

ALERTS

Intellectual Property Law Alert - Congress Passes Defend Trade Secrets Act Of 2016

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On April 27, the House of Representatives passed the Defend Trade Secrets Act (DTSA) of 2016 by a vote of 410-2. The Senate passed the DTSA earlier in April. The White House has indicated it will sign the act.

Currently, trade secrets are protected at the state level. Forty-eight of the 50 states have enacted versions of the Uniform Trade Secrets Act (UTSA). While the UTSA has provided general uniformity in state trade secret law, there are differences in its application from state to state. Massachusetts and New York have not adopted the UTSA and apply their own trade secret law.

The DTSA will not preempt existing state trade secret law. Rather, it will provide a federal private right of action to protect trade secrets under the Economic Espionage Act of 1996. That Act defines a trade secret very broadly as “all forms and types of financial, business, scientific, technical, economic, or engineering information” if the owner has taken reasonable steps to keep such information secret, and the information derives independent economic value from not being generally known or readily ascertainable through proper means.

The goals of the DTSA are to provide more predictable, nationwide case law and to provide trade secret owners with ready access to federal courts, which are often better equipped than state courts to handle cross-state and international disputes, as well as complex technological issues. The DTSA provides for monetary damages and injunctive relief. The act retains a controversial ex parte civil seizure provision but limits use of that provision to “extraordinary circumstances” in which notice to the defendant would result in the destruction or disclosure of the trade secret at issue. A successful litigant would be entitled to enhanced damages and attorneys’ fees. The act includes provisions restricting use of the act to prevent an employee from moving from one employer to another, and protecting whistleblowers in the event that trade secrets are included as part of the disclosed information.

For more information, contact the Barnes & Thornburg attorney with whom you work or a member of the firm’s Intellectual Property Law Department in the following offices: Atlanta (404-846-1693), Chicago (312-357-1313), Columbus (614-628-0096), Dallas (214-258-4200), Delaware (302-300-3434), Elkhart (574-293-0681), Fort Wayne (260-423-9440), Grand Rapids (616-742-3930), Indianapolis (317-236-1313), Los Angeles (310-284-3880), Minneapolis (612-333-2111), South Bend (574-233-1171), Washington, D.C. (202-289-1313).

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