

Federal Trade Secrets Act: As Big As It Sounds? (And What About Noncompetes?)

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**William A.
Nolan**

Partner
Columbus
Managing Partner

As many readers will be aware, Senators Coons and Hatch recently introduced the Defend Trade Secrets Act, which would create a federal trade secrets law allowing parties aggrieved by the misappropriation of trade secrets (such as former employers!) to bring private actions in federal court. Right now, former employers seeking to address trade secret misappropriation are governed by state laws, which – in the case of 48 states, some version of the Uniform Trade Secrets Act. So why the big news in various employer-focused publications if almost all states already have some version of the same law? One, there are *some* differences from state to state, so uniformity would be helpful for all parties, and seems logical in our highly interconnected and increasingly digital economy. Two, the law provides access to federal court, where it can often be advantageous for an employer to litigate such cases. As a general rule, federal courts are viewed by many as better equipped for litigating complex issues, and being in federal court can make certain procedural hurdles (e.g. obtaining the testimony of out of state witnesses) more manageable. Again, that's not always a major factor, we often end up in federal court for other reasons, but it is a potential positive of this law. The potential impact of a federal trade secrets law, however, pale in comparison to the impact a federal noncompete law could have. As I have written here many times (such as [HERE](#)), noncompete drafting and litigation is largely driven by vastly different state laws. Lawsuits are often won and lost less by the substance of what actually happened than by who gets to court first so that they can get in their home state to have their home state's law applied (yes, even if the agreement specifies that another state's law should be applied). Does that make sense for anybody? If this law passes, it will be interesting to see if there is any movement to get some more uniformity among noncompete laws.

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