


SENATE  
S. B. No. 1252

'04 JUL -1 A11:13

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Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

The development of proprietary economic information is an integral part of a nation's commerce. Its development, protection and lawful exchange is essential to the competitiveness of critical segments of Philippine business and industry.


The theft, misappropriation and wrongful use of Philippine proprietary economic information by foreign governments and their agents or instrumentalities can cost our economy millions of pesos each year.

Existing laws do not give adequate protection to proprietary economic information. This bill seeks to prevent economic espionage. It also seeks to advance the development and lawful use of Philippine proprietary economic information by protecting such information from theft, wrongful destruction or alteration, misappropriation and conversion by foreign governments and their agents or instrumentalities.

  
MIRIAM DEFENSOR SANTIAGO

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

*Be it enacted by the Senate and 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".

SEC. 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.

SEC. 3. Definition of Terms.

As used in this Act, the term ---

- (1) 'foreign corporation, institution, or instrumentality' means any corporation, agency, component, institution, association, instrumentality, or 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.
- (2) 'foreign agent' means any officer, employee, proxy, servant, delegate, or representative of a foreign nation or government.
- (3) 'person' means a natural person, corporation, agency, association, institution, or any other legal, commercial, or business entity.
- (4) 'proprietary economic information' means all forms and types of financial, business, scientific, technical, economic, or engineering information including, but not limited to

data, plans, tools, mechanism, 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 concur:

- (a) the owner thereof has taken reasonable measure to keep such information confidential,
  - (b) the information is not available generally to, or accessible by, the public, and
  - (c) the information is not a matter of "public concern", as defined by law.
- (5) 'owner' means any Filipino person or any Philippine Government compound, department, or agency in which, rightful legal, beneficial, or equitable title to, or license in, proprietary economic information is reposes.
- (6) 'Filipino person' means –
- (A) in the case of a natural person, a Philippine citizen or permanent resident alien; and
  - (B) in the case of artificial person, a juridical entity substantially owned or controlled by the Philippine Government or by Filipino citizens or permanent resident aliens, or incorporated under Philippine laws.

#### SEC. 4. Economic Espionage.

Engaging in economic espionage to aid foreign nations, governments, corporations, institutions, or instrumentalities.

(A) Any person who, who –

- (1) steals, wrongfully appropriates, takes, carries away, or conceals, or by fraud, artifice, or deception obtains proprietary economic information;
- (2) wrongfully copies, duplicates, sketches, draws, photographs, downloads, uploads, alters, destroys, photocopies, replicates, transmits, delivers, sends, mails, communicates, or conveys proprietary economic information;
- (3) being entrusted with, or having lawful possession or control of, or access to, proprietary economic information, wrongfully copies, duplicates, sketches, draws, photographs, downloads, uploads, alters, destroys, photocopies, replicates, transmits, delivers, sends, mails, communicates, or conveys the same.

- (4) receives, buys, 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 paragraphs (1), (2), (3), or (4);
- (6) wrongfully solicits another to commit any offense described in paragraphs (1), (2), (3), or (4); or
- (7) conspires with one or more other persons to commit any offense described in 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 or 25 years, or both.

(B) Any corporation that commits any offense described in the preceding subsection (A) shall be fined an amount equivalent to the economic value of such proprietary information

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

SEC. 5. Vicarious liability.

Any officer, director, manager, or other person occupying a position of authority and responsibility for the acquisition, use, or management of proprietary economic information for any corporation or other business or commercial entity who –

- (1) knowingly permitted or failed to prevent the commission of any of the acts enumerated in Section 4”

SEC. 6. Forfeiture.

(A) Notwithstanding any provision of law to the contrary, any person convicted of a violation of this Act shall forfeit to the Philippine Government - -

(1) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, from the commission of such violations, and

(2) 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 subsection (A) of this section be forfeited in favor of the Philippine Government.

SEC. 7. Extra-territoriality.

(A) Notwithstanding any provision of law to the contrary, this Act applies to conduct occurring outside the territorial jurisdiction of the Philippines if –

- (1) the offender is a Filipino citizens or permanent resident of the Philippines; or
- (2) 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 affect in the Philippines.
- (3) 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"

SEC. 8. Construction with other laws.

This Act shall not be construed to pre-empt or displace any other existing legal remedies, whether civil or criminal, for the misappropriation of proprietary economic information.

SEC. 9. 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 –

- (1) the granting of protective orders in connection with discovery proceedings; and
- (2) 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 which is the subject of the offense may request the prosecution to seek such protective action.

SEC. 9. 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

- (1) granting of protective orders in connection with discovery proceedings; and
- (2) the holding of in camera hearings, sealing relevant portions of the record, and the ordering of any person involved in the proceedings not to disclose the alleged propriety economic information without prior court approval. Any owner of the propriety economic information which is the subject of the offense may request the prosecution to seek such protective action.

SEC. 10. 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 of any of its political subdivisions, shall not be deemed a violation of sections 4 and 5 of this Act.

SEC. 11. Separability Clause. If any provision, or part hereof, is held invalid or unconstitutional, the remainder of the law or the provision not otherwise affected shall remain valid and subsisting.

SEC. 12. Repealing Clause. Presidential Decree No. 1602 is hereby amended and any law 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.

SEC. 13. Effectivity. This Act shall take effect fifteen (15) days after its publication in at least two (2) newspaper of general circulation.

Approved.