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NONCOMPETE AGREEMENTS AND AMERICAN WORKERS

HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP UNITED STATES SENATE

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

NOVEMBER 14, 2019

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C O N T E N T S

Opening Statements

	Page
Rubio, Hon. Marco, Chairman, a U.S. Senator from Florida	1
Cardin, Hon. Benjamin L., Ranking Member, a U.S. Senator from Maryland	4

Witnesses

Bollinger, Mr. Keith, Conover, NC	6
Starr, Ph.D., Mr. Evan, Assistant Professor of Management and Organization, Robert H. Smith School of Business, University of Maryland, College Park, MD	12
Lettieri, Mr. John, President and CEO, Economic Innovation Group (EIG), Washington, DC	21

Alphabetical Listing

Beck Reed Riden LLP	
Statement dated November 28, 2019	70
Bollinger, Mr. Keith	
Testimony	6
Prepared statement	8
Cardin, Hon. Benjamin L.	
Opening statement	4
Lettieri, Mr. John	
Testimony	21
Prepared statement	23
Responses to questions submitted by Ranking Member Cardin and Senator Hirono	64
Rubio, Hon. Marco	
Opening statement	1
Starr, Ph.D., Mr. Evan,	
Testimony	12
Prepared statement	14
Responses to questions submitted by Ranking Member Cardin and Senator Hirono	50

NONCOMPETE AGREEMENTS AND AMERICAN WORKERS

THURSDAY, NOVEMBER 14, 2019

UNITED STATES SENATE,
COMMITTEE ON SMALL BUSINESS
AND ENTREPRENEURSHIP,
Washington, DC.

The Committee met, pursuant to notice, at 10:09 a.m., in Room 428A, Russell Senate Office Building, Hon. Marco Rubio, Chairman of the Committee, presiding.

Present: Senators Rubio, Ernst, Young, Kennedy, Romney, Hawley, Cardin, Cantwell, Shaheen, and Hirono.

OPENING STATEMENT OF HON. MARCO RUBIO, CHAIRMAN, A U.S. SENATOR FROM FLORIDA

Chairman RUBIO. I apologize for the delay. This meeting of the Senate Committee on Small Business and Entrepreneurship will come to order.

I want to thank every single one of you for being here. I also want to welcome all of our witnesses, all three of our witnesses for your willingness to share your time and your perspective—it is incredibly useful—on an issue that I think many people are not really that aware of, the proliferation of noncompete agreements among American workers, across all sectors, all wage levels, and to examine today sort of the impact that this has, particularly on working Americans.

I have stated before my strong belief that American economic policy is not paying enough attention to the well-being of American workers. The foundation of our ability to grow and support strong families and thriving communities is, in my view, the availability of dignified work for the workforce.

And so you reach a point where we have seen what I think is very good news, which is three years of very strong economic growth, and yet—and yet we cannot ignore that there are still millions of people who are struggling to find dignified work in certain parts of the country, in certain sectors of the economy, and they feel forgotten and they feel left behind.

Our shared belief in this country has always been that if you work hard you should be able to support a family, to buy a home, potentially, to own a car, to live out the American dream as you define it. It was certainly the experience my parents had, coming to this country. And that dream is under strain as people face an economy whose structure has changed dramatically, an economy that does not seem, in some ways, in that new structure, to ade-

quately value the contributions that workers make, or the right that working people have to share in the value that they create for their employers.

So it is our job, I believe, to put forward policy solutions that address this challenge, to recognize that businesses do have a right to make a profit. At the same time, workers have a right to enjoy the fruits of their labor, and it is that balance, that joint obligation to each other, and rights, that helps our economy function when it is at its best.

And so that brings us to the subject of noncompetes. In a noncompete agreement, everyone knows what they are, they prohibit an employee from joining or starting a competitor after they leave their current employer, and usually noncompetes have specified geographic or time boundaries—a couple few years, or in this area.

They have traditionally been justified as a way to protect a company's trade secrets, to prevent a former employee from taking these secrets to a competitor. They have also been justified as a way to protect a firm's investment in a given employee, say in job-specific training where they spent a lot of money to capacitate someone and then they go off and work for someone else, using the training that they paid for.

So that is why the use of noncompetes, to most people, if you talk about, they think it is limited to senior employees, to people that have, you know, critical access to trade secrets or customer bases, and the like. But in recent years, noncompetes have become widespread across numerous sectors in our economy, numerous types of jobs, a wide range of wage levels.

Today, about one in every five American workers is bound by a noncompete agreement. One out of every five American workers is bound by a noncompete agreement. As many as 40 percent of all American workers have been subject to a noncompete at some point in their career. So 4 out of 10 American workers have had a noncompete at some point.

This is where it gets really startling. Fourteen percent of all workers who learn less than $40,000 a year are bound by a noncompete agreement. Fifteen percent of workers without a four-year college degree have a noncompete agreement. This proliferation of noncompete agreements has an impact on workers like that, ultimately, because it limits their options and, therefore, competition, it has an impact on depressing wages, it reduces a worker's mobility and it hinders their ability to form a new business, because if you cannot compete, not just working for someone else, you cannot even go out and work for yourself in that field.

By restricting someone's freedom to seek better employment elsewhere, these agreements reduce a worker's ability to increase their pay, by two things. It limits their ability to find higher-paying work with a new employer, and two, it gives their current employer greater leverage over their pay levels at their current job, because, ultimately, your bargaining power is taken away, if you cannot quit and go work for someone else in the same field where you have established expertise, because, you know, you are bound by this agreement. So it gives them tremendous leverage on not increasing your pay, and even, as we will hear today, on cutting it.

So one study that was conducted by one of our witnesses, Mr. Starr, used Oregon as a case study. Oregon banned noncompetes for lower-wage and hourly workers in 2008. The study found that after the ban, average wages increased by up to 6 percent. Among those hourly workers actually subject to noncompetes, the increase may have been as high as 14 to 21 percent.

There is story after story of American workers. I am talking about security guards, textile workers, construction workers, hairstylists, even minimum-wage sandwich-makers, having their financial and personal lives deeply disrupted and harmed when former employers sought to enforce noncompete agreements against them.

Oregon is not alone in having taken action on this. There are numerous states that have passed legislation to restrict the use of noncompete agreements. California, North Dakota, and Oklahoma actually ban them entirely. A growing number of other states have prohibited the applicability of noncompetes to workers who earn below a certain income.

It is important to understand that in many cases, especially when it comes to workers who are not at the top of their respective working environments, noncompete agreements are also not freely negotiated. Workers are often asked to sign agreements late, as they come on board, in the onboarding process. Sometimes they are pressured into signing after they have started a new job.

Nearly 70 percent of workers who have signed a noncompete receive the agreement after the offer letter, and approximately one-quarter of these workers were asked to sign the agreement on their first day of work, not before they joined but on their first day of work, perhaps after having turned down other job opportunities.

So those who might defend noncompete agreements by pointing to the right to freely enter into contracts, that is true, but we must remember that these contracts, in some respects, in important respects, are actually often not freely entered into.

American workers have a right to compete in the market. They have a right to offer their labor to the highest bidder. It is wrong, both as a matter of smart economic policy and as a matter of basic morality and decency, to deny them that right. That is why I have introduced the Freedom to Compete Act, which would ban noncompetes for workers below a certain income level, an approach similar to that taken by numerous states.

Senator Young, who is with us here today, and also is a member of this Committee, has introduced a Workforce Mobility Act with Senator Murphy, which would ban noncompetes more broadly, in almost every case, at all income levels. That is more in the model of the three states that have done the same, and it is important work that he has done and I thank him.

Senator Young, myself, and a bipartisan group of Senators have also asked the GAO, the General Accounting Office, to examine these trends and to report to us on what it all means, and that study is currently underway.

I think perhaps there is room to debate whether noncompete agreements are useful tools for executives and other high-level workers. People could debate that, and I imagine to some extent, but the broad harm that noncompetes have cost American working

families is, in my view, beyond dispute. The need for Federal action on noncompete agreements is an idea whose, I believe, time has come.

And so I am pleased to welcome all of you to this important discussion, particularly its impact on small business and on entrepreneurship, which is a key part of our jurisdiction. This has a real impact on entrepreneurship as well. It keeps a lot of people from being able to go out and start their own business.

And with that I want to recognize the Ranking Member.

OPENING STATEMENT OF HON. BENJAMIN L. CARDIN, RANKING MEMBER, A U.S. SENATOR FROM MARYLAND

Senator CARDIN. Well, let me thank Chairman Rubio for calling this very, very important hearing on the abuse of noncompete clauses and agreements. I want to welcome all three of our very distinguished witnesses.

I am sure it is not going to surprise the Chairman that I will single out Dr. Starr. He probably believes because Dr. Starr is from the Robert H. Smith School of Business at the University of Maryland, which is absolutely true, or because the Chairman referred to Dr. Starr's research in the number of employees that are now covered by noncompete agreements, and that is also true. But I am singling him out because I have been told it is Dr. Starr's birthday today, so happy birthday, Dr. Starr.

Senator YOUNG. He is also your star witness.

[Laughter.]

Senator CARDIN. Thank you, Senator Young. For all those reasons we welcome you and we welcome all of our witnesses today.

I just really want to underscore the point that the Chairman mentioned, that the original intent of noncompete agreements was to protect industrial secrets, trade secrets, and to use that in a way to protect intellectual property and the way that companies could expand and use employees appropriately, but also restrict their use of company information. That clearly is not how it is being used today.

We saw that in the Jimmy John's case, in the fast food industry, that got a lot of national attention, or the number of hairstylists today that are subject to noncompete agreements, health care practitioners. It has clearly been abuse.

The impact is pretty clear. You have taken away from employees their bargaining strength and it means that their wages are going to be depressed. They are not going to be able to earn as much as they should with these types of agreements. It limits mobility, which is something that we should not be doing for people that should be able to participate in our economy. It challenges small businesses to get the talented people they need in order to provide the needs of their company and the expansion of their companies. It discourages entrepreneurship and innovation, particularly in underserved communities. It hurts our economy. So for all those reasons, we need to take action.

Now the states, as Chairman Rubio has said, have taken action, and they have passed different types of restrictions on noncompete agreements. My State of Maryland has adopted an approach similar to Senator Rubio's suggestion. There have been other states

that have gone similar to Senator Young's suggestions. The point is that even with state action it needs Federal action, because for an employee to challenge what an employer has done, even if there is a law in the state, it is extremely difficult and challenging, and the economics of it and the impact, there is not an effective enforcement at the state levels for these noncompete agreements.

So I agree with Senator Rubio. We need Federal legislation. And I thank Senator Rubio for putting forward legislation. I thank Senator Young, working with Senator Murphy, for putting forward legislation. Our question is, who should be covered by it? And it seems to me we should try to get a definition of those that are covered where there is not a need for a noncompete agreement. Obviously, the lower-wage workers, that should be an easy one, but I think we can go beyond that, because I hope we can carve out noncompete agreements to only where they are needed for the original intent in which they were used.

I think we also have to have effective transparency in this transaction, so that the employee knows what they are doing and really has an effective way to negotiate this and not being asked to sign an agreement on the first day of work. So I hope we can deal with that.

And lastly, let's deal with enforcement. How do you enforce this so you do not put all the burden on an employee who does not have the resources to challenge what a company is doing?

So the noncompete agreements are not the only issue. There are many issues that address the health of wage growth and protect workers, and I am just going to mention them very briefly. We need to strengthen collective bargaining. We need to close the wealth gap, and this Committee has looked at that, and there are tools of the SBA to help entrepreneurs deal particularly underserved communities. That would all be helpful. Expanding benefits for health care and retirement. Addressing the $1.6 trillion of student loan debt. Raising the minimum wage. These are all issues that could help us protect the workers of America.

Today we have a chance to do that, at this hearing, to take on a very important issue dealing with the abuses of noncompete agreements, and I really look forward to our witnesses, our discussion, and coming forward with a consensus bill.

Chairman RUBIO. Thank you. We will now go to our witnesses.

Mr. Bollinger, I am going to begin with you. First of all, I want to thank you for being here today and being a part of this. As I told you at the outset, when we met a few minutes ago, this hearing is nothing like the stuff you are seeing on television. You know, this is a very different setting in terms of the topic, and I think you will find it to be a place where your story is one that those who do not know it are going to be shocked by. And so I wanted to begin with you.

I just want to introduce you. You are a customer service manager at American Custom Finishing in Hickory, North Carolina, and you have worked in this industry, the textile industry, since you graduated from high school in 1982. And we thank you very much for being here today. Stories like yours we have heard from people all over the country, but I hope those who read the record or are watching this on television or are here today are going to hear your

story and be convinced that this is something we need to take action on. So thank you for being here.

STATEMENT OF KEITH BOLLINGER, CONOVER, NC

Mr. BOLLINGER. Leaders, Senators, and Senator Marco Rubio, thank you for having this hearing and thank you for having me here today and giving me the opportunity to speak. I hope we can make a difference.

