vanderbilt's Owen Graduate School of Management where he met Stephanie, a native of Lexington, KY.

Justin and Stephanie's journey is inspiring. Two young people from small towns, they set out on a journey to explore the world and to broaden their horizons.

They moved to Brussels in 2014. Justin worked for Clarcor, a Franklin, TN, manufacturing company, and Stephanie worked for Mars. They had a bright future ahead of them—a future that was stolen by terror.

To their family members and to all who loved them, we offer our prayers and deepest sympathies as we mourn their passing. We also extend condolences to all of the families who lost loved ones and to the people of Belgium.

I also thank the many individuals and organizations that were instrumental in helping Justin's and Stephanie's families in the aftermath of the attack. They include the State Department, the FBI, the consulate in Brussels, Delta Airlines, Justin's and Stephanie's companies, Clarcor and Mars, and members of my staff, especially Bess McWherter.

From Chattanooga to Paris, San Bernardino, Brussels, and beyond, we have seen unimaginable events unfold before our eyes. It is clear the fight against evil will be a long-term struggle. To protect our citizens, we must deepen our partnership with Europe and other allies to defeat ISIS and other terrorists so no more families will have to deal with the heartbreak Justin's and Stephanie's families face today.

We mourn their passing, we honor their lives, and we renew our commitment to fight against this evil.

With that, I yield the floor to our distinguished senior Senator LAMAR ALEXANDER.

THE PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I join Senator CORKER in expressing to the families of Justin and Stephanie our deepest sympathy and our horror at what happened to them in Brussels.

I wish to thank Senator CORKER as well. Because of his position as chairman of the Senate Foreign Relations Committee, he was able to do some things all of us would have liked to have been able to do. He was able to help the family by being a liaison with the families and the State Department. These are things he wouldn't say about himself, but I would like to say. He and his staff worked to help the family get expedited passports, and they have stayed in touch with the families. I hope the families of Justin and Stephanie will know that when Senator CORKER and his staff are in touch with them, that they are in touch with them

for all of us in the U.S. Senate and all of us as citizens of the State of Tennessee.

There is so much on television today that is horrible and violent and terroristic that we have become immune to it. It is almost an unreality. We don't want to believe any of it is true, until it hits home in Gatlinburg, TN, and happens to a bright young man whom everyone in the community seems to have known, one of those young men whom everybody looks at and says he is going to amount to something, we are going to watch him one day, and to a young woman from Lexington, KY, who met this young man at Vanderbilt's graduate school of management, not just in Sevier County, TN, and not just in Lexington, where so many people knew these two promising young Americans, but also in Nashville and the Vanderbilt community.

This is actually the third promising young life taken from the Vanderbilt school family. Taylor Force, a student there, was killed on a class visit to Israel a few weeks ago. At any time that is a horrifying, terrible thought, but this is a generation of young Americans who have grown up with the idea of living in the whole world, of making a contribution to the entire world. That is what Justin and Stephanie were doing when they went to Brussels with their companies, and now their lives are cut short by an evil act.

Our hearts go out to their families and to the communities from which they come in Gatlinburg, in Lexington, and in the Nashville Vanderbilt Owen school community. My personal thanks to Senator CORKER for doing what all of us want to do as well as we can, which is to be helpful to the families and express to them our appreciation for the lives of their children and our sorrow at what has happened to them.

Thank you, Mr. President.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

THE PRESIDING OFFICER. Morning business is now closed.

DEFEND TRADE SECRETS ACT OF 2015

THE PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of S. 1890, which the clerk will report.

The bill clerk read as follows:

A bill (S. 1890) to amend chapter 90 of title 18, United States Code, to provide Federal jurisdiction for the theft of trade secrets, and for other purposes.

The Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Defend Trade Secrets Act of 2016".

SEC. 2. FEDERAL JURISDICTION FOR THEFT OF TRADE SECRETS.

(a) IN GENERAL.—Section 1836 of title 18, United States Code, is amended by striking subsection (b) and inserting the following:

“(b) PRIVATE CIVIL ACTIONS.—

“(1) IN GENERAL.—An owner of a trade secret that is misappropriated may bring a civil action under this subsection if the trade secret is related to a product or service used in, or intended for use in, interstate or foreign commerce.

“(2) CIVIL SEIZURE.—

“(A) IN GENERAL.—

“(i) APPLICATION.—Based on an affidavit or verified complaint satisfying the requirements of this paragraph, the court may, upon ex parte application but only in extraordinary circumstances, issue an order providing for the seizure of property necessary to prevent the propagation or dissemination of the trade secret that is the subject of the action.

