

Union Calendar No. 409

114TH CONGRESS
2^D SESSION

S. 1890

[Report No. 114-529]

IN THE HOUSE OF REPRESENTATIVES

APRIL 11, 2016

Referred to the Committee on the Judiciary

APRIL 26, 2016

Committed to the Committee of the Whole House on the State of the Union
and ordered to be printed

A BILL

To amend chapter 90 of title 18, United States Code, to provide Federal jurisdiction for the theft of trade secrets, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Defend Trade Secrets
5 Act of 2016”.

6 **SEC. 2. FEDERAL JURISDICTION FOR THEFT OF TRADE SE-**
7 **CRETS.**

8 (a) IN GENERAL.—Section 1836 of title 18, United
9 States Code, is amended by striking subsection (b) and
10 inserting the following:

11 “(b) PRIVATE CIVIL ACTIONS.—

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

17 “(2) CIVIL SEIZURE.—

18 “(A) IN GENERAL.—

19 “(i) APPLICATION.—Based on an affi-
20 davit or verified complaint satisfying the
21 requirements of this paragraph, the court
22 may, upon ex parte application but only in
23 extraordinary circumstances, issue an
24 order providing for the seizure of property
25 necessary to prevent the propagation or

1 dissemination of the trade secret that is
2 the subject of the action.

3 “(ii) REQUIREMENTS FOR ISSUING
4 ORDER.—The court may not grant an ap-
5 plication under clause (i) unless the court
6 finds that it clearly appears from specific
7 facts that—

8 “(I) an order issued pursuant to
9 Rule 65 of the Federal Rules of Civil
10 Procedure or another form of equi-
11 table relief would be inadequate to
12 achieve the purpose of this paragraph
13 because the party to which the order
14 would be issued would evade, avoid, or
15 otherwise not comply with such an
16 order;

17 “(II) an immediate and irrep-
18 arable injury will occur if such seizure
19 is not ordered;

20 “(III) the harm to the applicant
21 of denying the application outweighs
22 the harm to the legitimate interests of
23 the person against whom seizure
24 would be ordered of granting the ap-
25 plication and substantially outweighs

1 the harm to any third parties who
2 may be harmed by such seizure;

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

5 “(aa) the information is a
6 trade secret; and

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

9 “(AA) misappropriated
10 the trade secret of the appli-
11 cant by improper means; or

12 “(BB) conspired to use
13 improper means to mis-
14 appropriate the trade secret
15 of the applicant;

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

19 “(aa) the trade secret; and

20 “(bb) any property to be
21 seized;

22 “(VI) the application describes
23 with reasonable particularity the mat-
24 ter to be seized and, to the extent rea-
25 sonable under the circumstances,

1 identifies the location where the mat-
2 ter is to be seized;

3 “(VII) the person against whom
4 seizure would be ordered, or persons
5 acting in concert with such person,
6 would destroy, move, hide, or other-
7 wise make such matter inaccessible to
8 the court, if the applicant were to pro-
9 ceed on notice to such person; and

10 “(VIII) the applicant has not
11 publicized the requested seizure.

12 “(B) ELEMENTS OF ORDER.—If an order
13 is issued under subparagraph (A), it shall—

14 “(i) set forth findings of fact and con-
15 clusions of law required for the order;

16 “(ii) provide for the narrowest seizure
17 of property necessary to achieve the pur-
18 pose of this paragraph and direct that the
19 seizure be conducted in a manner that
20 minimizes any interruption of the business
21 operations of third parties and, to the ex-
22 tent possible, does not interrupt the legiti-
23 mate business operations of the person ac-
24 cused of misappropriating the trade secret;

1 “(iii)(I) be accompanied by an order
2 protecting the seized property from disclo-
3 sure by prohibiting access by the applicant
4 or the person against whom the order is
5 directed, and prohibiting any copies, in
6 whole or in part, of the seized property, to
7 prevent undue damage to the party against
8 whom the order has issued or others, until
9 such parties have an opportunity to be
10 heard in court; and

11 “(II) provide that if access is granted
12 by the court to the applicant or the person
13 against whom the order is directed, the ac-
14 cess shall be consistent with subparagraph
15 (D);

16 “(iv) provide guidance to the law en-
17 forcement officials executing the seizure
18 that clearly delineates the scope of the au-
19 thority of the officials, including—

