



THINK FORWARD

Long-awaited Defend Trade Secrets Act approved by U.S. House of Representatives today; Brinks Gilson & Lione attorney looks at impact on Michigan business

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ANN ARBOR – James Cleland, a shareholder in the Ann Arbor office of Brinks Gilson & Lione, one of the largest intellectual property law firms in the U.S., says Michigan businesses just gained additional protection of their trade secrets following approval of the Defend Trade Secrets Act (DTSA) by the U. S. House of Representatives today. The U.S. Senate passed the DTSA on April 4, 2016 by a unanimous vote of 87-0. President Obama is now expected to sign the bill into law.

“This is a win for Michigan businesses and businesses throughout the country seeking strong protection for their trade secrets,” Cleland said. “Although individual state laws governing trade secret protection and misappropriation existed prior to the passage of DTSA, the lack of a federal statute made enforcement of trade secrets non-uniform, slow and highly dependent on the particular state in which theft of trade secrets occurred. A federal statute is particularly welcome in an age where the theft of electronic information using sophisticated technology occurs quickly and across not only state borders, but our country’s borders.”

Cleland noted Michigan corporate behemoths like Ford and GM immediately come to mind as beneficiaries of the DTSA.

“Several automakers were the unfortunate victims in recent years of high profile, high stakes cases of trade secret theft when foreign nationals they employed fled the U.S. and returned to their native countries with valuable trade secrets in hand,” Cleland said. “Providing federal courts with jurisdiction over trade secret cases, enhancing the civil seizure procedures and beefing up damages unquestionably will help wronged companies pursue these individuals across state and international borders.”

Cleland notes the Defend Trade Secrets Act is the most sweeping trade secret reform in a generation. Key provisions of the DTSA are:

- Providing a uniform law on the protection of trade secrets and giving federal courts jurisdiction over disputes involving trade secrets relating to products or services used in interstate or foreign commerce.
- Enhanced ex parte civil seizure procedures to help U.S. companies immediately seize property necessary to prevent trade secret theft, particularly useful when an employee plans to leave the country with stolen trade secrets.
- Recognizing that the most important remedy in many cases is to stop the trade secret theft in its tracks, and thus providing options for immediate court intervention and involvement of law enforcement officers.

- In addition to civil seizure and injunctive relief, setting forth multiple options for damages for trade secret theft to ensure that wronged companies are made whole.
- Establishing enhanced damages and attorney's fees for willful and malicious misappropriation of trade secrets.
- Requiring periodic public reports on the scope and breadth of the theft of U.S. trade secrets outside the U.S.
- Creating whistleblower protections for individuals who disclose trade secrets to the government to report a violation of the law or in the context of a retaliation lawsuit.

"With the evolving knowledge economy in Michigan and beyond, trade secrets play an increasingly important role in defining the value of any company, whether it is a chemical formula, manufacturing process or a critical customer list," Cleland said. "Assuming companies affirm the value of their trade secrets by taking the proper steps to safeguard them in the first place, the DTSA will provide companies with added protection and expand civil enforcement options."

The DTSA language can be viewed [here](#).

Brinks Gilson & Lione

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