“(ii) REQUIREMENTS FOR ISSUING ORDER.—The court may not grant an application under clause (i) unless the court finds that it clearly appears from specific facts that—

“(I) an order issued pursuant to Rule 65 of the Federal Rules of Civil Procedure or another form of equitable relief would be inadequate to achieve the purpose of this paragraph because the party to which the order would be issued would evade, avoid, or otherwise not comply with such an order;

“(II) an immediate and irreparable injury will occur if such seizure is not ordered;

“(III) the harm to the applicant of denying the application outweighs the harm to the legitimate interests of the person against whom seizure would be ordered of granting the application and substantially outweighs the harm to any third parties who may be harmed by such seizure;

“(IV) the applicant is likely to succeed in showing that—

“(aa) the information is a trade secret; and

“(bb) the person against whom seizure would be ordered—

“(AA) misappropriated the trade secret of the applicant by improper means; or

“(BB) conspired to use improper means to misappropriate the trade secret of the applicant;

“(V) the person against whom seizure would be ordered has actual possession of—

“(aa) the trade secret; and

“(bb) any property to be seized;

“(VI) the application describes with reasonable particularity the matter to be seized and, to the extent reasonable under the circumstances, identifies the location where the matter is to be seized;

“(VII) the person against whom seizure would be ordered, or persons acting in concert with such person, would destroy, move, hide, or otherwise make such matter inaccessible to the court, if the applicant were to proceed on notice to such person; and

“(VIII) the applicant has not publicized the requested seizure.

“(B) ELEMENTS OF ORDER.—If an order is issued under subparagraph (A), it shall—

“(i) set forth findings of fact and conclusions of law required for the order;

“(ii) provide for the narrowest seizure of property necessary to achieve the purpose of this paragraph and direct that the seizure be conducted in a manner that minimizes any interruption of the business operations of third parties and, to the extent possible, does not interrupt the legitimate business operations of the person accused of misappropriating the trade secret;

“(iii)(I) be accompanied by an order protecting the seized property from disclosure by prohibiting access by the applicant or the person against whom the order is directed, and prohibiting any copies, in whole or in part, of the seized property, to prevent undue damage to the party against whom the order has issued or others, until such parties have an opportunity to be heard in court; and

“(II) provide that if access is granted by the court to the applicant or the person against whom the order is directed, the access shall be consistent with subparagraph (D);

“(iv) provide guidance to the law enforcement officials executing the seizure that clearly delineates the scope of the authority of the officials, including—

“(I) the hours during which the seizure may be executed; and

“(II) whether force may be used to access locked areas;

“(v) set a date for a hearing described in subparagraph (F) at the earliest possible time, and not later than 7 days after the order has issued, unless the party against whom the order is directed and others harmed by the order consent to another date for the hearing, except that a party against whom the order has issued or any person harmed by the order may move the court at any time to dissolve or modify the order after giving notice to the applicant who obtained the order; and

“(vi) require the person obtaining the order to provide the security determined adequate by the court for the payment of the damages that any person may be entitled to recover as a result of a wrongful or excessive seizure or wrongful or excessive attempted seizure under this paragraph.

“(C) PROTECTION FROM PUBLICITY.—The court shall take appropriate action to protect the person against whom an order under this paragraph is directed from publicity, by or at the behest of the person obtaining the order, about such order and any seizure under such order.

“(D) MATERIALS IN CUSTODY OF COURT.—

“(i) IN GENERAL.—Any materials seized under this paragraph shall be taken into the custody of the court. The court shall secure the seized material from physical and electronic access during the seizure and while in the custody of the court.

“(ii) STORAGE MEDIUM.—If the seized material includes a storage medium, or if the seized material is stored on a storage medium, the court shall prohibit the medium from being connected to a network or the Internet without the consent of both parties, until the hearing required under subparagraph (B)(v) and described in subparagraph (F).

“(iii) PROTECTION OF CONFIDENTIALITY.—The court shall take appropriate measures to protect the confidentiality of seized materials that are unrelated to the trade secret information ordered seized pursuant to this paragraph unless the person against whom the order is entered consents to disclosure of the material.

“(iv) APPOINTMENT OF SPECIAL MASTER.—The court may appoint a special master to locate and isolate all misappropriated trade secret information and to facilitate the return of unrelated property and data to the person from whom the property was seized. The special master appointed by the court shall agree to be bound by a non-disclosure agreement approved by the court.

“(E) SERVICE OF ORDER.—The court shall order that service of a copy of the order under this paragraph, and the submissions of the applicant to obtain the order, shall be made by a Federal law enforcement officer who, upon making service, shall carry out the seizure under the order. The court may allow State or local law enforcement officials to participate, but may not permit the applicant or any agent of the applicant to participate in the seizure. At the request of law enforcement officials, the court may allow a technical expert who is unaffiliated with the applicant and who is bound by a court-approved non-disclosure agreement to participate in the seizure if the court determines that the participation of the expert will aid the efficient execution of and minimize the burden of the seizure.

“(F) SEIZURE HEARING.—

“(i) DATE.—A court that issues a seizure order shall hold a hearing on the date set by the court under subparagraph (B)(v).

“(ii) BURDEN OF PROOF.—At a hearing held under this subparagraph, the party who obtained the order under subparagraph (A) shall have the burden to prove the facts supporting the findings of fact and conclusions of law necessary to support the order. If the party fails to meet that burden, the seizure order shall be dissolved or modified appropriately.

“(iii) DISSOLUTION OR MODIFICATION OF ORDER.—A party against whom the order has been issued or any person harmed by the order may move the court at any time to dissolve or modify the order after giving notice to the party who obtained the order.

