



Are Big Changes on the Horizon for Trade Secrets Litigation?

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Identical bills pending in the U.S. House and Senate are aimed at expanding and altering the substantive and procedural remedies available to businesses seeking to defend their valuable trade secrets through litigation. On July 29, 2015, bipartisan leaders in each house of Congress introduced proposed legislation titled the Defend Trade Secrets Act of 2015 (“DTSA”). If enacted into law, the DTSA would empower companies to protect their trade secrets in federal court by creating a federal private right of action for the misappropriation of a trade secret that is “related to a product or service used in, or intended for use in, interstate or foreign commerce.”

Under existing laws, trade secrets litigation is most frequently initiated in state court and prosecuted under a patchwork of state statutes, most of which mirror or closely track the Uniform Trade Secrets Act (“UTSA”). “Unfortunately, in today’s global information age, there are endless examples of how easy— and rewarding—it can be to steal trade secrets,” said Senator Orrin Hatch, R-Utah, a primary proponent of the new bill, in a statement. “Yet there are no federal remedies available to help victim companies recover from their losses. The Defend Trade Secrets Act of 2015 establishes a uniform standard for what constitutes trade secret theft and will give U.S. companies the ability to protect their trade secrets in federal court.”

In addition to opening the federal courts as a forum for businesses seeking to protect their trade secrets and recoup damages through litigation, the DTSA would also create a five year statute of limitations for bringing such claims (as opposed to the three year statute that currently exists in most states). In situations where injunctive relief is necessary to prevent an immediate and irreparable injury to the owner of the trade secret, the DTSA equips plaintiffs with a mechanism for pursuing an ex parte “seizure of property necessary to prevent the propagation or dissemination of the trade secret that is the subject of the action.” Unlike the UTSA, the DTSA would allow broader recovery for plaintiffs because it would not expressly preempt additional causes of action arising from the same set of facts as the misappropriation. Thus, the DTSA marks a significant expansion of remedies for employers suing employees or businesses suing competitors for trade secret misappropriation.

The identical DTSA bills have been referred to their respective judiciary committees and continue, for now, to receive bipartisan support in Congress.



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