## 104TH CONGRESS 2D SESSION

## H. R. 3723

To amend title 18, United States Code, to protect proprietary economic information, and for other purposes.

## IN THE HOUSE OF REPRESENTATIVES

June 26, 1996

Mr. McCollum (for himself and Mr. Schumer) introduced the following bill; which was referred to the Committee on the Judiciary

## A BILL

To amend title 18, United States Code, to protect proprietary economic 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 "Economic Espionage
- 5 Act of 1996".
- 6 SEC. 2. PROTECTION OF PROPRIETARY ECONOMIC INFOR-
- 7 **MATION.**
- 8 (a) In General.—Chapter 31 of title 18, United
- 9 States Code, is amended by adding at the end the follow-
- 10 ing:

1	3003. Frotection of proprietary economic informa-
2	tion
3	"(a) Offense.—Whoever—
4	"(1) with the intent to, or with reason to be-
5	lieve that the offense will, benefit any foreign gov-
6	ernment, foreign instrumentality, or foreign agent
7	or
8	"(2) with the intent to divert that information
9	to the use or benefit of anyone other than the owner
10	thereof, and with the intent to, or with reason to be-
11	lieve that the offense will, disadvantage any owner of
12	proprietary economic information that is related to
13	or is included in a product that is produced for or
14	placed in interstate or foreign commerce;
15	wrongfully copies or otherwise controls any economic pro-
16	prietary information, or attempts or conspires to do so
17	shall be punished as provided in subsection (b).
18	"(b) Punishment.—
19	"(1) Generally.—The punishment for an of-
20	fense under this section is—
21	"(A) in the case of an offense under sub-
22	section (a)(1), a fine under this title or impris-
23	onment for not more than 25 years, or both
24	and

1	"(B) in the case of an offense under sub-
2	section (a)(2), a fine under this title or impris-
3	onment for not more than 15 years.
4	"(2) Increased maximum fine for organi-
5	zations.—If an organization commits an offense—
6	"(A) under subsection (a)(1), the maxi-
7	mum fine, if not otherwise larger, that may be
8	imposed is \$10,000,000; and
9	"(B) under subsection (a)(2), the maxi-
10	mum fine, if not otherwise larger, that may be
11	imposed is \$5,000,000.
12	"(c) Definitions.—As used in this section—
13	"(1) the term 'foreign instrumentality' means
14	any agency, bureau, ministry, component, institu-
15	tion, association, or any legal, commercial, or busi-
16	ness organization, corporation, firm, or entity that is
17	substantially owned, controlled, sponsored, com-
18	manded, managed, or dominated by a foreign gov-
19	ernment or subdivision thereof;
20	"(2) the term 'foreign agent' means any officer,
21	employee, proxy, servant, delegate, or representative
22	of a foreign nation or government;
23	"(3) the term 'proprietary economic informa-
24	tion' means all forms and types of financial, busi-
25	ness, scientific, technical, economic, or engineering

1	information including data, plans, tools, mecha-
2	nisms, compounds, formulas, designs, prototypes,
3	processes, procedures, programs, codes, or commer-
4	cial strategies, whether tangible or intangible, and
5	whether stored, compiled, or memorialized phys-
6	ically, electronically, graphically, photographically, or
7	in writing if—
8	"(A) the owner thereof has taken reason-
9	able measures to keep such information con-
10	fidential; and
11	"(B) the information derives independent
12	economic value, actual or potential, from not
13	being generally known to, and not being readily
14	ascertainable through proper means by, the
15	public;
16	"(4) the term 'owner' means the person in
17	whom, or United States Government component, de-
18	partment, or agency in which, rightful legal, bene-
19	ficial, or equitable title to, or license in, proprietary
20	economic information is reposed; and
21	"(5) the term 'United States person' means—
22	"(A) in the case of a natural person, a
23	United States citizen or permanent resident
24	alien; and

1	"(B) in the case of an organization, an en-
2	tity substantially owned or controlled by United
3	States citizens or permanent resident aliens, or
4	incorporated in the United States.
5	"(d) Criminal Forfeiture.—
6	"(1) Notwithstanding any other provision of
7	State law, any person convicted of a violation under
8	this chapter shall forfeit to the United States—
9	"(A) any property constituting, or derived
10	from, any proceeds the person obtained, directly
11	or indirectly, as the result of such violation; and
12	"(B) any of the person's property used, or
13	intended to be used, in any manner or part, to
14	commit or facilitate the commission of such vio-
15	lation, if the court in its discretion so deter-
16	mines, taking into consideration the nature,
17	scope, and proportionality of the use of the
18	property in the offense.
19	"(2) The court, in imposing sentence on such
20	person, shall order, in addition to any other sentence
21	imposed pursuant to this section, that the person
22	forfeit to the United States all property described in
23	this section.
24	"(3) Property subject to forfeiture under this
25	section, any seizure and disposition thereof, and any

- 1 administrative or judicial proceeding in relation
- 2 thereto, shall be governed by the provisions of sec-
- 3 tion 413 of the Comprehensive Drug Abuse Preven-
- 4 tion and Control Act of 1970 (21 U.S.C. 853), ex-
- 5 cept for subsection 413(d) which shall not apply to
- 6 forfeitures under this section.
- 7 "(e) Territorial Application.—
- 8 "(1) This section applies to conduct occurring
- 9 within the United States.
- 10 "(2) This section also applies to conduct occur-
- ring outside the United States if—
- 12 "(A) the offender is a United States per-
- son; or
- 14 "(B) an act in furtherance of the offense
- was committed in the United States.
- 16 "(f) Nonpreemption of Other Remedies.—This
- 17 section shall not be construed to preempt or displace any
- 18 other remedies, whether civil or criminal, provided by
- 19 United States Federal, State, commonwealth, possession,
- 20 or territory law for the misappropriation of proprietary
- 21 economic information.
- 22 "(g) Orders To Preserve Confidentiality.—In
- 23 any prosecution or other proceeding under this section, the
- 24 court shall enter such orders and take such other action
- 25 as may be necessary and appropriate to preserve the con-

- 1 fidentiality of proprietary economic information, consist-
- 2 ent with the requirements of the Federal Rules of Crimi-
- 3 nal and Civil Procedure, the Federal Rules of Evidence,
- 4 and all other applicable laws. An interlocutory appeal by
- 5 the United States shall lie from a decision or order of a
- 6 district court authorizing or directing the disclosure of
- 7 proprietary economic information.
- 8 "(h) Exceptions to Prohibition.—
- 9 "(1) This section does not prohibit and shall
- 10 not impair any otherwise lawful activity conducted
- by an agency or instrumentality of the United
- 12 States, a State, or a political subdivision of a State.
- "(2) This section does not prohibit the report-
- ing of any suspected criminal activity to any law en-
- 15 forcement agency or instrumentality of the United
- 16 States, a State, or a political subdivision of a State,
- to any intelligence agency of the United States, or
- to Congress.".
- 19 SEC. 3. WIRE AND ELECTRONIC COMMUNICATIONS INTER-
- 20 CEPTION AND INTERCEPTION OF ORAL COM-
- 21 MUNICATIONS.
- Section 2516(1)(c) of title 18, United States Code,
- 23 is amended by inserting "section 669 (relating to economic
- 24 espionage)," after "(bribery in sporting contests),".

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