

The definition of “Territory” was omitted as unnecessary. The revised section makes clear the places included in the application of the section without the use of definitions.

The definition of “Interstate Commerce” was likewise omitted as unnecessary in view of definition of interstate commerce in section 10 of this title.

Changes of phraseology and arrangement were made, but without change of substance.

AMENDMENTS

2002—Pub. L. 107-273 struck out “, the Canal Zone” after “the District of Columbia” in first par.

1996—Pub. L. 104-294 substituted “fined under this title” for “fined not more than \$1,000” in last par.

CHAPTER 90—PROTECTION OF TRADE SECRETS

Sec.	
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AMENDMENTS

2016—Pub. L. 114-153, §2(d)(2), May 11, 2016, 130 Stat. 381, substituted “Civil proceedings” for “Civil proceedings to enjoin violations” in item 1836.

2002—Pub. L. 107-273, div. B, title IV, §4002(f)(1), Nov. 2, 2002, 116 Stat. 1811, substituted “Applicability to conduct” for “Conduct” in item 1837.

§ 1831. Economic espionage

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

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

(2) without authorization copies, duplicates, sketches, draws, photographs, downloads, uploads, alters, destroys, photocopies, replicates, transmits, delivers, sends, mails, communicates, or conveys a trade secret;

(3) receives, buys, or possesses a trade secret, knowing the same to have been stolen or appropriated, obtained, or converted without authorization;

(4) attempts to commit any offense described in any of paragraphs (1) through (3); or

(5) 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 not more than \$5,000,000 or imprisoned not more than 15 years, or both.

(b) ORGANIZATIONS.—Any organization that commits any offense described in subsection (a) shall be fined 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.

(Added Pub. L. 104-294, title I, §101(a), Oct. 11, 1996, 110 Stat. 3488; amended Pub. L. 112-269, §2, Jan. 14, 2013, 126 Stat. 2442.)

AMENDMENTS

2013—Subsec. (a). Pub. L. 112-269, §2(a), substituted “not more than \$5,000,000” for “not more than \$500,000” in concluding provisions.

Subsec. (b). Pub. L. 112-269, §2(b), substituted “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” for “not more than \$10,000,000”.

§ 1832. Theft of trade secrets

(a) Whoever, with intent to convert a trade secret, that is related to a product or service used in or intended for use 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) steals, or without authorization appropriates, takes, carries away, or conceals, or by fraud, artifice, or deception obtains such information;

(2) without authorization copies, duplicates, sketches, draws, photographs, downloads, uploads, alters, destroys, photocopies, replicates, transmits, delivers, sends, mails, communicates, or conveys such information;

(3) receives, buys, or possesses such information, knowing the same to have been stolen or appropriated, obtained, or converted without authorization;

(4) attempts to commit any offense described in paragraphs (1) through (3); or

(5) conspires with one or more other persons to commit any offense described in 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) Any organization that commits any offense described in subsection (a) shall be fined not more than the greater of \$5,000,000 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.

(Added Pub. L. 104-294, title I, §101(a), Oct. 11, 1996, 110 Stat. 3489; amended Pub. L. 112-236, §2, Dec. 28, 2012, 126 Stat. 1627; Pub. L. 114-153, §3(a)(1), May 11, 2016, 130 Stat. 382.)

AMENDMENTS

2016—Subsec. (b). Pub. L. 114-153 substituted “the greater of \$5,000,000 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” for “\$5,000,000”.

2012—Subsec. (a). Pub. L. 112-236 substituted “a product or service used in or intended for use in” for “or included in a product that is produced for or placed in” in introductory provisions.

REPORT ON THEFT OF TRADE SECRETS OCCURRING ABROAD

Pub. L. 114-153, §4, May 11, 2016, 130 Stat. 382, which requires biannual reports on the theft of trade secrets

of United States companies occurring outside of the United States, was editorially reclassified as section 41310 of Title 34, Crime Control and Law Enforcement.

§ 1833. Exceptions to prohibitions

(a) IN GENERAL.—This chapter does not prohibit or create a private right of action for—

(1) any otherwise lawful activity conducted by a governmental entity of the United States, a State, or a political subdivision of a State; or

(2) the disclosure of a trade secret in accordance with subsection (b).

