

## CLIENT ALERT

### Companion Federal Trade Secret Bill Introduced In The House

August 19, 2014

Just before Congress's August recess, the Trade Secrets Protection Act (TSPA) (H.R. 5233) was introduced in the House of Representatives. The TSPA is a companion to the Defend Trade Secrets Act (DTSA), which was introduced in the Senate in April. The TSPA and DTSA are the most recent attempts to create a federal civil remedy for certain trade secret theft cases – an effort that appears to have strong momentum. The TSPA was introduced on behalf of a bi-partisan coalition by Rep. George Holding (R-N.C.).

Like the DTSA, the TSPA would amend the Economic Espionage Act of 1996 to add a private cause of action for misappropriation of trade secrets. Currently, parties attempting to protect their trade secrets must usually rely on state trade secret laws and often have to proceed in state courts. While most states have adopted some version of the Uniform Trade Secrets Act, there is still a great deal of variation between states' trade secret law. The TSPA would allow parties to proceed directly to federal court in many instances and would afford a level of uniformity that does not currently exist. Additionally, the TSPA would allow a court to issue a seizure order on an *ex parte* application to prevent dissemination of the trade secret or to preserve evidence.

Much of the TSPA is identical to the DTSA, but it also has key differences from the Senate bill. For instance, both provide for a private cause of action, but the DTSA provides a civil remedy for violation of the Economic Espionage Act, while the TSPA's private cause of action is framed more narrowly – only for misappropriation of trade secrets. The DTSA also permits a seizure order like the TSPA, but the TSPA has greater limitations on the availability of a seizure order and makes an applicant potentially liable for damages caused by wrongful or excessive seizure. Some commentators had criticized the Senate bill as providing too little protection from improper seizures.

Although prior bills to create a private right of action for trade secret theft were not successful in prior congresses, the DTSA and/or the TSPA are possibly in a more promising position for success. They both have bi-partisan sponsorship and have received important backing from businesses and trade associations. In the current political climate, it is impossible to predict whether either bill will have more success than the prior attempts, but companies concerned with stemming the tide of high profile, international trade secret theft should closely monitor both bills.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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