

KENTUCKY UNIFORM TRADE SECRETS ACT

§§ 365.882 to 365.900

365.880 Definitions.

As used in KRS 365.880 to 365.900, unless the context requires otherwise:

- (1) "Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means;
- (2) "Misappropriation" means:
 - (a) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or
 - (b) Disclosure or use of a trade secret of another without express or implied consent by a person who:
 1. Used improper means to acquire knowledge of the trade secret; or
 2. At the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was:
 - a. Derived from or through a person who had utilized improper means to acquire it;
 - b. Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
 - c. Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or
 3. Before a material change of his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.
- (3) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.
- (4) "Trade secret" means information, including a formula, pattern, compilation, program, data, device, method, technique, or process, that:
 - (a) 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
 - (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Effective: July 13, 1990

History: Created 1990 Ky. Acts ch. 300, sec. 1, effective July 13, 1990.

365.882 Injunctive relief.

- (1) Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.
- (2) In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances shall include, but not be limited to, a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.
- (3) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

Effective: July 13, 1990

History: Created 1990 Ky. Acts ch. 300, sec. 2, effective July 13, 1990.

365.884 Damages.

- (1) Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant shall be entitled to recover damages for misappropriation. Damages may include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.
- (2) If willful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (1).

Effective: July 13, 1990

History: Created 1990 Ky. Acts ch. 300, sec. 3, effective July 13, 1990.

365.886 Attorney's fees.

If a claim of misappropriation is made in bad faith, a motion to terminate an injunction is made or resisted in bad faith, or willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.

Effective: July 13, 1990

History: Created 1990 Ky. Acts ch. 300, sec. 4, effective July 13, 1990.

365.888 Preservation of secrecy.

In an action under KRS 365.880 to 365.900, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

Effective: July 13, 1990

History: Created 1990 Ky. Acts ch. 300, sec. 5, effective July 13, 1990.

365.890 Statute of limitations.

An action for misappropriation must be brought within three (3) years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this section, a continuing misappropriation constitutes a single claim.

Effective: July 13, 1990

History: Created 1990 Ky. Acts ch. 300, sec. 6, effective July 13, 1990.

365.892 Effect on other laws.

- (1) Except as provided in subsection (2) of this section, KRS 365.880 to 365.900 replaces conflicting tort, restitutionary, and other law of this state providing civil remedies for misappropriation of a trade secret.
- (2) KRS 365.880 to 365.900 shall not affect:
 - (a) Contractual remedies, whether or not based upon misappropriation of a trade secret;
 - (b) Other civil remedies that are not based upon misappropriation of a trade secret; or
 - (c) Criminal remedies, whether or not based upon misappropriation of a trade secret.

Effective: July 13, 1990

History: Created 1990 Ky. Acts ch. 300, sec. 7, effective July 13, 1990.

365.894 Uniformity of application and construction.

KRS 365.880 to 365.900 shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of KRS 365.880 to 365.900 among states enacting it.

Effective: July 13, 1990

History: Created 1990 Ky. Acts ch. 300, sec. 8, effective July 13, 1990.

365.896 Short title.

KRS 365.880 to 365.900 may be cited as the Uniform Trade Secrets Act.

Effective: July 13, 1990

History: Created 1990 Ky. Acts ch. 300, sec. 9, effective July 13, 1990.

365.898 Severability.

If any provision of KRS 365.880 to 365.900 or its application to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of KRS 365.880 to 365.900 which can be given effect without the invalid provision or application, and to this end the provisions of KRS 365.880 to 365.900 shall be severable.

Effective: July 13, 1990

History: Created 1990 Ky. Acts ch. 300, sec. 10, effective July 13, 1990.

365.900 Effective date -- When applicable to misappropriation.

KRS 365.880 to 365.900 shall take effect on July 13, 1990, and shall not apply to misappropriation occurring prior to July 13, 1990. With respect to a continuing misappropriation that began prior to July 13, 1990, KRS 365.880 to 365.900 also shall not apply to the continuing misappropriation that occurs after July 13, 1990.

Effective: July 13, 1990

History: Created 1990 Ky. Acts ch. 300, sec. 11, effective July 13, 1990.