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104TH CONGRESS  
2D SESSION

# H. R. 3011

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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## IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 1996

Mrs. GOODLATTE (for himself, Mr. DELAY, Mr. BOEHNER, Mr. MOORHEAD, Mrs. SCHROEDER, Mr. GEJDENSON, Mr. MANZULLO, Mr. COBLE, Mr. BARR of Georgia, Mr. BONO, Ms. LOFGREN, Mr. CAMPBELL, Ms. ESHOO, Mr. DOOLITTLE, Mr. FARR of California, Mr. MCKEON, Mr. ENGEL, Mrs. WALDHOLTZ, Mr. EWING, Mr. MICA, Mr. CHAMBLISS, Mr. EVERETT, Mr. EHLERS, Mr. ORTON, Mr. MATSUI, Mr. BOUCHER, Mr. CHABOT, Mr. MOAKLEY, and Mr. BARTLETT of Maryland) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on International Relations, 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.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Security and Freedom  
3 Through Encryption (SAFE) Act”.

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

5 (a) **IN GENERAL.**—Part I of title 18, United States  
6 Code, is amended by inserting after chapter 121 the fol-  
7 lowing new chapter:

8 **“CHAPTER 122—ENCRYPTED WIRE AND**  
9 **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.

10 **“§ 2801. Definitions**

11 “As used in this chapter—

12 “(1) the terms ‘person’, ‘State’, ‘wire commu-  
13 nication’, ‘electronic communication’, ‘investigative  
14 or law enforcement officer’, ‘judge of competent ju-  
15 risdiction’, and ‘electronic storage’ have the mean-  
16 ings given those terms in section 2510 of this title;

17 “(2) the terms ‘encrypt’ and ‘encryption’ refer  
18 to the scrambling of wire or electronic information  
19 using mathematical formulas or algorithms in order  
20 to preserve the confidentiality, integrity, or authen-  
21 ticity of, and prevent unauthorized recipients from  
22 accessing or altering, such information;

1           “(3) the term ‘key’ means the variable informa-  
2           tion used in a mathematical formula, code, or algo-  
3           rithm, or any component thereof, used to decrypt  
4           wire or electronic information that has been  
5           encrypted; and

6           “(4) the term ‘United States person’ means—

7                   “(A) any United States citizen;

8                   “(B) any other person organized under the  
9           laws of any State, the District of Columbia, or  
10          any commonwealth, territory, or possession of  
11          the United States; and

12                   “(C) any person organized under the laws  
13          of any foreign country who is owned or con-  
14          trolled by individuals or persons described in  
15          subparagraphs (A) and (B).

16   **“§ 2802. Freedom to use encryption**

17           “Subject to section 2805, it shall be lawful for any  
18   person within any State, and for any United States person  
19   in a foreign country, to use any encryption, regardless of  
20   the encryption algorithm selected, encryption key length  
21   chosen, or implementation technique or medium used.

22   **“§ 2803. Freedom to sell encryption**

23           “Subject to section 2805, it shall be lawful for any  
24   person within any State to sell in interstate commerce any  
25   encryption, regardless of the encryption algorithm se-

1 lected, encryption key length chosen, or implementation  
2 technique or medium used.

3 **“§ 2804. Prohibition on mandatory key escrow**

4 “(a) PROHIBITION.—No person in lawful possession  
5 of a key to encrypted information may be required by Fed-  
6 eral or State law to relinquish to another person control  
7 of that key.

8 “(b) EXCEPTION FOR ACCESS FOR LAW ENFORCE-  
9 MENT PURPOSES.—Subsection (a) shall not affect the au-  
10 thority of any investigative or law enforcement officer, act-  
11 ing under any law in effect on the effective date of this  
12 chapter, to gain access to encrypted information.

13 **“§ 2805. Unlawful use of encryption in furtherance of**  
14 **a criminal act**

15 “Any person who willfully uses encryption in further-  
16 ance of the commission of a criminal offense for which  
17 the person may be prosecuted in a court of competent ju-  
18 risdiction—

19 “(1) in the case of a first offense under this  
20 section, shall be imprisoned for not more than 5  
21 years, or fined in the amount set forth in this title,  
22 or both; and

23 “(2) in the case of a second or subsequent of-  
24 fense under this section, shall be imprisoned for not

1 more than 10 years, or fined in the amount set forth  
 2 in this title, or both.”.

3 (b) CONFORMING AMENDMENT.—The table of chap-  
 4 ters for part I of title 18, United States Code, is amended  
 5 by inserting after the item relating to chapter 33 the fol-  
 6 lowing new item:

“122. Encrypted wire and electronic information ..... 2801”.