20 “(I) the hours during which the
21 seizure may be executed; and

22 “(II) whether force may be used
23 to access locked areas;

24 “(v) set a date for a hearing described
25 in subparagraph (F) at the earliest pos-

1 sible time, and not later than 7 days after
2 the order has issued, unless the party
3 against whom the order is directed and
4 others harmed by the order consent to an-
5 other date for the hearing, except that a
6 party against whom the order has issued
7 or any person harmed by the order may
8 move the court at any time to dissolve or
9 modify the order after giving notice to the
10 applicant who obtained the order; and

11 “(vi) require the person obtaining the
12 order to provide the security determined
13 adequate by the court for the payment of
14 the damages that any person may be enti-
15 tled to recover as a result of a wrongful or
16 excessive seizure or wrongful or excessive
17 attempted seizure under this paragraph.

18 “(C) PROTECTION FROM PUBLICITY.—The
19 court shall take appropriate action to protect
20 the person against whom an order under this
21 paragraph is directed from publicity, by or at
22 the behest of the person obtaining the order,
23 about such order and any seizure under such
24 order.

1 “(D) MATERIALS IN CUSTODY OF
2 COURT.—

3 “(i) IN GENERAL.—Any materials
4 seized under this paragraph shall be taken
5 into the custody of the court. The court
6 shall secure the seized material from phys-
7 ical and electronic access during the sei-
8 zure and while in the custody of the court.

9 “(ii) STORAGE MEDIUM.—If the seized
10 material includes a storage medium, or if
11 the seized material is stored on a storage
12 medium, the court shall prohibit the me-
13 dium from being connected to a network or
14 the Internet without the consent of both
15 parties, until the hearing required under
16 subparagraph (B)(v) and described in sub-
17 paragraph (F).

18 “(iii) PROTECTION OF CONFIDEN-
19 TIALITY.—The court shall take appropriate
20 measures to protect the confidentiality of
21 seized materials that are unrelated to the
22 trade secret information ordered seized
23 pursuant to this paragraph unless the per-
24 son against whom the order is entered con-
25 sents to disclosure of the material.

1 “(iv) APPOINTMENT OF SPECIAL MAS-
2 TER.—The court may appoint a special
3 master to locate and isolate all misappro-
4 priated trade secret information and to fa-
5 cilitate the return of unrelated property
6 and data to the person from whom the
7 property was seized. The special master
8 appointed by the court shall agree to be
9 bound by a non-disclosure agreement ap-
10 proved by the court.

11 “(E) SERVICE OF ORDER.—The court shall
12 order that service of a copy of the order under
13 this paragraph, and the submissions of the ap-
14 plicant to obtain the order, shall be made by a
15 Federal law enforcement officer who, upon
16 making service, shall carry out the seizure
17 under the order. The court may allow State or
18 local law enforcement officials to participate,
19 but may not permit the applicant or any agent
20 of the applicant to participate in the seizure. At
21 the request of law enforcement officials, the
22 court may allow a technical expert who is unaf-
23 filiated with the applicant and who is bound by
24 a court-approved non-disclosure agreement to
25 participate in the seizure if the court deter-

1 mines that the participation of the expert will
2 aid the efficient execution of and minimize the
3 burden of the seizure.

4 “(F) SEIZURE HEARING.—

5 “(i) DATE.—A court that issues a sei-
6 zure order shall hold a hearing on the date
7 set by the court under subparagraph
8 (B)(v).

9 “(ii) BURDEN OF PROOF.—At a hear-
10 ing held under this subparagraph, the
11 party who obtained the order under sub-
12 paragraph (A) shall have the burden to
13 prove the facts supporting the findings of
14 fact and conclusions of law necessary to
15 support the order. If the party fails to
16 meet that burden, the seizure order shall
17 be dissolved or modified appropriately.

18 “(iii) DISSOLUTION OR MODIFICATION
19 OF ORDER.—A party against whom the
20 order has been issued or any person
21 harmed by the order may move the court
22 at any time to dissolve or modify the order
23 after giving notice to the party who ob-
24 tained the order.

1 “(iv) DISCOVERY TIME LIMITS.—The
2 court may make such orders modifying the
3 time limits for discovery under the Federal
4 Rules of Civil Procedure as may be nec-
5 essary to prevent the frustration of the
6 purposes of a hearing under this subpara-
7 graph.

