

## Calendar No. 255

112<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION**S. 678**

To increase the penalties for economic espionage.

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## IN THE SENATE OF THE UNITED STATES

MARCH 30, 2011

Mr. KOHL (for himself, Mr. WHITEHOUSE, Mr. COONS, Mr. BLUMENTHAL, Mr. GRAHAM, Mr. KYL, Mr. COBURN, Mrs. FEINSTEIN, and Ms. KLOBUCHAR) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

DECEMBER 8, 2011

Reported by Mr. LEAHY, with an amendment

[Omit the part struck through and insert the part printed in italic]

**A BILL**

To increase the penalties for economic espionage.

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 Penalty Enhancement Act”.

1 **SEC. 2. AMENDMENT TO TITLE 18.**

2 Section 1831(a) of title 18, United States Code, is  
3 amended by striking “15 years” and inserting “20 years”.

4 **SEC. 3. DIRECTIVE TO SENTENCING COMMISSION.**

5 Pursuant to its authority under section 994(p) of title  
6 28, United States Code, the United States Sentencing  
7 Commission shall—

8 (1) review its guidelines and policy relating to  
9 a two-level enhancement for economic espionage; and

10 (2) as a part of such review consider amending  
11 such guidelines to—

12 (A) apply the two-level enhancement to the  
13 simple misappropriation of a trade secret;

14 (B) apply an additional two-level enhance-  
15 ment if the defendant transmits or attempts to  
16 transmit the stolen trade secret outside of the  
17 United States and an additional three-level en-  
18 hancement if the defendant instead commits  
19 economic espionage (i.e., he/she knew or in-  
20 tended that the offense would benefit a foreign  
21 government, foreign instrumentality, or foreign  
22 agent); and

23 (C) provide when a defendant transmits  
24 trade secrets outside of the United States or  
25 commits economic espionage, that the defend-  
26 ant should face a minimum offense level.

1 **SEC. 3. DIRECTIVE TO THE UNITED STATES SENTENCING**  
2 **COMMISSION.**

3 (a) *IN GENERAL.*—Pursuant to its authority under  
4 section 994(p) of title 28, United States Code, the United  
5 States Sentencing Commission shall review and, if appro-  
6 priate, amend the Federal sentencing guidelines and policy  
7 statements applicable to persons convicted of offenses relat-  
8 ing to the transmission or attempted transmission of a sto-  
9 len trade secret outside of the United States or economic  
10 espionage, in order to reflect the intent of Congress that pen-  
11 alties for such offenses under the Federal sentencing guide-  
12 lines and policy statements appropriately, reflect the seri-  
13 ousness of these offenses, account for the potential and ac-  
14 tual harm caused by these offenses, and provide adequate  
15 deterrence against such offenses.

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

18 (1) *consider the extent to which the Federal sen-*  
19 *tencing guidelines and policy statements appro-*  
20 *priately account for the simple misappropriation of a*  
21 *trade secret, including the sufficiency of the existing*  
22 *enhancement for these offenses to address the serious-*  
23 *ness of this conduct;*

24 (2) *consider additional enhancements in the Fed-*  
25 *eral sentencing guidelines and policy statements to*  
26 *account for—*

1           (A) *the transmission or attempted trans-*  
2           *mission of a stolen trade secret outside of the*  
3           *United States; and*

4           (B) *the transmission or attempted trans-*  
5           *mission of a stolen trade secret outside of the*  
6           *United States that is committed or attempted to*  
7           *be committed for the benefit of a foreign govern-*  
8           *ment, foreign instrumentality, or foreign agent;*

9           (3) *consider establishing a minimum offense level*  
10          *under the Federal sentencing guidelines and policy*  
11          *statements for offenses relating to the transmission or*  
12          *attempted transmission of a stolen trade secret outside*  
13          *of the United States;*

14          (4) *ensure the Federal sentencing guidelines and*  
15          *policy statements reflect the seriousness nature of*  
16          *these offenses and the need to deter such conduct;*

17          (5) *ensure reasonable consistency with other rel-*  
18          *evant directives, Federal sentencing guidelines and*  
19          *policy statements, and any Federal statutes;*

20          (6) *make any necessary conforming changes to*  
21          *the Federal sentencing guidelines and policy state-*  
22          *ments; and*

23          (7) *ensure that the Federal sentencing guidelines*  
24          *adequately meet the purposes of sentencing as set*

1       *forth in section 3553(a)(2) of title 18, United States*  
2       *Code.*

3       (c) *CONSULTATION.*—*In carrying out the review re-*  
4       *quired under this section, the Commission shall consult*  
5       *with individuals or groups representing owners of trade se-*  
6       *crets, law enforcement, victims of economic espionage of-*  
7       *fenses, the United States Department of State, the United*  
8       *States Department of Homeland Security, and the United*  
9       *States Trade Representative.*

10       (d) *REVIEW.*—*Not later than 180 days after the date*  
11       *of enactment of this Act, the Commission shall—*

12               (1) *complete its consideration and review under*  
13       *this section; and*

14               (2) *if it chooses not to adopt any of the specific*  
15       *recommendations made under this section, issue a re-*  
16       *port explaining why it has not adopted the rec-*  
17       *ommendations.*

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