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## New federal law intends to help firms protect trade secrets

By **Dustin Walsh**

U.S. companies are set to find an ally in protecting valuable trade secrets from the federal court system.

Both the **U.S. Senate** and **House of Representatives** stamped their approval last month on the Defend Trade Secrets Act of 2015 — a bill that provides civil action in federal courts and stiff penalties for theft of protected information from corporations. President Barack Obama signed the bill last week.

Tom Brady, partner and head of the labor and employment practice at Detroit-based law firm **Clark Hill PLC**, said the impending law creates uniformity — 48 states currently have versions of the Uniform Trade Secrets Act — for protecting trade secrets across the nation.

"Most states have a version of the trade secrets act, but it's a balkanized treatment to protection," Brady said. "(Trade secret theft) is increasingly a problem as technology expands and outside third parties increase hacking to get those secrets or employees that can now simply put in a thumb drive to download those secrets."

Trade secrets differ, and are often less protected, than copyrights and patents.

Trade secrets are considered private materials such as manufacturing processes that don't meet the patent guidelines, software, financial information, pricing information, etc.

The Defend Trade Secrets Act differs slightly from the Uniform Trade Secrets Act in that it allows a plaintiff fearing its trade secrets have been stolen to file a federal court order to allow the government to seize the stolen information before the alleged defendant is notified of a lawsuit — an *ex parte* seizure.

"I don't have evidence to support that this happens a lot, but I'd imagine whoever took the trade secret is likely to hide or destroy the (stolen) information to eliminate the proof," Brady said. "Before (the law), the information couldn't be seized until the lawsuit was over."

The penalties are also much stiffer under the Defend Trade Secrets Act. Plaintiffs can now seek up to

two times the damages plus attorney fees, making a high-profile case very costly to the defendant, Brady said.

While the law will strengthen enforcement, companies still must ensure they are protecting valuable information to be considered a trade secret, Brady said.

"Companies need to start training employees on how to properly protect trade secrets in the first place," Brady said.

"Smart companies are going to put notices in their policy manuals and work to keep their secrets secret."

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