

Gavel to Gavel: Trade secrets now a federal case

By: Todd Nelson Guest Columnist November 30, 2016



Almost all businesses possess at least some trade secrets, which could include a wide variety of information, including customer lists, formulas, manufacturing processes, data compilations, marketing plans and many other types of information.

This confidential and proprietary information can be a company's most valuable asset. This asset can be quickly lost through theft or disclosure by former employees and others. Federal courts have long adjudicated cases for infringement of other intellectual property, such as patents, copyrights and trademarks, but trade secret protection has been left to state law and enforcement in state courts. While most states, including Oklahoma, have adopted the Uniform Trade Secrets Act, there are variations in the law among the states.

This has now changed. Earlier this year, the Defend Trade Secrets Act of 2016 was unanimously passed in the U.S. Senate and overwhelmingly passed in the House by a vote of 410-2. It was signed into law on May 11 and became immediately effective.

Unlike the existing Economic Espionage Act, the DTSA expressly provides for private civil enforcement actions by the trade secret owner. While the DTSA does not pre-empt existing state law, trade secret owners now have a choice in terms of whether to file in state or federal court for alleged trade secret violations.

The DTSA is similar in some respects to the UTSA, but there are also differences. One notable difference is the DTSA includes a powerful enforcement mechanism through an ex parte seizure process. Specifically, in "extraordinary circumstances" a court may order, on an ex parte (no advance notice to the opposing party) basis, seizure of allegedly misappropriated materials.

This not only prevents further dissemination and misuse of the trade secret information while a lawsuit is pending, it also preserves evidence. Another difference is whistleblower protection. The DTSA provides certain immunity from civil liability and criminal prosecution relating to disclosure of trade secrets where the disclosure was solely for the purpose of reporting suspected violations of law.

The bottom line is that, in addition to state law protections and remedies, trade secret owners are now granted protection by federal law and civil enforcement remedies in federal courts.