I began my career in textiles in 1982 as an entry-level worker. I worked hard and diligently and worked my way up to a supervisor, a salaried position. In 1992, the company that I worked for was bought out by the competition, TSG Finishing, and I started over there, put back on the clock, so I had to start over. Again, I worked my way up through the years and I finally worked my way up into management, to a quality control manager over their three finishing facilities they had in the Hickory, North Carolina, area.

In 2007, all salaried employees received noncompete agreements to sign with their raise and bonuses. I held out. I did not like it. I did not agree with it. I did not like the fact that it stated all of North America as the noncompete territory. It made me very uncomfortable.

But on January of 2008, I was told by the VP of Operators that I had to sign the noncompete agreement. He said, "Keith, you have to sign this." I felt my job was at risk. I had a family, a young son, a wonderful wife, so I signed it.

A little over a year later all of us that signed those received 35 to 40 percent pay cuts. At the end of that year, TSG filed for Chapter 11 bankruptcy protection, and they had a meeting with all of us, a conference call, and assured us that as soon as they came out of bankruptcy protection the first thing they would do was reinstate our pay. Of course, they came out of bankruptcy protection and that never happened. They reworded it that, "Oh, we said when business picks back up," which was not the case at all.

Later, in 2013, I was approached by another company, a competitor down the street, by a guy that I used to work with at the first place, and he was ready to retire and he wanted me to—want to know if I wanted to take his place running the operation. And I told him about the noncompete. And I met with the majority owner of that company as well, and they said, "Well, just go talk to an attorney and see what he has to say," and I did.

And he looked at me and said, "Well, I do not think it is enforceable, because the contract you signed was before they went into bankruptcy protection. They came out of bankruptcy protection as a new company, a new tax ID, a different company altogether, and that is who I was working for." He asked me, "Did you sign a noncompete with that company?" No, I did not. He said, "Well, I do not see where it is enforceable. You should be free to go wherever you want to go.

So I accepted the job and loved it. It was my dream job. I was Operations Manager. But they came after me. I won, initially, in business court, and my attorney said, "Congratulations. You do not have anything to worry about. They will try to appeal it, but there is no way an appeals court will overturn this." Well, he was wrong. They overturned it and I was immediately laid off, for fear that

they would be drug into the lawsuit. Well, they got drug into the lawsuit anyway.

I went to work part-time after that for a rigger, who moves heavy equipment, industrial equipment, just turning wrenches. A grunt. A gopher. They got wind of that and sued him. So later they dropped him.

But I had no choice but to go along with the other people in the lawsuit and settle. I could not afford to fight it. My attorney bills had mounted to the point where there was just no way I could pay it. We wiped out our savings, relied on credit cards. I got loans from family members and friends. Otherwise, I would have lost everything.

I did not have the knowledge of chemical recipes or anything else. It is not like I had the Colonel's secret recipe. You know, I was just a working stiff who worked diligently to get ahead in life, and when an opportunity came for me to provide a better life for my family, it was yanked out from under me.

I am now making about what I did 20 years ago, with no benefits, and honestly, I do not think that I will ever fully recover from it, and neither will my family.

I hope that things do change. I know what happens today will not help undo what happened to me. It will not right the wrongs. But if my testimony today can help prevent somebody else from going through what I have gone through, I had to be here today, and I thank you very much.

[The prepared statement of Mr. Bollinger follows:]

Keith A Bollinger "Noncompete Agreements and American Workers"

Leaders, Senators, and Senator Marco Rubio:
Good morning and thank you for holding this hearing and for the opportunity to appear before you today on this matter. I hope we can make a difference.

My name is Keith Bollinger. I am 56 years old. I was never a rich man, but once I had a comfortable life style. The company I worked with for more than 20 years had a downturn and used fear to get the management team to sign non-compete agreements. They went through bankruptcy, cut pay and despite promises - never reinstated the pay of loyal employees even after the market returned. I had an opportunity to recover my losses by joining another company and for that I was punished. I was unemployed for almost 2 years, and my family suffered both financially and emotionally. My story is a prime example of the overreach of non-compete agreements.

I began my career in textile finishing in 1982 after high school and I have no college degree. In 1992 the company I worked for was purchased by one of their local competitors TSG Incorporated. They offered me an hourly position that I accepted. I advanced to quality control manager for TSG by the late 1990's.

TSG issued yearly raises and bonuses at the end of each year. At the end of 2007 all salaried employees received a non-compete agreement to sign with their raise and bonuses. I did not sign it. I did not understand it and did not agree with some of the terms – particularly listing all of North America as the non-compete territory. On January 14, 2008 I was told by the VP of Operations that I had to sign the non-compete agreement. I felt my job was at risk, so I signed it. I never thought it would lead to the destruction of my career, 2 years of unemployment, my current low income and damaged resume.

I received 2 pay cuts equaling 35% at the beginning of 2009. The end of that year, TSG filed for chapter 11 bankruptcy protection. Every person that had to sign the non-complete was given large pay cuts of 35% to 40%. Sometime during bankruptcy period, there was a conference call between the plant managers and TSG headquarters, letting all of us know that once the company was out of bankruptcy that our pay would be reinstated. Later this was reworded to "when business picks back up", the pay would be reinstated.

During bankruptcy, TSG Incorporated renamed itself to TSG Holding Company. Around April 2011, TSG Finishing LLC was created. After bankruptcy was over I repeatedly asked for my pay to be reinstated, but received only small increases never amounting to my previous salary.

In the fall of 2013, I was approached by a minority owner of American Custom Finishing (ACF) and an individual whom I had worked with at the first employer. He was planning to retire, and the position was for operations manager to replace him. I met with another owner about this opportunity and we discussed the non-compete agreement I had with TSG Finishing. I consulted an attorney and was advised that it was probably not enforceable because I signed the non-compete with TSG Incorporated not TSG Finishing, my current employer. The large pay cuts were also discussed. He did recommend other attorneys with larger firms if I needed one but thought I would be ok. An offer was made by (ACF) and I accepted the offer in November 2013 letting them know that I would need to give TSG a notice.

I submitted my notice in person with one of the company owners. He accepted and seemed to understand when I told him the offer from ACF was a substantial pay increase. He asked me to continue to perform my duties. I remember thinking that the owners may discuss reinstating my pay. I

remember calling my wife and discussing this possibility. She felt that if they reinstated my pay then I should stay as it shows good faith from them. Honestly, I struggled with this possibility. I had worked for TSG for more than 20 years and moving to a new company would be a risk. It was an exciting new opportunity, but I am a loyal guy and would probably have stayed if they had matched or come close to matching the offer from ACF. After about three hours, the plant manager came to my office. He was there to escort me off the property. He told me the owners had discussed my notice and I was to leave and they were going to "come after me".

So, I started at ACF the following week as operations manager and loved it. I felt this was the job I had worked my entire life for. It was a once in lifetime opportunity and my dream job. Then, on November 26, 2013, TSG Finishing sent both me and ACF cease and desist letters with a copy of my non-compete agreement. I hired an attorney right away. My attorney responded to the letter on December 9, 2013 with his arguments that the contract was not enforceable due to wrong company suing, proof of assignment along with other arguments. He reminded them I was not a chemist, engineer or a sales representative with a territory. He assured them that if they thought I possessed some sort of trade secrete knowledge or proprietary information that I would not use them, and we would be more than happy to discuss those matters further to help eliminate any of their concerns.

Instead of trying to discuss what sort of reasonable restrictions they wanted for their trade or other protections I was served with a lawsuit January 24, 2014. I was the only defendant at this time and the case was moved from Catawba County NC to North Carolina Business court.

TSG filed motion for preliminary injunction. I was not being accused of taking anything just that I had access to or had knowledge of customer preferences and that I ran trials to help determine processes. I did handle customer complaints and quality issues and trials to help satisfy customers. Nothing I could take with me that the customer would not know. I did not have knowledge of chemical recipes or anything else. I don't know how to make the goop, I just know how to apply the goop.

The non-compete territories included North Carolina and Pennsylvania as well as 16 other states that they considered their primary competition states. Also, both the United States and all North America. The duration was for two years and did not allow engaging as an employee or contractor in performance of textile finishing, engage in the manufacturing of textile finishing machinery or equipment, including but not limited to jobber, reseller, or dealers of used textile machinery or equipment or engage in sales, marketing or managerial services for any individual or entity that competes with TSG direct or indirectly in prohibited territory. The choice of Law was Pennsylvania. I never worked in Pennsylvania. I have lived and worked in the Hickory, NC area my entire life.

My attorney responded to their motion and I went through a brutal deposition from a very aggressive attorney. He seemed to keep asking the same questions over and over just rewording them trying to force me to choose the words he wanted to hear. Wanting my words to fit his agenda.

That night I had a panic attack or an anxiety attack. I was gasping for my breath. Felt like I could not breathe. Scared my wife and son. There were more of these through the course of all the legal battles. I went to my doctor and was tested for other possibilities, but we concluded it was probably stress.

A hearing was held February 5 for the preliminary injunction. I was present and Jack Rosenstein testified. Attorneys from both sides made their arguments. The preliminary Injunction was denied by the NC Business Court judge February 24, 2014. The order seems to agree with most of my attorneys'

arguments and stated something to the effect of enforcing a non-compete as articulated by the plaintiff's would bar me from working in the only profession I have known since high school throughout North America. I felt great and thought glad this is over.

TSG appealed to the NC Appeals Court and on December 31, 2014 NC Appeals court reversed the Business Courts decision.

Still today I cannot read the Appeals Court opinion all the way through. I do not understand how they made such absurd statements and acted as if facts and it is on the internet for all to see. If you did not know me, you may not give me a second chance after reading it. Anytime applying for jobs, I have to mention the lawsuit. It haunts me. North Carolina believes the public has the right to know and the Business Court, Appeals & Supreme Court all have my case on their websites. If you google my name you can find the Appeals Court opinion without going to their website and that's not been a lot of help when looking for employment. They make me out to be some awful ex-employee and they never even met me.

The same day the Appeals court reversed my victory TSG's attorney notified ACF's attorney of the decision and I was immediately laid off. I lost my dream job and a good income.

My attorney filed to NC Supreme Court for a stay and we were granted it. Lucky me. My review was denied on August 20, 2015 and that dissolved the stay.

I remained unemployed for about 2 years during all of this. It is hard to find full time employment with no reference from longest employer and with companies now doing internet searches it seemed like a good idea to tell anyone I interview with about my situation. I had an interview with a Weaving company close by that asked me if I was allowed to work for them. I said I thought I was. No offer was ever made. I am unsure if they called TSG or just decided to play it safe.

I remember at one point I was being accused of still working for ACF and they subpoenaed our tax records. Our adjusted gross income was around $27,000. Hard to pay a house payment and car payments and keep up with attorney fees with that. Unemployment benefits in NC are terrible.

There were multiple times my wife noticed traffic backed up in front of our house with someone taking pictures and on several occasions I saw the plaintiff's attorney following me.

TSG filed another lawsuit against ACF and other companies and individuals signed by their attorney the same day the Supreme Court's denial. TSG Finishing was even suing indirect competitors. Both cases were combined in NC Business Court. December of 2015 the preliminary injunction was placed on me.

We borrowed money from family and friends. We wiped out our savings and had to use credit cards and cut expenses the best way we could. No cable, Christmas gifts, eating out, movies, home repairs were left undone, and our son was starting college and had to take out college loans. After 3 ½ years in 2017 TSG accepted $200,000 offer of judgment from all defendants. The lawsuit left a vaper trail internet and damaged my resume. I never got my day in court to determine whether the non-compete was legal. According to the appeals court the burden is on the employee. That's frustrating.

I am currently back working at ACF making about the same as I did 20 years ago with no insurance benefits or 401k. During my absence that position was filled and I don't blame them. I have applied and

interviewed for other positions with better pay and benefits but internet searches and unable to use a company I worked for over 20 years as a reference make it difficult.

I am 56 years old and have spent 3 ½ years of my life fighting to have a future. The one I had worked 30 plus years for and was taken from me. I lost a comfortable life style. The company I worked with had me sign a non-compete after 16 years then cut my pay - never reinstating it even after the market returned. I had an opportunity to recover my losses by joining another company and for that I was punished. My career has not recovered, and it may never. I went through three different courts one never gave the time to hear me, and the other two had the complete opposite opinions with only one ever meeting me. How is someone like me able to understand a contract when the courts interpretations are complete opposite. There are other contracts a business can use that does not destroy careers. I thought this was a free country and a land of opportunity.

Chairman RUBIO. Thank you so much for sharing that story with the Committee. It was very impactful. It puts a real human face on what we are trying to deal with here today.

Dr. Starr is the Assistant Professor of Management and Organization at the Smith School of Business at the University of Maryland, and he is also one of the Nation's leading researchers on the subject of noncompete agreements and their effect on employee mobility and earnings.

Thank you for being here today. You are recognized.