“(iv) DISCOVERY TIME LIMITS.—The court may make such orders modifying the time limits for discovery under the Federal Rules of Civil Procedure as may be necessary to prevent the frustration of the purposes of a hearing under this subparagraph.

“(G) ACTION FOR DAMAGE CAUSED BY WRONGFUL SEIZURE.—A person who suffers damage by reason of a wrongful or excessive seizure under this paragraph has a cause of action against the applicant for the order under which such seizure was made, and shall be entitled to the same relief as is provided under section 34(d)(11) of the Trademark Act of 1946 (15 U.S.C. 1116(d)(11)). The security posted with the court under subparagraph (B)(vi) shall not limit the recovery of third parties for damages.

“(H) MOTION FOR ENCRYPTION.—A party or a person who claims to have an interest in the subject matter seized may make a motion at any time, which may be heard ex parte, to encrypt any material seized or to be seized under this paragraph that is stored on a storage medium. The motion shall include, when possible, the desired encryption method.

“(3) REMEDIES.—In a civil action brought under this subsection with respect to the misappropriation of a trade secret, a court may—

“(A) grant an injunction—

“(i) to prevent any actual or threatened misappropriation described in paragraph (1) on such terms as the court deems reasonable, provided the order does not—

“(I) prevent a person from entering into an employment relationship, and that conditions placed on such employment shall be based on evidence of threatened misappropriation and not merely on the information the person knows; or

“(II) otherwise conflict with an applicable State law prohibiting restraints on the practice of a lawful profession, trade, or business;

“(ii) if determined appropriate by the court, requiring affirmative actions to be taken to protect the trade secret; and

“(iii) in exceptional circumstances that render an injunction inequitable, that conditions future use of the trade secret upon payment of a reasonable royalty for no longer than the period of time for which such use could have been prohibited;

“(B) award—

“(i)(I) damages for actual loss caused by the misappropriation of the trade secret; and

“(II) damages for any unjust enrichment caused by the misappropriation of the trade secret that is not addressed in computing damages for actual loss; or

“(ii) in lieu of damages measured by any other methods, the damages caused by the misappropriation measured by imposition of liability for a reasonable royalty for the misappropriator's unauthorized disclosure or use of the trade secret;

“(C) if the trade secret is willfully and maliciously misappropriated, award exemplary damages in an amount not more than 2 times the amount of the damages awarded under subparagraph (B); and

“(D) if a claim of the misappropriation is made in bad faith, which may be established by circumstantial evidence, a motion to terminate an injunction is made or opposed in bad faith, or the trade secret was willfully and maliciously

misappropriated, award reasonable attorney's fees to the prevailing party.

“(c) JURISDICTION.—The district courts of the United States shall have original jurisdiction of civil actions brought under this section.

“(d) PERIOD OF LIMITATIONS.—A civil action under subsection (b) may not be commenced later than 3 years after the date on which the misappropriation with respect to which the action would relate is discovered or by the exercise of reasonable diligence should have been discovered. For purposes of this subsection, a continuing misappropriation constitutes a single claim of misappropriation.”.

(b) DEFINITIONS.—Section 1839 of title 18, United States Code, is amended—

(1) in paragraph (3)—

(A) in subparagraph (B), by striking “the public” and inserting “another person who can obtain economic value from the disclosure or use of the information”; and

(B) by striking “and” at the end;

(2) in paragraph (4), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

“(5) the term ‘misappropriation’ means—

“(A) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

“(B) disclosure or use of a trade secret of another without express or implied consent by a person who—

“(i) used improper means to acquire knowledge of the trade secret;

“(ii) at the time of disclosure or use, knew or had reason to know that the knowledge of the trade secret was—

“(I) derived from or through a person who had used improper means to acquire the trade secret;

“(II) acquired under circumstances giving rise to a duty to maintain the secrecy of the trade secret or limit the use of the trade secret; or

“(III) derived from or through a person who owed a duty to the person seeking relief to maintain the secrecy of the trade secret or limit the use of the trade secret; or

“(iii) before a material change of the position of the person, knew or had reason to know that—

“(I) the trade secret was a trade secret; and

“(II) knowledge of the trade secret had been acquired by accident or mistake;

“(6) the term ‘improper means’—

“(A) includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means; and

“(B) does not include reverse engineering, independent derivation, or any other lawful means of acquisition; and

“(7) the term ‘Trademark Act of 1946’ means the Act entitled ‘An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes, approved July 5, 1946 (15 U.S.C. 1051 et seq.) (commonly referred to as the ‘Trademark Act of 1946’ or the ‘Lanham Act’).”.

(c) EXCEPTIONS TO PROHIBITION.—Section 1833 of title 18, United States Code, is amended, in the matter preceding paragraph (1), by inserting “or create a private right of action for” after “prohibit”.

(d) CONFORMING AMENDMENTS.—

(1) The section heading for section 1836 of title 18, United States Code, is amended to read as follows:

“§ 1836. Civil proceedings”.

