

103^D CONGRESS
2^D SESSION

S. 2056

To amend the National Security Act of 1947 to improve the counterintelligence and security posture of the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 2, 1994

Mr. DECONCINI (for himself and Mr. WARNER) (by request) introduced the following bill; which was read twice and referred to the Select Committee on Intelligence

A BILL

To amend the National Security Act of 1947 to improve the counterintelligence and security posture of the United States, 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 “Counterintelligence
5 and Security Enhancements Act of 1994”.

1 **SEC. 2. AMENDMENT TO THE NATIONAL SECURITY ACT OF**
2 **1947.**

3 The National Security Act of 1947 (50 U.S.C. 401
4 et seq.) is amended by inserting at the end thereof the
5 following new title:

6 “TITLE VIII—ACCESS TO CLASSIFIED
7 INFORMATION

8 “SEC. 801. The provisions of this title shall not apply
9 to the President and Vice President, Members of the Con-
10 gress, Justices of the Supreme Court, and Federal judges
11 appointed by the President.

12 “SEC. 802. The President shall, within one hundred
13 and eighty days of enactment of this title, direct the issu-
14 ance of a regulation to govern access to classified informa-
15 tion which shall be binding upon all departments, agen-
16 cies, and offices of the executive branch.

17 “SEC. 803. Except as may be provided for in the reg-
18 ulation issued under section 802 of this title, no person
19 shall be given access to classified information, after the
20 effective date of this title, by any department, agency, or
21 office of the executive branch unless, based upon an appro-
22 priate background investigation, such access is determined
23 to be clearly consistent with the interests of national secu-
24 rity.

1 “REQUESTS BY AUTHORIZED INVESTIGATIVE AGENCIES

2 “SEC. 804. (a)(1) Any authorized investigative agen-
3 cy may request from any financial agency, financial insti-
4 tution, or holding company, as defined in section 5312 of
5 the Currency and Foreign Transactions Reporting Act (31
6 U.S.C. 5312, as amended) or section 1101 of the Right
7 to Financial Privacy Act of 1978 (12 U.S.C. 3401), or
8 from any consumer credit reporting agency, as defined in
9 section 603 of the Consumer Credit Protection Act (15
10 U.S.C. 1681a), such financial records, other financial in-
11 formation, and consumer reports as are necessary in order
12 to conduct any authorized law enforcement investigation,
13 counterintelligence inquiry, or security determination. Any
14 authorized investigative agency may also request records
15 maintained by any commercial entity within the United
16 States pertaining to travel by a person outside the United
17 States.

18 “(2) Requests may be made under this section
19 where—

20 “(A) the records sought pertain to a person
21 who is or was an employee required by the President
22 in an Executive order, as a condition of access to
23 classified information, to provide consent, during a
24 background investigation and for such time as ac-
25 cess to the information is maintained, and for not

1 more than 5 years thereafter, permitting access to
2 financial records, other financial information,
3 consumer reports, and travel records; and

4 “(B) there is information or allegations indicat-
5 ing that the person is, or may be, disclosing classi-
6 fied information in an unauthorized manner to a for-
7 eign power or agent of a foreign power, or an issue
8 of otherwise unexplained affluence or excessive in-
9 debtedness arises in the course of any background
10 investigation or reinvestigation.

11 “(3) Each such request—

12 “(A) shall be accompanied by a written certifi-
13 cation signed by the department or agency head or
14 deputy department or agency head concerned and
15 shall certify that—

16 “(i) the person concerned is or was an em-
17 ployee within the meaning of subparagraph
18 (2)(A) above;

19 “(ii) the request is being made pursuant to
20 an authorized inquiry or investigation and is
21 authorized under this section; and

22 “(iii) the records or information to be re-
23 viewed are records or information which the
24 employee has previously agreed to make avail-

1 able to the authorized investigative agency for
2 review;

3 “(B) shall contain a copy of the agreement re-
4 ferred to in subparagraph (A)(iii);

5 “(C) shall identify specifically or by category
6 the records or information to be reviewed; and

7 “(D) shall inform the recipient of the request of
8 the prohibition described in subsection (b).

9 “(b) Notwithstanding any other provision of law, no
10 governmental or private entity, or officer, employee, or
11 agent of such entity, may disclose to any person, other
12 than those officers, employees, or agents of such entity
13 necessary to satisfy a request made under this section,
14 that such entity has received or satisfied a request made
15 by an authorized investigative agency under this section.

