

TEXAS CHAPTER 134A: UNIFORM TRADE SECRETS ACT

§ 134A.001. SHORT TITLE. This chapter may be cited as the Texas Uniform Trade Secrets Act.

§ 134A.002. DEFINITIONS. In this chapter:

(1) "Claimant" means a party seeking to recover damages under this chapter, including a plaintiff, counterclaimant, cross-claimant, or third-party plaintiff. In an action in which a party seeks recovery of damages under this chapter on behalf of another person, "claimant" includes both that other person and the party seeking recovery of damages.

(1-a) "Clear and convincing" means the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.

(2) "Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, to limit use, or to prohibit discovery of a trade secret, or espionage through electronic or other means.

(3) "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:

(i) used improper means to acquire knowledge of the trade secret;

(ii) at the time of disclosure or use, knew or had reason to know that the person's knowledge of the trade secret was:

(a) derived from or through a person who used improper means to acquire the trade secret;

(b) acquired under circumstances giving rise to a duty to maintain the secrecy of or limit the use of the trade secret; or

(c) derived from or through a person who owed a duty to the person seeking relief to maintain the secrecy of or limit the use of the trade secret; or



(iii) before a material change of the position of the person, knew or had reason to know that the trade secret was a trade secret and that knowledge of the trade secret had been acquired by accident or mistake.

(3-a) "Owner" means, with respect to a trade secret, the person or entity in whom or in which rightful, legal, or equitable title to, or the right to enforce rights in, the trade secret is reposed.

(4) "Proper means" means discovery by independent development, reverse engineering unless prohibited, or any other means that is not improper means.

(5) "Reverse engineering" means the process of studying, analyzing, or disassembling a product or device to discover its design, structure, construction, or source code provided that the product or device was acquired lawfully or from a person having the legal right to convey it.

(6) "Trade secret" means all forms and types of information, including business, scientific, technical, economic, or engineering information, and any formula, design, prototype, pattern, plan, compilation, program device, program, code, device, method, technique, process, procedure, financial data, or list of actual or potential customers or suppliers, whether tangible or intangible and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if:

(A) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and

(B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

(7) "Willful and malicious misappropriation" means intentional misappropriation resulting from the conscious disregard of the rights of the owner of the trade secret.

§ 134A.003. INJUNCTIVE RELIEF. (a) Actual or threatened misappropriation may be enjoined if the order does not prohibit a person from using general knowledge, skill, and experience that person acquired during employment.

(a-1) On 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.

(b) 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 include a material and prejudicial change of position before acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.

(c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

§ 134A.004. DAMAGES. (a) In addition to or in lieu of injunctive relief, a claimant is entitled to recover damages for misappropriation. Damages can 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.

(b) If willful and malicious misappropriation is proven by clear and convincing evidence, the fact finder may award exemplary damages in an amount not exceeding twice any award made under Subsection (a).

§ 134A.005. ATTORNEY'S FEES. The court may award reasonable attorney's fees to the prevailing party if:

- (1) a claim of misappropriation is made in bad faith;
 - (2) a motion to terminate an injunction is made or resisted in bad faith; or
 - (3) willful and malicious misappropriation exists.
-

§ 134A.006. PRESERVATION OF SECRECY. (a) In an action under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means. There is a presumption in favor of granting protective orders to preserve the secrecy of trade secrets. Protective orders may include provisions limiting access to confidential information to only the attorneys and their experts, 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.



(b) In an action under this chapter, a presumption exists that a party is allowed to participate and assist counsel in the presentation of the party's case. At any stage of the action, the court may exclude a party and the party's representative or limit a party's access to the alleged trade secret of another party if other countervailing interests overcome the presumption. In making this determination, the court must conduct a balancing test that considers:

- (1) the value of an owner's alleged trade secret;
- (2) the degree of competitive harm an owner would suffer from the dissemination of the owner's alleged trade secret to the other party;
- (3) whether the owner is alleging that the other party is already in possession of the alleged trade secret;
- (4) whether a party's representative acts as a competitive decision maker;
- (5) the degree to which a party's defense would be impaired by limiting that party's access to the alleged trade secret;
- (6) whether a party or a party's representative possesses specialized expertise that would not be available to a party's outside expert; and
- (7) the stage of the action.

§ 134A.007. EFFECT ON OTHER LAW. (a) Except as provided by Subsection (b), this chapter displaces conflicting tort, restitutionary, and other law of this state providing civil remedies for misappropriation of a trade secret.

(b) This chapter does not affect:

- (1) contractual remedies, whether or not based upon misappropriation of a trade secret;
- (2) other civil remedies that are not based upon misappropriation of a trade secret; or
- (3) criminal remedies, whether or not based upon misappropriation of a trade secret.

(c) To the extent that this chapter conflicts with the Texas Rules of Civil Procedure, this chapter controls. Notwithstanding Section 22.004, Government Code, the supreme court may not amend or adopt rules in conflict with this chapter.

(d) This chapter does not affect the disclosure of public information by a governmental body under Chapter 552, Government Code.



§ 134A.008. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