(2) The table of sections for chapter 90 of title 18, United States Code, is amended by striking the item relating to section 1836 and inserting the following:

“1836. Civil proceedings.”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to any

misappropriation of a trade secret (as defined in section 1839 of title 18, United States Code, as amended by this section) for which any act occurs on or after the date of the enactment of this Act.

(f) RULE OF CONSTRUCTION.—Nothing in the amendments made by this section shall be construed to modify the rule of construction under section 1838 of title 18, United States Code, or to preempt any other provision of law.

(g) APPLICABILITY TO OTHER LAWS.—This section and the amendments made by this section shall not be construed to be a law pertaining to intellectual property for purposes of any other Act of Congress.

SEC. 3. TRADE SECRET THEFT ENFORCEMENT.

(a) IN GENERAL.—Chapter 90 of title 18, United States Code, is amended—

(1) in section 1832(b), by striking “\$5,000,000” and inserting “the greater of \$5,000,000 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”; and

(2) in section 1835—

(A) by striking “In any prosecution” and inserting the following:

“(a) IN GENERAL.—In any prosecution”; and

(B) by adding at the end the following:

“(b) RIGHTS OF TRADE SECRET OWNERS.—The court may not authorize or direct the disclosure of any information the owner asserts to be a trade secret unless the court allows the owner the opportunity to file a submission under seal that describes the interest of the owner in keeping the information confidential. No submission under seal made under this subsection may be used in a prosecution under this chapter for any purpose other than those set forth in this section, or otherwise required by law. The provision of information relating to a trade secret to the United States or the court in connection with a prosecution under this chapter shall not constitute a waiver of trade secret protection, and the disclosure of information relating to a trade secret in connection with a prosecution under this chapter shall not constitute a waiver of trade secret protection unless the trade secret owner expressly consents to such waiver.”.

(b) RICO PREDICATE OFFENSES.—Section 1961(1) of title 18, United States Code, is amended by inserting “sections 1831 and 1832 (relating to economic espionage and theft of trade secrets),” before “section 1951”.

SEC. 4. REPORT ON THEFT OF TRADE SECRETS OCCURRING ABROAD.

(a) DEFINITIONS.—In this section:

(1) DIRECTOR.—The term “Director” means the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

(2) FOREIGN INSTRUMENTALITY, ETC.—The terms “foreign instrumentality”, “foreign agent”, and “trade secret” have the meanings given those terms in section 1839 of title 18, United States Code.

(3) STATE.—The term “State” includes the District of Columbia and any commonwealth, territory, or possession of the United States.

(4) UNITED STATES COMPANY.—The term “United States company” means an organization organized under the laws of the United States or a State or political subdivision thereof.

(b) REPORTS.—Not later than 1 year after the date of enactment of this Act, and biannually thereafter, the Attorney General, in consultation with the Intellectual Property Enforcement Coordinator, the Director, and the heads of other appropriate agencies, shall submit to the Committees on the Judiciary of the House of Representatives and the Senate, and make publicly available on the Web site of the Department of Justice and disseminate to the public through such other means as the Attorney General may identify, a report on the following:

(1) The scope and breadth of the theft of the trade secrets of United States companies occurring outside of the United States.

(2) The extent to which theft of trade secrets occurring outside of the United States is sponsored by foreign governments, foreign instrumentalities, or foreign agents.

(3) The threat posed by theft of trade secrets occurring outside of the United States.

(4) The ability and limitations of trade secret owners to prevent the misappropriation of trade secrets outside of the United States, to enforce any judgment against foreign entities for theft of trade secrets, and to prevent imports based on theft of trade secrets overseas.

(5) A breakdown of the trade secret protections afforded United States companies by each country that is a trading partner of the United States and enforcement efforts available and undertaken in each such country, including a list identifying specific countries where trade secret theft, laws, or enforcement is a significant problem for United States companies.

(6) Instances of the Federal Government working with foreign countries to investigate, arrest, and prosecute entities and individuals involved in the theft of trade secrets outside of the United States.

(7) Specific progress made under trade agreements and treaties, including any new remedies enacted by foreign countries, to protect against theft of trade secrets of United States companies outside of the United States.

(8) Recommendations of legislative and executive branch actions that may be undertaken to—

(A) reduce the threat of and economic impact caused by the theft of the trade secrets of United States companies occurring outside of the United States;

(B) educate United States companies regarding the threats to their trade secrets when taken outside of the United States;

(C) provide assistance to United States companies to reduce the risk of loss of their trade secrets when taken outside of the United States; and

(D) provide a mechanism for United States companies to confidentially or anonymously report the theft of trade secrets occurring outside of the United States.

SEC. 5. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) trade secret theft occurs in the United States and around the world;

(2) trade secret theft, wherever it occurs, harms the companies that own the trade secrets and the employees of the companies;

(3) chapter 90 of title 18, United States Code (commonly known as the “Economic Espionage Act of 1996”), applies broadly to protect trade secrets from theft; and

(4) it is important when seizing information to balance the need to prevent or remedy misappropriation with the need to avoid interrupting the—

(A) business of third parties; and

(B) legitimate interests of the party accused of wrongdoing.

SEC. 6. BEST PRACTICES.

