

## **President Obama Signs Federal Trade Secrets Bill Into Law**

Almost all companies have information that they consider trade secrets. On May 11, 2016, President Obama signed into law the Defend Trade Secrets Act creating a new federal civil cause of action which companies may use to defend their trade secrets from misappropriation. The law also adds the potentially-attractive new provisional remedy of a civil seizure of the offender's property where the victim's trade secrets are stored. All persons facing or potentially facing trade secret misappropriation should be aware of this development. Companies should also consider updating their employment and confidentiality agreements in light of this development.

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On May 11, 2016, President Obama signed into law the Defend Trade Secrets Act of 2016 (the DTSA). The DTSA adds a civil component to federal law already in existence, the Economic Espionage Act of 1996 (the EEA), making it a crime to steal intellectual property. With the addition of this civil component, companies and individuals have a powerful new federal tool with which to protect their intellectual property from misuse and misappropriation.

Almost all companies have information that they consider trade secrets. Potential trade secrets include strategic business information, financial information, research and development efforts, certain customer and vendor information, and internally developed techniques and know-how. Under the Uniform Trade Secrets Act (UTSA), adopted by most states, almost any information may potentially be protected as a trade secret provided it (1) has economic value because it is not generally known and (2) is subject to reasonable efforts to maintain its secrecy. The DTSA does not substantively change this definition of trade secrets, nor does it preempt state trade-secret protections. Nonetheless, it impacts persons seeking to protect their trade secrets in several important ways.

First, with the creation of a civil remedy for violation of the EEA, federal district courts now have original jurisdiction over trade-secret-misappropriation claims. A victim of trade-secret misappropriation may thus proceed directly to federal court for redress of its injuries. This can be a more attractive forum than pursuing claims in state court due to the uniform procedural rules and generally quicker resolution of claims and remedies provided by federal courts.

Second, although most states have adopted some form of the UTSA, they are not identical and differences have developed in the interpreting case law. With the passage of the DTSA, companies operating across several states now have a uniform standard by which they may draft confidentiality agreements and seek to enforce and protect their property rights in their trade secrets.

Third, the DTSA provides for civil seizure of the defendant's property where the plaintiff's trade secrets are stored – including computers, email accounts, and cell phones – where the plaintiff demonstrates that such seizure is “necessary to prevent the propagation or dissemination of the trade secret that is the subject of the action.” This is a rather extraordinary provisional remedy and it

remains to be seen how freely it will be applied. The plaintiff would have to make a particularized showing of a likelihood of success on the merits and that immediate and irreparable injury will result if the seizure is not made.

While the DTSA does not change the legal statutes of trade secrets, it does add another tool with which companies and individuals can protect their intellectual property. Companies or individuals dealing with the misappropriation of their trade secrets should strongly consider pursuing federal claims under the DTSA. And persons accused of misappropriation should be cognizant of these new developments as well. Companies should also consider updating their employment and confidentiality agreements in light of this new law.

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