

Technology Committee - July 30, 2015

Bipartisan Trade Secrets Legislation Introduced in Senate and House

Yesterday, bipartisan legislation was introduced in both the Senate and the House to address the theft of corporate trade secrets. The *Defend Trade Secrets Act* would empower companies to protect their trade secrets in federal court by creating a federal private right-of-action.

The Senate bill ([S. 1890](#)) was introduced by Senate Judiciary Committee members Sen. Orrin Hatch (R-UT), Sen. Chris Coons (D-DE), Sen. Jeff Flake (R-AZ), Sen. Dick Durbin (D-IL), Sen. Thom Tillis (R-NC), as well as Sen. Tammy Baldwin (D-WI). Click here to view [the full legislation](#).

The House bill ([H.R. 3326](#)) was introduced by Rep. Doug Collins (R-GA), Rep. Jerrold Nadler (D-NY), Rep. George Holding (R-NC), Rep. John Conyers (D-MI), Rep. Steve Chabot (R-OH) and Rep. Hakeem Jeffries (D-NY). Click here to view [the full legislation](#).

[Click here for a one-page summary of the legislation.](#)

After consulting with a number of NEC members in recent months regarding this issue, the Council signed on to industry letters of support for both the [House](#) and [Senate](#) bills. A number of NEC members also signed on to the letter, including:

- Boston Scientific
- Eli Lilly & Company
- General Electric
- IBM
- Microsoft
- The Procter & Gamble Company

In addition, the Council plans to send our own letter to the New England House and Senate delegations in the coming weeks, and will also plan meetings with New England Congressional offices early this fall to encourage support for this legislation. **If you or a representative of your company are interested in being involved in these efforts, please be in touch with either [Emily Heisig](#) or [Taylor Pichette](#).** It would be great to have a group of Council members who care about this issue participate in Hill meetings.

Below is a press release on the legislation with more detail. Please let us know if you have any questions.

Senate, House Leaders Introduce Bipartisan, Bicameral Bill to Protect Trade Secrets

Washington, D.C.— Senate Judiciary Committee members Orrin Hatch, R-Utah, Chris Coons, D-Del., Jeff Flake, R-Ariz., Sheldon Whitehouse, D-R.I., Thom Tillis, R-N.C., together with Senator Tammy Baldwin, D-Wisc. and House Members Rep. Doug Collins, R-Ga., and Jerrold Nadler, D-N.Y., today introduced a bipartisan, bicameral legislation Wednesday to help combat the loss of hundreds of billions of dollars each year in the United States to the theft of corporate trade secrets. The *Defend Trade Secrets Act* would empower companies to protect their trade secrets in federal court by creating a federal private right-of-action.

“Unfortunately, in today’s global information age, there are endless examples of how easy—and rewarding—it can be to steal trade secrets,” **Hatch said**. “Yet there are no federal remedies available to help victim companies recover from their losses. The *Defend Trade Secrets Act of 2015* establishes a uniform standard for what constitutes trade secret theft and will give U.S. companies the ability to protect their trade secrets in federal court. I hope Congress will act quickly to pass this bipartisan, bicameral bill that will help American companies maintain their competitive advantage both here and abroad.”

“In our increasingly globalized world, the intellectual property that drives the U.S. economy has never been more valuable or more vulnerable,” **said Senator Chris Coons**. “Too many American companies are losing jobs because their trade secrets are open to theft, threatening our economy and our security. This bipartisan bill finally gives trade secrets the same legal protections that other forms of critical intellectual property enjoy. It’s a long overdue update that will empower American companies to protect their jobs in the 21st century. I urge Congress to act now and stop the hemorrhaging of jobs and revenue being lost to the theft of trade secrets by passing the *Defend Trade Secrets Act*.”

“For innovation to keep driving economic growth in the United States, innovators must be able to protect their intellectual property,” **said Senator Jeff Flake**. This legislation will take much-needed steps to empower victims of trade secret theft to protect their intellectual property in federal court. It’s also necessary that Congress address the fact that trade secret theft extends to foreign entities misappropriating U.S. trade secrets. To that end, I’d like to thank Sens. Hatch and Coons for working with me to include a study that looks into the extent of this problem.”