16 “(c)(1) Notwithstanding any other provision of law
17 except section 6103 of title 26, United States Code, an
18 entity receiving a request for records or information under
19 subsection (a) shall, if the request satisfies the require-
20 ments of this section, make available such records or infor-
21 mation within thirty days for inspection or copying, as
22 may be appropriate, by the agency requesting such records
23 or information.

24 “(2) Any entity (including any officer, employee, or
25 agent thereof) that discloses records or information for in-

1 spection or copying pursuant to this section in good faith
2 reliance upon the certifications made by an agency pursu-
3 ant to this section shall not be liable for any such disclo-
4 sure to any person under this title, the constitution of any
5 State, or any law or regulation of any State or any politi-
6 cal subdivision of any State.

7 “(d) Subject to the availability of appropriations
8 therefor, any agency requesting records or information
9 under this section may reimburse a private entity for any
10 cost reasonably incurred by such entity in responding to
11 such request, including the cost of identifying, reproduc-
12 ing, or transporting records or other data.

13 “(e) An agency receiving records or information pur-
14 suant to a request under this section may disseminate the
15 records or information obtained pursuant to such request
16 outside the agency only to the agency employing the em-
17 ployee who is the subject of the records or information,
18 to the Department of Justice for law enforcement or coun-
19 terintelligence purposes, or, with respect to dissemination
20 to an agency of the United States, only if such information
21 is clearly relevant to the authorized responsibilities of such
22 agency.

23 “(f) Nothing in this section shall affect the authority
24 of an investigative agency to obtain information pursuant
25 to the Right to Financial Privacy Act (12 U.S.C. 3401

1 et seq.) or the Fair Credit Reporting Act (15 U.S.C. 1681
2 et seq.).

3 “DEFINITIONS

4 “SEC. 805. For purposes of this title—

5 “(a) the phrase ‘classified information’ means
6 any information that has been determined pursuant
7 to Executive Order No. 12356 of April 2, 1982, or
8 successor orders, or the Atomic Energy Act of 1954,
9 to require protection against unauthorized disclosure
10 and that is so designated;

11 “(b) the term ‘employee’ includes any person
12 who receives a salary or compensation of any kind
13 from the United States Government, is a contractor
14 of the United States Government or an employee
15 thereof, is an unpaid consultant of the United States
16 Government, or otherwise acts for or on behalf of
17 the United States Government;

18 “(c) the term ‘authorized investigative agency’
19 means an agency authorized by law or regulation to
20 conduct a counterintelligence investigation or inves-
21 tigations of persons who are proposed for access to
22 classified information to ascertain whether such per-
23 sons satisfy the criteria for obtaining and retaining
24 access to such information; and

25 “(d) the term ‘State’ means any State of the
26 United States, the District of Columbia, the Com-

1 monwealth of Puerto Rico, the Trust Territory of
 2 the Pacific Islands, and any territory or possession
 3 of the United States.

4 “EFFECTIVE DATE

5 “SEC. 806. This title shall take effect one hundred
 6 eighty days after the date of its enactment.”.

7 **SEC. 3. DISCLOSURE OF CONSUMER CREDIT REPORTS FOR**
 8 **COUNTERINTELLIGENCE PURPOSES.**

9 Section 608 of the Fair Credit Reporting Act (15
 10 U.S.C. 1681f) is amended—

11 (1) by striking “Notwithstanding” and insert-
 12 ing “(a) DISCLOSURE OF CERTAIN IDENTIFYING IN-
 13 FORMATION.—Notwithstanding”; and

14 (2) by adding at the end the following new sub-
 15 section:

16 “(b) DISCLOSURES TO THE FBI FOR COUNTER-
 17 INTELLIGENCE PURPOSES.—

18 “(1) CONSUMER REPORTS.—Notwithstanding
 19 the provisions of section 604, a consumer reporting
 20 agency shall furnish a consumer report to the Fed-
 21 eral Bureau of Investigation when presented with a
 22 written request for a consumer report, signed by the
 23 Director or Deputy Director of the Federal Bureau
 24 of Investigation who certifies compliance with this
 25 subsection. The Director or Deputy Director may

1 make such a certification only if he has determined
2 in writing that—

3 “(A) such records are necessary for the
4 conduct of an authorized foreign counterintel-
5 ligence investigation; and

6 “(B) there are specific and articulable
7 facts giving reason to believe that the consumer
8 whose consumer report is sought is a foreign
9 power or an agent of a foreign power, as de-
10 fined in section 101 of the Foreign Intelligence
11 Surveillance Act of 1978 (50 U.S.C. 1801).