(a) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Federal Judicial Center, using existing resources, shall develop recommended best practices for—

(1) the seizure of information and media storing the information; and

(2) the securing of the information and media once seized.

(b) UPDATES.—The Federal Judicial Center shall update the recommended best practices developed under subsection (a) from time to time.

(c) CONGRESSIONAL SUBMISSIONS.—The Federal Judicial Center shall provide a copy of the recommendations developed under subsection (a), and any updates made under subsection (b), to the—

(1) Committee on the Judiciary of the Senate; and

(2) Committee on the Judiciary of the House of Representatives.

SEC. 7. IMMUNITY FROM LIABILITY FOR CONFIDENTIAL DISCLOSURE OF A TRADE SECRET TO THE GOVERNMENT OR IN A COURT FILING.

(a) AMENDMENT.—Section 1833 of title 18, United States Code, is amended—

(1) by striking “This chapter” and inserting “(a) IN GENERAL.—This chapter”;

(2) in subsection (a)(2), as designated by paragraph (1), by striking “the reporting of a suspected violation of law to any governmental entity of the United States, a State, or a political subdivision of a State, if such entity has lawful authority with respect to that violation” and inserting “the disclosure of a trade secret in accordance with subsection (b)”;

(3) by adding at the end the following:

“(b) IMMUNITY FROM LIABILITY FOR CONFIDENTIAL DISCLOSURE OF A TRADE SECRET TO THE GOVERNMENT OR IN A COURT FILING.—

“(1) IMMUNITY.—An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that—

“(A) is made—

“(i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and

“(ii) solely for the purpose of reporting or investigating a suspected violation of law; or

“(B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

“(2) USE OF TRADE SECRET INFORMATION IN ANTI-RETALIATION LAWSUIT.—An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual—

“(A) files any document containing the trade secret under seal; and

“(B) does not disclose the trade secret, except pursuant to court order.

“(3) NOTICE.—

“(A) IN GENERAL.—An employer shall provide notice of the immunity set forth in this subsection in any contract or agreement with an employee that governs the use of a trade secret or other confidential information.

“(B) POLICY DOCUMENT.—An employer shall be considered to be in compliance with the notice requirement in subparagraph (A) if the employer provides a cross-reference to a policy document provided to the employee that sets forth the employer’s reporting policy for a suspected violation of law.

“(C) NON-COMPLIANCE.—If an employer does not comply with the notice requirement in subparagraph (A), the employer may not be awarded exemplary damages or attorney fees under subparagraph (C) or (D) of section 1836(b)(3) in an action against an employee to whom notice was not provided.

“(D) APPLICABILITY.—This paragraph shall apply to contracts and agreements that are entered into or updated after the date of enactment of this subsection.

“(4) EMPLOYEE DEFINED.—For purposes of this subsection, the term ‘employee’ includes any individual performing work as a contractor or consultant for an employer.

“(5) RULE OF CONSTRUCTION.—Except as expressly provided for under this subsection, nothing in this subsection shall be construed to authorize, or limit liability for, an act that is otherwise prohibited by law, such as the unlawful access of material by unauthorized means.”

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 1838 of title 18, United States Code, is amended by striking “This chapter” and inserting “Except as provided in section 1833(b), this chapter”.

The PRESIDING OFFICER. Under the previous order, there will be 30 minutes of debate equally divided in the usual form.

Mr. COONS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. COONS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. COONS. Mr. President, I made long remarks earlier this afternoon, along with my colleague and friend Senator HATCH.

I want to briefly reiterate my thanks to the many staff who worked tirelessly to make it possible for the Defend Trade Secrets Act to move forward today. I greatly appreciate the leadership and hard work of the chairman and ranking member of the Judiciary Committee, Senators GRASSLEY and LEAHY, for their hard work and their staffs’ work.

I want to personally thank Ted Schroeder, who was my chief counsel for many years, for his terrific work on this bill and the dozens of staffs here in the Senate and the House and outside groups who have come together to make it possible for this strong bipartisan bill to move forward today.

Thank you, Mr. President.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

EX PARTE SEIZURE PROVISION

Mr. GRASSLEY. Mr. President, as the Senate is prepared to vote on the Defend Trade Secrets Act, I rise today to enter into a colloquy with my longtime friend and colleague from Utah, Senator ORRIN HATCH.

Does the Senator agree that the ex parte seizure provision is a vital element of the bill?

Mr. HATCH. I thank my colleague and longtime friend from Iowa, Senator CHUCK GRASSLEY, for the question.

Indeed, the Defend Trade Secrets Act provides a trade secret owner with a right of action to go to court ex parte to have the trade secret seized and returned before the misappropriator can divulge it and cause it to lose its protection or before significant destruction of evidence.

The provision is tailored to prevent abuse—balancing the need to recover a stolen trade secret with the rights of defendants and third parties.

We drafted the bill to require the party seeking ex parte review to make a rigorous showing that they owned the secret, that it was stolen, and that third parties would not be harmed if an order were granted. We required a hearing at the earliest possible date. We also included damages for wrongful seizure, including attorney’s fees.

Could the Senator discuss the intent behind that language?

