
Protect Your Trade Secrets – TUTSA

Gray Reed & McGraw Legal Alert

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On May 2, 2013, Texas Governor Rick Perry signed into law the Texas Uniform Trade Secrets Act (TUTSA). The statute takes effect September 1, 2013, making Texas the 47th state to adopt the UTSA. Only New York, North Carolina, and Massachusetts have not adopted the UTSA. The new law intends to replace all statutory or common law trade secret law in place at that time.

Texas's Act includes some modifications to the UTSA adopted by the majority of states. The enactment of the statute strengthens trade secret protection for businesses. It will increase the litigation in this area and will also be a paved avenue towards earlier settlements. The modified version of the Uniform Trade Secrets Act (UTSA):

- provides consistent and predictable statutory language for trade secret protection;
- updates the definition of 'trade secret' to reflect current business practices and technologies, to include that financial data and lists of current or potential customers or suppliers can constitute trade secrets; and
- clarifies that certain business practices do not constitute misappropriation of trade secrets, specifically "reverse engineering", which is defined as "the process of studying, analyzing, or disassembling a product or device to discover its design, structure, construction, or source code." A product must be legally obtained to qualify for protection.

What Relief Does TUTSA Provide?

The new law offers easily applied standards for injunctive relief. It allows injunctions to survive the life of the trade secret, permitting an additional reasonable period of time to eliminate any commercial advantage that otherwise would result from the misappropriations. In addition to injunctive relief, the claimant under the new law may pursue damages:

- for the actual loss caused by misappropriation;
- for the unjust enrichment caused by misappropriation; and
- in form of royalty for unauthorized disclosure or use.

Exemplary damages in an amount not exceeding twice any award granted, as well as attorney's fees are available for the willful and malicious misappropriation of trade secrets. This is significant, as it is a major change in Texas law. This is key because of the appreciable attorneys' fees in these cases.

At times, businesses are reluctant to pursue action because of the fear that their secrets might be disclosed during the court proceedings. The new law puts these worries to rest by including a clause designed to preserve secrecy. It provides for a presumption in favor of granting protective orders (PO) to preserve the secrecy of trade secrets. A PO includes provisions limiting access to confidential information to only the attorneys and their experts, holding in-camera hearings, sealing the records of the actions, among others.

How Does TUTSA Affect Your Business?

Businesses should identify what information is considered a trade secret. A trade secret is information with commercial value that has not been publicly disclosed by its owner. It may encompass elements such as business methods, strategic plans, customer lists, formulas, or product designs. Many businesses are faced with employees having access to their confidential information—data that they do not want to see being shared with a competitor. The recommended action plan would be to consult an experienced Intellectual Property (IP) attorney about protecting their trade secrets.

If you have any questions, Gray Reed's IP attorneys are available at your request.