

103^D CONGRESS
2^D SESSION

S. 1866

To amend the National Security Act of 1947 to improve personnel security measures that enhance security for classified information, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 24 (legislative day, FEBRUARY 22), 1994

Mr. METZENBAUM (for himself, Mr. SIMON, and Mr. REID) introduced the following bill; which was read twice and referred to the Select Committee on Intelligence

A BILL

To amend the National Security Act of 1947 to improve personnel security measures that enhance security for classified 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Personnel Security Act
5 of 1994”.

1 **SEC. 2. AMENDMENT TO THE NATIONAL SECURITY ACT OF**
2 **1947.**

3 The National Security Act of 1947 (50 U.S.C. 401
4 et seq.) is amended by inserting at the end thereof the
5 following new title:

6 “TITLE VIII—ACCESS TO TOP SECRET
7 INFORMATION

8 “ELIGIBILITY FOR ACCESS TO TOP SECRET INFORMATION

9 “SEC. 801. (a) The President and Vice President,
10 Members of the Congress, Justices of the Supreme Court
11 and judges of other courts of the United States established
12 pursuant to Article III of the Constitution, shall, by virtue
13 of their elected or appointed positions, be entitled to access
14 to Top Secret information needed for the performance of
15 their governmental functions without regard to the other
16 provisions of this title.

17 “(b) Among employees of the United States Govern-
18 ment, access to Top Secret information shall be limited
19 to employees who—

20 “(1) have been granted access to such informa-
21 tion pursuant to this title;

22 “(2) are citizens of the United States who re-
23 quire access to such information for the performance
24 of official governmental functions; and

25 “(3) have been determined to be trustworthy
26 based upon a background investigation and appro-

1 appropriate reinvestigations and have otherwise satisfied
2 the requirements of section 802, below.

3 “(c) Access to Top Secret information by persons
4 other than those identified in subsections (a) and (b) shall
5 be permitted only in accordance with the regulations is-
6 sued by the President pursuant to section 802 below.

7 “IMPLEMENTING REGULATIONS

8 “SEC. 802. The President shall, within 180 days of
9 enactment of this title, issue regulations to implement this
10 title which shall be binding upon all departments, agen-
11 cies, and offices of the Executive branch. These regula-
12 tions shall, at a minimum provide that—

13 “(a) no employee of the United States Govern-
14 ment shall be given access to Top Secret information
15 owned, originated or possessed by United States,
16 after the effective date of this title, by any depart-
17 ment, agency, or entity of the United States Govern-
18 ment unless such person has been subject to an ap-
19 propriate background investigation and has—

20 “(1) provided consent to the investigative
21 agency responsible for conducting the security
22 investigation of such person, during the initial
23 background investigation and for such times as
24 access to such information is maintained, and
25 for 5 years thereafter, permitting access to—

1 “(A) financial records concerning the
2 subject pursuant to section 1104 of the
3 Right to Financial Privacy Act of 1978;

4 “(B) consumer reports concerning the
5 subject pursuant to section 1681b of the
6 Consumer Credit Protection Act; and

7 “(C) records maintained by commer-
8 cial entities within the United States per-
9 taining to any travel by the subject outside
10 the United States: *Provided*, that—

11 “(i) no information may be re-
12 quested by an authorized investigative
13 agency pursuant to this section for
14 any purpose other than making a se-
15 curity determination, unless such
16 agency has reasonable grounds to be-
17 lieve, based upon specific and
18 articulable facts available to it, that
19 such person may pose a threat to the
20 continued security of the information
21 to which he or she had previously had
22 access; and

23 “(ii) any information obtained by
24 an authorized investigative agency
25 pursuant to this section shall not be

1 disseminated to any other department,
2 agency, or entity for any purpose
3 other than: (A) for making a security
4 determination; or (B) for foreign
5 counterintelligence or law enforcement
6 purposes;

7 “(2) agreed, during the period of his or
8 her access, to report to the department, agency,
9 or entity granting such access in accordance
10 with applicable regulations, any travel to for-
11 eign countries which has not been authorized as
12 part of the subject’s official duties; and

13 “(3) agreed to report to the Federal Bu-
14 reau of Investigation, or to appropriate inves-
15 tigative authorities of the department, agency,
16 or entity concerned, any unauthorized contacts
17 with persons known to be foreign nationals or
18 persons representing foreign nationals, where
19 an effort to acquire classified information is
20 made by the foreign national, or where such
21 contacts appear intended for this purpose. For
22 purposes of this subsection, the term ‘unauthor-
23 ized contacts’ does not include contacts made
24 within the context of an authorized diplomatic
25 relationship. Failure by the employee to comply

1 with any of the requirements of this subsection
2 shall constitute grounds for denial or termi-
3 nation of access to the Top Secret information
4 concerned.

