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Will Congress Enact a Federal Trade Secrets Act in 2015?

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Historically, **trade secrets have been protected principally by state**, not federal law. **Forty-eight states have enacted a version of the Uniform Trade Secrets Act**. And while the origins of trade secret law extend back centuries, the Uniform Trade Secrets Act is a relatively recent development, as it was first enacted in 1979. One of the primary goals of the UTSA was to bring uniformity to trade secret law across the states.

Despite wide adoption of the UTSA, why are some advocating for a new federal statute to protect trade secrets? Advocates have at least three main arguments in support of a federal trade secret statute. First, federal law protects patents, trademarks, and copyrights. Because trade secrets are often a company's most valuable asset, advocates argue that federal trade secret protection is needed. Second, advocates argue the UTSA has in fact not been uniform.

Instead, application of the UTSA still depends on the jurisdiction, thus creating uncertainty for trade secret owners. Finally, advocates for a stronger trade secrets law want to see a robust "seizure" provision that would give federal courts the power to enter *ex parte* seizure orders. Without this provision, advocates worry, for example, that trade secrets can and will leave the country before a plaintiff can stop the harm.

In response, critics of a new federal trade secrets statute say it is not needed at this time. Just because federal law protects patents, trademarks, and copyrights, that does not lead to the conclusion that a federal trade secret law is necessary. In fact, there is more uniformity in the law protecting trade secrets law than ever before, and adding another layer to trade secret law will only confuse matters. Finally, critics argue that the proposed "seizure" provision is potentially problematic because of a worry that plaintiffs will be overly aggressive in seeking an *ex parte* seizure order. They worry about the due process concerns raised by a new federal trade secrets law providing for *ex parte* seizure orders.

Whatever your position is on these issues, Congress appears ready to take action and appears close to enacting such legislation. The House's Trade Secrets Protection Act and the Senate's Defend Trade Secrets Act are likely to be considered in early 2015. If the bills are reconciled and a new law is enacted, companies may have to change how they protect trade secrets moving forward. Will state law be preempted in any way by a new federal trade secret statute? Will plaintiffs want to file in state or federal court? Would the text of the federal law be identical to the UTSA? These and other questions loom on the horizon.

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