

INSIGHTS

The Trade Secrets Bill Proceeds to the President's Desk

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On April 27, the House of Representatives by a 410-2 vote passed the Defend Trade Secrets Act (DTSA), which creates a federal cause of action for trade secret misappropriation, providing trade secrets with a degree of protection akin to other forms of intellectual property. The Senate passed the bill earlier this month by a unanimous 87-0 vote. President Obama is expected to sign the bill into law. The bill gained over 155 cosponsors, with endorsements across sectors, including leaders in the fields of technology, life sciences, manufacturing, energy, automotive, agricultural, and telecommunications.

If enacted, the DTSA would amend the Economic Espionage Act to provide a federal cause of action to allow trade secret owners to file civil actions in U.S. district courts for trade secret theft, provided the trade secret is “related to a product or service used in, or intended for use in, interstate or foreign commerce.” In addition, under the DTSA, an owner may request that the court issue an order providing for the seizure of property if necessary to prevent the propagation and dissemination of the trade secret during the pendency of the action. The DTSA would not preempt existent state law.

The bill expresses Congress’ sense that trade secret misappropriation occurs around the world, including within the United States, and harms both the companies that own the trade secrets, as well as the employees working for those companies. Therefore, the bill balances the need to prevent or remedy theft with the need to respect third parties and the “legitimate interests of the party accused of wrongdoing.”

The statute of limitations under the DTSA is three years from the date the misappropriation is discovered, or should have been discovered via the exercise of reasonable diligence. Within two years of enactment, the Federal Judicial Center is required to use existing resources to develop “recommended best practices for (1) the seizure of information and media storing the information; and (2) the securing of the information and media once seized.” These best practices will be updated from time to time.