8 “(G) ACTION FOR DAMAGE CAUSED BY
9 WRONGFUL SEIZURE.—A person who suffers
10 damage by reason of a wrongful or excessive
11 seizure under this paragraph has a cause of ac-
12 tion against the applicant for the order under
13 which such seizure was made, and shall be enti-
14 tled to the same relief as is provided under sec-
15 tion 34(d)(11) of the Trademark Act of 1946
16 (15 U.S.C. 1116(d)(11)). The security posted
17 with the court under subparagraph (B)(vi) shall
18 not limit the recovery of third parties for dam-
19 ages.

20 “(H) MOTION FOR ENCRYPTION.—A party
21 or a person who claims to have an interest in
22 the subject matter seized may make a motion at
23 any time, which may be heard ex parte, to
24 encrypt any material seized or to be seized
25 under this paragraph that is stored on a stor-

1 age medium. The motion shall include, when
2 possible, the desired encryption method.

3 “(3) REMEDIES.—In a civil action brought
4 under this subsection with respect to the misappropriation of a trade secret, a court may—

6 “(A) grant an injunction—

7 “(i) to prevent any actual or threatened
8 misappropriation described in paragraph (1) on such terms as the court
9 deems reasonable, provided the order does
10 not—

12 “(I) prevent a person from entering into an employment relationship,
13 and that conditions placed on such
14 employment shall be based on evidence of threatened misappropriation
15 and not merely on the information the
16 person knows; or

17 “(II) otherwise conflict with an
18 applicable State law prohibiting restraints on the practice of a lawful
19 profession, trade, or business;

20 “(ii) if determined appropriate by the
21 court, requiring affirmative actions to be
22 taken to protect the trade secret; and
23
24
25

1 “(iii) in exceptional circumstances
2 that render an injunction inequitable, that
3 conditions future use of the trade secret
4 upon payment of a reasonable royalty for
5 no longer than the period of time for which
6 such use could have been prohibited;

7 “(B) award—

8 “(i)(I) damages for actual loss caused
9 by the misappropriation of the trade se-
10 cret; and

11 “(II) damages for any unjust enrich-
12 ment caused by the misappropriation of
13 the trade secret that is not addressed in
14 computing damages for actual loss; or

15 “(ii) in lieu of damages measured by
16 any other methods, the damages caused by
17 the misappropriation measured by imposi-
18 tion of liability for a reasonable royalty for
19 the misappropriator’s unauthorized disclo-
20 sure or use of the trade secret;

21 “(C) if the trade secret is willfully and ma-
22 liciously misappropriated, award exemplary
23 damages in an amount not more than 2 times
24 the amount of the damages awarded under sub-
25 paragraph (B); and

1 “(D) if a claim of the misappropriation is
2 made in bad faith, which may be established by
3 circumstantial evidence, a motion to terminate
4 an injunction is made or opposed in bad faith,
5 or the trade secret was willfully and maliciously
6 misappropriated, award reasonable attorney’s
7 fees to the prevailing party.

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

11 “(d) PERIOD OF LIMITATIONS.—A civil action under
12 subsection (b) may not be commenced later than 3 years
13 after the date on which the misappropriation with respect
14 to which the action would relate is discovered or by the
15 exercise of reasonable diligence should have been discov-
16 ered. For purposes of this subsection, a continuing mis-
17 appropriation constitutes a single claim of misappropria-
18 tion.”.

19 (b) DEFINITIONS.—Section 1839 of title 18, United
20 States Code, is amended—

21 (1) in paragraph (3)—

22 (A) in subparagraph (B), by striking “the
23 public” and inserting “another person who can
24 obtain economic value from the disclosure or
25 use of the information”; and

1 (B) by striking “and” at the end;

2 (2) in paragraph (4), by striking the period at
3 the end and inserting a semicolon; and

4 (3) by adding at the end the following:

5 “(5) the term ‘misappropriation’ means—

6 “(A) acquisition of a trade secret of an-
7 other by a person who knows or has reason to
8 know that the trade secret was acquired by im-
9 proper means; or

10 “(B) disclosure or use of a trade secret of
11 another without express or implied consent by
12 a person who—

