



(U) **The Economic Espionage Act of 1996**

(U) In October 1996, the Economic Espionage Act was signed into law. The purpose of the new statute was to provide new tools, weapons, and sanctions to use against industrial espionage. The main provisions of the new legislation are as follows:

(U) **Scope.** The Economic Espionage Act outlaws economic espionage where:

1. (U) The conduct occurs in the U.S.
2. (U) The conduct occurs outside the U.S. and either:
 - a. (U) An Act in furtherance of the offense was committed in the U.S.
 - b. (U) The offender is a U.S. person or organization.

(U) **Confidentiality.** The court must issue orders necessary to protect the confidentiality of trade secrets consistent with Federal Rules of Procedure and the Constitution. Also, the prosecution is permitted to immediately appeal any order authorizing or directing disclosure of a trade secret.

(U) **Criminal Penalties.** Imposes up to a:

1. (U) 15 year prison term and/or maximum \$500,000.00 fine on any person and a \$10 million fine on any organization who steals or destroys a trade secret of value with intent to benefit any foreign power.
2. (U) 10 year prison term and/or a maximum \$250,000.00 fine on any person and a \$5 million fine on any organization who knowingly steals or destroys any trade secret with intent to:
 - a. (U) Economically benefit anyone other than the owner; and
 - b. (U) Injure the owner of the trade secret (Title 18 USC 1832).

(U) **Forfeiture.** Requires the forfeiture to the U.S. Government of proceeds or property derived from economic espionage and may require forfeiture of property used to commit economic espionage. The victim can apply to the U.S. for restitution.

(U) **Civil Relief.** The Government can apply for injunctive relief to prevent trade secret crimes.

(U) Definition of Terms

(U) "Owner," with respect to trade secret, means the person or entity in whom or in which rightful legal or equitable title to, or license in, the trade secret is reposed.

(U) "Trade Secret" means all forms and types of financial, business, scientific, technical, engineering or economic information, including patterns, plans, compilations, programs devices, procedures, methods, techniques, codes, processes, or programs, whether or how stored, compiled memorialized physically, electronically, graphically, photographically, or in writing if –

1. (U) The owner thereof has taken reasonable measures to keep such information secret; and
2. (U) The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public.

(U) **Corporate Responsibility.** To take reasonable measures to keep trade secret information secret.

(U) Economic Espionage Act of 1996 Text**(U) 1831. Economic Espionage**

(a) (U) IN GENERAL.-Whoever, intending or knowing that the offense will benefit any foreign government, foreign instrumentality, or foreign agent, knowingly –

- (1) (U) steals, or without authorization appropriates, takes, carries away, or conceals, or by fraud, artifice, or deception obtains a trade secret;
- (2) (U) without authorization copies, duplicates, sketches, draws, photographs, downloads, uploads, alters, destroys, photocopies, replicates, transmits, delivers, sends, mails, communicates, or conveys a trade secret;
- (3) (U) receives, buys, or possesses a trade secret, knowing the same to have been stolen or appropriated, obtained, or converted without authorization;
- (4) (U) attempts to commit any offense described in any of paragraphs (1) through (3); or
- (5) (U) conspires with one or more others persons to commit any offense described in any of paragraphs (1) through (4), and one or more of such persons do any act to effect the object of the conspiracy,

shall, except as provided in subsection (b), be fined not more than \$500,000 or imprisoned not more than 15 years, or both.

(b) (U) ORGANIZATIONS.-Any organization that commits any offense described in subsection (a) shall be fined not more than \$10,000,000.