(b) IMMUNITY FROM LIABILITY FOR CONFIDENTIAL DISCLOSURE OF A TRADE SECRET TO THE GOVERNMENT OR IN A COURT FILING.—

(1) IMMUNITY.—An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that—

(A) is made—

(i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and

(ii) solely for the purpose of reporting or investigating a suspected violation of law; or

(B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

(2) USE OF TRADE SECRET INFORMATION IN ANTI-RETALIATION LAWSUIT.—An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual—

(A) files any document containing the trade secret under seal; and

(B) does not disclose the trade secret, except pursuant to court order.

(3) NOTICE.—

(A) IN GENERAL.—An employer shall provide notice of the immunity set forth in this subsection in any contract or agreement with an employee that governs the use of a trade secret or other confidential information.

(B) POLICY DOCUMENT.—An employer shall be considered to be in compliance with the notice requirement in subparagraph (A) if the employer provides a cross-reference to a policy document provided to the employee that sets forth the employer's reporting policy for a suspected violation of law.

(C) NON-COMPLIANCE.—If an employer does not comply with the notice requirement in subparagraph (A), the employer may not be awarded exemplary damages or attorney fees under subparagraph (C) or (D) of section 1836(b)(3) in an action against an employee to whom notice was not provided.

(D) APPLICABILITY.—This paragraph shall apply to contracts and agreements that are entered into or updated after the date of enactment of this subsection.

(4) EMPLOYEE DEFINED.—For purposes of this subsection, the term “employee” includes any

individual performing work as a contractor or consultant for an employer.

(5) RULE OF CONSTRUCTION.—Except as expressly provided for under this subsection, nothing in this subsection shall be construed to authorize, or limit liability for, an act that is otherwise prohibited by law, such as the unlawful access of material by unauthorized means.

(Added Pub. L. 104-294, title I, §101(a), Oct. 11, 1996, 110 Stat. 3489; amended Pub. L. 114-153, §§2(c), 7(a), May 11, 2016, 130 Stat. 381, 384.)

REFERENCES IN TEXT

The date of enactment of this subsection, referred to in subsec. (b)(3)(D), is the date of enactment of Pub. L. 114-153, which was approved May 11, 2016.

AMENDMENTS

2016—Pub. L. 114-153, §7(a)(1), (3), designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

Pub. L. 114-153, §2(c), inserted “or create a private right of action for” after “prohibit” in introductory provisions.

Subsec. (a)(2). Pub. L. 114-153, §7(a)(2), substituted “the disclosure of a trade secret in accordance with subsection (b)” for “the reporting of a suspected violation of law to any governmental 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”.

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114-153, §2(e), May 11, 2016, 130 Stat. 381, provided that: “The amendments made by this section [amending this section and sections 1836 and 1839 of this title] shall apply with respect to any misappropriation of a trade secret (as defined in section 1839 of title 18, United States Code, as amended by this section) for which any act occurs on or after the date of the enactment of this Act [May 11, 2016].”

CONSTRUCTION OF 2016 AMENDMENT

Pub. L. 114-153, §2(f), May 11, 2016, 130 Stat. 382, provided that: “Nothing in the amendments made by this section [amending this section and sections 1836 and 1839 of this title] shall be construed to modify the rule of construction under section 1838 of title 18, United States Code, or to preempt any other provision of law.”

APPLICABILITY OF SECTION 2 OF PUB. L. 114-153 TO OTHER LAWS

Pub. L. 114-153, §2(g), May 11, 2016, 130 Stat. 382, provided that: “This section [amending this section and sections 1836 and 1839 of this title and enacting provisions set out as notes under this section] and the amendments made by this section shall not be construed to be a law pertaining to intellectual property for purposes of any other Act of Congress.”

§ 1834. Criminal forfeiture

Forfeiture, destruction, and restitution relating to this chapter shall be subject to section 2323, to the extent provided in that section, in addition to any other similar remedies provided by law.

(Added Pub. L. 104-294, title I, §101(a), Oct. 11, 1996, 110 Stat. 3489; amended Pub. L. 110-403, title II, §207, Oct. 13, 2008, 122 Stat. 4263.)

AMENDMENTS

2008—Pub. L. 110-403 amended section generally. Prior to amendment, section related to forfeiture of property