13 “(i) used improper means to acquire
14 knowledge of the trade secret;

15 “(ii) at the time of disclosure or use,
16 knew or had reason to know that the
17 knowledge of the trade secret was—

18 “(I) derived from or through a
19 person who had used improper means
20 to acquire the trade secret;

21 “(II) acquired under cir-
22 cumstances giving rise to a duty to
23 maintain the secrecy of the trade se-
24 cret or limit the use of the trade se-
25 cret; or

1 “(III) derived from or through a
2 person who owed a duty to the person
3 seeking relief to maintain the secrecy
4 of the trade secret or limit the use of
5 the trade secret; or

6 “(iii) before a material change of the
7 position of the person, knew or had reason
8 to know that—

9 “(I) the trade secret was a trade
10 secret; and

11 “(II) knowledge of the trade se-
12 cret had been acquired by accident or
13 mistake;

14 “(6) the term ‘improper means’—

15 “(A) includes theft, bribery, misrepresenta-
16 tion, breach or inducement of a breach of a
17 duty to maintain secrecy, or espionage through
18 electronic or other means; and

19 “(B) does not include reverse engineering,
20 independent derivation, or any other lawful
21 means of acquisition; and

22 “(7) the term ‘Trademark Act of 1946’ means
23 the Act entitled ‘An Act to provide for the registra-
24 tion and protection of trademarks used in commerce,
25 to carry out the provisions of certain international

1 conventions, and for other purposes, approved July
2 5, 1946 (15 U.S.C. 1051 et seq.) (commonly re-
3 ferred to as the “Trademark Act of 1946” or the
4 “Lanham Act”).”.

5 (c) EXCEPTIONS TO PROHIBITION.—Section 1833 of
6 title 18, United States Code, is amended, in the matter
7 preceding paragraph (1), by inserting “or create a private
8 right of action for” after “prohibit”.

9 (d) CONFORMING AMENDMENTS.—

10 (1) The section heading for section 1836 of title
11 18, United States Code, is amended to read as fol-
12 lows:

13 **“§ 1836. Civil proceedings”.**

14 (2) The table of sections for chapter 90 of title
15 18, United States Code, is amended by striking the
16 item relating to section 1836 and inserting the fol-
17 lowing:

“1836. Civil proceedings.”.

18 (e) EFFECTIVE DATE.—The amendments made by
19 this section shall apply with respect to any misappropria-
20 tion of a trade secret (as defined in section 1839 of title
21 18, United States Code, as amended by this section) for
22 which any act occurs on or after the date of the enactment
23 of this Act.

24 (f) RULE OF CONSTRUCTION.—Nothing in the
25 amendments made by this section shall be construed to

1 modify the rule of construction under section 1838 of title
2 18, United States Code, or to preempt any other provision
3 of law.

4 (g) **APPLICABILITY TO OTHER LAWS.**—This section
5 and the amendments made by this section shall not be con-
6 strued to be a law pertaining to intellectual property for
7 purposes of any other Act of Congress.

8 **SEC. 3. TRADE SECRET THEFT ENFORCEMENT.**

9 (a) **IN GENERAL.**—Chapter 90 of title 18, United
10 States Code, is amended—

11 (1) in section 1832(b), by striking
12 “\$5,000,000” and inserting “the greater of
13 \$5,000,000 or 3 times the value of the stolen trade
14 secret to the organization, including expenses for re-
15 search and design and other costs of reproducing the
16 trade secret that the organization has thereby avoid-
17 ed”; and

18 (2) in section 1835—

19 (A) by striking “In any prosecution” and
20 inserting the following:

21 “(a) **IN GENERAL.**—In any prosecution”; and

22 (B) by adding at the end the following:

23 “(b) **RIGHTS OF TRADE SECRET OWNERS.**—The
24 court may not authorize or direct the disclosure of any
25 information the owner asserts to be a trade secret unless

1 the court allows the owner the opportunity to file a sub-
2 mission under seal that describes the interest of the owner
3 in keeping the information confidential. No submission
4 under seal made under this subsection may be used in a
5 prosecution under this chapter for any purpose other than
6 those set forth in this section, or otherwise required by
7 law. The provision of information relating to a trade secret
8 to the United States or the court in connection with a
9 prosecution under this chapter shall not constitute a waiv-
10 er of trade secret protection, and the disclosure of infor-
11 mation relating to a trade secret in connection with a pros-
12 ecution under this chapter shall not constitute a waiver
13 of trade secret protection unless the trade secret owner
14 expressly consents to such waiver.”.