12 “(2) IDENTIFYING INFORMATION.—Notwith-
13 standing the provisions of section 604, a consumer
14 reporting agency shall furnish identifying informa-
15 tion respecting a consumer, limited to name, ad-
16 dress, former addresses, places of employment, or
17 former places of employment, to the Federal Bureau
18 of Investigation when presented with a written re-
19 quest, signed by the Director or Deputy Director,
20 which certifies compliance with this subsection. The
21 Director or Deputy Director may make such certifi-
22 cation only if the Director or Deputy Director has
23 determined in writing that—

1 “(A) such information is necessary to the
2 conduct of an authorized foreign counterintel-
3 ligence investigation; and

4 “(B) there is information giving reason to
5 believe that the consumer has been, or is about
6 to be, in contact with a foreign power or an
7 agent of a foreign power, as so defined.

8 “(3) CONFIDENTIALITY.—No consumer report-
9 ing agency or officer, employee, or agent of such
10 consumer reporting agency may disclose to any per-
11 son, other than those officers, employees, or agents
12 of such agency necessary to fulfill the requirement
13 to disclose information to the Federal Bureau of In-
14 vestigation under this subsection, that the Federal
15 Bureau of Investigation has sought or obtained a
16 consumer report or identifying information respect-
17 ing any consumer under paragraph (1) or (2), nor
18 shall such agency, officer, employee, or agent include
19 in any consumer report any information that would
20 indicate that the Federal Bureau of Investigation
21 has sought or obtained such a consumer report or
22 identifying information.

23 “(4) PAYMENT OF FEES.—The Federal Bureau
24 of Investigation may, subject to the availability of
25 appropriations, pay to the consumer reporting agen-

1 cy assembling or providing credit reports or identify-
2 ing information in accordance with this title, a fee
3 for reimbursement for such costs as are reasonably
4 necessary and which have been directly incurred in
5 searching, reproducing, or transporting books, pa-
6 pers, records, or other data required or requested to
7 be produced under this subsection.

8 “(5) LIMIT ON DISSEMINATION.—The Federal
9 Bureau of Investigation may not disseminate infor-
10 mation obtained pursuant to this subsection outside
11 of the Federal Bureau of Investigation, except to the
12 Department of Justice or as may be necessary for
13 the conduct of a foreign counterintelligence inves-
14 tigation.

15 “(6) RULES OF CONSTRUCTION.—Nothing in
16 this subsection shall be construed to prohibit infor-
17 mation from being furnished by the Federal Bureau
18 of Investigation pursuant to a subpoena or court
19 order, or in connection with a judicial or administra-
20 tive proceeding to enforce the provisions of this Act.
21 Nothing in this subsection shall be construed to au-
22 thorize or permit the withholding of information
23 from Congress.

24 “(7) REPORTS TO CONGRESS.—On an annual
25 basis, the Attorney General of the United States

1 shall fully inform the Permanent Select Committee
2 on Intelligence of the House of Representatives and
3 the Select Committee on Intelligence of the Senate
4 concerning all requests made pursuant to para-
5 graphs (1) and (2).

6 “(8) DAMAGES.—Any agency or department of
7 the United States obtaining or disclosing credit re-
8 ports, records, or information contained therein in
9 violation of this subsection is liable to the consumer
10 to whom such records relate in an amount equal to
11 the sum of—

12 “(A) \$100, without regard to the volume
13 of records involved;

14 “(B) any actual damages sustained by the
15 consumer as a result of the disclosure;

16 “(C) if the violation is found to have been
17 willful or intentional, such punitive damages as
18 a court may allow; and

19 “(D) in the case of any successful action to
20 enforce liability under this subsection, the costs
21 of the action, together with reasonable attor-
22 ney’s fees, as determined by the court.

23 “(9) GOOD FAITH EXCEPTION.—Any credit re-
24 porting agency or agent or employee thereof making
25 disclosure of credit reports or identifying informa-

1 tion pursuant to this subsection in good faith reli-
2 ance upon a certificate of the Federal Bureau of In-
3 vestigation pursuant to this subsection shall not be
4 liable to any person for such disclosure under this
5 title, the constitution of any State, or any law or
6 regulation of any State or any political subdivision
7 of any State. As used in this subsection, the term
8 ‘State’ means any State of the United States, the
9 District of Columbia, the Commonwealth of Puerto
10 Rico, the Trust Territory of the Pacific Islands, and
11 any territory or possession of the United States.