Mr. GRASSLEY. I thank Senator HATCH. The Defend Trade Secrets Act is the product of bipartisan consensus, and as he will recall, before the bill was approved in the Senate Judiciary Com-

mittee, a modification added language that ex parte seizures would be granted under “extraordinary circumstances.”

As I understand it, the “extraordinary circumstances” language was not added to impose an additional requirement for obtaining an ex parte seizure, but to acknowledge the Judiciary’s general disfavor of ex parte procedures and to reinforce that particular circumstances are required to utilize the seizure provisions but still provide a much needed avenue for ex parte seizures when necessary.

The legislation specifically lists these requirements for issuing an ex parte seizure order. For example, this authority is not available if an injunction under existing rules of civil procedure would be sufficient. The ex parte seizure provision is expected to be used in instances in which a defendant is seeking to flee the country or planning to disclose the trade secret to a third party immediately or is otherwise not amenable to the enforcement of the court’s orders.

Mr. HATCH. That is correct. We expect the provision will be used in instances such as when a trade secret misappropriator is seeking to flee the country or planning to disclose a trade secret immediately.

Mr. GRASSLEY. I thank Senator HATCH for his helpful insights.

Mr. President, today the Senate is poised to pass the Defend Trade Secrets Act of 2016, a bill that offers practical and necessary solutions to a growing problem.

I have recently had the opportunity to speak about a number of bipartisan bills that have passed out of the Judiciary Committee and that have been taken up here on the Senate floor. That is a testament to the fact that the Judiciary Committee is working hard through an open process to find thoughtful solutions to the problems facing our country. In fact, we have processed 24 bills out of the Judiciary Committee, all in a bipartisan fashion. Of these, 16 have passed the Senate and 6 have been signed into law by the President. While any Member of this body can tell you that it isn’t always easy to find legislative agreement, the American people deserve hardworking representatives in Washington who strive to get things accomplished. And the record of the Judiciary Committee shows that we have chosen to overcome gridlock and dysfunction to pass legislation that addresses problems that American people face.

Here are a few examples of the Judiciary Committee’s legislative accomplishments so far. Last month, the Senate overwhelmingly passed the bipartisan Comprehensive Addiction and Recovery Act, or CARA, by a vote of 94-1. In the face of a growing and deadly epidemic of heroin and opioid painkillers, this bill addresses this crisis comprehensively supporting prevention, education, treatment, recovery, and law enforcement.

In the past few weeks, the Senate also passed the FOIA Improvement

Act, a bill authored by Senators CORNYN and LEAHY that I worked to move through the committee process. It codifies a presumption of openness for government agencies to follow when they respond to requests for government records via the Freedom of Information Act. In passing the FOIA Improvement Act—the Senate is helping change the culture in government toward openness and transparency.

In February, the Judiciary Committee reported out the bipartisan Justice Against Sponsors of Terrorism Act by a vote of 19-0. The bill, which has now been signed into law, holds sponsors of terrorism accountable by preventing them from invoking “sovereign immunity” in cases involving attacks within the United States. It also allows civil suits to be filed against foreign entities that have aided or abetted terrorists.

The committee has worked to protect families and children by passing bills such as the Amy and Vicky Child Pornography Victim Restitution Improvement Act and the Adoptive Family Relief Act. The Amy and Vicky Child Pornography Victim Restitution Improvement Act reverses a Supreme Court decision that limited the restitution that victims of child pornography can seek from any single perpetrator, ensuring that victims can be fully compensated for these heinous crimes, and can focus their attention on healing. The Adoptive Family Relief Act was signed into law in October of 2015, after passing the Judiciary Committee, and aims to help families facing challenges with international adoptions.

And once again today, we are set to approve another Judiciary Committee bill that is supported by folks across the whole of the political spectrum. The support behind the Defend Trade Secrets Act makes clear that the Senate and Judiciary Committee is working to find thoughtful solutions to problems facing our country. This bipartisan legislation is authored by Senators HATCH and COONS. It brings needed uniformity to trade secret litigation so creators and owners of trade secrets can more effectively address the growing problem of trade secret theft.

It is estimated that the American economy loses 2.1 million jobs every year because of trade secret theft. Further, according to a recent report of the Commission on the Theft of American Intellectual Property, annual losses owing to trade secret theft are likely comparable to the current annual level of U.S. exports to Asia—over \$300 billion.

Back in Iowa we have seen this firsthand as innovative companies like Monsanto and DuPont-Pioneer have become targets for trade secret theft. In a well-publicized case, a naturalized citizen was indicted and convicted for engaging in a scheme with foreign nationals to steal proprietary test seeds from Iowa fields to benefit foreign companies.

Contrasted with other areas of intellectual property, trade secrets are

mainly protected as a matter of state law. Forty-seven states have enacted some variation of the Uniform Trade Secrets Act. Yet as we have learned through hearings in the Judiciary Committee and from companies who have experienced trade secret theft, the increasing use of technology by criminals and their ability to quickly travel across state lines, means at times these laws are inadequate. The existing patchwork of state laws has become a difficult procedural hurdle for victims who must seek immediate relief before their valuable intellectual property is lost forever.

