

FOREIGN AND ECONOMIC ESPIONAGE PENALTY ENHANCEMENT
ACT OF 2012 -- (House of Representatives - December 30, 2012)

Mr. SMITH of Texas. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 6029) to amend title 18, United States Code, to provide for increased penalties for foreign and economic espionage, and for other purposes.

The Clerk read the title of the bill.

The text of the Senate amendment is as follows:

Senate amendment:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Foreign and Economic Espionage Penalty Enhancement Act of 2012”.

SEC. 2. PROTECTING U.S. BUSINESSES FROM FOREIGN ESPIONAGE.

(a)For Offenses Committed by Individuals.--Section 1831(a) of title 18, United States Code, is amended, in the matter after paragraph (5), by striking “not more than \$500,000” and inserting “not more than \$5,000,000”.

(b)For Offenses Committed by Organizations.--Section 1831(b) of such title is amended

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by striking “not more than \$10,000,000” and inserting “not more than the greater of \$10,000,000 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”.

SEC. 3. REVIEW BY THE UNITED STATES SENTENCING COMMISSION.

(a)In General.--Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall review and, if

appropriate, amend the Federal sentencing guidelines and policy statements applicable to persons convicted of offenses relating to the transmission or attempted transmission of a stolen trade secret outside of the United States or economic espionage, in order to reflect the intent of Congress that penalties for such offenses under the Federal sentencing guidelines and policy statements appropriately, reflect the seriousness of these offenses, account for the potential and actual harm caused by these offenses, and provide adequate deterrence against such offenses.

(b)Requirements.--In carrying out this section, the United States Sentencing Commission shall--

(1) consider the extent to which the Federal sentencing guidelines and policy statements appropriately account for the simple misappropriation of a trade secret, including the sufficiency of the existing enhancement for these offenses to address the seriousness of this conduct;

(2) consider whether additional enhancements in the Federal sentencing guidelines and policy statements are appropriate to account for--

(A) the transmission or attempted transmission of a stolen trade secret outside of the United States; and

(B) the transmission or attempted transmission of a stolen trade secret outside of the United States that is committed or attempted to be committed for the benefit of a foreign government, foreign instrumentality, or foreign agent;

(3) ensure the Federal sentencing guidelines and policy statements reflect the seriousness of these offenses and the need to deter such conduct;

(4) ensure reasonable consistency with other relevant directives, Federal sentencing guidelines and policy statements, and related Federal statutes;

(5) make any necessary conforming changes to the Federal sentencing guidelines and policy statements; and

(6) ensure that the Federal sentencing guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

(c)Consultation.--In carrying out the review required under this section, the Commission shall consult with individuals or groups representing law enforcement, owners of trade secrets, victims of economic espionage offenses, the United States Department of Justice, the United States Department of Homeland Security, the United States Department of State and the Office of the United States Trade Representative.

(d)Review.--Not later than 180 days after the date of enactment of this Act, the Commission shall complete its consideration and review under this section.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Texas (Mr. Smith) and the gentleman from Virginia (Mr. Scott) each will control 20 minutes.

The Chair recognizes the gentleman from Texas.

GENERAL LEAVE

Mr. SMITH of Texas. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous materials on the matter currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. SMITH of Texas. Mr. Speaker, I yield myself as much time as I may consume.

First of all, I want to thank Judiciary Committee Chairman-elect Bob Goodlatte, Ranking Member John Conyers, and IP Subcommittee Ranking Member Mel Watt for their work on this bill.

Mr. Speaker, the Foreign and Economic Espionage Penalty Enhancement Act of 2012 deters and pushes criminals who target U.S. economic and security interests on behalf of foreign interests.

In a dynamic and globally connected information economy, the protection of intangible assets is vital, not only to the success of individual enterprises, but also to the future of entire industries.

In recent years, cybercriminals have shifted from the theft of personal information such as credit cards and Social Security numbers to the theft of corporate intellectual capital.

Our intelligence community has warned us that foreign interests place a high priority on acquiring sensitive U.S. economic information and technologies. In the U.S., the Economic Espionage Act serves as a primary tool the Federal Government uses to protect secret, valuable commercial information from theft.

Our intelligence community declares that there is a “significant and growing threat to our Nation’s prosperity and security” posed by criminals both inside and outside our borders who commit espionage. Congress should also recognize and confront this increasing threat by adjusting our penalties so that we can enhance deterrents and provide appropriate punishments for those criminals who knowingly target our companies for espionage.

I urge my colleagues to support H.R. 6029 as it was amended by the Senate. The original bill was developed in a bipartisan manner and was unanimously reported by both the Judiciary Committee and this House. This is a commonsense and much-needed measure that deserves our full support.

Mr. Speaker, I reserve the balance of my time.

• [Begin Insert]

I want to thank Judiciary Committee Chairman-Elect BOB GOODLATTE, Ranking Member JOHN CONYERS and IP Subcommittee Ranking Member MEL WATT for their work on this bill. It has been a privilege to serve with them during my tenure as Chairman and Ranking Member of the Judiciary Committee.

I look forward to continuing to explore areas where we can work together in the 113th Congress.

Mr. Speaker, the Foreign and Economic Espionage Penalty Enhancement Act of 2012 deters and punishes criminals who target U.S. economic and security interests on behalf of foreign interests.