STATEMENT OF EVAN STARR, Ph.D., ASSISTANT PROFESSOR OF MANAGEMENT AND ORGANIZATION, ROBERT H. SMITH SCHOOL OF BUSINESS, UNIVERSITY OF MARYLAND, COLLEGE PARK, MD

Mr. STARR. Thank you, Chairman Rubio and Ranking Member Cardin, and other members of the Committee. Thank you for the opportunity to testify on the important topic of noncompete agreements and American workers.

My name is Evan Starr and I am an Assistant Professor at the University of Maryland's Robert H. Smith School of Business, and today is my birthday, and there are few places I would rather be and few topics I would rather be discussing, so thank you.

A noncompete agreement is an employment provision that prohibits a departing worker from joining or starting a competing firm. As an example, I would like to read the text of a noncompete signed in 2015, by a temporarily employed Amazon packer making $12 an hour.

"During employment and for 18 months after the separation date, employee will not engage in or support the development, manufacture, marketing, or sale of any product or service that competes or is intended to compete with any product or service sold, offered, or otherwise provided by Amazon, that employee worked on or supported or about which employee obtained or received confidential information."

The reason noncompetes like this are important is because they may prevent workers from working where they want and earning what they could in the labor market.

The last few years have seen a bevy of new laws seeking to ban noncompetes for all or a subset of workers, including in Massachusetts, Washington, Florida, New Hampshire, Illinois, Hawaii, New Jersey, my home State of Maryland, and across the whole United States.

In my research, I have sought to understand how common noncompetes are, how they influence workers and firms, and what of effects banning them has on economic activity.

In my testimony today I would like to make the following points. First, noncompetes are everywhere. Doggie daycare workers, unpaid interns, volunteer coaches, janitors, and hairstylists are just some of the jobs in which noncompetes have been found. In a 2014 study of 11,500 U.S. workers, J.J. Prescott, Norman Bishara, and I estimate that approximately one in five private sector workers were bound by noncompetes, and that approximately 40 percent of labor force participants had ever signed one.

We also find that while noncompetes are more common among executives and managers, hourly paid workers actually make up the majority of noncompete signers because they represent such a large part of the labor force.

Second, noncompetes are negotiated over just 10 percent of the time and are regularly asked of workers when they have limited bargaining power, such as on the first day of the job.

Third, despite reasonable arguments that noncompetes might benefit workers and firms, most research suggests that the use and enforceability of noncompetes reduces wages, entrepreneurship, and job-to-job mobility, making it harder for firms to hire and creating negative spillovers in the market.

For example, after Oregon banned noncompetes for low-wage workers in 2008, my colleague, Michael Lipsitz, and I find that hourly worker wages rose up to 6 percent five years after the ban, while job-to-job mobility rose 17 percent. We also find that the wage gains were stronger for women than for men.

In another study, my co-authors and I examined a ban on noncompetes that Hawaii implemented in 2015, for only high-tech workers, an occupation in which the potential benefits of investment are very salient. Yet similar to the low-wage study, we find that this ban raised quarterly earnings for new hires by 4 percent and increased job mobility by 11 percent.

Other studies find that where it is easier to enforce noncompetes, the startup rate is lower and businesses struggle to hire.

Taken together, these results suggest that noncompetes do indeed prevent both low-wage and high-tech workers from working where they want and earning what they could.

Fourth, bans on noncompetes do not tell the whole story. In states where noncompetes are unenforceable, they still cover 19 percent of the workforce. Moreover, these unenforceable noncompetes also appear to chill employee mobility.

Fifth, two recent studies suggest that the negative effects of noncompetes are borne not only by those who sign them but are also shared by others in the labor market.

Sixth, other tools can do similar jobs for the firm without constraining worker options so severely. For example, nondisclosure agreements and trade secret laws can protect trade secrets, while non-solicitation agreements can protect clients. Yet neither of these provisions limit job options for departing workers. So the efficacy of noncompetes should be judged based on their value relative to these less-restrictive alternatives.

Finally, I would like to note that this is not a classic firm-versus-worker issue, because firms are on both sides of the equation here. Firms may not want to lose workers to competitors but they would like to hire from their competitors.

I would also like to note that it has been uplifting to see bipartisan interest in this space, including recent bills from Chairman Rubio, Senator Young, and Senator Murphy.

I look forward to your questions. Thank you.

[The prepared statement of Mr. Starr follows:]

Written Testimony for the Senate Committee on Small Business and Entrepreneurship Hearing on "Noncompete Agreements and American Workers"

Evan Starr
Assistant Professor of Management and Organization
University of Maryland Robert H Smith School of Business*

November 14, 2019

Chairman Rubio, Ranking Member Cardin, and Members of the Committee:

Thank you for the opportunity to testify on the important topic of noncompete agreements and American workers. My name is Evan Starr and I am an Assistant Professor at the University of Maryland's Robert H. Smith School of Business.

If you are unfamiliar with noncompete agreements, they are employment provisions that prohibit departing workers from starting or joining another firm in the industry within particular time and geographic boundaries. Here is an example of one, signed by a temporarily-employed packer at Amazon in 2015:

> *During employment and for 18 months after the Separation Date, Employee will not, directly or indirectly, whether on Employee's own behalf or on behalf of any other entity (for example, as an employee, agent, partner, or consultant), engage in or support the development, manufacture, marketing, or sale of any product or service that competes or is intended to compete with any product or service sold, offered, or otherwise provided by Amazon (or intended to be sold, offered, or otherwise provided by Amazon in the future) that Employee worked on or supported, or about which Employee obtained or received Confidential Information.*[1]

The reason that noncompetes like this are important is because they can prevent workers from working where they want and earning what they could in a competitive market. In addition, recent evidence suggests that noncompetes may have negative spillover effects that reduce economic dynamism generally.

The last few years have seen a bevy of new laws seeking to ban noncompetes for all or a subset of workers, including in Massachusetts, Washington, Florida, New Hampshire, Illinois, Hawaii, New Jersey, my home state of Maryland, and across the whole United States.

In my research I have sought to understand how common noncompetes are, how they influence workers and firms, and what sort of effects banning them has on economic activity.

* This testimony represents my own views and not necessarily those of the University of Maryland or the Robert H. Smith School of Business.

1 The text of this noncompete is provided by Spencer Woodman in his article "Exclusive: Amazon makes even temporary warehouse workers sign 18-month non-competes." The article is available at https://www.theverge.com/2015/3/26/8280309/amazon-warehouse-jobs-exclusive-noncompete-contracts. After this contract was made public, Amazon reportedly withdrew these provisions from hourly workers' contracts.

In my testimony today, I'd like to make the following points:

(1) Noncompetes are everywhere. They are found most frequently in high-wage jobs, but they are also found regularly in low-wage jobs.

(2) Noncompetes are rarely negotiated over, and are regularly presented to workers when they have limited outside options—to the worker's detriment.

(3) Despite reasonable arguments that noncompetes might benefit workers and firms, most research suggests that the use and enforceability of noncompetes reduces wages, entrepreneurship, and job-to-job mobility, making it harder for firms to hire, and creating negative spillovers in the market.

(4) Women and non-white workers appear to be particularly harmed by noncompetes.

(5) Noncompetes are still common in states that do not enforce them, and even unenforceable noncompetes appear to limit employee mobility.

(6) Other, less restrictive employment practices can often do the same jobs for the firm as noncompetes. The efficacy of noncompetes should be judged based on their relative value compared to these less restrictive alternatives.

(7) Recent research on other mobility-restricting employment practices, such as no-poach agreements and non-solicitation (of clients) agreements suggest that they too hurt workers.

Before I elaborate on each of these points, I'd like to make two additional comments. From a conceptual perspective, it is important to note that this is not a classic firm vs. worker issue because firms are on both sides of the equation: Firms would clearly not like their workers to leave for competitors, but they would like to hire from their competitors. It is also not a conservative vs. liberal issue, as we've seen several recent bills proposed by both Republicans and Democrats, including recently by Chairman Rubio, Senator Young, and Senator Murphy.

I will now elaborate on each of my main points:

Point 1. Noncompetes are everywhere. They are found most frequently in high-paid jobs, but they are also found regularly in low-wage jobs.

Doggy daycare workers, unpaid interns, volunteer coaches, janitors, yoga instructors, and hair stylists are just some of the types of jobs in which noncompetes have been found.[2] In a study of 11,500 US workers, my colleagues JJ Prescott, Norman Bishara, and I estimate that in 2014 approximately 1 in 5 private sector workers were bound by noncompetes, and that approximately

[2] See Greenhouse, Steven "*Noncompete Clauses Increasingly Pop Up in Array of Jobs,*" *New York Times, June 8, 2014* at https://www.nytimes.com/2014/06/09/business/noncompete-clauses-increasingly-pop-up-in-array-of-jobs.html.

40% of labor force participants have ever signed one.[3] Noncompetes are most common among executives,[4] as one might expect. Yet, hourly-paid workers actually make up the majority of noncompete signers because they represent such a large part of the labor force.[5]

Point 2. Noncompetes are rarely negotiated over, and are regularly presented to workers when they have limited outside options—to the worker's detriment.

In my study with Prescott and Bishara, we find that only 10% of workers report negotiating over their noncompete or for other benefits in exchange for signing. Furthermore, 86% of workers report that they were not promised any benefits for agreeing not to compete.[6] These findings do not imply that noncompetes are bad for workers per se, since additional compensation might be baked into the initial employment offer. But they do suggest that workers generally sign noncompetes when they are asked without requiring additional compensation beyond what is offered.

Furthermore, evidence from two studies finds that approximately 33-45% of workers who have signed noncompetes are asked to sign them *after* the worker has accepted the job offer, but without a promotion, raise, or other change in responsibilities.[7] The issue of timing is important because noncompetes give the firm *future* product and labor market power. For example, if a worker gets a job offer from a competitor, or has an idea to start a new firm in the industry, the employer can use the noncompete as a shield to prevent the worker from taking those opportunities. Given that noncompetes operate in the future, a key question is whether workers are compensated for what they give up *when they agree to these provisions*. The delay of noncompetes until after the worker has accepted the job may erode worker bargaining power if, for example, workers have turned down other offers or have already made important investments in the new job. My research with Prescott and Bishara finds that workers are worse off under these delays relative to workers who receive noncompetes with the job offer.[8]

Point 3. Despite reasonable arguments that noncompetes might benefit workers and firms, most research suggests that the use and enforceability of noncompetes reduces wages, entrepreneurship, and job-to-job mobility, making it harder for firms to hire, and creating negative spillovers in the market.

While noncompetes appear to be prima facie anticompetitive in that they can be used as a shield to protect the firm from future labor and product market competition, there are reasonable

[3] This evidence is reported in Starr, Evan, James J. Prescott, and Norman Bishara. "Noncompetes in the US labor force." *U of Michigan Law & Econ Research Paper* 18-013 (2019).
[4] See, for example, Bishara, Norman, Kenneth J. Martin, and Randall S. Thomas. "When do CEOs have covenants not to compete in their employment contracts?." *Vanderbilt Law Review* 68, no. 1 (2015): 12-33. They find that 70% of executives sign noncompetes (See Table 3).
[5] See, Lipsitz, Michael, and Evan Starr. "Low-Wage Workers and the Enforceability of Non-Compete Agreements." *Available at SSRN 3452240* (2019), finding that 53% of noncompete signers are hourly workers.
[6] See Starr et al. (2019 at 3; Table 5 shows the negotiation propensities and Table B13 shows what workers report their employers promised them in exchange for signing ag noncompete.
[7] See Table 4 in Marx, Matt. "The firm strikes back: non-compete agreements and the mobility of technical professionals." *American Sociological Review* 76.5 (2011): 695-712.
[8] See Starr et al. (2019) at 3, Table 7.

justifications for their use. These justifications typically include encouraging firms to invest in the development of trade secrets or valuable worker skills that firms fear would otherwise end up subsidizing their competitors. Theoretically, workers would be willing to agree to these restrictions when they are better off relative to their outside option, which might occur if firms share the returns made from these investments.

Given that it's unclear whether noncompetes (or the laws that regulate them) will hurt or benefit workers, the question is ultimately empirical. Tests of these competing arguments tend to find that when states ban noncompetes (or relax enforcement), workers tend to benefit.[9] For example, a recent study of mine with Michael Lipsitz examines Oregon's 2008 low-wage ban on noncompetes. We find that hourly-worker wages rose up to 6% 5 years after the ban, while job-to-job mobility rose 12-18% on average. The fact that wages rose following a ban suggests that they were being held down by noncompetes.

Low-wage workers are unique, however, in that they likely do not have access to the traditionally protectable interests, and so may not be a great test of the investment theory. In another study, my coauthors and I examine a ban on noncompetes that Hawaii implemented in 2015 for *only* high-tech workers—an occupation in which the potential benefits of investment are more salient.[10] Yet similar to the low-wage study, we find that Hawaii's ban on noncompetes for high-tech workers raised quarterly earnings for new hires by 4% and increased job mobility by 11%.[11] That is, even in the precise jobs where the investment story ought to be most plausible, we still find that noncompetes were holding down worker wages and mobility.

