105TH CONGRESS
1ST SESSION

H. R. 695

To amend title 18, United States Code, to affirm the rights of United States persons to use and sell encryption and to relax export controls on encryption.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 12, 1997

Mr. GOODLATTE (for himself, Ms. LOFGREN, Mr. DELAY, Mr. BOEHNER, Mr. COBLE, Mr. SENSENBRENNER, Mr. BONO, Mr. PEASE, Mr. CANNON, Mr. CONYERS, Mr. BOUCHER, Mr. GEKAS, Mr. SMITH of Texas, Mr. INGLIS of South Carolina, Mr. BRYANT, Mr. CHABOT, Mr. BARR of Georgia, Ms. JACKSON-LEE of Texas, Ms. WATERS, Mr. ACKERMAN, Mr. BAKER, Mr. BARTLETT of Maryland, Mr. CAMPBELL, Mr. CHAMBLISS, Mr. CUNNINGHAM, Mr. DAVIS of Virginia, Mr. DICKEY, Mr. DOOLITTLE, Mr. EHLERS, Mr. ENGEL, Ms. ESHOO, Mr. EVERETT, Mr. EWING, Mr. FARR of California, Mr. GEJDENSON, Mr. GILLMOR, Mr. GOODE, Ms. NORTON, Mr. HORN, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. SAM JOHNSON of Texas, Mr. KOLBE, Mr. MCINTOSH, Mr. MCKEON, Mr. MANZULLO, Mr. MATSUI, Mr. MICA, Mr. MINGE, Mr. MOAKLEY, Mr. NETHERCUTT, Mr. PACKARD, Mr. SESSIONS, Mr. UPTON, Mr. WHITE, and Ms. WOOL- SEY) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Internaional Rela- tions, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To amend title 18, United States Code, to affirm the rights of United States persons to use and sell encryption and to relax export controls on encryption.

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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 "Security and Freedom

5 Through Encryption (SAFE) Act".

6 **SEC. 2. SALE AND USE OF ENCRYPTION.**

7 (a) IN GENERAL.—Part I of title 18, United States

8 Code, is amended by inserting after chapter 121 the fol-

9 lowing new chapter:

10 **"CHAPTER 122—ENCRYPTED WIRE AND**

11 **ELECTRONIC INFORMATION**

"2801. Definitions.
"2802. Freedom to use encryption.
"2803. Freedom to sell encryption.
"2804. Prohibition on mandatory key escrow.
"2805. Unlawful use of encryption in furtherance of a criminal act.

12 **"§ 2801. Definitions**

13 "As used in this chapter—

14 "(1) the terms 'person', 'State', 'wire commu-

15 nication', 'electronic communication', 'investigative

16 or law enforcement officer', 'judge of competent ju-

17 risdiction', and 'electronic storage' have the mean-

18 ings given those terms in section 2510 of this title;

19 "(2) the terms 'encrypt' and 'encryption' refer

20 to the scrambling of wire or electronic information

21 using mathematical formulas or algorithms in order

1   to preserve the confidentiality, integrity, or authen-

2   ticity of, and prevent unauthorized recipients from

3   accessing or altering, such information;

4   ''(3) the term 'key' means the variable informa-

5   tion used in a mathematical formula, code, or algo-

6   rithm, or any component thereof, used to decrypt

7   wire or electronic information that has been

8   encrypted; and

9   ''(4) the term 'United States person' means—

10   ''(A) any United States citizen;

11   ''(B) any other person organized under the

12   laws of any State, the District of Columbia, or

13   any commonwealth, territory, or possession of

14   the United States; and

15   ''(C) any person organized under the laws

16   of any foreign country who is owned or con-

17   trolled by individuals or persons described in

18   subparagraphs (A) and (B).

19 **''§ 2802. Freedom to use encryption**

20   ''Subject to section 2805, it shall be lawful for any

21 person within any State, and for any United States person

22 in a foreign country, to use any encryption, regardless of

23 the encryption algorithm selected, encryption key length

24 chosen, or implementation technique or medium used.

1 **"§ 2803. Freedom to sell encryption**

2   "Subject to section 2805, it shall be lawful for any

3 person within any State to sell in interstate commerce any

4 encryption, regardless of the encryption algorithm se-

5 lected, encryption key length chosen, or implementation

6 technique or medium used.

7 **"§ 2804. Prohibition on mandatory key escrow**

8   "(a) PROHIBITION.—No person in lawful possession

9 of a key to encrypted information may be required by Fed-

10 eral or State law to relinquish to another person control

11 of that key.

12   "(b) EXCEPTION FOR ACCESS FOR LAW ENFORCE-

13 MENT PURPOSES.—Subsection (a) shall not affect the au-

14 thority of any investigative or law enforcement officer, act-

15 ing under any law in effect on the effective date of this

16 chapter, to gain access to encrypted information.

17 **"§ 2805. Unlawful use of encryption in furtherance of**

18   **a criminal act**

19   "Any person who willfully uses encryption in further-

20 ance of the commission of a criminal offense for which

21 the person may be prosecuted in a court of competent ju-

22 risdiction—

23   "(1) in the case of a first offense under this

24   section, shall be imprisoned for not more than 5

25   years, or fined in the amount set forth in this title,

26   or both; and

1 ''(2) in the case of a second or subsequent of-

2 fense under this section, shall be imprisoned for not

3 more than 10 years, or fined in the amount set forth

4 in this title, or both.''.

