



## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

February 25, 2016

### **S. 1890** **Defend Trade Secrets Act of 2016**

*As ordered reported by the Senate Committee on the Judiciary on January 28, 2016*

S. 1890 would establish a federal remedy for individuals seeking relief from the misappropriation of trade secrets. Under the bill, an owner of a trade secret could file a civil action in a district court and the court could issue an order to seize any property necessary to preserve evidence for the civil action. The legislation would require information gathered or stored during a legal proceeding related to trade secrets to be secured to protect its confidentiality. The bill also would increase the fines that may be collected in the event of the theft of a trade secret. Finally, the legislation would require the Department of Justice (DOJ) and the Federal Judicial Center to submit periodic reports concerning the theft of trade secrets in the United States.

Based on information from DOJ and the Administrative Office of the U.S. Courts, CBO estimates that implementing S. 1890 would have no significant effect on the federal budget. Because enacting S. 1890 would affect direct spending and revenues, pay-as-you-go procedures apply. Specifically, the bill would affect civil court filing fees and potentially increase certain fines, which are recorded in the budget as revenues. A portion of those revenues would be spent without further appropriation. On net, CBO estimates that the budgetary effect of those provisions would be negligible for each year and over the 2016-2026 period.

CBO estimates that enacting S. 1890 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year period beginning in 2027.

S. 1890 would preempt state laws that govern matters of individual liability when trade secrets are disclosed to governmental officials during the course of an investigation or legal proceeding. That preemption would be a mandate as defined in the Unfunded Mandate Reform Act (UMRA) because it would limit the authority of states to apply their own laws. However, CBO estimates that the preemption would not affect the budgets of state, local, or tribal governments because it would impose no duty on states that would result in additional spending or loss of revenue.

S. 1890 also would impose a private-sector mandate as defined in UMRA by extending civil and criminal liability protection to individuals who disclose trade secrets to government authorities during the course of an investigation or as a part of certain legal proceedings. By providing such liability protection, the bill would prevent entities from seeking compensation for damages from those individuals under trade secret laws. The cost of the mandate would be the forgone value of judgements and compensation for damages for such disclosures that entities would be awarded under a trade secrets claim. The bill would strengthen existing whistleblower protections to protect individuals from potential trade secret claims. The available literature suggests that few of those types of lawsuits have been brought against individuals under current law. Consequently, CBO estimates the cost of the mandate would probably fall below the annual threshold established in UMRA for private-sector mandates (\$154 million in 2016, adjusted annually for inflation).

The CBO staff contacts for this estimate are Marin Burnett (for federal costs), Rachel Austin (for intergovernmental mandates), and Logan Smith (for private-sector mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.