



The Uniform Trade Secret Act, Federal Statute & State Acts

Terms:

National Conference of Commissioners on Uniform State Laws:

The National Conference of Commissioners on Uniform State Laws (NCCUSL) is a non-profit unincorporated association in the United States that consists of commissioners appointed by each state and territory. The purpose of the association is to discuss and debate in which areas of law there should be uniformity among the states and to draft acts accordingly. The results of these discussions are proposed to the states as either model acts or uniform acts.

The Uniform Trade Secret Act (USTA) is a model act, drafted by National Conference of Commissioners on Uniform State Laws, which has been used as the basis of trade secret law in over 40 states. The model Act itself is relatively short, consisting of only a handful of provisions (sections). The definition of a trade secret under the Act is given in §1 as:

Information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

1. derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and
2. is the subject of efforts that are reasonable under the circumstances to maintain its secrecy?

To receive protection under the Act, there must be (1) a trade secret, which is (2) misappropriated (also defined in §1 of the UTSA).

Once a plaintiff has demonstrated that its trade secret had been misappropriated, the UTSA allows for injunctive relief as well as monetary damages. §2(a) of the act even allows for injunctive relief of "threatened misappropriation" and §4 permits the court to award attorney's fees in certain circumstances.

Example: Cow Chemical Co. brings a trade secret action against a prior employee who wrote an article for a magazine titled "How Cow Keeps its Cash Coming." The article was about how the company manages its various inventions so that they avoid flooding the market and competing against their own products. Before enjoining further such articles and receiving monetary damages, Cow will have to show that the business plan revealed was "the subject of efforts that are reasonable under the circumstances to maintain its secrecy," as well as the other elements of a trade secret under the UTSA.

Among the many states to incorporate the UTSA into its laws is Pennsylvania. Title 12, Part V, Chapter 23 of the Pennsylvania Consolidated Statutes covers "Trade Secrets." 12 Pa.C.S. §§5301–5308).

Pennsylvania defines trade secrets in §5302 largely as suggested by the UTSA. Combining the definitions for "trade secret" under the UTSA and the Pennsylvania Act (there are some differences), we get the following categories of trade secrets:

- Formulas
- Drawings
- Patterns
- Compilations (including customer lists)
- Programs
- Devices
- Methods
- Techniques
- Processes

With such a list, it is difficult to conceive of much that would not potentially be protected by trade secret law, provided the other elements are met. But trade secret statutes do not exist in all states, and might not be the best form of protection for every situation.

As suggested by the UTSA, the Pennsylvania act contains a provision which states that it does not affect "contractual remedies, whether or not based upon misappropriation of a trade secret...." §5308. This is vital because, in addition to state statutes governing trade secrets, businesses can use the laws of contracts to protect themselves from having their valuable information revealed to the public. Even in states which have no version of the [UTSA](#) on the books, these contractual remedies (and preventative measures) are available.

Federal Statute: Defend Trade Secrets Act (18 USC §§ 1836 et seq.)

On May 11, 2016, President Obama signed the Defend Trade Secrets Act (DTSA) into law. The DTSA creates a federal, private, civil cause of action for trade-secret. Before the enactment of the DTSA, in the absence of diversity jurisdiction or an independent federal cause of action, trade secret owners seeking redress for trade-secret misappropriation had no choice but to sue in state court, where laws protecting against trade-secret misappropriation differed from state-to-state. The DTSA provides a uniform statute to be applied nationwide in federal court. Although the DTSA does not preempt existing state trade-secret laws, it gives trade secret owners the option of filing suit in federal court.

The DTSA is modeled in many respects after the UTSA. Accordingly, the substantive provisions governing federal actions under the DTSA bear many similarities with those of state laws modeled after the UTSA.

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