

109TH CONGRESS
1ST SESSION

H. CON. RES. 319

Expressing the sense of the Congress regarding the successful and substantial contributions of the amendments to the patent and trademark laws that were enacted in 1980 (Public Law 96–517; commonly known as the “Bayh-Dole Act”), on the occasion of the 25th anniversary of its enactment.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 16, 2005

Mr. SENSENBRENNER (for himself, Mr. CONYERS, Mr. BOEHLERT, Mr. GORDON, Mr. SMITH of Texas, Mr. BERMAN, Mr. EHLERS, Mr. WU, Mr. COBLE, Ms. ZOE LOFGREN of California, Mr. GREEN of Wisconsin, Mr. CANNON, Mr. JENKINS, Mr. FEENEY, Ms. BALDWIN, Mr. HONDA, Mr. MILLER of North Carolina, and Mr. INGLIS of South Carolina) submitted the following concurrent resolution; which was referred to the Committee on the Judiciary

CONCURRENT RESOLUTION

Expressing the sense of the Congress regarding the successful and substantial contributions of the amendments to the patent and trademark laws that were enacted in 1980 (Public Law 96–517; commonly known as the “Bayh-Dole Act”), on the occasion of the 25th anniversary of its enactment.

Whereas article I, section 8, clause 8, of the United States Constitution provides that Congress shall have Power “[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors

the exclusive Right to their respective Writings and Discoveries”;

Whereas the 96th Congress enacted Public Law 96–517, entitled “An Act to amend the patent and trademark laws” (commonly known as the “Bayh-Dole Act”, in honor of its two lead sponsors in the Senate, the Honorable Birch Bayh and the Honorable Bob Dole), in 1980;

Whereas for 15 to 20 years before the enactment of the Bayh-Dole Act, Members of Congress considered, discussed, and deliberated on the proper resolution of issues implicated by the Act;

Whereas before the enactment of the Bayh-Dole Act, the United States was confronted by great economic uncertainty and presented with unprecedented new challenges from foreign industrial competition;

Whereas before 1980, only 5 percent of patents owned by the Federal Government were used by the private sector—a situation that resulted in the American people being denied the benefits of further development, disclosure, exploitation, and commercialization of the Government’s patent portfolio;

Whereas the Bayh-Dole Act established a “single, uniform national policy designed to . . . encourage private industry to utilize government financed inventions through the commitment of the risk capital necessary to develop such inventions to the point of commercial application”, and eliminated the 26 different Federal agency policies that had existed regarding the use of the results of federally funded research and development;

Whereas the Bayh-Dole Act fundamentally changed the Federal Government’s patent policies by enabling inventors

or their employers to retain patent rights in inventions developed as part of federally funded research grants, thereby promoting licensing and the leveraging of contributions by the private sector towards applied research, and facilitating the transfer of technology from the laboratory bench to the marketplace;

Whereas examples of the tangible products and technologies that have resulted from the Bayh-Dole Act include, inter alia, an improved method for preserving organs for transplant, a lithography system to enable the manufacture of nano-scale devices, the development of new chemotherapeutic agents, the discovery of new therapies for the treatment of patients diagnosed with rheumatoid arthritis, and countless other advances in materials, electronics, energy, environmental protection, and information technologies;

Whereas these new therapies, technologies, and inventions, which have resulted from the collaborative environment fostered by the Bayh-Dole Act, have directly contributed to the ability of medical researchers to discover and commercialize new treatments that alleviate patient suffering, enhance the ability of doctors to diagnose and treat disease, and target promising new medical research;

Whereas the Bayh-Dole Act has stimulated two of the major contemporary scientific trends of the last quarter century—the development of the biotechnology and information communications industries—and the Act is poised to continue playing a central role in new fields of innovative activities, including nanotechnology;

Whereas the Bayh-Dole Act has resulted in benefitting taxpayers by generating millions of dollars in annual licensing royalties for universities and nonprofit institutions—

revenues that are reinvested in furtherance of additional research and education programs;