12 “(10) LIMITATION OF REMEDIES.—The rem-
13 edies set forth in this subsection shall be the only ju-
14 dicial remedies for violation of this subsection.

15 “(11) INJUNCTIVE RELIEF.—In addition to any
16 other remedy contained in this subsection, injunctive
17 relief shall be available to require compliance with
18 the procedures of this subsection. In the event of
19 any successful action under this subsection, costs of
20 the action, together with reasonable attorney’s fees,
21 as determined by the court, may be recovered.”.

22 **SEC. 4. REWARDS FOR INFORMATION CONCERNING ESPIO-**
23 **NAGE.**

24 (a) REWARDS.—Section 3071 of title 18, United
25 States Code, is amended—

1 (1) by inserting “(a)” before “With respect to”;
2 and

3 (2) by adding at the end the following new sub-
4 section:

5 “(b) With respect to acts of espionage involving or
6 directed at the United States, the Attorney General may
7 reward any individual who furnishes information—

8 “(1) leading to the arrest or conviction, in any
9 country, of any individual or individuals for commis-
10 sion of an act of espionage against the United
11 States;

12 “(2) leading to the arrest or conviction, in any
13 country, of any individual or individuals for conspir-
14 ing or attempting to commit an act of espionage
15 against the United States; or

16 “(3) leading to the prevention or frustration of
17 an act of espionage against the United States.”.

18 (b) DEFINITIONS.—Section 3077 of such title is
19 amended by inserting at the end thereof the following new
20 paragraph:

21 “(8) ‘act of espionage’ means an activity that is
22 a violation of—

23 “(A) section 793, 794, or 798 of title 18,
24 United States Code;

1 “(B) section 783(b) of title 50, United
2 States Code; or

3 “(C) section 4 of the Subversive Activities
4 Control Act of 1950 (50 U.S.C. 783).”.

5 (c) CLERICAL AMENDMENTS.—The items relating to
6 chapter 24 in the table of chapters at the beginning of
7 such title, and in the table of chapters at the beginning
8 of part II of such title, are each amended by adding at
9 the end the following: “and espionage.”.

10 **SEC. 5. ESPIONAGE NOT COMMITTED IN ANY DISTRICT.**

11 (a) IN GENERAL.—Chapter 211 of title 18, United
12 States Code, is amended by inserting after section 3238
13 the following new section:

14 “SEC. 3239. Espionage and related offenses not com-
15 mitted in any district.

16 “The trial for any offense involving a violation of—

17 “(1) section 793, 794, 798, 952, or 1030(a)(1)
18 of this title;

19 “(2) section 601 of the National Security Act of
20 1947 (50 U.S.C. 421); or

21 “(3) subsection (b) or (c) of section 4 of the
22 Subversive Activities Control Act of 1950 (50 U.S.C.
23 783 (b) or (c)), begun or committed upon the high
24 seas or elsewhere out of the jurisdiction of any par-
25 ticular State or district, may be in the District of

1 Columbia or in any other district authorized by
2 law.”.

3 (b) CLERICAL AMENDMENT.—The table of sections
4 at the beginning of chapter 211 of such title is amended
5 by inserting after the item relating to section 3238 the
6 following: “3239. Jurisdiction of espionage outside the
7 United States and related offenses.”.

8 **SEC. 6. CRIMINAL FORFEITURE FOR VIOLATION OF CER-**
9 **TAIN ESPIONAGE LAWS.**

10 (a) Section 798 of title 18, United States Code, is
11 amended by adding at the end the following new sub-
12 sections:

13 “(d)(1) Any person convicted of a violation of this
14 section shall forfeit to the United States irrespective of
15 any provision of State law—

16 “(A) any property constituting, or derived from,
17 any proceeds the person obtained, directly or indi-
18 rectly, as the result of such violation; and

19 “(B) any of the person’s property used, or in-
20 tended to be used, in any manner or part, to com-
21 mit, or to facilitate the commission of, such viola-
22 tion.

23 “(2) The court, in imposing sentence on a defendant
24 for a conviction of a violation of this section, shall order

1 that the defendant forfeit to the United States all property
2 described in paragraph (1).

3 “(3) Except as provided in paragraph (4), the provi-
4 sions of subsections (b), (c), and (e) through (p) of section
5 413 of the Comprehensive Drug Abuse Prevention and
6 Control Act of 1970 (21 U.S.C. 853 (b), (c), and (e)–(p))
7 shall apply to—

8 “(A) property subject to forfeiture under this
9 subsection;

10 “(B) any seizure or disposition of such prop-
11 erty; and

12 “(C) any administrative or judicial proceeding
13 in relation to such property, if not inconsistent with
14 this subsection.

