

## Proposed federal trade secrets legislation before Congress



David B. Cupar | Tuesday, September 8, 2015

Some members of Congress have proposed bipartisan legislation that would allow companies to bring trade secret misappropriation cases in federal court. The Defend Trade Secrets Act (DTSA) would finally give trade secrets the same legal protections that other forms of critical intellectual property enjoy – specifically, a federal private cause of action.

Presently, theft of trade secret cases can only be brought at the federal level by the Department of Justice (DOJ), but bill supporters argue that the DOJ lacks the resources to prosecute these cases. Individual states allow civil actions related to trade secret misappropriation, but state laws can vary, so the current policies are not uniform nationwide. Unlike federal courts, state courts are not well-suited to work across state and national boundaries to facilitate discovery, serve defendants or witnesses, or prevent parties from leaving the country.

The DTSA, modeled after the Uniform Trade Secrets Act adopted by many states, would create a uniform standard for theft of trade secret cases and give U.S. companies the ability to protect their trade secrets in federal court.

Supporters of the DTSA include: The Association of Global Automakers, Biotechnology Industry Organization, The Boeing Company, Boston Scientific, BSA The Software Alliance, Caterpillar, Corning Incorporated, Eli Lilly and Company, General Electric, Honda, IBM, Illinois Tool Works Inc., Intel, International Fragrance Association, North America, Johnson & Johnson, Medtronic, Micron, National

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Alliance for Jobs and Innovation, National Association of Manufacturers, Nike, The Procter & Gamble Company, Siemens Corporation, Software & Information Industry Association, U.S. Chamber of Commerce, United Technologies Corporation, and 3M.

In addition to permitting a lawsuit in federal court, the DTSA would also allow for court seizure of trade secret material, thereby providing protection against destruction by the possessing party (a mechanism not generally available in state courts). A hearing for the seizure must take place within seven days of the seizure unless otherwise agreed upon by the parties. The party seeking the seizure has the burden of proof. If they cannot show adequate proof, the non-moving party may seek lost profits, costs of materials, loss of goodwill, punitive damages, and attorneys' fees.

### **Potential new opportunity**

The DTSA could be an extremely valuable tool for U.S. companies looking to protect their trade secrets. If the proposed legislation gains support, a new opportunity may exist in federal court for employers in civil disputes against former employees or others involved in trade secret misappropriation. Until this legislation becomes law, however, companies wishing to pursue trade secret misappropriation claims in federal court will still need to rely on the DOJ.

For more information, please contact one of the attorneys listed below.

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**David B. Cupar**

[Team member bio](#)