

119TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To amend the Export Control Reform Act of 2018 to establish a whistleblower incentive program and provide protections to whistleblowers.

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IN THE SENATE OF THE UNITED STATES

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Mr. ROUNDS (for himself and Mr. WARNER) introduced the following bill; which was read twice and referred to the Committee on

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**A BILL**

To amend the Export Control Reform Act of 2018 to establish a whistleblower incentive program and provide protections to whistleblowers.

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 “Stop Stealing our  
5 Chips Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Violations of the export control laws of the  
9 United States, especially the diversion of leading-

1 edge artificial intelligence chips into countries that  
2 are adversaries of the United States, threaten the  
3 national security of the United States.

4 (2) Individuals who accurately report violations  
5 of United States export control laws play a signifi-  
6 cant role in helping authorities identify and mitigate  
7 such threats.

8 (3) An incentive program that rewards whistle-  
9 blowers can significantly enhance enforcement ef-  
10 forts by encouraging individuals to provide high-  
11 value information on potential violations.

12 **SEC. 3. ESTABLISHMENT OF WHISTLEBLOWER INCENTIVE**  
13 **PROGRAM AND WHISTLEBLOWER PROTEC-**  
14 **TIONS.**

15 (a) IN GENERAL.—The Export Control Reform Act  
16 of 2018 (50 U.S.C. 4801 et seq.) is amended by inserting  
17 after section 1761 the following:

18 **“SEC. 1761A. WHISTLEBLOWER INCENTIVES AND PROTEC-**  
19 **TIONS.**

20 “(a) DEFINITIONS.—In this section:

21 “(1) ORIGINAL INFORMATION.—The term  
22 ‘original information’ means information that is—

23 “(A) derived from the independent knowl-  
24 edge or analysis of a whistleblower;

1           “(B) not known to the Secretary from any  
2 other source;

3           “(C) not exclusively derived from an alle-  
4 gation made in a judicial or administrative  
5 hearing, a governmental report, hearing, audit,  
6 or investigation, or from news media, unless the  
7 whistleblower is the source of such allegation;  
8 and

9           “(D) provided to the Secretary voluntarily,  
10 without any request from the Secretary or any  
11 other government official.

12           “(2) WHISTLEBLOWER.—

13           “(A) IN GENERAL.—The term ‘whistle-  
14 blower’ means, except as provided by subpara-  
15 graph (B), any individual (including an indi-  
16 vidual who is not a United States citizen) who  
17 provides, or 2 or more such individuals acting  
18 jointly who provide, to the Secretary informa-  
19 tion relating to a possible violation of this part  
20 or of any regulation, order, license, or other au-  
21 thorization issued under this part.

22           “(B) EXCLUSIONS.—The term ‘whistle-  
23 blower’ does not include—

24           “(i) a Federal employee acting within  
25 the scope of the duties of the employee; or

1                   “(ii) an individual on the list of spe-  
2                   cially designated nationals and blocked  
3                   persons maintained by the Office of For-  
4                   eign Assets Control of the Department of  
5                   the Treasury.

6                   “(b) WHISTLEBLOWER INCENTIVE PROGRAM.—

7                   “(1) ESTABLISHMENT.—Not later than 120  
8                   days after the date of the enactment of this section,  
9                   the Secretary shall establish a whistleblower incen-  
10                  tive program to reward individuals who provide  
11                  original information that leads to the imposition of  
12                  fines under this part on persons that violate, at-  
13                  tempt to violate, conspire to violate, or cause a viola-  
14                  tion of this part or any regulation, order, license, or  
15                  other authorization issued under this part.

16                  “(2) WHISTLEBLOWER REPORTS.—

17                  “(A) ONLINE PORTAL.—Not later than  
18                  120 days after the date of the enactment of this  
19                  section, the Secretary shall develop, implement,  
20                  and maintain a secure portal, on a website ac-  
21                  cessible to the public, for the reporting of origi-  
22                  nal information relating to persons that violate,  
23                  attempt to violate, conspire to violate, or cause  
24                  a violation of this part or any regulation, order,

1 license, or other authorization issued under this  
2 part.

3 “(B) ANONYMITY.—

4 “(i) IN GENERAL.—As an alternative  
5 to submission through the portal required  
6 by subparagraph (A), an individual may  
7 submit a report of original information  
8 under this subsection anonymously, includ-  
9 ing through an attorney.

10 “(ii) EXCEPTION.—The Secretary  
11 may require that the identity of an indi-  
12 vidual be disclosed for the individual to re-  
13 ceive an award under paragraph (3).

