

AMENDMENT NO. _____ Calendar No. _____

Purpose: To amend title 18, United States Code, to provide immunity from liability for confidential disclosure of trade secret information to the Government or in a court filing.

IN THE SENATE OF THE UNITED STATES—114th Cong., 2d Sess.

S. 1890

To amend chapter 90 of title 18, United States Code, to provide Federal jurisdiction for the theft of trade secrets, 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. LEAHY (for
himself and Mr. GRASSLEY)

Viz:

1 At the appropriate place, insert the following:

2 **SEC. ____ . IMMUNITY FROM LIABILITY FOR CONFIDENTIAL**
3 **DISCLOSURE OF A TRADE SECRET TO THE**
4 **GOVERNMENT OR IN A COURT FILING.**

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

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

9 (2) in subsection (a)(2), as designated by para-
10 graph (1), by striking “the reporting of a suspected

1 violation of law to any governmental entity of the
2 United States, a State, or a political subdivision of
3 a State, if such entity has lawful authority with re-
4 spect to that violation” and inserting “the disclosure
5 of a trade secret in accordance with subsection (b)”;
6 and

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

8 “(b) IMMUNITY FROM LIABILITY FOR CONFIDENTIAL
9 DISCLOSURE OF A TRADE SECRET TO THE GOVERNMENT
10 OR IN A COURT FILING.—

11 “(1) IMMUNITY.—An individual shall not be
12 held criminally or civilly liable under any Federal or
13 State trade secret law for the disclosure of a trade
14 secret that—

15 “(A) is made—

16 “(i) in confidence to a Federal, State,
17 or local government official, either directly
18 or indirectly, or to an attorney; and

19 “(ii) solely for the purpose of report-
20 ing or investigating a suspected violation of
21 law; or

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

1 “(2) USE OF TRADE SECRET INFORMATION IN
2 ANTI-RETALIATION LAWSUIT.—An individual who
3 files a lawsuit for retaliation by an employer for re-
4 porting a suspected violation of law may disclose the
5 trade secret to the attorney of the individual and use
6 the trade secret information in the court proceeding,
7 if the individual—

8 “(A) files any document containing the
9 trade secret under seal; and

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

12 “(3) NOTICE.—

13 “(A) IN GENERAL.—An employer shall
14 provide notice of the immunity set forth in this
15 subsection in any contract or agreement with
16 an employee that governs the use of a trade se-
17 cret or other confidential information.

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

1 “(C) NON-COMPLIANCE.—If an employer
2 does not comply with the notice requirement in
3 subparagraph (A), the employer may not be
4 awarded exemplary damages or attorney fees
5 under subparagraph (C) or (D) of section
6 1836(b)(3) in an action against an employee to
7 whom notice was not provided.

8 “(D) APPLICABILITY.—This paragraph
9 shall apply to contracts and agreements that
10 are entered into or updated after the date of
11 enactment of this subsection.

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

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

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