

ALERTS

Bipartisan House Bill Provides Private Right of Action for Misappropriation of Trade Secrets

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On July 29, 2014, a bipartisan group of congressional representatives introduced legislation that would codify a federal private right of action for trade secret misappropriation. The proposed bill, the Trade Secrets Protection Act of 2014, H.R. 5233 (“the Bill”), would permit companies and individuals to sue under the Economic Espionage Act.

While the protection of other forms of intellectual property (e.g., patents, copyrights and trademarks) has long been federalized, the protection of trade secrets has largely been left up to the states. Most states have adopted some version of the Uniform Trade Secrets Act (UTSA) and provide companies and individuals the statutory right to seek injunctions and damages for trade secret misappropriation. Two states (New York and Massachusetts) have not adopted any version of the UTSA, leaving litigants to rely on contractual and/or state common law to protect their trade secrets. If passed, the Bill would permit litigants to go directly to federal court to seek statutory protection of their trade secrets.

The Bill adopts all of the protections set forth in the UTSA. It permits litigants in federal court to seek injunctive relief for both actual and threatened misappropriation and compensatory damages for losses caused by actual misappropriation. It also allows them to seek reasonable royalties and exemplary damages of up to a maximum of three times their economic damages.

The Bill extends the protections set forth in the UTSA by permitting federal courts, upon ex parte application, to issue an order “for the seizure of property necessary to preserve evidence in a civil action ... or to prevent the propagation or dissemination of the trade secret that is the subject of the action.” To obtain a seizure order under the Bill, an applicant must demonstrate, among other things, that a temporary restraining order would be insufficient because the defendant would evade or otherwise not comply with such an order and that the defendant (or a person acting in concert with the defendant) would destroy or hide the trade secret information if the defendant were on notice of the civil action. The applicant must also provide adequate security for damages in the event the seizure is determined to be wrongful. Courts would be required to conduct a hearing regarding the seizure no later than seven days after issuing a seizure order.

The Bill also lengthens the current two- or three-year limitations period enforced by most states for trade secret misappropriation claims to a five-year statute of limitations.

The Bill is a companion to the Defend Trade Secrets Act, introduced in the Senate in April 2014. We will continue to monitor the progress of both proposed laws.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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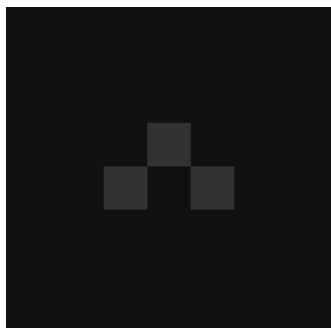
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