



The Defend Trade Secrets Act of 2014: Bill Would Grant Federal Protections to American Businesses

Client Advisories

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A bipartisan bill introduced recently in the U.S. Senate would create the first federal, private right-of-action for theft of trade secrets. The measure would provide trade secret owners with federal rights and remedies, including injunctions and treble damages for willful or malicious misappropriation.

Known as the Defend Trade Secrets Act of 2014 ("DTSA"), the bill, [S.2267](#), proposes to amend the Economic Espionage Act of 1996 ("EEA"). Introduced by Senators Chris Coons, a Delaware Democrat, and Orrin Hatch, a Republican from Utah, the bill seeks to stem the rising trend of corporate trade secret theft, which results in lost jobs as part of an estimated economic loss of up to \$480 billion each year in the United States, according to the Senators. Though the EEA makes trade secret theft a crime, Sens. Coons and Hatch assert that this amendment is necessary because current federal criminal law is insufficient to deal with the magnitude of the problem.

"American companies utilizing technology to grow and create more jobs increasingly face threats to the trade secrets that help drive their success," Senator Hatch said in a statement. "The legislation we're introducing...takes a big step towards confronting bad actors seeking to steal intellectual property, and provides victims of trade secret theft with the legal protections they need. I hope Congress will act quickly to pass this bipartisan bill that will help American companies maintain their competitive advantage both here and abroad."

Introduced on April 29, 2014, the bill applies to trade secrets used in interstate or foreign commerce. Among other provisions, if passed, the legislation would permit a single party to obtain *ex parte* relief in federal court to preserve and seize evidence of trade secret theft in certain situations.

The legislation also aims to harmonize trade secret law nationally. Trade secret misappropriation is a matter of state law, making it difficult for U.S. companies to develop uniform policies.

The proposed federal legislation provides trade secret owners with a quiver of new and expanded protective measures and remedies for situations in which state law may fall short, including:

1. *ex parte* applications for preservation of evidence or seizure of property;
2. injunctive relief, both restrictive (to prevent violation of trade secret rights) and affirmative (to require protection of trade secrets);
3. a wide range of damages and/or royalties, including treble damages in certain situations; and
4. the award of attorney fees in certain situations.

If you have questions about this pending legislation or other issue related to protecting your company's trade secrets, please contact a member of Archer's **Trade Secret Protection and Non-Compete Group** or the firm's **Intellectual Property Group** in Haddonfield, N.J., at (856) 795-2121, in Philadelphia, Pa., at (215) 963-3300, in Princeton, N.J., at (609) 580-3700, in Hackensack, N.J., at (201) 342-6000, or in Wilmington, Del., at (302) 777-4350.

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