

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
First Regular Session

HOUSE BILL No. 1093



Introduced by Representative HORACIO P. SUANSING, JR.

AN ACT
DEFINING THE CRIME OF ECONOMIC ESPIONAGE AND PROVIDING
PENALTIES THEREFOR

EXPLANATORY NOTE

All economic agents, from regular consumers to multinational corporations, act upon incentives to participate in commercial exchange. Incentives are vital to the functioning of all markets; without sizeable incentives, trade between parties would result in suboptimal results, if they even transpire at all.

Specifically, for all commercial establishments, the development of proprietary economic information (i.e. the development of physical or electronic business, financial, commercial or technical data, mechanisms, programs, strategies, etc.) is a byproduct of considerable incentives within a fully-functional, competitive market to improve establishments' physical and/or technological machineries in order to remain competitive. For agents within these establishments, allocating a significant amount of resources towards the development of proprietary economic information and data would then rest on the projected benefits and costs of doing such action within the conditions or environment in which it is to be done.

Unfortunately, as it stands today, the environment in which our local commercial establishments function is far from being congenial or conducive to the development of proprietary economic information because, within our legal framework, there is a lack of formidable legal safeguards against its theft, misappropriation and wrongful use. Additionally, given recent developments in technology, it has become more challenging for our local businesses to acquire and implement their own institutional safeguards against more sophisticated methods of cybertheft, thus making them more vulnerable against agents who aspire to expropriate or steal information from their establishments. Such conditions have already immensely diminished incentives for our local firms to allocate resources towards research, improving their respective machineries/technologies and adopting more modern ways of conducting commercial activities. This has had an adverse impact on our domestic economic markets, both in the short- and the long-run, and has impeded the acceleration of research and development in our country.


It is therefore important that this Congress enacts legal protections to safeguard against economic espionage and against the theft, misappropriation and wrongful use of proprietary economic information from both domestic agents and foreign governments and their agents or instrumentalities, as these can cost our economy millions of pesos each year and diminish incentives to modernize Philippine commerce. By imposing criminal penalties against the

theft, wrongful destruction or alteration, misappropriation and conversion by agents (both domestic and foreign, or their instrumentalities) of proprietary economic information, this Congress can deter these actions and act upon its duty to facilitate local commercial exchange free of discord, thereby preserving the competitiveness of critical segments of Philippine trade and industry.

This measure intends to advance the development and lawful use of proprietary economic information in the country by protecting such information from theft, wrongful destruction, alteration, misappropriation and conversion by:

1. Criminalizing the misappropriation of proprietary economic information (including conspiracy to misappropriate and the subsequent acquisition of such) with the knowledge or intent that the theft will benefit a foreign power or will injure the owner of the economic information;
2. Requiring criminal forfeiture of any proceeds of the crime and property derived from proceeds of the crime, and any property used, or intended to be used, in commission of the crime;
3. Providing extra-territorial jurisdiction; and
4. Preserving the confidentiality of proprietary economic information during court trial, subject to certain provisions of law.

To protect the competitiveness of our domestic markets and to develop an environment conducive to research and development, the immediate approval of this bill is earnestly sought.¹


HORACIO P. SUANSING, JR.
2nd District of Sultan Kudarat

¹ This bill was originally filed by Senator Miriam Defensor Santiago during the 13th Congress and the 16th Congress.

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Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

SECTION 1. *Short Title.* – This Act may be cited as the “Economic Espionage and Protection of Proprietary Information Act.”

SECTION 2. *Statement of Policy.* – It is hereby declared the policy of the State to prevent economic espionage and further the development and lawful use of Philippine proprietary economic information.

SECTION 3. *Definition of Terms.* – as used in this Act,

- (A) “Foreign corporation, institution, or instrumentality” – any corporation, agency, component, institution, association, instrumentality, as well as any legal, commercial or business entity that is substantially owned, controlled, sponsored, commanded, managed, patronized, dominated or chartered by a foreign government or subdivision of a foreign government.
- (B) “Foreign agent” – any officer, employee, proxy, servant, delegate or representative of a foreign nation or government.
- (C) “Person” – a natural person, corporation, agency, association, institution or any other legal, commercial or business entity.
- (D) “Proprietary economic information” – all forms and types of financial, business, scientific, technical, economic or engineering information, including, but not limited to, data, plans, tools, mechanisms, compounds, formulas, designs, prototype, processes, procedures, programs, codes or commercial strategies, whether tangible or intangible and whether stored, compiled, or memorialized physically, electronically, graphically, photographically or in writing provided that the following occur:
 - (1) The owner thereof has taken reasonable measure to keep such information confidential;

