



Defend Trade Secrets Act Would Create Federal Private Right-of-Action For Trade Secret Misappropriation Under Economic Espionage Act

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On April 29, Senators Orrin Hatch and Chris Coons introduced the Defend Trade Secrets Act, which would create a federal private right-of-action under Economic Espionage Act.

Currently, claims for trade secret misappropriation generally are brought in state courts regardless of the scope of the misappropriation. The resulting state-by-state protection can create problems for trade secret owners in developing global non-disclosure policies required to maintain protection for these extraordinarily valuable assets, which include secret formulas, customer lists, manufacturing techniques, business processes, advertising strategies and sales methods.

The Defend Trade Secrets Act would amend the Economic Espionage Act to provide an owner of a trade secret with significant remedies for misappropriation, including:

- the ability to obtain an *ex parte* order to: a) copy electronically stored information from the alleged thief to preserve evidence of the misappropriation; and b) seize “any property used, in any manner...to commit or facilitate the” misappropriation;
- injunctions to protect the trade secret;
- damages for actual losses plus unjust enrichment to the extent not compensated by the award of actual losses, or a reasonable royalty in lieu of damages; and
- if the misappropriation is willful or malicious, exemplary damages of no more than 3 times the actual damages or reasonable royalty awarded.



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The requirements for the seizure order will follow those under the Lanham Act.

If the Defend Trade Secrets Act ultimately becomes law, it would provide businesses with a significant tool to protect their valuable intellectual property. Given the bipartisan support, it stands a good chance. In the meantime, companies seeking to protect their trade secrets will continue to rely upon the state-by-state protection currently in place.

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