15 (b) RICO PREDICATE OFFENSES.—Section 1961(1)
16 of title 18, United States Code, is amended by inserting
17 “sections 1831 and 1832 (relating to economic espionage
18 and theft of trade secrets),” before “section 1951”.

19 **SEC. 4. REPORT ON THEFT OF TRADE SECRETS OCCUR-**
20 **RING ABROAD.**

21 (a) DEFINITIONS.—In this section:

22 (1) DIRECTOR.—The term “Director” means
23 the Under Secretary of Commerce for Intellectual
24 Property and Director of the United States Patent
25 and Trademark Office.

1 (2) FOREIGN INSTRUMENTALITY, ETC.—The
2 terms “foreign instrumentality”, “foreign agent”,
3 and “trade secret” have the meanings given those
4 terms in section 1839 of title 18, United States
5 Code.

6 (3) STATE.—The term “State” includes the
7 District of Columbia and any commonwealth, terri-
8 tory, or possession of the United States.

9 (4) UNITED STATES COMPANY.—The term
10 “United States company” means an organization or-
11 ganized under the laws of the United States or a
12 State or political subdivision thereof.

13 (b) REPORTS.—Not later than 1 year after the date
14 of enactment of this Act, and biannually thereafter, the
15 Attorney General, in consultation with the Intellectual
16 Property Enforcement Coordinator, the Director, and the
17 heads of other appropriate agencies, shall submit to the
18 Committees on the Judiciary of the House of Representa-
19 tives and the Senate, and make publicly available on the
20 Web site of the Department of Justice and disseminate
21 to the public through such other means as the Attorney
22 General may identify, a report on the following:

23 (1) The scope and breadth of the theft of the
24 trade secrets of United States companies occurring
25 outside of the United States.

1 (2) The extent to which theft of trade secrets
2 occurring outside of the United States is sponsored
3 by foreign governments, foreign instrumentalities, or
4 foreign agents.

5 (3) The threat posed by theft of trade secrets
6 occurring outside of the United States.

7 (4) The ability and limitations of trade secret
8 owners to prevent the misappropriation of trade se-
9 crets outside of the United States, to enforce any
10 judgment against foreign entities for theft of trade
11 secrets, and to prevent imports based on theft of
12 trade secrets overseas.

13 (5) A breakdown of the trade secret protections
14 afforded United States companies by each country
15 that is a trading partner of the United States and
16 enforcement efforts available and undertaken in each
17 such country, including a list identifying specific
18 countries where trade secret theft, laws, or enforce-
19 ment is a significant problem for United States com-
20 panies.

21 (6) Instances of the Federal Government work-
22 ing with foreign countries to investigate, arrest, and
23 prosecute entities and individuals involved in the
24 theft of trade secrets outside of the United States.

1 (7) Specific progress made under trade agree-
2 ments and treaties, including any new remedies en-
3 acted by foreign countries, to protect against theft
4 of trade secrets of United States companies outside
5 of the United States.

6 (8) Recommendations of legislative and execu-
7 tive branch actions that may be undertaken to—

8 (A) reduce the threat of and economic im-
9 pact caused by the theft of the trade secrets of
10 United States companies occurring outside of
11 the United States;

12 (B) educate United States companies re-
13 garding the threats to their trade secrets when
14 taken outside of the United States;

15 (C) provide assistance to United States
16 companies to reduce the risk of loss of their
17 trade secrets when taken outside of the United
18 States; and

19 (D) provide a mechanism for United States
20 companies to confidentially or anonymously re-
21 port the theft of trade secrets occurring outside
22 of the United States.

23 **SEC. 5. SENSE OF CONGRESS.**

24 It is the sense of Congress that—

1 (1) trade secret theft occurs in the United
2 States and around the world;

3 (2) trade secret theft, wherever it occurs, harms
4 the companies that own the trade secrets and the
5 employees of the companies;

6 (3) chapter 90 of title 18, United States Code
7 (commonly known as the “Economic Espionage Act
8 of 1996”), applies broadly to protect trade secrets
9 from theft; and

10 (4) it is important when seizing information to
11 balance the need to prevent or remedy misappropria-
12 tion with the need to avoid interrupting the—

13 (A) business of third parties; and

14 (B) legitimate interests of the party ac-
15 cused of wrongdoing.