Other studies recognize that noncompetes do not just prohibit moving to another firm within the industry, but also extend to *starting* a new firm within the industry as well. Most studies find that the vigorous enforcement of noncompetes reduces entrepreneurship and makes it difficult for new firms to hire.[12]

[9] In addition to the studies described herein, Starr, Evan. "Consider this: Training, wages, and the enforceability of covenants not to compete." *ILR Review* 72.4 (2019): 783-817, also finds that workers earn less in higher enforceability states. Johnson, Matthew S., Kurt Lavetti, and Michael Lipsitz. "The Labor Market Effects of Legal Restrictions on Worker Mobility," *Available at SSRN 3455381* (2019), finds similar results. For a broad overview see Starr, Evan. "The Use, Abuse, and Enforceability of Non-Compete and No-Poach Agreements." *Economic Innovation Group. February 2019* https://eig.org/noncompetesbrief.

[10] See, Balasubramanian, N., Chang, J. W., Sakakibara, M., Sivadasan, J., & Starr, E. (2018). Locked in? the enforceability of covenants not to compete and the careers of high-tech workers. *US Census Bureau Center for Economic Studies Paper No. CES-WP-17-09.*

[11] Early studies in this literature documented that enforcing noncompetes reduces and redirects inventor mobility. See Marx, Matt, Deborah Strumsky, and Lee Fleming. "Mobility, skills, and the Michigan non-compete experiment." *Management Science* 55.6 (2009): 875-889, and Marx, Matt, Jasjit Singh, and Lee Fleming. "Regional disadvantage? Employee non-compete agreements and brain drain." *Research Policy* 44.2 (2015): 394-404.

[12] On reductions in entrepreneurship and challenges in hiring, see Starr, Evan, Natarajan Balasubramanian, and Mariko Sakakibara. "Screening spinouts? How noncompete enforceability affects the creation, growth, and survival of new firms." *Management Science* 64.2 (2017): 552-572. See also Starr, Evan, Martin Ganco, and Benjamin A. Campbell. "Strategic human capital management in the context of cross-industry and within-industry mobility frictions." *Strategic Management Journal* 39.8 (2018): 2226-2254. See also Stuart, Toby E., and Olav Sorenson. "Liquidity events and the geographic distribution of entrepreneurial activity." *Administrative Science Quarterly* 48.2 (2003): 175-201. Finally, see Jeffers, Jessica. "The impact of restricting labor mobility on corporate investment and entrepreneurship." *Available at SSRN 3040393* (2019).

Taken together, these results are hard to square with theories that suggest workers should benefit from noncompetes.

It's important to note that these studies do not generally have information on the use of noncompetes—rather, they examine differences in state law and average across those who are and are not bound by noncompetes. Accordingly, it may be the case that enforcing noncompetes results in negative spillovers in the market (i.e., the wage losses are borne not only by those bound by noncompetes but also by others in the market). A recent study of mine with Justin Frake and Rajshree Agarwal finds evidence consistent with negative spillovers: in state-industry combinations where noncompetes are used *en masse* and are vigorously enforced by courts, the whole labor market is less dynamic, with lower mobility and wages, even for those not bound by noncompetes.[13] Another recent study by Johnson, Lipsitz, and Lavetti finds similar evidence of negative externalities.[14]

It's also important to note that not all studies in this literature find negative effects of noncompetes, and that this research stream is still reaching consensus on some points. For example, there is contrasting evidence on the effects of noncompetes for CEOs.[15] And there are two studies finding evidence that those bound by noncompetes have higher earnings, though both studies acknowledge that they are unable to determine whether it is the noncompete or some other aspect of the worker or firm that causes higher earnings.[16] Other studies look directly at the investment margin, and some do find evidence that firms invest in riskier innovation, more firm-sponsored training, or more investment, though again there is some dispute on these points.[17] Most notable among these points is that California banned noncompetes in 1872, and some scholars note that this may be an important reason why Silicon Valley came to be such a thriving technology hub.[18]

Point 4. Recent research also finds that noncompetes have particularly negative effects on women and on non-white workers.

[13] Starr, Evan, Justin Frake, and Rajshree Agarwal. "Mobility Constraint Externalities." *Organization Science* 30.5 (2019): 961-980.
[14] Johnson, Matthew S., Kurt Lavetti, and Michael Lipsitz. "The Labor Market Effects of Legal Restrictions on Worker Mobility," *Available at SSRN 3455381* (2019).
[15] On the contrasting effects on executives, see Garmaise, Mark J. "Ties that truly bind: Noncompetition agreements, executive compensation, and firm investment." *The Journal of Law, Economics, and Organization* 27.2 (2011): 376-425. For the alternative result, see Kini, O., R. Williams, and D. Yin. *CEO Mobility, Performance-Turnover Sensitivity, and Compensation: Evidence from Non-Compete Agreements*. Working Paper, 2017.
[16] Starr et al. (2019) at 3. And, Lavetti, Kurt, Carol Simon, and William D. White. "The impacts of restricting mobility of skilled service workers: Evidence from physicians." *Journal of Human Resources* (2019): 0617-8840R5.
[17] On firm-sponsored training, see Starr, Evan. "Consider this: Training, wages, and the enforceability of covenants not to compete." *ILR Review* 72.4 (2019): 783-817. On investment, see Jeffers (2017) at 12, Garmaise (2011) at 15. On risky investments, see Conti, Raffaele. "Do non-competition agreements lead firms to pursue risky R&D projects?." *Strategic Management Journal* 35.8 (2014): 1230-1248. And on innovation outcomes, see Samila, Sampsa, and Olav Sorenson. "Noncompete covenants: Incentives to innovate or impediments to growth." *Management Science* 57.3 (2011): 425-438.
[18] Gilson, Ronald J. "The legal infrastructure of high technology industrial districts: Silicon Valley, Route 128, and covenants not to compete." *NYUl Rev.* 74 (1999): 575.

With regards to gender, two recent studies find that when noncompetes are easier to enforce they have a more detrimental effect on the earnings of women relative to the earnings of men.[19] For example, in my study of low-wage workers with Michael Lipsitz, we find that after Oregon bans low-wage noncompete for hourly workers, the hourly wages of women rise by 3.5%, nearly double the effect for men. In another recent study, Matt Marx finds that when noncompetes are easier to enforce, women are particularly less likely to start new ventures.

With regards to racial differences in the effects of noncompete agreements, one recent study by Johnson, Lipsitz, and Lavetti finds that when it is easier to enforce a noncompete non-white workers' wages are held down approximately twice as much as the wages for white workers.

Point 5. Noncompetes are still common in states that do not enforce them, and even unenforceable noncompetes appear to limit employee mobility.

Many recent proposals seek to ban noncompetes, much like California did back in 1872. However, it is important to note that noncompetes are still quite common in California: 62% of CEOs in California have signed them, 31% of physicians, and 20% of hair salons use them; more generally, across states that do not enforce noncompetes, 19% of workers still sign them.[20] My recent research with JJ Prescott and Norman Bishara also suggests that workers are generally unaware of the laws governing noncompetes and that worker mobility is chilled simply by the existence of the contract.[21] Accordingly, any policy that seeks to reduce the effects of noncompetes would need consider ways to disincentivize their use.

Point 6. Other, less restrictive employment practices can often do the same jobs for the firm as noncompetes. The efficacy of noncompetes should be judged based on their relative value compared to these less restrictive alternatives.

Noncompetes may be the most effective at protecting firm interests because they stop workers from joining or starting competitors in the first place. But this bluntness also underlies their potential downsides, offering the firm perhaps more protection than they need—at the expense of workers who may forego better opportunities.

There are several alternative provisions that are more tightly coupled with the firm's protectable interests that do not dictate where a worker can or cannot move. For example, if the firm's goal is to protect investments in specialized training, they might consider a training repayment agreement which stipulates that the firm will invest a certain amount of money in training the

[19] See, Lipsitz, Michael, and Evan Starr. "Low-Wage Workers and the Enforceability of Non-Compete Agreements." *Available at SSRN 3452240* (2019). See also Johnson, Matthew S., Kurt Lavetti, and Michael Lipsitz. "The Labor Market Effects of Legal Restrictions on Worker Mobility," *Available at SSRN 3455381* (2019).
[20] On executives, see Bishara et al. (2015) at 4. On physicians, see Lavetti et al. (2019) at 15. On hair salons, see Johnson, Matthew S., and Michael Lipsitz. "Why are low-wage workers signing noncompete agreements." Working paper (2019). On the use of noncompetes in non-enforcing states, see Starr et al. (2019) at 3.
[21] On what workers believe about the law related to noncompetes, see Prescott, J. J., and Evan Starr. *Subjective Beliefs about Contract Enforceability*. Working Paper, 2019. On the extent to which unenforceable noncompetes still influence employee mobility, see Starr, Evan, James J. Prescott, and Norman Bishara. "The *in terrorem* Effects of (Unenforceable) Contracts." *U of Michigan Law & Econ Research Paper* 16-032 (2019).

worker, a portion of which the worker would repay if they leave too soon. If the firm is worried about the departure of clients, it can use a non-solicitation agreement that prohibits workers from soliciting former clients. If the firm is worried about the disclosure of information, it can use a non-disclosure agreement, or rely on trade secret laws. And so on.

Whether noncompetes are efficacious depends on their relative value to these alternative provisions. What little research exists on these provisions suggests that firms already use these provisions in tandem.[22] Moreover, there may be important tradeoffs involved if noncompetes (or any other practice) are restricted. For example, while noncompetes may be associated with lower wages and economic dynamism, enforcing a non-disclosure agreement may engender larger legal fees and longer court cases. Whatever policy choices are made, policymakers should be cognizant of the ways that firms can and will substitute between these practices, thereby anticipating any unintended consequences.

7. Recent research on these other mobility-restricting provisions, such as no-poach agreements and non-solicitation (of clients) agreements suggest that they too hurt workers.

No-poach agreements are organizational level agreements (i.e., not agreed to by workers) not to poach each other's workers. Recent research in the fast food franchise sector found that they covered more than 60% of major franchises in the United States in 2016,[23] although this number has fallen dramatically following investigations by the Washington State Attorneys General.[24] Recent research by Matt Gibson examines whether such no-poach agreements hurt workers in the context of the Silicon Valley collusion between 2005 and 2009 (later investigated by the DOJ).[25] He finds that each no-poach agreement agreed to by these firms cost workers between 2.6% to 4% of their annual salary.

Notably, little research has examined contractual "no-recruit agreements," where workers agree not to leave and then poach their former co-workers. These provisions are similar to no-poach agreements in that they may be invisible to the worker. That is, one worker may have his options limited not by his own choice, but by the choice of a coworker.

Other recent research on financial brokers finds that when firms allow brokers to leave with their clients that broker mobility rises, incentivizing workers to take better care of their clients.[26]

[22] See Nunn, Ryan, and Evan Starr, "The Co-Adoption of Overlapping Restrictive Employment Provisions," (data work in progress). See also, Kryscynski, David and Evan Starr, "Examining Employment Practice Bundles: When Firms Adopt Value Creation and Value Protection Practices" on how firms bundle these provisions with other HR perks.

[23] Krueger, A. B., & Ashenfelter, O. (2018). *Theory and evidence on employer collusion in the franchise sector* (No. w24831). National Bureau of Economic Research.

[24] See https://www.atg.wa.gov/news/news-releases/ag-ferguson-s-initiative-ends-no-poach-clauses-eight-more-corporate-chains-more.

[25] Gibson, M. "Employer market power in Silicon Valley" (2019)

[26] See Clifford, Christopher P., and William Christopher Gerken. "Investment in human capital and labor mobility: Evidence from a shock to property rights." *Available at SSRN 3064204* (2017). See also, Gurun, Umit G., Noah Stoffman, and Scott E. Yonker. "Unlocking Clients: Non-compete Agreements in the Financial Advisory Industry." (2019). Working paper.

Chairman RUBIO. Thank you. And finally, I want to make sure that I introduce you appropriately. Mr. Lettieri, right—am I pronouncing it correctly—is our third witness, and let me make sure I introduce you appropriately here. I lost my—as I was reading along on the previous statement.

He is the President and CEO of the Economic Innovation Group. He previously served as the Vice President of Public Policy and Government Affairs for the Organization of International Investment, where he led the organization's State and Federal policy work on tax reform, trade, investment promotion, and manufacturing. And before that he was the Director of Public and Government Affairs for a global aerospace manufacturer, and before that was a foreign policy aid to former U.S. Senator Chuck Hagel, where he served on the Foreign Relations Committee.

So you have like nine lives. That is great. Well, thank you for being here. We look forward to your testimony.

STATEMENT OF JOHN LETTIERI, PRESIDENT AND CEO, ECONOMIC INNOVATION GROUP (EIG), WASHINGTON, DC

Mr. LETTIERI. Thank you, Chairman Rubio and Ranking Member Cardin, members of the Committee. I appreciate this opportunity to testify on the impact of noncompete agreements on American workers and the broader U.S. economy.

Today roughly 20 percent of the American workforce is not allowed to take a better job in the field of their choice, regardless of higher pay, better benefits, improved job satisfaction, or any other factor. The reason is simple: they are bound by a noncompete agreement.