5 (b) CONFORMING AMENDMENT.—The table of chap-

6 ters for part I of title 18, United States Code, is amended

7 by inserting after the item relating to chapter 33 the fol-

8 lowing new item:

''122. Encrypted wire and electronic information .... **2801''.**

9 **SEC. 3. EXPORTS OF ENCRYPTION.**

10 (a) AMENDMENT TO EXPORT ADMINISTRATION ACT

11 OF 1979.—Section 17 of the Export Administration Act

12 of 1979 (50 U.S.C. App. 2416) is amended by adding at

13 the end thereof the following new subsection:

14 ''(g) COMPUTERS AND RELATED EQUIPMENT.—

15 ''(1) GENERAL RULE.—Subject to paragraphs

16 (2), (3), and (4), the Secretary shall have exclusive

17 authority to control exports of all computer hard-

18 ware, software, and technology for information secu-

19 rity (including encryption), except that which is spe-

20 cifically designed or modified for military use, in-

21 cluding command, control, and intelligence applica-

22 tions.

23 ''(2) ITEMS NOT REQUIRING LICENSES.—No

24 validated license may be required, except pursuant

1 to the Trading With The Enemy Act or the Inter-
2 national Emergency Economic Powers Act (but only
3 to the extent that the authority of such Act is not
4 exercised to extend controls imposed under this Act),
5 for the export or reexport of—

6   "(A) any software, including software with
7   encryption capabilities—

8   "(i) that is generally available, as is,
9   and is designed for installation by the pur-
10   chaser; or

11   "(ii) that is in the public domain for
12   which copyright or other protection is not
13   available under title 17, United States
14   Code, or that is available to the public be-
15   cause it is generally accessible to the inter-
16   ested public in any form; or

17   "(B) any computing device solely because
18   it incorporates or employs in any form software
19   (including software with encryption capabilities)
20   exempted from any requirement for a validated
21   license under subparagraph (A).

22   "(3) SOFTWARE WITH ENCRYPTION CAPABILI-
23 TIES.—The Secretary shall authorize the export or
24 reexport of software with encryption capabilities for

1 nonmilitary end uses in any country to which ex-
2 ports of software of similar capability are permitted
3 for use by financial institutions not controlled in fact
4 by United States persons, unless there is substantial
5 evidence that such software will be—

6   ''(A) diverted to a military end use or an
7   end use supporting international terrorism;

8   ''(B) modified for military or terrorist end
9   use; or

10   ''(C) reexported without any authorization
11   by the United States that may be required
12   under this Act.

13   ''(4) HARDWARE WITH ENCRYPTION CAPABILI-
14   TIES.—The Secretary shall authorize the export or
15   reexport of computer hardware with encryption ca-
16   pabilities if the Secretary determines that a product
17   offering comparable security is commercially avail-
18   able outside the United States from a foreign sup-
19   plier, without effective restrictions.

20   ''(5) DEFINITIONS.—As used in this sub-
21   section—

22   ''(A) the term 'encryption' means the
23   scrambling of wire or electronic information
24   using mathematical formulas or algorithms in
25   order to preserve the confidentiality, integrity,

1 or authenticity of, and prevent unauthorized re-

2 cipients from accessing or altering, such infor-

3 mation;

4 "(B) the term 'generally available' means,

5 in the case of software (including software with

6 encryption capabilities), software that is offered

7 for sale, license, or transfer to any person with-

8 out restriction, whether or not for consider-

9 ation, including, but not limited to, over-the-

10 counter retail sales, mail order transactions,

11 phone order transactions, electronic distribu-

12 tion, or sale on approval;

13 "(C) the term 'as is' means, in the case of

14 software (including software with encryption ca-

15 pabilities), a software program that is not de-

16 signed, developed, or tailored by the software

17 publisher for specific purchasers, except that

18 such purchasers may supply certain installation

19 parameters needed by the software program to

20 function properly with the purchaser's system

21 and may customize the software program by

22 choosing among options contained in the soft-

23 ware program;

1 ''(D) the term 'is designed for installation

2 by the purchaser' means, in the case of soft-

3 ware (including software with encryption capa-

4 bilities) that—

5 ''(i) the software publisher intends for

6 the purchaser (including any licensee or

7 transferee), who may not be the actual

8 program user, to install the software pro-

9 gram on a computing device and has sup-

10 plied the necessary instructions to do so,

11 except that the publisher may also provide

12 telephone help line services for software in-

13 stallation, electronic transmission, or basic

14 operations; and

15 ''(ii) the software program is designed

16 for installation by the purchaser without

17 further substantial support by the supplier;

18 ''(E) the term 'computing device' means a

19 device which incorporates one or more micro-

20 processor-based central processing units that

21 can accept, store, process, or provide output of

22 data; and

23 ''(F) the term 'computer hardware', when

24 used in conjunction with information security,

1   includes, but is not limited to, computer sys-

2   tems, equipment, application-specific assem-

3   blies, modules, and integrated circuits.''.

4   (b) CONTINUATION OF EXPORT ADMINISTRATION

5 ACT.—For purposes of carrying out the amendment made

6 by subsection (a), the Export Administration Act of 1979

7 shall be deemed to be in effect.

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