As the pace of trade secret theft has soared, the Federal Bureau of Investigation reports that their caseload for economic espionage and trade secret theft cases has also increased more than 60% from 2009 to 2013. The Defend Trade Secrets Act will create a uniform federal civil cause of action, without preempting state law, to provide clear rules and predictability for trade secret cases. Victims of trade secret theft will now have another weapon in their arsenal to combat trade secret theft, aside from criminal enforcement. This bill will provide certainty of the rules, standards, and practices to stop trade secrets from being disseminated and losing their value, and will allow victims to move quickly to federal court to stop their trade secrets from being disseminated. By improving trade secret protection, this bill will also help to incentivize future innovation.

Importantly, the Defend Trade Secrets Act codifies protections for whistleblowers. An amendment that I authored with Ranking Member LEAHY, which was included in Committee, would create express protections for whistleblowers who disclose trade secrets confidentially to the government to report a violation of the law. There is a longstanding and compelling public interest in safeguarding the ability of whistleblowers to lawfully and appropriately disclose waste, fraud, and abuse that would otherwise never be brought to light. As chairman, and one of the founding members of the Senate Whistleblower Protection Caucus, I've seen how whistleblowers help hold wrongdoers accountable and allow the government to recoup taxpayer money that might otherwise be lost to fraud and other unlawful activities. The inclusion of this whistleblower protection in the Defend Trade Secrets Act allows us to help make sure that those who are best in a position to report illegal conduct can come forward.

Passing legislation to help Americans deal with a growing problem like trade secret theft in a bipartisan fashion is an important accomplishment. I am proud of the way the Judiciary Committee continues to get things done.

Mr. President, I yield back the remainder of our time.

The PRESIDING OFFICER. All time is yielded back.

Under the previous order, the committee-reported substitute amendment is agreed to.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. GRASSLEY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. CORNYN. The following Senators are necessarily absent: the Senator from New Hampshire (Ms. AYOTTE), the Senator from Texas (Mr. CRUZ), the Senator from Colorado (Mr. GARDNER), the Senator from Utah (Mr. LEE), the Senator from Alaska (Ms. MURKOWSKI), the Senator from Alaska (Mr. SULLIVAN), the Senator from Pennsylvania (Mr. TOOMEY), and the Senator from Louisiana (Mr. VITTER).

Further, if present and voting, the Senator from New Hampshire (Ms. AYOTTE) would have voted “yea”, the Senator from Colorado (Mr. GARDNER) would have voted “yea”, and the Senator from Alaska (Mr. SULLIVAN) would have voted “yea”.

Mr. DURBIN. I announce that the Senator from Delaware (Mr. CARPER), the Senator from New York (Mrs. GILLIBRAND), the Senator from Vermont (Mr. LEAHY), the Senator from Maryland (Ms. MIKULSKI), and the Senator from Vermont (Mr. SANDERS).

The PRESIDING OFFICER (Mr. LANKFORD). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 87, nays 0, as follows:

[Rollcall Vote No. 39 Leg.]

YEAS—87

Alexander	Feinstein	Murray
Baldwin	Fischer	Nelson
Barrasso	Flake	Paul
Bennet	Franken	Perdue
Blumenthal	Graham	Peters
Blunt	Grassley	Portman
Booker	Hatch	Reed
Boozman	Heinrich	Reid
Boxer	Heitkamp	Risch
Brown	Heller	Roberts
Burr	Hirono	Rounds
Cantwell	Hoeven	Rubio
Capito	Inhofe	Sasse
Cardin	Isakson	Schatz
Casey	Johnson	Schumer
Cassidy	Kaine	Scott
Coats	King	Sessions
Cochran	Kirk	Shaheen
Collins	Klobuchar	Shelby
Coons	Lankford	Stabenow
Corker	Manchin	Tester
Cornyn	Markey	Thune
Cotton	McCain	Tillis
Crapo	McCaskill	Udall
Daines	McConnell	Warner
Donnelly	Menendez	Warren
Durbin	Merkley	Whitehouse
Enzi	Moran	Wicker
Ernst	Murphy	Wyden

NOT VOTING—13

Ayotte	Gardner	Lee
Carper	Gillibrand	
Cruz	Leahy	

Mikulski
Murkowski

Sanders
Sullivan

Toomey
Vitter

The bill (S. 1890), as amended, was passed.

AMERICA'S SMALL BUSINESS TAX RELIEF ACT OF 2015—MOTION TO PROCEED—Continued

The PRESIDING OFFICER. The majority leader is recognized.

Mr. MCCONNELL. Mr. President, what is the pending business?

The PRESIDING OFFICER. The motion to proceed on H.R. 636.

CLOTURE MOTION

Mr. MCCONNELL. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to Calendar No. 55, H.R. 636, an act to amend the Internal Revenue Code of 1986 to permanently extend increased expensing limitations, and for other purposes.