14 “(C) EXPEDITED REVIEW.—

15 “(i) INITIAL REVIEW.—Not later than  
16 60 days after the date of receipt of a re-  
17 port from a whistleblower, the Secretary  
18 shall—

19 “(I) determine whether the re-  
20 port is credible; and

21 “(II) if credible, initiate a formal  
22 investigation of the allegations con-  
23 tained in the report.

24 “(ii) INVESTIGATION.—Unless the  
25 Secretary determines that the investigation

1 is particularly complex, the Secretary shall  
2 conclude the investigation not later than  
3 180 days after the date on which a formal  
4 investigation has been initiated under  
5 clause (i).

6 “(iii) NOTIFICATION.—

7 “(I) IN GENERAL.—The Sec-  
8 retary shall update the whistleblower  
9 on the status of a report and, if appli-  
10 cable, the related investigation not  
11 later than 30 days after the date on  
12 which the whistleblower submitted the  
13 report and not less frequently than  
14 every 30 days thereafter.

15 “(II) SENSITIVE INFORMA-  
16 TION.—The Secretary may omit from  
17 the updates required by subclause (I)  
18 any information that could com-  
19 promise an ongoing investigation.

20 “(D) AVOIDANCE OF FRIVOLOUS RE-  
21 PORTS.—The Secretary may prohibit an indi-  
22 vidual from making reports under this sub-  
23 section if the individual has previously sub-  
24 mitted multiple reports under this subsection

1 that the Secretary determined under subpara-  
2 graph (C)(i) were not credible.

3 “(3) AWARDS.—

4 “(A) ELIGIBILITY.—Subject to subpara-  
5 graph (B), the Secretary may pay an award or  
6 awards to any whistleblower who provided origi-  
7 nal information that led to the imposition of a  
8 fine under this part on a person or persons that  
9 violated, attempted to violate, conspired to vio-  
10 late, or caused a violation of this part or any  
11 regulation, order, license, or other authorization  
12 issued under this part.

13 “(B) DISQUALIFICATION.—

14 “(i) IN GENERAL.—Subject to clause  
15 (ii), the Secretary may not pay an award  
16 or awards to any whistleblower who pro-  
17 vides original information with respect to a  
18 person or persons that violated, attempted  
19 to violate, conspired to violate, or caused a  
20 violation of this part or any regulation,  
21 order, license, or other authorization issued  
22 under this part, if such information was  
23 obtained through—

24 “(I) the role of the whistleblower  
25 as—

1                   “(aa) an officer, director,  
2 trustee, or partner of an entity  
3 that handles internal processes  
4 for legal violations for the person  
5 or persons;

6                   “(bb) an employee of an en-  
7 tity that conducts compliance or  
8 internal audits for the person or  
9 persons;

10                   “(cc) an employee of a pub-  
11 lic accounting firm if the infor-  
12 mation was obtained while work-  
13 ing on an engagement required  
14 by Federal securities laws, other  
15 than specific audits; or

16                   “(II) any means that violates  
17 Federal or State criminal law.

18                   “(ii) EXCEPTIONS.—Clause (i) shall  
19 not apply if—

20                   “(I) the whistleblower had a rea-  
21 sonable basis to believe that disclosing  
22 the original information to the Sec-  
23 retary was necessary to stop conduct  
24 likely to cause significant financial  
25 harm;



1                   “(II) the whistleblower had a rea-  
2                   sonable basis to believe that the rel-  
3                   evant entity was obstructing an inves-  
4                   tigation into the misconduct; or

5                   “(III) not less than 120 days  
6                   have elapsed since the whistleblower  
7                   provided the information to the audit  
8                   committee, chief legal officer, chief  
9                   compliance officer (or their equiva-  
10                  lent) of the relevant entity or the su-  
11                  pervisor of the whistleblower.

12                  “(C) AMOUNT.—

13                  “(i) IN GENERAL.—An award issued  
14                  under subparagraph (A) shall be—

15                  “(I) not less than 10 percent, in  
16                  total, of the amount collected of the  
17                  fine imposed under this part; and

18                  “(II) not more than 30 percent,  
19                  in total, of the amount collected of  
20                  that fine.

21                  “(ii) JOINTLY SUBMITTED REPORT.—

22                  In the case of a report that was submitted  
23                  jointly by 2 or more individuals, any award  
24                  issued under subparagraph (A) shall be  
25                  split equally among the individuals.