Noncompetes erect barriers to worker mobility and dampen the vitality of the U.S. economy. Healthy labor markets depend both upon vigorous competition between firms for talent and upon the ability of workers to freely market their skills to interested employers. Likewise, a dynamic economy depends upon worker mobility, which facilitates innovation and helps know-how proliferate throughout the economy. Noncompetes directly undermine this vital process.

Research finds that strict enforcement of noncompetes is associated with lower wages as well as reduced job-to-job mobility and weaker rates of firm formation. Noncompetes also appear to exacerbate racial and gender wage gaps as well as the gender gap in entrepreneurship. And noncompetes do not simply impact workers who sign such agreements. They have a chilling effect on the entire labor market, as my fellow witness, Evan Starr, has found.

But these provisions are not just bad for workers. They are bad for employers as well. Most obvious is that they reduce the supply of available workers and can make it difficult for businesses to grow. The harmful effect of noncompetes on new businesses, in particular, both by stifling would-be entrepreneurs and limiting the pool of much-needed talent for startups should be of the utmost concern to this Committee.

So at time when policymakers are struggling to find ways to increase rates of business formation, strengthen innovation, and boost wages, noncompete reform is an obvious place to start. Indeed, Federal noncompete reform would be among the most

impactful and least expensive way to jumpstart economic dynamism and improve the fortunes of American workers.

So what form should Federal policy take? I believe the best answer would be a nearly universal restriction on noncompetes across all occupations and income levels. However, there are a wide variety of options from which Congress can choose.

Regardless of the scope, Federal policy should be guided by the following core objectives. First, require transparency. Many of the negative effects of noncompetes can be reduced simply by ensuring greater transparency and improving workers' awareness of their own bargaining position. Employees should always be given adequate notice before being asked to sign away future job opportunities.

Second, create disincentives for overuse. There are currently few disincentives for an employer to require noncompetes, even when agreements are written so broadly as to be unenforceable in court and even when they cover employees who have no specialized skill or trade secrets.

Third, limit the pool of eligible workers. There are currently no Federal restrictions on the kinds of workers that can be bound by a noncompete. Many options exist to narrow the eligible pool by wage, by education attainment, or by industry. The goal should be, at worst, that noncompetes are reserved only for senior executives and other top talent.

Fourth, limit the scope of the agreements themselves. Even if policymakers see a valid use for noncompetes under certain circumstances, almost everyone can agree the scope of such agreements should be limited in various ways, including their duration and geographic reach.

When considering various legislative options, policymakers must be mindful of why reform is necessary and what it can accomplish if properly crafted. Achieving the full promise of noncompete reform requires enabling skilled workers to better deploy their talents and ideas throughout the economy, including by starting new firms and bringing innovations to market. Exemptions for low-wage workers alone, while very important, will fall short of reaching this critical goal.

Here I also want to express my appreciation for the two bills introduced by members of this Committee, Chairman Rubio and Senator Young. These represent really valuable contributions to the broader debate about how to reform noncompetes at the Federal level.

So in closing, workers should be free to seek better jobs and compete in the labor market without permission from their former employer. Employers should be rewarded for winning the competition for talent, not by holding workers hostage. And policymakers should be relentlessly focused on ensuring an environment that encourages competition, healthy risk-taking, and worker mobility.

So I urge Congress to act upon this rare opportunity to revive economic dynamism and provide a long-overdue boost to the wages of American workers, all without spending a dollar of taxpayer money.

Thank you for holding this important hearing.

[The prepared statement of Mr. Lettieri follows:]

"Noncompete Agreements and American Workers"

Testimony before

The Committee on Small Business and Entrepreneurship
United States Senate

November 14, 2019

John W. Lettieri
President & Chief Executive Officer
Economic Innovation Group

Introduction

Chairman Rubio, Ranking Member Cardin, and members of the committee, thank you for the opportunity to testify on how noncompete agreements impact American workers and the broader U.S. economy.[1]

Today, roughly 20 percent of the American workforce is not allowed to take a better job in the field of their choice – regardless of higher pay, better benefits, improved job satisfaction, or other factors. The reason: they are bound by a covenant not to compete, or "noncompete" agreement.

Noncompete agreements, much like occupational licensing laws and "no-poach" agreements, erect barriers to worker mobility and dampen the vitality of the U.S. economy. Once reserved for senior executives and those possessing valuable trade secrets, these provisions are now a common weapon in the arms race among employers looking to retain talent, hedge against competition, and keep their labor costs down.

Simply put, noncompete agreements are a tool of corporate protectionism – one that weakens the competitive forces essential to broad-based prosperity.

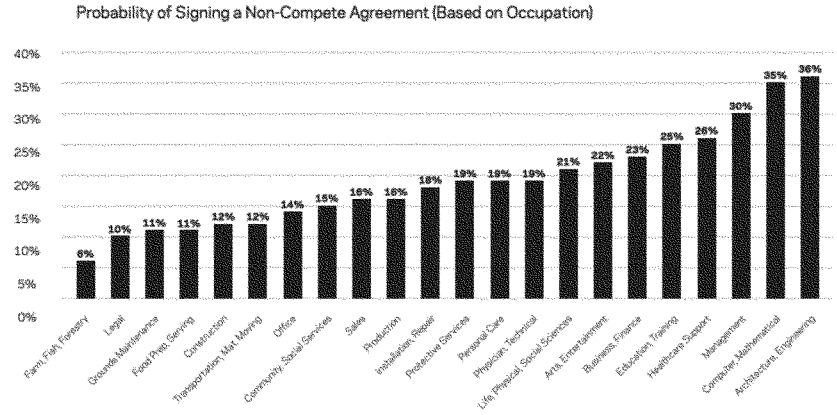
At a time when policymakers are struggling to find ways to improve worker mobility, increase business formation, strengthen innovation, and boost wages, noncompete reform is an obvious place to start. Indeed, federal policy to limit the use of noncompete agreements would be among the most impactful and least expensive ways to jumpstart economic dynamism and improve the fortunes of American workers.

[1] This testimony draws from a forthcoming paper on noncompete reform to be published by the American Enterprise Institute (AEI). AEI is a nonpartisan, nonprofit, 501(c)(3) educational organization and does not take institutional positions on any issues. The views expressed in this testimony are those of the author.

How Noncompetes Hurt Workers and Contribute to a Less Dynamic Economy

Healthy labor markets depend both upon vigorous competition for talent between firms and the ability of workers to freely market their skills to interested employers. Likewise, a dynamic economy depends upon the productivity-boosting exchanges that happen when individuals collaborate or apply their collection of ideas and experiences in new contexts. It's the simple microeconomic transaction of a worker switching firms that facilitates innovation and helps know-how to proliferate throughout the economy. Recent research from economists at the University of Chicago finds that up to 70 percent of the decline in measures of economic dynamism can be attributed to a dramatic slowdown in the rate at which knowledge diffuses across the economy.[2] Noncompete agreements directly undermine the economic processes integral to our continued prosperity.

An estimated one in five American workers are covered by a noncompete, and nearly twice as many have signed one at some point in the past. Their use among senior executives is commonplace, but a sizeable portion of lower-wage workers are covered by noncompetes as well. Much of the recent interest in noncompetes has been driven by a growing awareness that employers are requiring them of fast food workers, janitors, camp counselors, and other low-wage professions. Such examples are proof that noncompetes are often nothing more than a tool to suppress wages and limit the mobility of already vulnerable workers.



Source: Starr, Prescott, and Bishara, "Non-Competes in the U.S. Labor Force"

Why is limiting worker mobility potentially problematic? One key reason is that "job-hopping" – especially early in a worker's career – is associated with stronger lifetime earnings. Research indeed finds that strict enforcement of noncompetes is associated with lower wages, as well as reduced job-to-job mobility and weaker rates of firm formation. Noncompetes also appear to exacerbate racial and gender wage gaps by exerting much larger wage effects on women and

[2] Ufuk Akcigit, "What Happened to U.S. Business Dynamism." Becker Friedman Institute Research Brief (2019).

black employees than on white men.[3] Additional research has identified noncompetes as one explanatory factor in the gender gap in entrepreneurship.[4] It is also important to note that noncompetes do not simply impact the workers who sign such agreements; they bring negative externalities that have a chilling effect on the entire labor market, as my fellow witness Evan Starr and his colleagues have found.[5]

Noncompetes aren't just bad for workers; they have negative effects for employers as well. By tamping down the amount of healthy churn throughout a labor market, they reduce the supply of available workers and can make it more difficult for businesses to grow. Such limitation could be especially harmful to smaller enterprises that already face disadvantages against larger incumbent businesses. The harmful effect of noncompetes on new businesses – both by stifling would-be entrepreneurs and limiting the pool of much-needed talent for startups – should be of utmost concern to this committee.

The vast majority of noncompete agreements are not subject to any negotiation between the employer and employee. In fact, surveys show a large share of these agreements are presented for signature only after the employee has already accepted the job offer – often on the first day of work.[6] Employers frequently exploit workers' lack of knowledge and resources when crafting noncompetes. For example, employers commonly request signature of noncompetes even in states where they are completely unenforceable – and workers sign them. Likewise, employers often craft extremely broad provisions knowing that employees generally lack an understanding of what is enforceable and therefore rarely challenge the terms in court.[7]

Recent State Reforms

The growing evidence regarding how noncompetes impact workers and the economy has caught the attention of policymakers across the country from both sides of the aisle. While most states have few (if any) rules limiting the use of noncompetes, several have enacted meaningful reforms in recent years that should serve as guideposts for federal policy efforts.

While the new laws include a wide variety of features, the two most common are 1) exemptions for lower-wage workers, and 2) transparency requirements to ensure workers are given prior notice before being asked to sign an agreement. Particularly worth noting are Maine and Washington, which enacted the most comprehensive policies in 2019.

- **Maine**, a state grappling with population loss and a scarcity of available workers, enacted a broad set of provisions primarily aimed at protecting lower-wage employees. Under the new law, employees making at or below 300 percent of the federal poverty level would be prohibited from signing a noncompete agreement. The law imposes several prior

[3] Johnson, Matthew, Lavetti, Kurt and Lipsitz, Michael, "The Labor Market Effects of Legal Restrictions on Worker Mobility", SSRN (2019)
[4] Matt Marx, "Punctuated Entrepreneurship (Among Women)," Working Papers 18-26, Center for Economic Studies, U.S. Census Bureau (2019)
[5] See Starr, Evan, James J. Prescott, and Norman Bishara, "Noncompetes in the US labor force." U of Michigan Law & Econ Research Paper 18-013 (2019) and Starr, Evan, Frake Justin, and Agarwal, Rajshree "Mobility Constraint Externalities", Organization Science (2019)
[6] See Starr et al. (2019) at 5
[7] Prescott, J. J., and Evan Starr, "Subjective Beliefs about Contract Enforceability" Working Paper (2019)

notice requirements, including requiring employers to disclose in job postings when a noncompete will be required. Maine's law also enacts a ban on so-called "no poach" agreements between employers under which the parties agree not to recruit or hire each other's employees or former employees. These agreements disproportionately impact low-wage workers and are particularly common within the franchise sector.

- **Washington** state's new law sets a number of preconditions for the enforceability of noncompetes in the state. First, it exempts a much larger pool of employees than most other states, making noncompetes enforceable only for employees earning over $100,000 per year. (For independent contractors, the floor is set at $250,000 per year.) Employers are required to provide prior notice of the terms of the agreement by the time a job offer is made, and must compensate any terminated worker still subject to the terms of the agreement. Noncompetes in the state are now limited to 18 months in duration.

I want to briefly note three other state reforms that could inform potential federal policy efforts.

- **Oregon** was well ahead of its time in passing far-reaching noncompete reform in 2007. The state provided specific protections for low-wage workers alongside a range of broader measures to improve transparency and narrow the scope of what is enforceable under state law. The centerpiece of the law was a provision to void all new noncompetes for workers earning less than the median income for a household of four (it also covered hourly workers and employees in certain occupations). Other important elements include a "garden leave" provision requiring compensation of former employees covered by a noncompete, prior notice standards, and a rule limiting enforceable agreements to 18 months or less. Recent research finds the Oregon law had a significant positive effect on hourly wages and job-to-job mobility – exactly as intended.[8]

- Another noteworthy reform occurred in **Massachusetts** in 2018. Massachusetts is particularly interesting because many observers point to noncompetes as a key reason that Silicon Valley outpaced Boston as the country's premier hub of innovation. (California is one of only three states that does not enforce noncompetes.) The Massachusetts statute, which applied only to agreements signed after October 1, 2018, included a one-year limitation on noncompetes, prior notice standards, and garden leave provisions requiring employers to pay 50 percent of the annualized base salary of a former employee on a pro rata basis while they are covered by the agreement. It banned noncompetes entirely for low-wage workers who are classified as nonexempt under the Fair Labor Standards Act, as well as employees terminated without cause and undergraduate or graduate students in an internship. The law notably maintains the employer-favorable standard of allowing courts to rewrite an overly broad agreement in order to make it enforceable. It also provides exceptions for the sale of a business or the dissolution of a partnership.