(U) 1832. Theft of trade secrets

(a) (U) Whoever, with intent to convert a trade secret, that is related to or included in a product that is produced for or placed in interstate or foreign commerce, to the economic benefit of anyone other than the owner thereof, and intending or knowing that the offense will, injure any owner of that trade secret, knowingly –

- (1) (U) steals, or without authorization appropriates, takes, carries away, or conceals, or by fraud, artifice, or deception obtains a trade secret;



- (2) (U) without authorization copies, duplicates, sketches, draws, photographs, downloads, uploads, alters, destroys, photocopies, replicates, transmits, delivers, sends, mails, communicates, or conveys such information;
- (3) (U) receives, buys, or possesses such information, knowing the same to have been stolen or appropriated, obtained, or converted without authorization;
- (4) (U) attempts to commit any offense described in any of paragraphs (1) through (3); or
- (5) (U) conspires with one or more other persons to commit any offense described in any of paragraphs (1) through (3), and one or more of such persons do any act to effect the object of the conspiracy,

shall, except as provided in subsection (b), be fined under this title or imprisoned not more than 10 years, or both.

(b) (U) Any organization that commits any offense described in subsection (a) shall be fined not more than \$5,000,000.

(U) 1833. *Exceptions to prohibitions*

(U) This chapter does not prohibit—

- (1) (U) any otherwise lawful activity conducted by a government entity of the United States, a State, or a political subdivision of a State; or
- (2) (U) the reporting of a suspected violation of law to any government 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.

(U) 1834. *Criminal forfeiture*

(a) (U) The court, in imposing sentence on a person for a violation of this chapter, shall order, in addition to any other sentence imposed, that the person forfeit to the United States—

- (1) (U) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation; and
- (2) (U) any of the person's property used, or intended to be used, in any manner or part, to commit or facilitate the commission of such violation, if the court in its discretion so determines, taking into consideration the nature, scope, and proportionality of the use of the property in the offense.

(b) (U) Property subject to forfeiture under this section, any seizure and disposition thereof, and any administrative or judicial proceedings in relation thereto, shall be governed by section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), except for subsections (d) and (j) of such section, which shall not apply to forfeitures under this section.

(U) 1835. *Orders to preserve confidentiality*

(U) In any prosecution or other proceeding under this chapter, the court shall enter such orders and take such other action as may be necessary and appropriate to preserve the confidentiality of trade secrets, consistent with the requirements of the Federal Rules of Criminal and Civil Procedure, the federal rules of Evidence, and all other applicable laws. An interlocutory appeal by the United States shall lie from a



decision or order of a district court authorizing or directing the disclosure of any trade secret.

(U) **1836. *Civil proceedings to enjoin violations***

(a) (U) The Attorney general may, in a civil action, obtain appropriate injunctive relief against any violation of this section.

(b) (U) The district courts of the United States shall have exclusive original jurisdiction of civil actions under this subsection.

(U) **1837. *Applicability to conduct outside the United States***

(U) This chapter also applies to conduct occurring outside the United States if-

- (1) (U) the offender is a natural person who is a citizen or permanent resident alien of the United States, or an organization organized under the laws of the United States or a State or political subdivision thereof; or
- (2) (U) an act in furtherance of the offense was committed in the United States.

(U) **1838. *Construction with other laws***

(U) This chapter shall not be construed to preempt or displace any other remedies, whether civil or criminal, provided by United States Federal, State, commonwealth, possession, or territory law for the misappropriation of a trade secret, or to affect the otherwise lawful, disclosure of information by any Government employee under section 552 of title 5 (commonly known as the Freedom of Information Act).

(U) **1839. *Definitions***

(U) As used in this chapter –

(1) (U) the term ‘**foreign instrumentality**’ means any agency, bureau, ministry, component, institution, association, or any legal, commercial, or business organization, corporation, firm, or entity that is substantially owned, controlled, sponsored, commanded, managed, or dominated by a foreign government;

(2) (U) the term ‘**foreign agent**’ means any officer, employee, proxy, servant, delegate, or representative of a foreign government;

(3) (U) the term ‘**trade secret**’ means all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically or in writing if –

(A) (U) the owner thereof has taken reasonable measures to keep such information secret; and

(B) (U) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public; and

(4) (U) the term “**owner,**” with respect to a trade secret, means the person or entity in which or in which rightful legal or equitable title to, or license in, the trade secret is reposed.” *