Mitch McConnell, Orrin G. Hatch, Daniel Coats, Lamar Alexander, John Boozman, James M. Inhofe, Chuck Grassley, Mike Crapo, Richard Burr, Thad Cochran, Johnny Isakson, Roy Blunt, Dean Heller, John Thune, John McCain, John Cornyn, Steve Daines.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the mandatory quorum call be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

DEFEND TRADE SECRETS BILL

Mr. DURBIN. Mr. President, I am pleased that the Senate voted today on the Defend Trade Secrets Act. I am proud to be an original cosponsor of this legislation, which would create a Federal civil cause of action to help deter and remedy trade secret theft that is costing American businesses hundreds of billions of dollars each year.

Trade secrets, such as manufacturing processes, industrial techniques, and customer lists, are critical assets for U.S. companies. However, American companies are increasingly being targeted by efforts to steal this proprietary information, often by overseas interests. Currently, there is no Federal civil remedy available to companies to fight this theft, and the Justice Department does not have the resources to investigate and prosecute criminally all of the thefts that are taking place. While most States have passed civil trade secret laws, these laws are not well suited for remedying interstate or foreign trade secret theft. The lack of a Federal civil remedy for trade secret misappropriation is a glaring

gap in current law, especially since Federal civil remedies are available to protect other forms of intellectual property such as patents, trademarks, and copyrights.

The Defend Trade Secrets Act would close this gap by creating a civil right of action in Federal court for misappropriation of a trade secret that is related to a product or service used in interstate or foreign commerce. Available remedies would include injunctions, damages, and in certain cases enhanced damages. This broadly bipartisan bill has been carefully crafted to empower companies to protect their trade secrets through a process that will be both swift and fair. By helping American companies safeguard their essential trade secrets from theft, the bill will help keep innovation and jobs in America.

The Defend Trade Secrets Act has been cosponsored by 65 Senators and is supported by groups and companies representing a broad swath of the American economy, including numerous employers based in my home State of Illinois, such as Caterpillar and Illinois Tool Works. I am pleased that the Senate is moving forward with passage of this legislation, and I hope the bill will soon pass the House of Representatives and be signed into law.

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

• Mr. LEAHY. Today, the Senate voted on legislation that will provide a valuable tool to protect against trade secret theft. This legislation is supported by businesses from diverse sectors of our economy, including companies large and small.

In Vermont, trade secrets protect the specialized knowledge of woodworkers who have made heirloom products for generations, and cutting-edge start-ups that are shaping the future of plastics, software, and green technology. Trade secrets protect the recipes for Vermont craft brews and closely guarded customer lists for our top tourist services. Today's legislation provides an important tool to protect these innovative businesses in Vermont and across the country.

The Defend Trade Secrets Act contains a bipartisan provision I offered with Senator GRASSLEY to ensure that employers and other entities cannot bully whistleblowers or other litigants by threatening them with a lawsuit for trade secret theft. The provision protects disclosures made in confidence to law enforcement or an attorney for the purpose of reporting a suspected violation of law and disclosures made in the course of a lawsuit, provided that the disclosure is made under seal. It requires employers to provide clear notice of this protection in any non-disclosure agreements they ask individuals to sign. This commonsense public policy amendment is supported by the Project on Government Oversight and the Government Accountability Project and builds upon valuable scholarly work by Professor Peter Menell.

Good, thoughtful work was done in the Senate Judiciary Committee to craft the bill we are voting on today, which builds on earlier versions introduced in prior Congresses. It is a testament to how the Judiciary Committee can and should operate when it functions with regular order. We held a public hearing on the issue of trade secret theft in the Subcommittee on Crime and Terrorism during the 113th Congress and another hearing in the full committee this past December. Senators suggested improvements to the bill, they debated them, and they voted on the legislation.

Unfortunately, the regular order and fair consideration that was given to this legislation is being denied for one of the Senate's most important and solemn responsibilities: considering the Supreme Court nomination pending in the Senate Judiciary Committee. Americans by a 2-to-1 margin want the Senate to move forward with a full and fair process for Chief Judge Garland. The Senate today is coming together to pass trade secrets legislation, but that does nothing to absolve us from doing our jobs by considering the pending Supreme Court nominee. •

Mrs. FEINSTEIN. Mr. President, I wish to express my support for the Defend Trade Secrets Act and to explain some of the changes that were made in the Judiciary Committee to ensure the bill does not adversely impact California.

First, let me congratulate Senators HATCH and COONS on their work on this bill.

This bill will help protect vital trade secrets of American companies by providing a Federal cause of action for the theft of trade secrets. It will ensure there is access to Federal courts in these cases. During consideration of the bill in the Judiciary Committee, some members, including me, voiced concern that the injunctive relief authorized under the bill could override State law limitations that safeguard the ability of an employee to move from one job to another. This is known as employee mobility. Some States, including California, have strong public policies or laws in favor of employee mobility. These are reflected in some State court precedent or in laws that are on the books.

When this bill came before the Judiciary Committee, there was a serious concern that a Federal law without similar limits would override the law in those States and create impairments on employees' ability to move from job to job. If that were to happen, it could be a major limitation on employee mobility that does not exist today. To prevent this, the bill now includes language to preserve the law in California and elsewhere. Specifically, the bill bars an injunction "to prevent a person from entering into an employment relationship," period. In other words, relief under this bill cannot include an injunction barring a person from starting a new job. As I understand it, this