

DEFEND TRADE SECRETS ACT

ONE-PAGE SUMMARY

Background –

Trade secrets, such as manufacturing processes, formulas and customer lists, are an essential intellectual property right. The trade secrets of U.S. publicly listed companies alone are worth approximately \$5 trillion. Despite their strategic economic importance, trade secrets are the only form of U.S. intellectual property for which the owner lacks access to federal court for misappropriation. This leaves U.S. companies without a key tool to prevent trade secret theft and recover for any losses.

Trade secrets can be stolen with a few keystrokes, and increasingly they are stolen at the direction of foreign governments or for the benefit of foreign competitors. Trade secret theft cost U.S. businesses hundreds of billions of dollars each year. This puts U.S. jobs at risk and threatens incentives for continued investment in research and development.

The Economic Espionage Act of 1996 makes trade secret theft a crime, but the Department of Justice lacks the resources to prosecute many such cases. Unfortunately, state courts are not well suited to working across state and national boundaries to facilitate discovery, serve defendants or witnesses, or prevent a party from leaving the country. The Defend Trade Secret Act addresses these problems by empowering companies to protect their own trade secrets in federal court. Businesses—and not overstretched federal law enforcement—should determine when to bring a case for misappropriation.

Defend Trade Secrets Act Key Points –

- **The Defend Trade Secrets Act harmonizes U.S. law.** Building off of the Economic Espionage Act, the bill creates a uniform standard for trade secret misappropriation. Companies can craft one set of nondisclosure policies secure in the knowledge that its trade secrets will be protected by federal law.
- **The Defend Trade Secrets Act provides for injunctions and damages,** to preserve evidence, prevent disclosure, and account for the economic harm to American companies whose trade secrets are stolen without preventing employee mobility.
- **The Defend Trade Secrets Act is consistent** with the remedies provided for other forms of intellectual property, such as patents, trademarks and copyrights, which are all covered by federal civil law.
- **The Defend Trade Secrets Act will not lead to more litigation.** Trade secrets cases are already permitted under state law, but inconsistency in state laws and unavailability of key equitable remedies reduces their effectiveness. By providing a single uniform cause of action in federal court, trade secret litigation will be more effective and efficient. Lastly, state law will continue to apply, and state courts will continue to have jurisdiction over state law claims.