- While most states have targeted reforms to low-wage and moderate-wage workers, only one state has explicitly focused on entrepreneurship and innovation as the driving factors behind its policy efforts. In 2015, **Hawaii** banned noncompetes for workers in its

[8] Lipsitz, Michael and Starr, Evan, "Low-Wage Workers and the Enforceability of Non-Compete Agreements" (September 10, 2019). Available at SSRN: https://ssrn.com/abstract=3452240 or http://dx.doi.org/10.2139/ssrn.3452240

technology industry in an effort to attract and retain highly skilled workers and compensate for its unique geographical limitations. Research finds meaningful increases in mobility and wages for new hires for Hawaii's tech workers following the industry ban.[9] Hawaii's experience should inform federal efforts to create a more favorable policy environment for innovation and entrepreneurship nationwide.

How Should Federal Policymakers Respond?

The need for reform is urgent, but why should the federal government intervene in an issue that has until now been left to states? The answer is that noncompetes are clearly an issue of employment law, where the federal government commonly sets basic standards governing the relationship between employers and employees. In addition, even though employers exercise little self-restraint in how they deploy noncompete agreements, states have generally set few limitations of their own. But none of this would be of much consequence without the growing pile of research finding significant negative effects from noncompetes on wages, job-to-job mobility, entrepreneurship, the gender and racial income gaps, and more. In the absence of federal policy, we are left with a confusing patchwork of policy that fails to serve our national economic interests.

What form should federal policy take? While I believe the best answer would be a nearly universal restriction on noncompetes across all occupations and income levels, there are a wide variety of options from which Congress can choose.

Federal policy should be guided by the following core objectives.

- Require Transparency: Many of the negative effects of noncompetes can be reduced simply by ensuring greater transparency and improving workers' awareness of their bargaining position. As noted above, employers exploit their informational advantage by requiring noncompetes in states where they are unenforceable, or by offering a noncompete on an employee's first day of work when other options have been foreclosed. Rules governing noncompetes should be clear and easy to administer, and employees should be given adequate notice before being asked to sign away future job opportunities.

  Examples: Employers should be required to notify job candidates of their intent to request signature as well as present noncompetes when the formal job offer is made – not after the employee has accepted the job. Employers should disclose their intent to require a noncompete in any job posting or advertisement for the position. Additionally, employers requesting a noncompete agreement should be required to fully inform their prospective employee of applicable state and federal laws and allow adequate time for the candidate to discuss the terms of the agreement before making a decision.

- Create Disincentives for Overuse: There are currently few disincentives for an employer to require noncompetes of its employees – even when agreements are written so broadly as to be unenforceable, and even when they cover employees who have no specialized

[9] Balasubramanian et al. 2018, "Locked In? The Enforceability of Covenants Not to Compete and the Careers of High-Tech Workers." US Census Bureau Center for Economic Studies Paper No. CES-WP-17-09; Ross School of Business Paper No. 1339.

skills or trade secrets. Federal law should seek to discourage overuse of noncompetes wherever possible by ensuring that employers carefully consider whether the benefits are worth the costs.

Examples: Employers should be required to compensate former employees while their noncompete is in effect. Noncompetes drafted in an overly broad manner should be rendered completely void – not rewritten by courts to make them enforceable. Federal law should also penalize employers who request signature in states where noncompetes are unenforceable.

- Limit the Pool of Eligible Workers: Most states currently have no restrictions on the kinds of workers that can be bound by a noncompete. Many options exist to narrow the eligible pool of workers by industry, by wage level, or by education attainment so that noncompetes are reserved only for senior executives and other top talent.

  Example: Signature of a noncompete should be disallowed for any worker outside of the top five percent of the national income distribution.

- Limit the Scope of Agreements: Even when policymakers see a valid use for noncompetes under certain circumstances, most agree the scope of such agreements should be limited in various ways.

  Examples: The duration of noncompetes should be limited to no more than one year, and any noncompete should be voided if an employee is terminated without cause or laid off.

I want to note my appreciation for two pieces of legislation introduced by members of this committee, which represent different ends of the broad spectrum of potential reforms. The first is the Freedom to Compete Act introduced by Chairman Marco Rubio (R-FL), which would prohibit noncompete agreements for any nonexempt worker under the Fair Labor Standards Act. Like many of the state laws noted above, this legislation would provide welcome relief to the lowest-wage American workers. At the other end of the spectrum is the Workforce Mobility Act, introduced by Senators Todd Young (R-IN) and Chris Murphy (D-CT). This legislation would limit the use of noncompetes in all but two cases: the sale of a business and the dissolution of a partnership – instances where the parties involved are on more or less equal footing.

With so many potential legislative options, policymakers must be mindful of why reform is necessary and what it can accomplish if properly crafted. There is perhaps a natural temptation to focus solely on the lowest-wage workers for whom the use of a noncompete seems most abusive and ridiculous. But Congress shouldn't stop there. Achieving the full promise of noncompete reform requires enabling skilled workers to better deploy their talents and ideas throughout the economy, including by starting new firms and bringing innovations to market. Exemptions for low-wage workers alone will fall short of reaching this critical goal.

Conclusion

Workers should be free to seek better jobs and compete in the labor market without permission from their former employers. Employers should be rewarded for winning the competition for talent – not for holding workers hostage. And policymakers should be relentlessly focused on ensuring a policy environment that encourages competition, healthy risk-taking, and worker mobility. The pervasive use of noncompetes is proof that the United States has strayed from each of these fundamental principles. Fortunately, this is a solvable problem.

Noncompete reform is an issue whose time has clearly come. I urge Congress to act upon this rare opportunity to revive economic dynamism, improve worker mobility, and provide a long-overdue boost to the wages of American workers – all without spending a dollar of taxpayer money.

Thank you for holding this important hearing.

Chairman RUBIO. Thank you. We will begin questions with the Ranking Member.

Senator CARDIN. Well, let me thank all three of the witnesses, but to Mr. Bollinger, let me just tell you, your presence here will make a difference. You hear the numbers, but when you see the individual who was impacted by these abuses it motivates. So I know it took courage for you to be here, but I want you to know it is incredibly helpful to us to see an example of a person's life that has been affected by these abuses. So again, thank you very much for being here.

As I listen to the witnesses here, I come to the conclusion that perhaps we should abolish all noncompetes, and I say that with the understanding that there is an important responsibility of an industry to protect its trade secrets.

But, Dr. Starr, you make a point that there is a legal responsibility. You could have noncompete agreements. Companies have the capacity to enforce that. They are not in the same position as an individual employee, as far as their resources are concerned, as we saw in Mr. Bollinger's case. We could have restrictions on not soliciting customers or clients, as you point out, which would take care of that issue.

So maybe we are starting from the wrong side. Maybe we should be looking at a total abolition of these contracts and then come back to where it is necessary perhaps to clarify the law.

I will just point out one last thing before I get your responses to this. In law school, I learned that noncompete agreements had to be very narrowly tailored. Otherwise, they were not enforceable. There had to be a justification for noncompete agreements, and that if it did not do that it would not be enforceable. So it is clear to me that overwhelming majorities of these noncompete agreements are not enforceable, but you see in Mr. Bollinger's case, what he had to go through.

So we have to act, and with this type of an abuse, I do not really want to leave an opening for abusive companies figuring out a way to get around a definition that we have put in law.

So help me, and if I could go to our two experts on this. Can we draft something like that?

Mr. LETTIERI. I think you put it very well. We are starting with the wrong presumption, in too many cases. The presumption should be that workers should always be free to market their talent in an open labor market. That should be the presumption, not the presumption that employers have a right to constrain workers' future mobility. And if we work our way backwards from there, as I said in my testimony, I think the policy solution that is both the most beneficial to American workers, the most beneficial to business dynamism, the most beneficial to innovation or overall competitiveness is a nearly total ban.

I see two—and this reflects Senator Young's legislation—I see two cases where you can make exceptions that are very reasonable, and they are reasonable because the parties involved are on more or less even footing and there is no asymmetry between the two parties, and that is in the dissolution of a partnership and in the sale of a business, where the business owner binds him or herself to a noncompete as part of the transaction.

Those are reasonable exceptions that do not exploit an informational or resource asymmetry between, as you see in Mr. Bollinger's case, an employer who has the resources to take an unenforceable noncompete to court and go through multiple rounds of litigation and an employee who would be risking his entire financial security to do so.

Senator CARDIN. Dr. Starr.

Mr. STARR. I would say for me the most compelling evidence is a few things. First is that there are several states in which noncompetes are already entirely unenforceable, states like California, who adopted their ban on noncompetes in 1972, and North Dakota and Oklahoma. And so these states already exist and some even claim that California's early ban on noncompetes was a key reason that Silicon Valley came to be Silicon Valley.

And so those states have not fallen off the cliff, to the best of my knowledge, and so there is some evidence that maybe that could be the way forward.

Senator CARDIN. So let me ask you, in California if you have the circumstances such as a sale of business, where it is reasonable to include a noncompete as a part of it, how would they do it in California?

Mr. STARR. In California they have an exception for noncompetes incident to the sale of a business.

Senator CARDIN. So you are taking a total ban but with limited exceptions, which, as I understand it, is the approach taken by Senator Young and Senator Murphy.

Mr. STARR. I think that is true is almost all states.

Senator CARDIN. How about transparency? How do you deal with that issue? You both have commented that you should not be faced with signing something at the last minute. I understand if you have a total ban this may become a moot issue, but absent that, how do you deal effectively with transparency?

Mr. STARR. Yeah, that is right. Even setting aside a ban on which workers would be exempted from signing a noncompete, the floor should always be transparency that allows for some basic bargaining between the employer and the employee. As both of us noted in our testimony, so many of the noncompetes that are signed today are signed after the employees already foreclosed on other job options, and it is just part of the onboarding process of the first day of work. So that is clearly an attempt, whether intentional or not, to exploit that asymmetry between the employer and the employee, and it puts the light on the idea that these are bargained contracts.

And so, at a minimum, transparency helps to ensure that—and I would go further than just prior notice. I would say employers should be transparent about what the workers' rights actually are in that state, what's actually enforceable in that state, and that in addition to transparency, the rule should be that an employer cannot offer for signature a noncompete that is not enforceable, that is written overly broad. Those elements alone, even setting aside a ban, would help to reduce the negative impact of noncompetes on the economy.

Senator CARDIN. Thank you. Thank you, Mr. Chairman.

Chairman RUBIO. Senator Hawley.

Senator HAWLEY. Thank you, Mr. Chairman, and thanks to all the witnesses for being here. Mr. Bollinger, I want to thank you, particularly, for being here, for taking the time to be here, for sharing your story, and I just want to say I am so sorry that what happened to you has happened to you. Thank you for being willing to share about it, but it will help us do something about it, so it does not happen to other people.

Can I just ask you, when your company forced you to sign the noncompete, what did they tell you about it at the time? I mean, did they say that, you know, this is not really a big deal, you just need to sign this? I mean, were you given any kind of—did anybody explain it and say, you know, this is going to prevent you from working, basically, in the future?

Mr. BOLLINGER. There was no meeting. There was no explanation. No one sat us down and went through it and explained anything to us. It was given to us—it was an envelope in my mailbox, so nothing really was explained.

Senator HAWLEY. Yeah. I imagine that that is all too typical. It is almost what we lawyers call a contract of adhesion. But thank you again for your testimony.

Mr. Lettieri, I want to ask you, in 2016, the Treasury Department published a report on noncompete agreements and they made a number of findings, and I just want to give you a chance to respond to some of these. These are potential economic justifications for noncompete agreements, so I just wonder what you might think of these.

One of them is noncompetes are necessary for firms to protect trade secrets. Anything to that?

Mr. LETTIERI. I will just pick up where Dr. Starr left off. The State of California is home to many of the most trade secret-intensive, IP-intensive companies in the world. It is the crown jewel of worldwide innovation and technology. If noncompetes were necessary to protect trade secrets, Silicon Valley would not exist.

Senator HAWLEY. How about this: noncompetes encourage investment in workers. What do you think about that?

Mr. LETTIERI. Sure. So there is some evidence that in narrow circumstances noncompetes can be associated with firm investment in workers. What we have to be mindful of is the tradeoff, and for policymakers the question is not what is the benefit to an individual firm or employee, it is what are the broader benefits or harms to the economy and to the labor market?

And so what we find over and over again in research is that noncompetes and strict enforcement of noncompetes are associated with depressed wages throughout a labor market, depressed innovation and firm formation throughout a labor market, regardless of specific instances of individualized benefit to an employee or to a firm.

So again, I think even where there may be a reasonable case that in an individual circumstance there could be a benefit to the transaction, what policymakers have to keep in mind is what is the broader harm?

Senator HAWLEY. That is a great point. The effect on the labor market, I think, is a really important point, and the effect of wages across the board.

What about this: noncompetes help firms screen for workers who are likelier to stick with the company for the long haul. Thoughts on that one?

