

40th Annual Page Keeton Civil Litigation Conference  
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Austin, Texas

## Trade Secrets Update

### Federal Defend Trade Secrets Act of 2016

and

### Texas Uniform Trade Secrets Act

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## 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.

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## 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

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First appeared as part of the conference materials for the  
40<sup>th</sup> 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?"