“Illinois is home to some of the world’s leading manufacturing companies, which support thousands of jobs and generate tremendous economic activity for our state,” **said Senator**

Durbin. "This bipartisan bill would ensure that their trade secrets - like the proprietary manufacturing processes that are central to their business operations - have important legal protections like those enjoyed by other forms of intellectual property."

"I'm pleased to join the bipartisan effort to protect American businesses from intellectual property thieves and help those businesses recover their losses," **said Senator Tillis.** "Some of the most pioneering technology, pharmaceutical, and bio-agricultural companies in the world call North Carolina home, and the *Defend Trade Secrets Act* will help provide them with the legal protections they need to continue to do what they do best: produce life-changing innovation and create good-paying jobs."

"The theft of U.S intellectual property threatens economic growth and American jobs," **said Senator Tammy Baldwin,** "We must strengthen protections for American businesses and Made in America innovation. I am proud to support this bipartisan legislation because it closes a loophole in U.S. law to safeguard valuable intellectual property and protect American jobs."

"Protecting the trade secrets of American businesses is crucial to keeping our country a leader in the world economy, **said Rep. Collins.** "Providing a federal civil remedy will create certainty for companies throughout the nation, including in my home state of Georgia. Congress has the responsibility to give industries the tools they need to protect their intellectual property and thus encourage job creation and economic growth. Trade secret theft is costing America billions of dollars and that price tag will continue to grow as technology and thieves become more sophisticated. I appreciate the tireless work of my House and Senate colleagues in advancing this critical legislation."

"The value of trade secrets to U.S. companies is matched only by their tremendous vulnerability to theft," **said Rep. Nadler.** "Innovative technologies have made it easy to obtain information and transfer it across the globe with the click of a cell phone, tablet, or computer key. At the same time, U.S. companies are increasingly targeted for trade secret theft by competitors, with some foreign governments actively encouraging and facilitating the theft of U.S. trade secrets. In light of their value and vulnerability, it is essential that Congress provide robust protection for trade secrets and pass our bill."

In today's electronic age, trade secrets can be stolen with a few keystrokes, and increasingly, they are stolen at the direction of a foreign government or for the benefit of a foreign competitor. These losses put U.S. jobs at risk and threaten incentives for continued investment in research and development.

Current federal criminal law is insufficient. Although the *Economic Espionage Act of 1996* made trade secret theft a crime, the Department of Justice lacks the resources to prosecute many such cases. State-level civil trade secret laws alone have not been sufficient to stop interstate theft. Federal courts are better suited to working across state and national boundaries to facilitate discovery, serve defendants or witnesses, or prevent a party from leaving the country. Laws also vary state-to-state, making it difficult for U.S. companies to craft consistent policies.

The *Defend Trade Secrets Act* would:

1. **Harmonize U.S. law** by building on the *Economic Espionage Act* to create a uniform standard for trade secret misappropriation. Companies will be able to craft one set of nondisclosure policies secure in the knowledge that federal law will protect their trade secrets.
2. **Provide 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.
3. **Be 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 bill is **supported** by the Association of Global Automakers, Inc., Biotechnology Industry Organization (BIO), The Boeing Company, Boston Scientific, BSA | The Software Alliance (BSA), Caterpillar Inc., Corning Incorporated, Eli Lilly and Company, General Electric, Honda, IBM, Illinois Tool Works Inc., Intel, The Intellectual Property Owners Association (IPO), International Fragrance Association, North America, Johnson & Johnson, Medtronic, Micron, National Alliance for Jobs and Innovation (NAJI), National Association of Manufacturers (NAM), NIKE, The Procter & Gamble Company, Siemens Corporation, Software & Information Industry Association (SIIA), U.S. Chamber of Commerce, United Technologies Corporation, and 3M.