

CLIENT ALERT

## Federal Defend Trade Secrets Act Awaits President's Signature

APRIL 29, 2016

On April 27, 2016 – with widespread support from both sides of the political aisle, as well as from the business community – the U.S. House of Representative passed, 410-2, the Defend Trade Secrets Act of 2016 (DTSA), long-proposed legislation that would federalize trade secrets law. The DTSA has already cleared the Senate and will now make its way to the desk of President Barack Obama, who has promised to sign the bill.

Currently, companies seeking civil remedies for misappropriation of their trade secrets are generally limited to state law enforcement. Although 48 states have adopted the Uniform Trade Secrets Act (UTSA) in some form, there are significant differences among the states in the application of the UTSA. Moreover, companies are often limited to litigating in state court, except in cases where federal diversity jurisdiction exists.

The DTSA would amend the federal Economic Espionage Act of 1996 to create, for the first time, a federal civil remedy for the misappropriation of trade secrets. The DTSA is significant because if signed into law, employers will have a clear path to enforce their trade secret rights in federal court. This federalization of trade secrets law will also presumably lead to more uniformity and predictability in applicable standards. The DTSA would not preempt existing state laws governing trade secret enforcement, rather the DTSA would co-exist with state trade secrets laws.

Of note, the DTSA creates a civil seizure procedure – available only in extraordinary circumstances – whereby an aggrieved plaintiff can obtain an *ex parte* order, subject to several conditions, providing for the seizure of property necessary to prevent the propagation of dissemination of the trade secret that is at issue in the litigation.

Available remedies would also include injunctive relief, double damages in the case of willful and malicious misappropriation, and attorney's fees. The statute of limitations would be three years from the date the misappropriation was discovered or should have been discovered.

Assuming the DTSA is signed into law, companies that are victimized by trade secret theft will have a new, welcome, and powerful tool at their disposal to obtain relief in federal court.

To view the DTSA, click [here](#).

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Washington, DC

## Related Topics

Unfair Competition, Restrictive Covenants & Trade Secrets

Trade Secrets

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