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Defend Trade Secrets Act To Become Law

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On April 27, 2016, the U.S. House of Representatives voted to pass the Defend Trade Secrets Act of 2016 (“DTSA”) which the Senate had previously approved. President Obama released a statement praising the bill and enactment of DTSA is set to proceed within days.

The DTSA authorizes, for the first time in our country’s history, private civil actions in federal court for trade secret misappropriation, permitting an owner of a misappropriated trade secret to bring an action in federal court provided the trade secret is “related to a product or service used in, or intended for use in, interstate or foreign commerce”. It proscribes the illegal procurement of any trade secret, whether manufacturing process, formula, computer algorithm, industrial design, business strategy or customer list. Protections afforded to trade secrets are brought into line with protections for patents, copyrights and trademarks, with redress available in federal court under a single law, nationwide. The DTSA expands remedies for trade secret misappropriation, including by allowing for the ex-parte seizure of property “necessary to prevent the propagation or dissemination of the trade secret”, in addition to injunctive relief and damages, including reasonable attorneys’ fees. While the DTSA protects owners of trade secrets, important limitations are incorporated in the seizure provision and other remedies available under the statute to shield good-faith competitors and former employees from abuse.

Previously, trade secrets were covered exclusively by state law, leading to inconsistent and unpredictable results based on geographical location. The DTSA will reduce this inconsistency and enable uniformity under a broad body of federal case law coupled with jurisdiction to address trade secret misappropriation across all domains and circumstances.

One section of the DTSA requires immediate action by employers, as it imposes an affirmative obligation to notify employees of a whistleblower immunity in the statute. “Employee” includes any “individual performing work as a contractor or consultant”. The notice is required in employee agreements governing the use of trade secrets or other confidential information, but can also be made by reference to an appropriate policy statement.

Given the criticality of trade secrets to modern businesses and innovators, passage of the DTSA is an important development. Companies investing in technology and innovation will gain greater confidence that their trade secrets, often the most valuable asset a company has, are federally protected and remedies for the misappropriation of those assets are available in federal court. The enactment of the DTSA supplies trade secret holders with powerful new tools to stop misappropriation of their trade secrets and seek compensation. By the same token, competitors and persons accused of misappropriating trade secrets gain the consistency and jurisdictional efficiency of the federal court system. As such, the DTSA is set to provide an improved legal framework for all who interact with trade secrets in the U.S.

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