

## Introduction of the Economic Espionage Penalty Enhancement Act (S.678)

8-10 minutes

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### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. KOHL (for himself, Mr. Whitehouse, and Mr. Coons):

S. 678. A bill to increase the penalties for economic espionage; to the Committee on the Judiciary.

Mr. KOHL. Mr. President, the ability of American companies to out innovate and better compete with their global competitors is more important today than ever. Yet, the FBI estimates that U.S. companies lose billions of dollars each year to criminals who steal their trade secrets--their innovative ideas, formulas, designs and other proprietary information. For example, last year, a Chinese national working for an American automobile manufacturer was convicted of stealing trade secrets for a Chinese competitor. His actions were estimated to cost the American company between \$50 and \$100 million.

That is why I rise today with Senators Whitehouse and Coons to introduce the Economic Espionage Penalty Enhancement Act of 2011. This bill is simple and straightforward--it increases the maximum penalties for stealing a trade secret to benefit a foreign company. The measures in this bill were recommended to Congress by the U.S. Intellectual Property Enforcement Coordinator, in conjunction with the Departments of Commerce, Homeland Security, Justice and State, and the U.S. Trade Representative. The Economic Espionage Act Penalty Enhancement Act, while a modest bill, is intended to be a starting point for a larger discussion about the implementation of the Economic Espionage Act, EEA, and whether additional updates and improvements are needed in light of the global economy and advances in technology.

In 1996, Congress enacted the EEA, making it a federal crime to steal a trade secret. Nearly fifteen years later, trade secret theft and economic espionage continue to pose a threat to U.S. companies to the tune of billions of dollars a year. As we reexamine the law, we will be looking at how we can help prosecutors bring more of these criminals to justice and companies better protect their trade secrets. Among the issues we will look at are whether additional protections are needed for trade secrets as part of EEA prosecutions, whether whistleblower protections should be added, and whether we need a federal civil private right of action.

Businesses spend every resource at their disposal to develop proprietary economic information including their customer lists, pricing schedules, business agreements, and manufacturing processes, to name a few. This information is literally a business's lifeblood. Stealing it can be the death knell for a company. The chief executive of GM recently said that industrial espionage is a major threat to the company and that he worries about it ``every day.'' But these thefts

have a much greater impact beyond the American company that falls victim to an economic spy. The economic strength, competitiveness, and security of our country rely upon the ability of industry to compete without unfair interference from foreign governments and from their own domestic competitors. Without freedom from economic sabotage, our companies lose their hard-earned advantages and their competitive edge.

This problem is not new, but it has grown and evolved in the fifteen years since the Economic Espionage Act became law. U.S. corporations face intense competition at home and abroad. As much as 80 percent of the assets of today's companies are intangible trade secrets. They must be able to protect their trade secrets to remain competitive and keep our economy strong. Advances in technology make the protection of trade secrets more difficult and more critical than ever. Trade secrets can simply be downloaded from a company's computer, uploaded to the Internet, and transferred anywhere in the world in a matter of minutes. Within a matter of days, a U.S. corporation can lose complete control over its trade secrets. Unfortunately, we have many examples of the risk and harm posed by economic espionage. In 2009, a Chinese-born engineer who had been employed by a leading aerospace company was convicted of economic espionage and sentenced to fifteen years in prison for collecting sensitive information about the U.S. space shuttle that he intended to share with the Chinese government. Prior to his sentencing, the district court judge said that although we do not know how much information he shared with China, we do know that he hurt not only his former employer but also the national security of the United States.

Domestic economic espionage, known as industrial espionage, can be just as threatening to American companies. For example, just this month a former computer programmer for a Wall Street bank was sentenced to eight years in prison for stealing secret code used in the bank's valuable high-frequency trading system. The trading system earned the bank \$300 million in 2009 alone. He took a job at a startup company that was planning to directly compete with the Wall Street bank, and gave that company the stolen code.

In my home State of Wisconsin a disgruntled employee of a company that manufactures aftermarket airplane parts was prosecuted under the economic espionage statute and sentenced to thirty months in prison for attempting to sell trade secrets to competitors. The trade secret--details and measurements of particular airplane parts--took years and hundreds of thousands of dollars for the manufacturer to create, test and gain Federal Aviation Administration approval. Fortunately, the perpetrator was caught before he sold the trade secrets, but had he been successful the manufacturer would likely have been forced out of business.

The examples above illustrate the seriousness of these crimes. The legislation that we introduce today will increase the maximum sentence for economic espionage from 15 years to 20 years and to direct the Sentencing Commission to consider increasing the penalty range for theft of trade secrets and economic espionage. This is a first step in our efforts to do more to stem the flow of valuable business information out of our country. We must definitively punish anyone who steals information from American companies. Over the coming months, this measure will provide a framework for our discussions about how we can do more to solve this problem. I look forward to working with my colleagues on this critical problem.

Mr. President, I ask unanimous consent that the text of the bill be printed in the Record.

There being no objection, the text of the bill was ordered to be printed in the Record, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ``Economic Espionage Penalty Enhancement Act''.

SEC. 2. AMENDMENT TO TITLE 18.

Section 1831(a) of title 18, United States Code, is amended by striking ``15 years'' and inserting ``20 years''.

SEC. 3. DIRECTIVE TO SENTENCING COMMISSION.

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

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

(2) as a part of such review consider amending such guidelines to--

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

(B) apply an additional two-level enhancement if the defendant transmits or attempts to transmit the stolen trade secret outside of the United States and an additional three-level enhancement if the defendant instead commits economic espionage (i.e., he/she knew or intended that the offense would benefit a foreign government, foreign instrumentality, or foreign agent); and

(C) provide when a defendant transmits trade secrets outside of the United States or commits economic espionage, that the defendant should face a minimum offense level.

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