

Trade Secrets: Texas Law and the New Federal Defend Trade Secrets Act



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Overview

- Texas Trade Secrets Law
 - Common law trade secret misappropriation
 - Texas Theft Liability Act
- Texas Uniform Trade Secrets Act – TUTSA
 - Texas adopted in September 2013
 - 47 States adopted some version
- Defend Trade Secrets Act
 - Signed by President on May 11, 2016
 - Creates federal cause of action for trade secret misappropriation

Texas Trade Secrets Law Pre-TUTSA

FISH.

Texas Trade Secrets Law

Misappropriation of Trade Secrets

- Misappropriation consists of use or disclosure of a trade secret that was acquired through:
 - a relationship of trust (such as employment); or
 - fraud or other improper means (theft, bribery, hacking)



FISH.

4

Texas Trade Secrets Law

Misappropriation of Trade Secrets

- Trade secret – Definitions by various courts inconsistent
- However, Texas courts largely adopted Restatement of Torts definition
 - A trade secret consists of a formula, process, device, or compilation which one uses in his business and which gives him an opportunity to obtain an advantage over competitors who do not know or use it
 - Not just secret information, rather a process or device for **continuous** use in the operation of the business

Texas Trade Secrets Law

Texas Theft Liability Act (“TTLA”)

- Texas Civil Practice & Remedies Code Chapter 134
 - Provides a civil cause of action, and remedy, for certain violations of the Penal Code
 - A person who commits theft is liable for the damages resulting from the theft
 - Attorney’s fees to prevailing party under certain circumstances
- Trade secret
 - Can take many forms, formulas, plans, designs, etc., but it has to be secret;
 - It has to have value (competitive advantage to owner); and
 - It is subject to **reasonable measures to maintain its secrecy**

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