Whereas the incentives provided under the Act and the exchange of technology and research between and among the research community, small businesses, and industry, have resulted in new cooperative ventures and the emergence of sophisticated high-technology businesses, which provide a major catalyst for innovation and entrepreneurial activity;

Whereas more than 4,000 new companies have been created to develop and market academic research and development since 1980, and it is estimated that nearly 2300 of these companies were still in operation at the end of fiscal year 2003;

Whereas Lita Nelsen, director of the Technology Licensing Office at the Massachusetts Institute of Technology, has described the Bayh-Dole Act as “one of the most successful pieces of economic development and job-creation legislation in recent history”;

Whereas the Bayh-Dole Act was described in a 2002 article in *The Economist* (US) as “[p]ossibly the most inspired piece of legislation to be enacted in America over the past half-century . . . More than anything, this single policy measure helped to reverse America’s precipitous slide into industrial irrelevance”;

Whereas the Government Accountability Office (GAO) found that university administrators and small business representatives considered the Bayh-Dole Act to have had “a significant impact on their research and innovation efforts”;

Whereas a study of business executives found that 9 out of 10 identified the Bayh-Dole Act as an “important factor” in decisions to fund research and development in academia;

Whereas Howard Bremer, who served as patent counsel to the Wisconsin Alumni Research Foundation from 1960 to 1988, once observed that, “[o]ne important factor . . . is that the success was achieved without cost to the taxpayer. In other words, no separate appropriation of government funds was needed to establish or manage the effort”;

Whereas a 1998 GAO study found that the law had a positive impact on all involved and that the increased commercialization of federally funded research that resulted from implementation of the Act had positively affected both the Federal Government and the American people;

Whereas the President’s Council of Advisors on Science and Technology reported to the President in May 2003 that the Act “dramatically improved the nation’s ability to move ideas from research and development to the marketplace and into commerce” and that the system put in place for transferring technology from nonprofit institutions, which includes universities and Government laboratories, to the private sector has worked well;

Whereas the Bayh-Dole Act states, “[i]t is the policy and objective of the Congress to promote the utilization of inventions arising from federally-supported research or development; . . . to promote collaboration between commercial concerns and nonprofit organizations, including universities; . . . to promote the commercialization and public availability of inventions made in the United States by United States industry and labor; [and] to ensure that

the Government obtains sufficient rights in federally-supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions”;

Whereas the Congress finds that the policies and objectives of the Bayh-Dole Act have been achieved and that the patent law has played a critical role in stimulating technological advances and disclosing useful technical information to the public;

Whereas the Congress finds that federally-funded research at universities and Government laboratories and the partnerships between such nonprofit institutions and the private sector play a critical role in developing the technologies that allow the United States to lead the world in innovation; and

Whereas the Bayh-Dole Act and its subsequent amendments, which include the Trademark Clarification Act of 1984 (Public Law 98–620), have played a vital role in enabling the United States to become renowned as the world leader in scientific research, innovation, ingenuity, and collaborative research that involves institutions of higher education and the private sector: Now, therefore, be it

1 *Resolved by the House of Representatives (the Senate*
 2 *concurring)*, That it is the sense of the Congress that—
 3 (1) the Bayh-Dole Act (Public Law 96–517)
 4 has made substantial contributions to the advance-
 5 ment of scientific and technological knowledge, fos-
 6 tered dramatic improvements in public health and
 7 safety, strengthened the higher education system in
 8 the United States, served as a catalyst for the devel-

1 opment of new domestic industries that have created
2 tens of thousands of new jobs for American citizens,
3 strengthened States and local communities across
4 the country, and benefitted the economic and trade
5 policies of the United States; and

6 (2) it is appropriate that the Congress reaffirm
7 its commitment to the policies and objectives of the
8 Bayh-Dole Act by acknowledging its contributions
9 and commemorating the silver anniversary of its en-
10 actment.

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