

Federal Trade Secrets Bill Passes Overwhelmingly In The House: What It Means To Employers

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On April 27, the House voted 410-2 to approve the creation of a federal trade secrets law, the Defend Trade Secrets Act (DTSA). The DTSA has now passed both the House and Senate and it is expected that President Obama will approve this quickly to create a new federal private right of action for trade secret misappropriation under the Economic Espionage Act of 1996. Currently, trade secret misappropriation has previously been purely a matter of state law with 48 of the 50 adopting some version of the Uniform Trade Secrets Act (USTA). Please see our firm's [Alert](#) for more details. How will this affect employers in their attempts to protect company trade secrets? There are a number of significant developments:

- Access to federal courts – The main benefit of the law is the access to more predictable, nationwide case law through the federal court system which are better equipped than state courts to adjudicate interstate and international disputes as well as complex technological issues.
- Ex parte civil seizure provision – The act does retain the controversial ex parte seizure provision which would allow plaintiffs to ask the court to order law enforcement to seize any property “necessary to prevent the propagation or dissemination of the trade secret” without a hearing or answer from the accused party. However, it has been limited to situations as an “extraordinary remedy” and should not be considered lightly. If the plaintiff turns out to be wrong, then the defendant can seek enhanced profits and attorney’s fees.
- Whistleblower immunity – The law also provides a safe harbor for those employees who turn over trade secrets to the government to investigate potentially illegal activity as well as for those who confidentially disclose a trade secret in an anti-retaliation lawsuit against their employer. The law requires notice of this immunity in any agreement which governs the use of any trade secret or confidential information or alternatively if information is provided in a reporting policy. Failure to provide such notice could prevent an award of punitive damages or attorney’s fees even if the employer prevails in the lawsuit.

Once the law is passed, it will give employers an additional weapon to attack those who attempt to misappropriate their trade secrets through the federal courts with some additional enhanced remedies. However, with the changes to whistleblower immunity, it will require additional changes to existing

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confidentiality agreements or company reporting policies as well.