- (2) The information is not available generally to, or accessible by, the public;
 - (3) The information is not a matter of public concern.
- (E) “Owner” – any Filipino person or any Philippine Government compound, department or agency in which rightful legal, beneficial or equitable title or license for proprietary economic information reposes.
- (F) “Filipino person” –
 - (1) In the case of a natural person, a Philippine citizen or a permanent resident alien;
 - (2) In the case of an artificial person, a Philippine Government or by Filipino citizens or permanent resident aliens, or persons incorporated under Philippine laws.
- (G) “Economic espionage” is committed by any person who:
 - (1) Steals, wrongfully appropriates, takes or conceals, or by fraud, artifice or deception obtains proprietary economic information;
 - (2) Wrongfully copies, duplicates, replicates, photocopies, draws, photographs, downloads, uploads, alters, destroys, sends, transmits, communicates, delivers or conveys proprietary economic information;
 - (3) Being entrusted with, or having lawful possession, control of or access to proprietary economic information and subsequently wrongfully copies, duplicates, replicates, photocopies, draws, photographs, downloads, uploads, alters, destroys, sends, transmits, communicates, delivers or conveys the proprietary economic information;
 - (4) Receives, acquires or possesses proprietary economic information, knowing the same to have been stolen or wrongfully appropriated, obtained, or converted;
 - (5) Attempts to commit any offense described in the preceding subparagraphs (1), (2), (3) or (4); or
 - (6) Conspires with one or more other persons to commit any offense described in preceding paragraphs (1), (2), (3) or (4), and one or more of such persons do any act to effect the object of the conspiracy, shall, except as provided in the next subsection (B), be fined not more than 50% of the economic value of such proprietary information or imprisoned for a period ranging from 15 to 25 years, or both.

SECTION 4. *Prohibited Acts and Penalties.* – Any person who commits economic espionage as defined in the preceding Section, whether or not in the aid of foreign nations, governments, corporations, institutions or instrumentalities, shall be fined an amount

equivalent to the economic value of such proprietary information or imprisonment for a period ranging from 15 to 25 years, or both.

The person mentioned in the preceding paragraph is presumed to have acted with intent to injure any owner and benefit any foreign nation, government, corporation, institution, instrumentality, unless proven otherwise.

If the offender is a corporation, any officer, director or manager, or other person occupying a position of authority and responsibility for the acquisition, use of management of proprietary economic information for the corporation or other business or commercial entity who knowingly permitted or failed to prevent the commission of any of the acts which constitute economic espionage, shall be given the said penalty.

SECTION 5. *Forfeiture.* –

- (A) Notwithstanding any provision of law to the contrary, any person convicted of violation of this Act shall forfeit to the Philippine Government any property constituting, or derived from any proceeds the person obtained, directly or indirectly, from the commission of such violations, as well as any of the person's property used, or intended to be used, in any manner or part, to commit or to facilitate the commission of a violation of this Act.
- (B) The court, in imposing penalty on the offender for a violation of this Act, shall order that the property described in paragraph (A) of this Section be forfeited in favor of the Philippine Government.

SECTION 6. *Extra-Territoriality.* – Notwithstanding any provision of law to the contrary, this Act applies to conduct occurring outside the territorial jurisdiction of the Philippines if –

- (A) The offender is a Filipino citizen or permanent resident of the Philippines;
- (B) The victim of the offense is an “owner”, as defined in Section 3 of this Act, and the offense was intended to have, or had, an effect in the Philippines; or
- (C) The offender foreign corporation is conducting business in the Philippines through agents or subsidiaries and has caused damage to the “owner” in the conduct of its business abroad.

SECTION 7. *Construction with Other Laws.* – This Act shall not be construed to preempt or displace any other existing legal remedies, whether civil or criminal, for the misappropriation of proprietary economic information.

SECTION 8. *Preservation of Confidentiality.* – In any prosecution under this Act, the court shall preserve the confidentiality of alleged proprietary economic information by any reasonable and lawful means including, but not limited to –

- (A) The granting or protective orders in connection with discovery proceedings; and

- (B) The holding of in-camera hearing, sealing relevant portions of the record and the ordering of any person involved in the proceedings not to disclose the alleged proprietary economic information.

SECTION 9. *Non-Applicability of Lawfully Authorized Law Enforcement or Intelligence Activities.* – Any act in which information is seized, taken, transported, transmitted or transferred pursuant to or in furtherance of any lawfully authorized investigative, protective or intelligence activity of a law enforcement agency of the Philippines or any of its political subdivisions shall not be deemed a violation of this Act.

SECTION 10. *Separability Clause.* – If any provision or part thereof is held invalid or unconstitutional, the remainder of the law or the provision not otherwise affected shall remain valid and subsisting.

SECTION 11. *Repealing Clause.* – All laws, presidential decree or issuance, executive order, letter of instruction, administrative order, rule, or regulation contrary to or inconsistent with the provisions of this Act is hereby repealed, modified, or amended accordingly.

SECTION 12. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its publication in the *Official Gazette* or in a newspaper of general circulation.

Approved,