In a dynamic and globally-connected information economy, the protection of intangible assets is vital not only to the success of individual enterprises but also to the future of entire industries.

A global study released last year by McAfee, the world’s largest security technology company, and Science Applications International Corporation, concluded that corporate trade secrets and other sensitive intellectual capital are the newest “currency” of cybercriminals.

In recent years, cybercriminals have shifted from the theft of personal information such as credit cards and social security numbers to the theft of corporate intellectual capital.

Our intelligence community has warned us that foreign interests place a high priority on acquiring sensitive U.S. economic information and technologies.

We know that some individuals intentionally and persistently seek out U.S. information and trade secrets. The most recent report from the Office of the National Counterintelligence Executive specifically cited Chinese as “the world’s most active and persistent perpetrators of economic espionage.”

The report also described Russia’s intelligence services as responsible for “conducting a range of activities to collect economic information and technology from US targets.”

In the U.S., the Economic Espionage Act (EEA) serves as the primary tool the federal government uses to protect secret, valuable commercial information from theft.

On December 18, the House passed S. 3642, an important bill that clarifies the scope of protectable trade secrets.

Since enacting the EEA in 1996, Congress has not adjusted its penalties to take into account the increasing importance of intellectual property to the economic and national security of the U.S.

H.R. 6029, which the House unanimously passed this summer, increases the maximum penalties for an individual convicted of committing espionage on behalf of a foreign entity.

The bill the House passed increases the maximum penalty from 15 to 20 years imprisonment and increases the maximum fine from \$500,000 to \$5 million.

Several Senators wanted to give further consideration to the proposed statutory maximum increase from 15 to 20 years imprisonment.

The Senate amended H.R. 6029 by deleting this single provision. They then passed it unanimously on December 19, so that we may act again and send this bill directly to the desk of the President.

I thank Senators LEE and PAUL along with Senators LEAHY, KOHL and GRASSLEY for helping to resolve concerns and advancing this measure.

Our Intelligence community declares that there is a “significant and growing threat to [our] nation’s prosperity and security” posed by criminals--both inside and outside our borders--who commit espionage.

Congress should also recognize and confront this increasing threat by adjusting our penalties so that we may enhance deterrence and provide appropriate punishments for those criminals who knowingly target our companies for espionage.

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I urge my colleagues to support H.R. 6029 as it was amended by the Senate. The original bill was developed in a bipartisan manner and was unanimously reported by both the Judiciary Committee and this House. This is a common sense and much-needed measure that deserves our full support.

• [End Insert]

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself such time as I may consume

Mr. Speaker, I rise in support of the Senate amendment to H.R. 6029, the Foreign and Economic Espionage Penalty Enhancement Act of 2012. The House passed this legislation by voice vote in August, and the Senate recently passed a bill with amendment by unanimous consent.

Mr. Speaker, H.R. 6029 will increase the maximum fines that may be imposed for engaging in the Federal offense of economic espionage. The crime of economic espionage consists of knowingly misappropriating trade secrets with the intent or knowledge that the offense will benefit a foreign government.

As reported by the U.S. intellectual property enforcement coordinator, economic espionage is a serious threat to American businesses by foreign governments.

[Time: 18:00]

Economic espionage represents a significant cost to victim companies and threatens the economic security of the United States. This crime inflicts costs on companies, such as the loss of unique intellectual property, the loss of expenditures related to research and development, and the loss of future revenues and profits. Many companies are unaware when their sensitive data is pilfered, and those that find out are often reluctant to report the losses, fearing potential damage to their reputations with investors, customers, and employees.

The pace of the foreign collection of economic information and industrial espionage activities against major United States corporations is accelerating. For

example, in fiscal year 2011, the Justice Department and the FBI saw an increase of 29 percent in economic espionage and trade secret theft investigations compared to those in fiscal year 2010.

Details related to recent Federal investigations and prosecutions suggest that economic espionage and trade secret theft on behalf of companies located in China is an emerging trend. For example, at least 34 companies were reportedly victimized by a set of attacks originating in China in 2010. In the attacks, computer viruses were spread via emails to corporate employees, allowing the attackers to have access to emails and sensitive documents.

Foreign hackers constantly target U.S. companies in such ways in order to get every piece of competitive intelligence information they can. We simply cannot allow this to continue to happen. In response to this growing threat, in her 2011 annual report, the U.S. Intellectual Property Coordinator called upon Congress to increase the penalties for economic espionage, and this bill is consistent with that recommendation.

I would like to commend Members on both sides of the aisle for their work on this bill, particularly the gentleman from Texas, the chair of the committee, Mr. Smith; the ranking member, the gentleman from Michigan (Mr. Conyers); the incoming chair of the Judiciary Committee, my colleague from Virginia (Mr. Goodlatte); and the gentleman from North Carolina (Mr. Watt), who all worked very diligently on this bill. I also want to recognize the leadership of Senator Leahy.

I urge my colleagues to support the Senate amendment to H.R. 6029, and I yield back the balance of my time.

Mr. SMITH of Texas. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. Smith) that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 6029.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. SCOTT of Virginia. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

The point of no quorum is considered withdrawn.