1           “(D) DETERMINATION.—The Secretary  
2 shall determine the amount of an award made  
3 under subparagraph (A) taking into account,  
4 with respect to the information provided—

5                   “(i) accuracy;

6                   “(ii) relevance;

7                   “(iii) timeliness; and

8                   “(iv) usefulness.

9           “(4) PUBLICATION.—

10           “(A) IN GENERAL.—Not later than the  
11 date on which the online portal required by  
12 paragraph (2)(A) is complete, the Secretary  
13 shall develop and implement a plan to publicize  
14 the whistleblower incentive program established  
15 by paragraph (1).

16           “(B) FUNDING.—The Secretary shall pay  
17 any expenses incurred under subparagraph (A)  
18 from amounts authorized to be appropriated to  
19 the Bureau of Industry and Security.

20           “(c) PROTECTION OF WHISTLEBLOWERS.—

21           “(1) PROHIBITION AGAINST RETALIATION.—

22           “(A) IN GENERAL.—Except as provided in  
23 subparagraph (B), no employer may discharge,  
24 demote, suspend, threaten, harass, directly or  
25 indirectly, or in any other manner discriminate

1           against a whistleblower in the terms and condi-  
2           tions of employment because of a lawful act  
3           done by the whistleblower—

4                   “(i) in reporting violations to the em-  
5                   ployer or to a law enforcement agency;

6                   “(ii) in providing information to the  
7                   Secretary in accordance with this section;  
8                   or

9                   “(iii) in initiating, testifying in, or as-  
10                  sisting in any investigation or judicial or  
11                  administrative action based upon or related  
12                  to such information.

13                  “(B) EXCEPTION.—The protection against  
14                  retaliation established by subparagraph (A)  
15                  shall not apply to any individual who reports in-  
16                  formation under this section knowing that such  
17                  information is false.

18                  “(C) ENFORCEMENT.—

19                   “(i) CAUSE OF ACTION.—An indi-  
20                   vidual who alleges discharge or other dis-  
21                   crimination in violation of subparagraph  
22                   (A) may bring an action under this para-  
23                   graph in the appropriate district court of  
24                   the United States for the relief provided in  
25                   subparagraph (D).

1           “(ii) SUBPOENAS.—A subpoena re-  
2           quiring the attendance of a witness at a  
3           trial or hearing conducted under this sub-  
4           paragraph may be served at any place in  
5           the United States.

6           “(iii) STATUTE OF LIMITATIONS.—

7           “(I) IN GENERAL.—An action  
8           under this subparagraph shall not be  
9           entertained if commenced more  
10          than—

11                   “(aa) 6 years after the date  
12                   of the violation of subparagraph  
13                   (A) occurred; or

14                   “(bb) 3 years after the date  
15                   when facts material to the right  
16                   of action are known or reason-  
17                   ably should have been known by  
18                   the employee alleging a violation  
19                   of subparagraph (A).

20           “(II) REQUIRED ACTION WITHIN  
21          10 YEARS.—Notwithstanding sub-  
22          clause (I), an action under this sub-  
23          paragraph may not in any cir-  
24          cumstance be brought more than 10

1                   years after the date on which the vio-  
2                   lation occurs.

3                   “(D) RELIEF.—Relief for an individual  
4 prevailing in an action brought under subpara-  
5 graph (C) shall include—

6                   “(i) reinstatement with the same se-  
7                   niority status that the individual would  
8                   have had, but for the discrimination;

9                   “(ii) 2 times the amount of back pay  
10 otherwise owed to the individual, with in-  
11 terest; and

12                   “(iii) compensation for litigation  
13 costs, expert witness fees, and reasonable  
14 attorneys’ fees.

15                   “(2) CONFIDENTIALITY.—

16                   “(A) IN GENERAL.—Except as provided in  
17 subparagraphs (B) and (C), the Secretary and  
18 any officer or employee of the Department of  
19 Commerce shall not disclose any information,  
20 including information provided by a whistle-  
21 blower to the Secretary, that could reasonably  
22 be expected to reveal the identity of the whistle-  
23 blower, except in accordance with the provisions  
24 of section 552a of title 5, United States Code,  
25 unless and until required to be disclosed to a

1 defendant or respondent in connection with a  
2 public proceeding instituted by the Secretary or  
3 any entity described in subparagraph (D).

4 “(B) EXEMPTED STATUTE.—For purposes  
5 of section 552 of title 5, United States Code,  
6 this paragraph shall be considered a statute de-  
7 scribed in subsection (b)(3)(B) of such section.

