

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.

Statutory Notes and Related Subsidiaries

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.)

Editorial Notes

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”.

Statutory Notes and Related Subsidiaries

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.)

Editorial Notes

AMENDMENTS

2008—Pub. L. 110-403 amended section generally. Prior to amendment, section related to forfeiture of property either derived from or used to commit a violation of this chapter.

§ 1835. Orders to preserve confidentiality

(a) IN GENERAL.—In any prosecution or other proceeding under this chapter, the court shall enter such orders and take such other action as may be necessary and appropriate to preserve the confidentiality of trade secrets, consistent with the requirements of the Federal Rules of Criminal and Civil Procedure, the Federal Rules of Evidence, and all other applicable laws. An interlocutory appeal by the United States shall lie from a decision or order of a district court authorizing or directing the disclosure of any trade secret.

(b) RIGHTS OF TRADE SECRET OWNERS.—The court may not authorize or direct the disclosure of any information the owner asserts to be a trade secret unless the court allows the owner the opportunity to file a submission under seal that describes the interest of the owner in keeping the information confidential. No submission under seal made under this subsection may be used in a prosecution under this chapter for any purpose other than those set forth in this section, or otherwise required by law. The provision of information relating to a trade secret to the United States or the court in connection with a prosecution under this chapter shall not constitute a waiver of trade secret protection, and the disclosure of information relating to a trade secret in connection with a prosecution under this chapter shall not constitute a waiver of trade secret protection unless the trade secret owner expressly consents to such waiver.

(Added Pub. L. 104-294, title I, §101(a), Oct. 11, 1996, 110 Stat. 3490; amended Pub. L. 114-153, §3(a)(2), May 11, 2016, 130 Stat. 382.)

Editorial Notes

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (a), are set out in the Appendix to this title.

The Federal Rules of Civil Procedure, referred to in subsec. (a), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Federal Rules of Evidence, referred to in subsec. (a), are set out in the Appendix to Title 28.

AMENDMENTS

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

§ 1836. Civil proceedings

(a) The Attorney General may, in a civil action, obtain appropriate injunctive relief against any violation of this chapter.

(b) PRIVATE CIVIL ACTIONS.—

(1) IN GENERAL.—An owner of a trade secret that is misappropriated may bring a civil action under this subsection if the trade secret is related to a product or service used in, or intended for use in, interstate or foreign commerce.

(2) CIVIL SEIZURE.—

(A) IN GENERAL.—

(i) APPLICATION.—Based on an affidavit or verified complaint satisfying the requirements of this paragraph, the court may, upon ex parte application but only in extraordinary circumstances, issue an order providing for the seizure of property necessary to prevent the propagation or dissemination of the trade secret that is the subject of the action.

(ii) REQUIREMENTS FOR ISSUING ORDER.—The court may not grant an application under clause (i) unless the court finds that it clearly appears from specific facts that—

(I) an order issued pursuant to Rule 65 of the Federal Rules of Civil Procedure or another form of equitable relief would be inadequate to achieve the purpose of this paragraph because the party to which the order would be issued would evade, avoid, or otherwise not comply with such an order;

(II) an immediate and irreparable injury will occur if such seizure is not ordered;

(III) the harm to the applicant of denying the application outweighs the harm to the legitimate interests of the person against whom seizure would be ordered of granting the application and substantially outweighs the harm to any third parties who may be harmed by such seizure;

(IV) the applicant is likely to succeed in showing that—

(aa) the information is a trade secret; and

(bb) the person against whom seizure would be ordered—

(AA) misappropriated the trade secret of the applicant by improper means; or

(BB) conspired to use improper means to misappropriate the trade secret of the applicant;

(V) the person against whom seizure would be ordered has actual possession of—

(aa) the trade secret; and

(bb) any property to be seized;

(VI) the application describes with reasonable particularity the matter to be seized and, to the extent reasonable under the circumstances, identifies the location where the matter is to be seized;

(VII) the person against whom seizure would be ordered, or persons acting in