15 “(4) Notwithstanding section 524(c) of title 28, there
16 shall be deposited in the Crime Victims Fund established
17 under section 1402 of the Victims of Crime Act of 1984
18 (42 U.S.C. 10601) all amounts from the forfeiture of
19 property under this subsection remaining after the pay-
20 ment of expenses for forfeiture and sale authorized by law.

21 “(e) As used in subsection (d) of this section, the
22 term ‘State’ means any State of the United States, the
23 District of Columbia, the Commonwealth of Puerto Rico,
24 the Trust Territory of the Pacific Islands, and any terri-
25 tory or possession of the United States.”.

1 (b) AMENDMENTS FOR CONSISTENCY IN APPLICA-
2 TION OF FORFEITURE UNDER TITLE 18.—(1) Section
3 793(h)(3) of such title is amended in the matter above
4 subparagraph (A) by striking out “(o)” each place it ap-
5 pears and inserting in lieu thereof “(p)”.

6 (2) Section 794(d)(3) of such title is amended in the
7 matter above subparagraph (A) by striking out “(o)” each
8 place it appears and inserting in lieu thereof “(p)”.

9 (c) SUBVERSIVE ACTIVITIES CONTROL ACT.—Sec-
10 tion 4 of the Subversive Activities Control Act of 1950
11 (50 U.S.C. 783) is amended by adding at the end the fol-
12 lowing new subsection:

13 “(g)(1) Any person convicted of a violation of this
14 section shall forfeit to the United States irrespective of
15 any provision of State law—

16 “(A) any property constituting, or derived from,
17 any proceeds the person obtained, directly or indi-
18 rectly, as the result of such violation; and

19 “(B) any of the person’s property used, or in-
20 tended to be used, in any manner or part, to com-
21 mit, or to facilitate the commission of, such viola-
22 tion.

23 “(2) The court, in imposing sentence on a defendant
24 for a conviction of a violation of this section, shall order

1 that the defendant forfeit to the United States all property
2 described in paragraph (1).

3 “(3) Except as provided in paragraph (4), the provi-
4 sions of subsections (b), (c), and (e) through (p) of section
5 413 of the Comprehensive Drug Abuse Prevention and
6 Control Act of 1970 (21 U.S.C. 853(b), (c), and (e)–(p))
7 shall apply to—

8 “(A) property subject to forfeiture under this
9 subsection;

10 “(B) any seizure or disposition of such prop-
11 erty; and

12 “(C) any administrative or judicial proceeding
13 in relation to such property, if not inconsistent with
14 this subsection.

15 “(4) Notwithstanding section 524(c) of title 28, there
16 shall be deposited in the Crime Victims Fund established
17 under section 1402 of the Victims of Crime Act of 1984
18 (42 U.S.C. 10601) all amounts from the forfeiture of
19 property under this subsection remaining after the pay-
20 ment of expenses for forfeiture and sale authorized by
21 law.”.

1 **SEC. 7. DENIAL OF ANNUITIES OR RETIRED PAY TO PER-**
2 **SONS CONVICTED OF ESPIONAGE IN FOR-**
3 **EIGN COURTS INVOLVING UNITED STATES IN-**
4 **FORMATION.**

5 Section 8312 of title 5, United States Code, is
6 amended by adding at the end thereof the following new
7 section—

8 “(d) For purposes of subsections (b)(1) and (c)(1),
9 an offense within the meaning of such subsections is es-
10 tablished if the Attorney General certifies to the agency
11 administering the annuity or retired pay concerned—

12 “(1) that an individual subject to this chapter
13 has been convicted by an impartial court of appro-
14 priate jurisdiction within a foreign country in cir-
15 cumstances in which the conduct violates the provi-
16 sions of law enumerated in subsections (b)(1) and
17 (c)(1), or would violate such provisions had such
18 conduct taken place with the United States, and
19 that such conviction is not being appealed or that
20 final action has been taken on such appeal;

21 “(2) that such conviction was obtained in ac-
22 cordance with procedures that provided the defend-
23 ant due process rights comparable to such rights
24 provided by the United States Constitution, and
25 such conviction was based upon evidence which

1 would have been admissible in the courts of the
2 United States; and
3 “(3) that such conviction occurred after the
4 date of enactment of this subsection.”.

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