8 “(C) RULE OF CONSTRUCTION.—Nothing  
9 in this section is intended to limit, or shall be  
10 construed to limit, the ability of the Attorney  
11 General to present such evidence to a grand  
12 jury or to share such evidence with potential  
13 witnesses or defendants in the course of an on-  
14 going criminal investigation.

15 “(D) AVAILABILITY TO GOVERNMENT  
16 AGENCIES.—

17 “(i) IN GENERAL.—Without the loss  
18 of its status as confidential in the hands of  
19 the Secretary, all information referred to  
20 in subparagraph (A) may, in the discretion  
21 of the Secretary, when determined by the  
22 Secretary to be necessary to accomplish  
23 the purposes of this part or any regulation,  
24 order, license, or other authorization issued  
25 under this part, be made available to—

1 “(I) a Federal law enforcement  
2 agency;

3 “(II) a national security agency;

4 “(III) an appropriate regulatory  
5 authority;

6 “(IV) a self-regulatory organiza-  
7 tion; and

8 “(V) a foreign law enforcement  
9 authority.

10 “(ii) CONFIDENTIALITY.—

11 “(I) IN GENERAL.—Each of the  
12 entities described in subclauses (I)  
13 through (IV) of clause (i) shall main-  
14 tain such information as confidential  
15 in accordance with the requirements  
16 established under subparagraph (A).

17 “(II) FOREIGN AUTHORITIES.—  
18 Each of the entities described in  
19 clause (i)(V) shall maintain such in-  
20 formation in accordance with such as-  
21 surances of confidentiality as the Sec-  
22 retary determines appropriate.

23 “(d) EXPORT COMPLIANCE ACCOUNTABILITY  
24 FUND.—

1           “(1) ESTABLISHMENT.—Not later than 90 days  
2 after the date of the enactment of this section, there  
3 shall be established in the Treasury of the United  
4 States a fund to be known as the ‘Export Compli-  
5 ance Accountability Fund’ (in this subsection re-  
6 ferred to as the ‘Fund’).

7           “(2) AVAILABILITY.—At the end of each fiscal  
8 year, any amounts deposited into the Fund under  
9 paragraph (3) that remain in the Fund after the  
10 payment, for that fiscal year, of all expenses under  
11 paragraph (3) shall be transferred to the general  
12 fund of the Treasury.

13           “(3) USE OF FUND.—The Fund shall be avail-  
14 able to the Secretary, without further appropriation  
15 or fiscal year limitation, for—

16                   “(A) paying awards to whistleblowers as  
17 provided in subsection (b)(3);

18                   “(B) funding activities that support the  
19 whistleblower incentive program and whistle-  
20 blower protections, including—

21                           “(i) reviewing and investigating whis-  
22 tleblower reports;

23                           “(ii) providing training and education  
24 on compliance with the confidentiality re-  
25 quirement under subsection (c)(2); and



1                   “(iii) record keeping, as considered  
2                   necessary by the Secretary; and

3                   “(C) if all outstanding awards under sub-  
4                   section (b)(3) have been paid, expenses related  
5                   to enforcement of this part or any regulation,  
6                   order, license, or other authorization issued  
7                   under this part.

8                   “(4) DEPOSITS AND CREDITS.—There shall be  
9                   deposited into or credited to the Fund an amount  
10                  equal to any fine collected by the Secretary on or  
11                  after the date of the enactment of this section in any  
12                  judicial or administrative action brought by the Sec-  
13                  retary that depends on or was initiated because of  
14                  original information submitted by a whistleblower.

15                  “(e) INITIAL FUNDING.—The Secretary shall pay,  
16                  from amounts otherwise available to the Bureau of Indus-  
17                  try and Security, any expenses incurred under this section  
18                  before the Export Compliance Accountability Fund is es-  
19                  tablished under subsection (d) and has received deposits  
20                  under paragraph (3) of that subsection.”.

21                  (b)           CONFORMING            AMENDMENT.—Section  
22                  1402(b)(1)(B) of the Victims of Crime Act of 1984 (34  
23                  U.S.C. 20101(b)(1)(B)) is amended—

24                         (1) in clause (iii), by striking “; and” and in-  
25                         serting a semicolon;

1           (2) in clause (iv), by striking the semicolon and  
2           inserting “; and”; and

3           (3) by adding at the end the following;

4                       “(v) the Export Compliance Account-  
5                       ability Fund pursuant to section 1761A(e)  
6                       of the Export Control Reform Act of  
7                       2018.”.