Mr. LETTIERI. Again, I think that is the wrong tool for that task. If an employer wants an employee to stick with them for the long haul they could try radical ideas like paying better, offering better benefits, creating a better work environment, and again, the presumption should be that employees should be free to go market their labor.

Senator HAWLEY. Thanks for all of that. You know, it seems to me that based on Treasury's report here and the testimony you have offered today and both of your work and research that we know employers benefit from noncompetes, discrete individual employers, but workers and the labor market as a whole seems to be an entirely different matter.

Let me ask you one other thing. Mr. Starr, I will start with you on this one. I am from Missouri, and in Missouri we have a large rural population. And so in these cases, in smaller towns like the one I grew up in, there are not that many employers. So if you have got a noncompete in your contract, and then, you know, you find you want to change jobs, I mean, you do not always have the opportunity to move somewhere. It is not easy just to go and find, oh sure, there are 10 other employers who will take me, or I have got to uproot my family and move somewhere where I do not have social support, the rest of my family is not there. People do not want to do that, quite reasonably.

So could you give us a sense of how noncompetes might impact areas and regions with labor markets like that, in smaller rural areas?

Mr. STARR. I think that there are two things that are relevant. The first is that if there are only a few employers in there and you have knocked out the other ones with a noncompete, then absolutely you are—we have what we would call a monopsony, where you have one buyer of labor in the market, and we know that when we have a monopsony we have lower wages and reduced employment.

The other dual effect to think about is that noncompetes are also product market restrictions. You cannot enter and start a new company, and so you are going to sustain this kind of really high concentration of firms.

Senator HAWLEY. Thank you. That is a great point. And I think that, again, as somebody who comes from a rural area, this is a problem that we see frequently, that it is difficult—new firm formation is difficult, it is difficult to start a new job, find workers, and it is difficult for workers like Mr. Bollinger, who want to change jobs but do not necessarily want to move to a whole other region or place to actually have the freedom to do that.

Thank you, Mr. Chairman, for holding this hearing on this really important topic for our workers.

Chairman RUBIO. Thank you.

Senator Hirono.

Senator HIRONO. Thank you, Mr. Chairman. It is nice to have an issue on which I think there is bipartisan agreement that we need to do something.

These noncompete contracts, which, Dr. Starr, you say are everywhere, it kind of reminds me of mandatory arbitration clauses in employment contracts that are also not bargained for. So I think it is pretty clear from your testimony.

And Mr. Bollinger, I find it astounding that your company was able to force you to not compete, and did you say entire North America?

Mr. BOLLINGER. Yes, ma'am.

Senator HIRONO. And, yes, a North Carolina court deemed that to be okay?

Mr. BOLLINGER. Well, I won first in the business court.

Senator HIRONO. In the business court, yes.

Mr. BOLLINGER. But then that was overturned, so yes——

Senator HIRONO. Yeah. That is what I mean. So after this kind of, in my view, an outrageous decision, did the North Carolina legislature change the law in any way to prevent this kind of thing from happening to others?

Mr. BOLLINGER. Excuse me?

Senator HIRONO. Did the North Carolina legislature enact any kind of a law that would prevent this sort of thing from happening to other employees?

Mr. BOLLINGER. No, ma'am. Not that I know of.

Senator HIRONO. Nothing. I am glad that other states have enacted this kind of law.

Dr. Starr, I was curious as to how it is that you and your team picked Hawaii to research. Was there any particular reason that you wanted to do that?

Mr. STARR. Yeah. What we are looking for when we are trying to identify the causal effect of a ban on noncompetes are natural experiments where states kind of randomly flip their switches from enforcement to a ban. And so banning noncompetes is a pretty rare event. And so the Oregon ban was the first of its kind in 2008, and Hawaii is a really relevant ban because it is only for high-tech workers. And so there are arguments about low-wage workers that may be different for high-tech workers, and so the study of Hawaii gives us a nice natural experiment to study what happens when you ban noncompetes for high-tech workers.

Senator HIRONO. Yeah. And you also studied the effect of noncompetes on low-wage workers?

Mr. STARR. That is right, yeah.

Senator HIRONO. So it seems that these noncompetes seem to have a negative impact across the board for employees, and I can see where certain exceptions should be made for trade secrets, et cetera. So this negative effect would be also particularly harmful to women, because a lot of women are in low-wage jobs.

Mr. STARR. That is right. There are two studies which look at the differential effect of noncompete enforcement on women versus men, and they find that, in general noncompetes dampen wages more for women than men.

Senator HIRONO. Would you say there is overwhelming evidence that noncompetes, these kinds of broad noncompetes that are not bargained for—they are not face-to-face bargained—there is overwhelming evidence that these are highly negative kinds of things? Why is it that more states have not enacted laws that either really

limit the use of noncompetes or banned them altogether? And you can also respond, Mr. Lettieri.

Mr. STARR. So I will just say on the latter question, I think we are seeing a lot of movement on this recently, and I think, honestly, we have not known until 2014 how common noncompetes were. There were a few studies of executives, a few studies of tech workers, but until we started uncovering some of this information, we really did not know, and that is because employment contracts are private and we did not really have national evidence on these things.

Senator HIRONO. Do you think that a total ban on noncompetes, for both of you, is a good way to go, with allowing for some exceptions, as opposed to the kind of really narrowly drafted legislation that Hawaii enacted?

Mr. STARR. I personally have no problem with executives signing noncompetes when they sit next to their legal team and they hash it all out.

Senator HIRONO. That is face-to-face, though.

Mr. STARR. I actually have no problem with that. And I think the evidence we have on tech workers suggests that we should not have any problem with tech workers, with not these being banned for tech workers as well. And so for me the line for low-wage workers was an easy one. Moving up to tech workers, the arguments are a little bit stronger, but the evidence supports a ban in this case.

Senator HIRONO. So do people who are members of labor unions, do you find that they also are signing noncompete contracts?

Mr. STARR. I cannot remember the numbers off the top of my head, but I think the answer is yes.

Senator HIRONO. So it is not as though—you would think that maybe the unions would be able to bargain against those kinds of contracts. There are a lot of issues relating to the ability of workers to unionize these days, so I understand. So generally even union workers are signing these kinds of contracts.

Mr. STARR. I think that is right. There were some early issues in the early 1990s about whether they were mandatory subjects of bargaining, and I think that there was a recent—if I recall correctly—in 2016, there was a recent dispute where unions decided they would not negotiate over these bans of workers.

Senator HIRONO. If it is a subject of negotiation sometimes they are not.

Mr. Lettieri, would you like to opine as to whether you think a broad ban on these kinds of provisions is better, with limited exceptions?

Mr. LETTIERI. Yes. Yes and yes. I think a broad ban is best for American workers and for the American economy more broadly, and I think it is best for American business as well.

If I just may, very briefly, taking a step back, as this Committee knows, rates of new business formation are near historic lows today. There are a number of signs that economic dynamism, particularly post Great Recession, has been one of the few indicators in the economy that has failed to really rebound, and this has dramatic consequences throughout the economy.

If we want to maintain our innovation edge, if we want to maintain an entrepreneurial society, noncompete reform on a broad

basis is one of the best ways to do that, and that is why I believe that a presumption that workers should always be free, except in certain circumstances, to deploy their talents to everyone's benefit is the right policy approach.

Senator HIRONO. Are you referring to some kind of a study regarding the business formation? Can you just send that to us?

Mr. LETTIERI. Senator, yes, absolutely. There have actually been a number of studies on this.

Senator HIRONO. Send us the best ones.

Mr. LETTIERI. We will do that.

Senator HIRONO. Thank you.

Mr. LETTIERI. It will be mine.

Chairman RUBIO. I am going to interject briefly and then I am going to turn it to Senator Romney. Just a quick question. It seems to me that at the lower-wage level for a worker, who makes $40,000, $50,000, $30,000 a year, the mere existence of any restriction alone is enough to dissuade, no matter what the legalities around it may be, as Mr. Bollinger talked about, he couldn't afford the litigation costs. And I imagine an employer aware of this is not going to be excited to hire you if it means going to court and fighting somebody if it is going to be an added cost.

So I wonder if even on some of the trade secret issues, anybody can file a lawsuit claiming anything, right, and if the litigation costs either are impossible for you to bear or make you unattractive for someone to hire you—sorry, the flip side of it is I do not think we are talking about deals here, for example, a very typical deal where you are the CEO of a company, the company sells, or you are the founder and you sell. But the experience I have seen in that is you do have a noncompete. I mean, we are not going to buy your business and have you open a competitor in two years. But often times they stay on, even if it is in an honorary role, they pay you a consulting fee to hang around for a few years, and so forth. That is a very different thing from what we are talking about today, right? All right.

Senator Romney.

Senator ROMNEY. Thank you, Mr. Chairman. I appreciate the testimony of our witnesses today. I do believe that the whole discussion of noncompetes is an important discussion and has implications not only for employees but also for employers and the overall economy. I am not sure this is something that should be dealt with at the Federal level or whether, instead, each state should pursue this area in the way it thinks best, and we can learn from the experiences of different states.

I would presume, also, that you would agree, each of you would agree that noncompete agreements that are primarily designed, or even principally designed to lock employees in, to keep them from being able to move to a higher-paying job, to improve their lot, that kind of agreement should not be acceptable. But on the other hand, where an agreement is put in place to prevent the theft or appropriation of technology or trade secrets, that those are legitimate.

Is that a fair assessment? Do you have a sense of what type of noncompetes do make sense, because there are many that do not. But are there some that you think really are legitimate and are appropriate, or do you think virtually none are?

Mr. STARR. I think that what we need to think about is when you are talking about trade secrets, what are the other protection mechanisms? And so a noncompete is a very strong protection because it prohibits the worker from moving to another firm, but you can have the worker sign a nondisclosure agreement and you can enforce trade secret laws if you catch them leaving. And I am not a lawyer. I do not study the—I do not know all the details of the various trade secret laws, as well as I should, probably. But my understanding is that noncompetes offer a little bit extra protection because they prohibit the move and, thus, the misappropriation of trade secrets in the first place. And that if you were to go down and try to enforce a nondisclosure agreement it might be a little bit more costly for the firm to do so, because it would take a longer time in court.

So I do think there is a slight benefit, in some cases, though you should probably have some other expert testify on the exact details of the trade secret litigation.

Senator ROMNEY. Yeah. I mean, basically what you are saying is there is really not a legitimate reason for a noncompete, and you are nodding your head.

Let me give you an example. There is a company that makes subsea wellheads in the oil industry. The senior research and development people at that company left and formed their own company, and introduced a whole new line of products that were superior to the line of products that they had sold at the time they were with the previous company. That caused the dramatic reduction in the success of the company they previously had been employed by.

It would strike me that for employees of a company, the research and development department to leave and obviously take the ideas they had while they were working at one company to go start up a new company to compete with it was not in the interest of American enterprise and was not appropriate, and that a noncompete would therefore be appropriate in a setting like that.

Do you think, no, actually, people should be free to do that, work at a company, come up with some ideas, in the back of your mind. Perhaps you have not sent them along. Maybe you even have seen them. But you go and start a company with those ideas on your own. That is—do you think that should be allowed? Or the other way around, that we should legally say a company cannot protect itself from that kind of appropriation of technology?

Mr. LETTIERI. I would separate the use of noncompetes from the ability to protect yourself from the appropriation of trade secrets. So to Dr. Starr's point, there are other tools that exist, and other remedies and legal recourses for companies that feel that a trade secret has been appropriated, which I think is very different than an employee builds upon their lifetime accumulation of skill and ideas and goes and deploys those ideas in a different context, even in the same industry. That is what propels our economy forward.

And so again, I think the presumption should be that we want more competition, not less, even in industries where—and the concern from policymakers should not be what happens to the individual firm, outside of did they actually have a legal violation in the process of that transaction. In that case, certainly, and the courts and Congress have provided other tools besides noncompetes

that do not have the same type of broad-based harm that noncompetes have.

But in the scenario you mentioned, other than specifying that a trade secret had been stolen, the idea that an employee would leave one company and start another and compete in the same industry, I see as a huge benefit to the American economy and the overall prosperity that we should want.

Senator ROMNEY. I would suggest that if people feel that the technologies that they are developing in one company at great expense can then be taken and used by someone else in a way where they had not paid for that technology, that that does not encourage the economy. Yes, we do want competition, but the idea that people can, if you will, appropriate technology or know-how from one place and take it to somewhere else is not encouraging to the overall economy. I would disagree with you on that, in that perspective, and think it would be a mistake for the Federal Government to step in when states are perfectly able, state by state, to determine what is in the best interest of their respective economies, and we can learn from those states.

Mr. Chairman.

Chairman RUBIO. Thank you.

Senator Shaheen.

Senator SHAHEEN. Thank you, Mr. Chairman, and thank you to each of our witnesses for your testimony. Mr. Bollinger, I especially appreciate your being here, and I think your story really tells what we are seeing happening across this country in terms of bias in our courts toward corporations and business and against workers, in too many cases.

