

News from Senator

BOB DOLE



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DOLE INTRODUCES BILL TO HELP STEM INDUSTRIAL ESPIONAGE TODAY

WASHINGTON -- Senator Bob Dole (R.-Kan.) today introduced legislation to amend the Freedom of Information Act to curb industrial espionage. Co-sponsors are Senators Hatch, Laxalt, Cochran, Lugar, Schmitt, and DeConcini.

Dole's bill, "The Preservation of Confidential Information Act," responds to questions raised by Chrysler vs. Brown, a recent Supreme Court decision which, according to Dole, "raised questions as to whether the Freedom of Information Act has been transformed, in certain instances, from a mechanism by which citizens could learn about the operations of their government into an instrument for industrial espionage," said Dole.

"While initially intended to serve as a means to enlighten the public about their government, the act has become a vehicle for private surveillance, at government expense, of commercial enterprises by their adversaries," added Dole, who is a member of the Senate Judiciary Committee. Three out of five of FOIA requests are currently filed by business firms or the lawyers who represent them," said Dole.

Short Summary of Provisions "Preservation of Confidential Information Act"

Procedural Amendments to the Freedom of Information Act

1. Provides advance notice to private submitter of information before the government discloses that information under FOIA.
2. Gives the submitter the right to submit written objections to the disclosure of the requested information.
3. Provides an informal ex parte hearing for the submitter to challenge disclosure of information. Hearing may be denied by the agency under certain conditions.
4. Provides de novo judicial review of the agency's disclosure decision, similar to review provisions currently in FOIA.
5. Allows the requester to bring suit for disclosure if the "reverse FOIA" proceedings extend past a certain period.

Substantive Amendments to the Freedom of Information Act

1. Exemption (b)(4) (the "trade secrets" exemption) is expanded to include "proprietary information which would not customarily be disclosed to the public by the person from whom it was obtained" and "information which the agency in good faith has obligated itself not to disclose."
2. Exemption (b)(4) is made mandatory, except where the submitter consents to disclosure or non-disclosure would "seriously injure an overriding public interest."
3. 18 U.S.C. §1905, The Trade Secrets Act, is identified as a basis for a claim of confidentiality by being defined as within the scope of the (b)(3) exemption (referring to information exempted from disclosure by other statutes). This amendment resolves a confusion left in the wake of the Chrysler decision.