16 **SEC. 6. BEST PRACTICES.**

17 (a) IN GENERAL.—Not later than 2 years after the
18 date of enactment of this Act, the Federal Judicial Center,
19 using existing resources, shall develop recommended best
20 practices for—

21 (1) the seizure of information and media stor-
22 ing the information; and

23 (2) the securing of the information and media
24 once seized.

1 (b) UPDATES.—The Federal Judicial Center shall
2 update the recommended best practices developed under
3 subsection (a) from time to time.

4 (c) CONGRESSIONAL SUBMISSIONS.—The Federal
5 Judicial Center shall provide a copy of the recommenda-
6 tions developed under subsection (a), and any updates
7 made under subsection (b), to the—

8 (1) Committee on the Judiciary of the Senate;
9 and

10 (2) Committee on the Judiciary of the House of
11 Representatives.

12 **SEC. 7. IMMUNITY FROM LIABILITY FOR CONFIDENTIAL**
13 **DISCLOSURE OF A TRADE SECRET TO THE**
14 **GOVERNMENT OR IN A COURT FILING.**

15 (a) AMENDMENT.—Section 1833 of title 18, United
16 States Code, is amended—

17 (1) by striking “This chapter” and inserting
18 “(a) IN GENERAL.—This chapter”;

19 (2) in subsection (a)(2), as designated by para-
20 graph (1), by striking “the reporting of a suspected
21 violation of law to any governmental entity of the
22 United States, a State, or a political subdivision of
23 a State, if such entity has lawful authority with re-
24 spect to that violation” and inserting “the disclosure

1 of a trade secret in accordance with subsection (b)”;
2 and

3 (3) by adding at the end the following:

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

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

11 “(A) is made—

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

15 “(ii) solely for the purpose of report-
16 ing or investigating a suspected violation of
17 law; or

18 “(B) is made in a complaint or other docu-
19 ment filed in a lawsuit or other proceeding, if
20 such filing is made under seal.

21 “(2) USE OF TRADE SECRET INFORMATION IN
22 ANTI-RETALIATION LAWSUIT.—An individual who
23 files a lawsuit for retaliation by an employer for re-
24 porting a suspected violation of law may disclose the
25 trade secret to the attorney of the individual and use

1 the trade secret information in the court proceeding,
2 if the individual—

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

5 “(B) does not disclose the trade secret, ex-
6 cept pursuant to court order.

7 “(3) NOTICE.—

8 “(A) IN GENERAL.—An employer shall
9 provide notice of the immunity set forth in this
10 subsection in any contract or agreement with
11 an employee that governs the use of a trade se-
12 cret or other confidential information.

13 “(B) POLICY DOCUMENT.—An employer
14 shall be considered to be in compliance with the
15 notice requirement in subparagraph (A) if the
16 employer provides a cross-reference to a policy
17 document provided to the employee that sets
18 forth the employer’s reporting policy for a sus-
19 pected violation of law.

20 “(C) NON-COMPLIANCE.—If an employer
21 does not comply with the notice requirement in
22 subparagraph (A), the employer may not be
23 awarded exemplary damages or attorney fees
24 under subparagraph (C) or (D) of section

1 1836(b)(3) in an action against an employee to
2 whom notice was not provided.

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

7 “(4) EMPLOYEE DEFINED.—For purposes of
8 this subsection, the term ‘employee’ includes any in-
9 dividual performing work as a contractor or consult-
10 ant for an employer.

11 “(5) RULE OF CONSTRUCTION.—Except as ex-
12 pressly provided for under this subsection, nothing
13 in this subsection shall be construed to authorize, or
14 limit liability for, an act that is otherwise prohibited
15 by law, such as the unlawful access of material by
16 unauthorized means.”.

17 (b) TECHNICAL AND CONFORMING AMENDMENT.—
18 Section 1838 of title 18, United States Code, is amended
19 by striking “This chapter” and inserting “Except as pro-
20 vided in section 1833(b), this chapter”.

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