

AMENDMENT NO. _____ Calendar No. _____

Purpose: To amend chapter 90 of title 18, United States Code, to provide Federal jurisdiction for theft of trade secrets.

IN THE SENATE OF THE UNITED STATES—112th Cong., 1st Sess.

S. 1619

To provide for identification of misaligned currency, require action to correct the misalignment, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. COONS (for himself and Mr. KOHL)

Viz:

1 At the end, add the following:

2 **SEC. ____ . FEDERAL JURISDICTION FOR THEFT OF TRADE**
3 **SECRETS.**

4 (a) IN GENERAL.—Section 1836 of title 18, United
5 States Code, is amended to read as follows:

6 **“§ 1836. Civil proceedings**

7 **“(a) BY ATTORNEY GENERAL.—**

8 **“(1) IN GENERAL.—**The Attorney General may
9 bring a civil action to obtain relief described in para-
10 graph (2) for any violation of this chapter.

1 “(2) RELIEF.—Relief described in this para-
2 graph is—

3 “(A) appropriate injunctive relief against
4 any violation of this chapter, including the ac-
5 tual or threatened misappropriation of trade se-
6 crets;

7 “(B) if determined appropriate by the
8 court, an order requiring affirmative actions to
9 be taken to protect a trade secret; and

10 “(C) if the court determines that it would
11 be unreasonable to prohibit use of a trade se-
12 cret, an order requiring payment of a reason-
13 able royalty for any use of the trade secret.

14 “(b) PRIVATE CIVIL ACTIONS.—

15 “(1) IN GENERAL.—Any person aggrieved by a
16 violation of section 1832(a) may bring a civil action
17 under this subsection.

18 “(2) PLEADINGS.—A complaint filed in a civil
19 action brought under this subsection shall—

20 “(A) describe with specificity the reason-
21 able measures taken to protect the secrecy of
22 the alleged trade secrets in dispute; and

23 “(B) include a sworn representation by the
24 party asserting the claim that the dispute in-
25 volves either substantial need for nationwide

1 service of process or misappropriation of trade
2 secrets from the United States to another coun-
3 try.

4 “(3) CIVIL EX PARTE SEIZURE ORDER.—

5 “(A) IN GENERAL.—In a civil action
6 brought under this subsection, the court may,
7 upon ex parte application and if the court finds
8 by clear and convincing evidence that issuing
9 the order is necessary to prevent irreparable
10 harm, issue an order providing for—

11 “(i) the seizure of any property (in-
12 cluding computers) used or intended to be
13 used, in any manner or part, to commit or
14 facilitate the commission of the violation
15 alleged in the civil action; and

16 “(ii) the preservation of evidence in
17 the civil action.

18 “(B) SCOPE OF ORDERS.—An order issued
19 under subparagraph (A) shall—

20 “(i) authorize the retention of the
21 seized property for a reasonably limited pe-
22 riod, not to exceed 72 hours under the ini-
23 tial order, which may be extended by the
24 court after notice to the affected party and
25 an opportunity to be heard;

1 “(ii) require that any copies of seized
2 property made by the requesting party be
3 made at the expense of the requesting
4 party; and

5 “(iii) require the requesting party to
6 return the seized property to the party
7 from which the property were seized at the
8 end of the period authorized under clause
9 (i), including any extension.

10 “(4) REMEDIES.—In a civil action brought
11 under this subsection, a court may—

12 “(A) order relief described in subsection
13 (a)(2);

14 “(B) award—

15 “(i) damages for actual loss caused by
16 the misappropriation of a trade secret; and

17 “(ii) damages for any unjust enrich-
18 ment caused by the misappropriation of
19 the trade secret that is not addressed in
20 computing damages for actual loss;

21 “(C) if the trade secret is willfully or mali-
22 ciously misappropriated, award exemplary dam-
23 ages in an amount not more than the amount
24 of the damages awarded under subparagraph
25 (B); and

1 “(D) if a claim of misappropriation is
2 made in bad faith, a motion to terminate an in-
3 junction is made or opposed in bad faith, or a
4 trade secret is willfully and maliciously mis-
5 appropriated, award reasonable attorney’s fees
6 to the prevailing party.

7 “(c) JURISDICTION.—The district courts of the
8 United States shall have original jurisdiction of civil ac-
9 tions brought under this section.

10 “(d) PERIOD OF LIMITATIONS.—A civil action under
11 this section may not be commenced later than 3 years
12 after the date on which the misappropriation is discovered
13 or by the exercise of reasonable diligence should have been
14 discovered. For purposes of this subsection, a continuing
15 misappropriation constitutes a single claim of misappro-
16 priation.”.

17 (b) TECHNICAL AND CONFORMING AMENDMENT.—
18 The table of sections for chapter 90 of title 18, United
19 States Code, is amended by striking the item relating to
20 section 1836 and inserting the following:

“1836. Civil proceedings.”.

21 (c) RULE OF CONSTRUCTION.—Nothing in the
22 amendments made by this section shall be construed to
23 modify the rule of construction under section 1838 of title
24 18, United States Code, or to preempt any other provision
25 of law.