7 SEC. 3. EXPORTS OF ENCRYPTION.

8 (a) AMENDMENT TO EXPORT ADMINISTRATION ACT  
 9 OF 1979.—Section 17 of the Export Administration Act  
 10 of 1979 (50 U.S.C. App. 2416) is amended by adding at  
 11 the end thereof the following new subsection:

12 “(g) COMPUTERS AND RELATED EQUIPMENT.—

13 “(1) GENERAL RULE.—Subject to paragraphs  
 14 (2), (3), and (4), the Secretary shall have exclusive  
 15 authority to control exports of all computer hard-  
 16 ware, software, and technology for information secu-  
 17 rity (including encryption), except that which is spe-  
 18 cifically designed or modified for military use, in-  
 19 cluding command, control, and intelligence applica-  
 20 tions.

21 “(2) ITEMS NOT REQUIRING LICENSES.—No  
 22 validated license may be required, except pursuant  
 23 to the Trading With The Enemy Act or the Inter-  
 24 national Emergency Economic Powers Act (but only  
 25 to the extent that the authority of such Act is not

1       exercised to extend controls imposed under this Act),  
2       for the export or reexport of—

3               “(A) any software, including software with  
4       encryption capabilities—

5                       “(i) that is generally available, as is,  
6                       and is designed for installation by the pur-  
7                       chaser; or

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

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

19               “(3) SOFTWARE WITH ENCRYPTION CAPABILI-  
20       TIES.—The Secretary shall authorize the export or  
21       reexport of software with encryption capabilities for  
22       nonmilitary end-uses in any country to which ex-  
23       ports of software of similar capability are permitted  
24       for use by financial institutions not controlled in fact

1 by United States persons, unless there is substantial  
2 evidence that such software will be—

3 “(A) diverted to a military end-use or an  
4 end-use supporting international terrorism;

5 “(B) modified for military or terrorist end-  
6 use; or

7 “(C) reexported without any authorization  
8 by the United States that may be required  
9 under this Act.

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

17 “(5) **DEFINITIONS.**—As used in this sub-  
18 section—

19 “(A) the term ‘encryption’ means the  
20 scrambling of wire or electronic information  
21 using mathematical formulas or algorithms in  
22 order to preserve the confidentiality, integrity,  
23 or authenticity of, and prevent unauthorized re-  
24 cipients from accessing or altering, such infor-  
25 mation;



1           “(B) the term ‘generally available’ means,  
2           in the case of software (including software with  
3           encryption capabilities), software that is offered  
4           for sale, license, or transfer to any person with-  
5           out restriction, whether or not for consider-  
6           ation, including, but not limited to, over-the-  
7           counter retail sales, mail order transactions,  
8           phone order transactions, electronic distribu-  
9           tion, or sale on approval;

10           “(C) the term ‘as is’ means, in the case of  
11           software (including software with encryption ca-  
12           pabilities), a software program that is not de-  
13           signed, developed, or tailored by the software  
14           publisher for specific purchasers, except that  
15           such purchasers may supply certain installation  
16           parameters needed by the software program to  
17           function properly with the purchaser’s system  
18           and may customize the software program by  
19           choosing among options contained in the soft-  
20           ware program;

21           “(D) the term ‘is designed for installation  
22           by the purchaser’ means, in the case of soft-  
23           ware (including software with encryption capa-  
24           bilities) that—

1           “(i) the software publisher intends for  
2           the purchaser (including any licensee or  
3           transferee), who may not be the actual  
4           program user, to install the software pro-  
5           gram on a computing device and has sup-  
6           plied the necessary instructions to do so,  
7           except that the publisher may also provide  
8           telephone help line services for software in-  
9           stallation, electronic transmission, or basic  
10          operations; and

11          “(ii) the software program is designed  
12          for installation by the purchaser without  
13          further substantial support by the supplier;

14          “(E) the term ‘computing device’ means a  
15          device which incorporates one or more  
16          microprocessor-based central processing units  
17          that can accept, store, process, or provide out-  
18          put of data; and

19          “(F) the term ‘computer hardware’, when  
20          used in conjunction with information security,  
21          includes, but is not limited to, computer sys-  
22          tems, equipment, application-specific assem-  
23          blies, modules, and integrated circuits.”.

24          (b) CONTINUATION OF EXPORT ADMINISTRATION  
25          ACT.—For purposes of carrying out the amendment made

- 1 by subsection (a), the Export Administration Act of 1979
- 2 shall be deemed to be in effect.

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