

40th Annual Page Keeton Civil Litigation Conference
October 27-28, 2016
Austin, Texas

Trade Secrets Update

Federal Defend Trade Secrets Act of 2016

and

Texas Uniform Trade Secrets Act

Michael K. Oldham
Reynolds Frizzell LLP
1100 Louisiana, Suite 3500
Houston, Texas 77002
oldham@reynoldsfrizzell.com
713-485-7207

What really changed?

Significant Changes

- Federal cause of action
- *Ex parte* civil seizure under DTSA
- Attorney fees / exemplary damages
- Whistleblower immunity/notice requirements
- Forum considerations
 - Civil seizure
 - Did client give notice of whistleblower rights?

What law governs?

TUTSA → Claims that accrue on or after September 1, 2013
→ Displaces Texas common law and TTLA

DTSA → Available for acts committed after May 11, 2016
(but not continuing acts that began earlier)
→ Secrets relating to interstate/foreign commerce
→ Extraterritorial application
→ Does not preempt state law

"Old" Common Law/TTLA

→ Actions accrued before 9/1/13

Statute of Limitations Unchanged

(Same for all: 3 years)

Texas law → Tex. Civ. Prac. & Rem. Code § 16.010
→ Applies to common law and TUTSA claims

DTSA → 18 U.S.C. §1836(d)

Same standard for all:

→ 3 years
→ Accrues when misappropriation is or could be discovered through reasonable diligence

What is a trade secret?

Texas Common Law

- Used in the business
- Six-factor test for importance/secretcy

TUTSA/DTSA

- Actual or potential use
- Derives its value from not being generally known to others in the industry
- reasonable efforts under the circumstances to maintain secrecy

What is a trade secret?

Texas Common Law

“[A]ny formula, pattern, device or compilation of information which is used in one's business and presents an opportunity to obtain an advantage over competitors who do not know or use it.”

Six-factor test:

- (1) Extent information is known outside of the business;
- (2) Extent known by employees/others involved in the business;
- (3) Extent of measures taken to guard its secrecy;
- (4) Value to the business and to its competitors;
- (5) Amount of effort or money expended in developing it; and
- (6) Ease/difficulty for others to properly acquire/duplicate it.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Trade Secrets Update: Federal Defend Trade Secrets Act of 2016 and Texas Uniform Trade Secrets Act

Also available as part of the eCourse

[2016 Page Keeton Civil Litigation eConference](#)

First appeared as part of the conference materials for the
40th Annual Page Keeton Civil Litigation Conference session

"Texas Uniform Trade Secrets Act and the New Federal Defend Trade Secrets Act of 2016:
What's all the Hubbub About?"