5 “(b) all employees granted access to Top Secret
6 information pursuant to this subsection shall also be
7 subject to—

8 “(1) additional background investigations
9 by appropriate governmental authorities during
10 the period of access at no less frequent interval
11 than every 5 years, except that any failure to
12 satisfy this requirement that is not solely attrib-
13 utable to the subject of the investigation shall
14 not result in a loss or denial of access; and

15 “(2) investigation by appropriate govern-
16 mental authority at any time during the period
17 of access to ascertain whether such persons
18 continue to meet the requirements for access;

19 “(c) access to Top Secret information by cat-
20 egories of persons who do not meet the requirements
21 of subsections (A) and (B) of this section may be
22 permitted only where the president, or officials des-
23 igned by the President for this purpose, determine
24 that such access is essential to protect or further the
25 national security interests of the United States; and

1 “(d) a single office within the Executive branch
2 shall be designated to monitor the implementation
3 and operation of this title within the Executive
4 branch. This office shall submit an annual report to
5 the President and appropriate committees of the
6 Congress, describing the operation of this title and
7 recommending needed improvements. A copy of the
8 regulations implementing this title shall be provided
9 to the Select Committee on Intelligence of the Sen-
10 ate and the Permanent Select Committee on Intel-
11 ligence of the House of Representatives thirty days
12 prior to their effective date.

13 “WAIVERS FOR INDIVIDUAL CASES

14 “SEC. 803. In extraordinary circumstances, when es-
15 sential to protect or further the national security interests
16 of the United States, the President (or officials designated
17 by the President for this purpose) may waive the provi-
18 sions of this title, or the provisions of the regulations is-
19 sued pursuant to section 802, above, in individual cases
20 involving persons who are citizens of the United States
21 or are persons admitted into the United States for perma-
22 nent residence: *Provided*, that all such waivers shall be
23 made a matter of record and reported to the office des-
24 igned pursuant to subsection 802(D), above, and shall
25 be available for review by the Select Committee on Intel-

1 lidence of the Senate and the Permanent Select Committee
2 on Intelligence of the House of Representatives.

3 “DEFINITIONS

4 “SEC. 804. For purposes of this title—

5 “(a) the term ‘national security’ refers to the
6 national defense and foreign relations of the United
7 States;

8 “(b) the phrases ‘information classified in the
9 interest of national security’ or ‘classified informa-
10 tion’ mean any information originated by or on be-
11 half of the United States Government, the unauthor-
12 ized disclosure of which would cause damage to the
13 national security, which has been marked and is con-
14 trolled pursuant to the Executive Order 12356 of
15 April 2, 1982, or successor orders, or the Atomic
16 Energy Act of 1954;

17 “(c) the term ‘Top Secret information’ means
18 information classified in the interests of national se-
19 curity, the unauthorized disclosure of which would
20 cause exceptionally grave damage to the national se-
21 curity;

22 “(d) the term ‘employee’ includes any person
23 who receives a salary or compensation of any kind
24 from the United States Government, is a contractor
25 of the United States Government, is an unpaid con-
26 sultant of the United States Government, or other-

1 wise acts for or on behalf of the United States Gov-
2 ernment, but does not include the President or Vice
3 President of the United States, Members of the Con-
4 gress of the United States, Justices of the Supreme
5 Court or judges of other federal courts established
6 pursuant to Article III of the Constitution; and

7 “(e) the term ‘authorized investigative agency’
8 means an agency authorized by law or regulation to
9 conduct investigations of persons who are proposed
10 for access to Top Secret information to ascertain
11 whether such persons satisfy the criteria for obtain-
12 ing and retaining access to such information.

13 “EFFECTIVE DATE

14 “SEC. 805. This title shall take effect 180 days after
15 the date of its enactment.”

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