I want to follow up on Senator Romney's question about the benefits of Federal legislation versus legislation in 50 states, and ask both of you, Mr. Starr and Mr. Lettieri, how you would respond to that. What are the benefits of having a Federal bill that addresses this versus having 50 different states with 50 different ways of dealing with the issue?

Mr. STARR. Let me just say that the first one, I think, perhaps, most important reason is that when you cross state lines it becomes extremely tricky to figure out what to do with a noncompete that was signed in one state. There have been cases where a worker was working in Minnesota in biotech and moved to California, and he had a noncompete, and his firm sued him in Minnesota, and he brought suit in California, and the case is being tried in both places at the same time. And so you can imagine it gets super tricky because he could have left it to 50 other states and you could reach different outcomes.

And so I think that a Federal bill would help provide kind of a clear set of guidelines to allow for interstate labor mobility.

Senator SHAHEEN. Mr. Lettieri.

Mr. LETTIERI. I agree. I think, to Senator Romney's point, we do have states that are free to craft their own rules now. There are a couple of problems. One is that most states do not and have not. The rules that have been created, create a patchwork that is very hard to navigate, for firms and employees alike. It creates uncertainty and inefficiency in the economy that does not need to exist.

And we should not look past the point that the Federal Government has long had a say in the fundamental relationship between employees and employers. It is labor market law. It is employment law. And so this would not be breaking new ground, in terms of the role of the Federal Government in setting basic terms. And this is such an important issue and such a fundamental part of the relationship between employees and employers that it seems obvious that the Federal Government should have some kind of say that standardizes at least a floor that then other states, if they wish, can create additional rules on top of.

Senator SHAHEEN. And can you speak to the importance of enforcement and who should have responsibility for enforcement, and how important it is to have someone who has that responsibility?

Mr. STARR. I will just say one quick point on that, which is that I think what some of my research has been documenting, and Mr. Bollinger is an unfortunate victim of this, is that what matters is having the contract in your employment agreement. It may not matter what the courts do at all, because you may not even get to the court. And, in fact, most of the time the chilling effect happens before you even enter a courtroom, when you get that threatening letter or when your new employer says they are not going to hire you anymore.

And so I think that a Federal action that disincentivizes use for those workers in the first place would be really the most effective.

Senator SHAHEEN. Do you share that view?

Mr. LETTIERI. Yes, absolutely.

Senator SHAHEEN. I want to follow up on the large versus small business. This is the Small Business Committee, and New Hampshire, my home state, is very much a small business state. Are there any—is there any study that shows that small businesses have made more use of noncompete agreements than large businesses, or vice versa, and does it matter?

Mr. STARR. There is some evidence that larger firms tend to use them a little bit more frequently, or if you work in a large firm you have a slightly higher chance of signing a noncompete, but it is not as much as you would think.

Senator SHAHEEN. So it really does not have much impact.

Mr. STARR. Well, so, the place that I will say is that there one study I did where we looked at new firms starting up and we looked at the size of new firms and how the changes in their growth relate to the law, and we find that in states where noncompetes are easier to enforce, new firms have trouble hiring. And new firms also tend to be smaller, of course. And so I think this is indicative of kind of a small firm problem, as well.

Senator SHAHEEN. To follow up on Senator Hawley's question about rural versus urban areas, New Hampshire has a lot of small towns where there may be only one or two companies, larger companies, that have real opportunities for future, other than mom-and-pop shops. So what happens, and are there any studies that show the impact on rural communities versus an urban area on noncompete agreements? For either of you.

Mr. STARR. You know, there is not a study—so you should know, this literature is relatively new, and so we are still learning a lot—but so there is not a study that directly comes to mind that says

what is the effect on a rural versus an urban area. There is a study looking at executives, and part of it exploits the fact that noncompetes are maybe more effective when there are more competitors to go to. And they do find that, if I remember correctly, that the effects of noncompetes on executive wages is actually more negative in the less rural areas, so the more suburban areas.

I am not sure that was clear, but I can send you the study.

Senator SHAHEEN. No, I got it. Do you have anything to add to that?

Mr. LETTIERI. No.

Senator SHAHEEN. And finally, just to your point, Mr. Lettieri, about the importance of dynamism in our economy and about small businesses, as I interpreted the exchange between you and Senator Romney, the difference that I would make with the point that he was trying to suggest is that I have been to a lot of small businesses in New Hampshire where the people who started those worked at large companies over a long period of time, and they did not take that technology with them to their new business but they developed ideas based on some of the work that they had done, and those ideas are what led them to start new businesses, and that has been really important to the dynamism within the economy.

Mr. LETTIERI. It is interesting to think about the counterfactual of what if noncompetes had existed in California, and all the world-defining innovations that would not have happened if the simple transaction of an employee being able to take their experience and ideas and go spin out and start their own company had never been possible.

And so the logic of that exchange, of the scenario that Senator Romney set up, is identical to Mr. Bollinger's example. The company in question said, "You have something that you took from our company, that you learned at our company, in the textile industry, and applied it elsewhere, at a competitor, and, therefore, you should not be allowed to do that." They did not substantiate a trade secret had been violated. And that is where, I think, the difference exists.

It is very important that we not violate trade secrets, but it is also very important that we not violate the ability of workers to go use the skills that they have in the economy efficiently, and that distinction is very important in policy.

Senator SHAHEEN. And that latter distinction is one of the things that contributes to churn in our business community and the dynamism of starting small businesses. Thank you very much.

Chairman RUBIO. I want to recognize Senator Young. Before I do, I want to interject again, since I did not use my time at the beginning, with just a quick commentary. It is not a perfect analogy, but imagine if we told members of the Armed Forces, "You are going to learn a lot of interesting skills here but you can never, now, when you leave, use anything you learned in the service of your country, in the commercial sector." You cannot disclose classified information, right? But there is no way that—and during the period of time in which that worker is accruing knowledge, the company is accruing benefits. It is not, you know, a one-sided deal.

Senator Young.

Senator YOUNG. So I thank all of you for being here. I thank the Chairman for his leadership on this issue, and the Ranking Member, and for elevating this important issue.

There are two things I really want to make sure I give Mr. Lettieri an opportunity to discuss, and it has to do with your exchange with Senator Romney. I am going to ask you a bunch of questions, but two issues that I think he will probably agree with you on. It seemed as if there was a bit of talking past one another, which often happens when you are allotted five-minute segments, right?

When one experiences, as he put it, a misappropriation of intellectual property, or a misappropriation of trade secrets, I think what I heard you say, Mr. Lettieri, is that is an over-broad and over-inclusive approach to use a noncompete to try and address that. We already have properly scoped legal mechanisms to deal with that. Is that correct?

Mr. LETTIERI. That is right, and those other mechanisms do not have the kind of negative externalities that noncompetes do, and so they are much more finely tailored.

Senator YOUNG. Meaning, in plain speak——

Mr. LETTIERI. Meaning that they do not depress wages, they do not reduce firm formation, they do not chill innovation and chill the labor market more broadly.

Senator YOUNG. Right. And with respect to leaving it up to the states, you very pointedly piped up that this is an issue of labor and employment law, which historically has been handled at the Federal level. What happens when you have a patchwork of different rules and regulations in the area of labor and employment law?

Mr. LETTIERI. Yeah. Again, this is not a state issue other than the fact that the Federal Government has just chosen not to have a policy in this space. So in the absence of that you have a vacuum that has been filled by some states, but many have not. And so what your resulted with is a patchwork of policies that are somewhat incoherent across states, that create uncertainty between firms and workers; jurisdictional questions, that when a noncompete gets challenged in court as to which jurisdiction it should be challenged in.

That is all dead-weight loss for the economy and the net result of it, based on, in large part, the work that Dr. Starr has done, and many others, is that we have a patchwork of policies that does not serve our national interests.

Senator YOUNG. Right. So I have introduced legislation with Senator Murphy, the Workforce Mobility Act, and it limits the use of all noncompete agreements, except in a very few limited circumstances, where that makes sense.

Given the trends that you have discussed here in this hearing, in your opinion, should a limit on noncompetes be expanded to encompass all income levels? Yes or no.

Mr. LETTIERI. Yes.

Senator YOUNG. Okay. And how exactly is this going to benefit all workers?

Mr. LETTIERI. It benefits all workers in a number of different ways. Let's go back to new business formation. The chain reaction

that happens when a new business is formed is really important for making sure that the economy works for working people. More employers means more demand for labor. More demand for labor means better benefits, better wages for workers. And so when you have fewer new firms, as we are seeing now in the economy, you have more downward pressure on wages, and when you reduce that even further by allowing noncompetes to be so pervasive, you are just limiting the number of employers who are competing for workers' talent.

So that is why expanding up and down the income level is important, because the higher income level and the higher skill level is more associated with new business formation.

Senator YOUNG. So, Mr. Lettieri, right now the economy is humming. It is red hot. We have tight labor markets. Wages are rising. That is a good thing, right? How can the use of noncompetes actually end up harming an employer in light of the predicate I just laid?

Mr. LETTIERI. Exactly. Well, it is already very difficult for employers to find the talent that they need to grow. When you constrain that further by putting artificial limits on available talent, as noncompetes do, you are getting in the way of employers being able to, again, win the competition for talent. Because in this case it does not matter if an employer is offering dramatically better benefits, dramatically better job opportunities and upward mobility. That is not a factor if a noncompete is in play.

So it is not just hurting the employers, it is getting in the way of the fundamental competitive transaction.

Senator YOUNG. Okay. And getting back to the Romney exchange, which may make some news, right, I hope it does and I hope some of the counters to it do as well, that I am eliciting from you.

Silicon Valley is regarded as a hotbed of innovation, of enterprise, of dynamism, of business creation. Do we read a lot of articles about the theft of intellectual property on account of the lack of noncompetes in the state of California?

Mr. LETTIERI. Again, if it were a fundamental issue I do not think we would have the natural example that we have, of Silicon Valley being what it is. As Dr. Starr had mentioned earlier, I think a lot of people point to noncompete enforcement or non-enforcement of noncompetes as one of the reasons that Silicon Valley has outpaced, say, Boston, as an example of kind of the hub of technology and innovation in our country. So it is clearly not a predicate, that you need not compete in order to protect trade secrets and intellectual property.

Senator YOUNG. And we have seen an outright ban on noncompetes in states that, in many ways, do not resemble California. It is not my intention to hold them up as a model for all lawmaking and rulemaking—the state of Oklahoma, the state of North Dakota—and I am unaware that they have significant challenges——

Mr. LETTIERI. They seem to be doing fine.

Senator YOUNG [continuing]. In enforcing intellectual property protection.

Mr. LETTIERI. That is right. That is right. We have not seen intellectual property-intensive companies flee those jurisdictions after the bans.

Senator YOUNG. Okay. Thanks so much.

Chairman RUBIO. Thank you. Before I recognize Senator Cantwell I just want one more observation—interesting analogy, as well. You know, this is a city in which people, the taxpayers, pay Members of Congress $172,000 a year, in which time they establish expertise in this process, they create all these relationships, and then they leave and get immediately hired. They cannot lobby for a year. They get maybe hired to consult on the basis of all this great information that they learned, and I would argue some trade secrets about how the sausage is made around here, so they can provide people advice. Maybe we should have a noncompete on the transfer of that knowledge.

Mr. LETTIERI. Well, if I may, imagine how much poorer Congress as an institution would be in terms of its expertise if you were not allowed to hire from each other's staffs. If a staffer who worked for a committee was not then allowed to go work for another member who offered a better opportunity, that would really beggar the institution, instead of accumulating knowledge and putting it to its best use.

Chairman RUBIO. Actually, Senator Cardin is working on that.

[Laughter.]

Senator Cantwell.

Senator CANTWELL. Thank you, Mr. Chairman, and thank the witnesses for being here. Washington, our state, passed a law that restricts noncompete agreements, so beginning in 2020, only employees making more than $100,000 per year, and independent contractors making more than $250,000 a year could be covered by noncompete agreements. The law limits noncompete agreements to 18 months for these workers unless there is a clear and convincing evidence from the employer.

So as we look at Federal law, what do you think our necessary components, or what Federal legislation would look like?

Mr. LETTIERI. I think many of the components of Federal legislation are found in the Washington statute, which I think is one of the far-reaching that has been passed to date.

So it includes disclosure requirements, it includes a limitation on duration, it includes a limitation on these pool of workers that are covered, it has enforcement mechanisms. Those are all characteristics that should be present at a Federal level as well. So it is not enough just to say let's ban them or make them unenforceable. You have to include all those different features to make the policy complete.

Senator CANTWELL. And then if somebody signs a nondisclosure agreement then that is honored at the next——

Mr. LETTIERI. That is right. I mean, the Washington statute, as many others do, makes it clear—makes it clear that the ban on noncompetes for certain workers does not affect nondisclosure or nonsolicitation or other types of arrangement, and those do not have the kinds of negative effects that a noncompete has.

Senator Young's legislation does the same thing. It makes it explicitly clear that this does not invalidate those other forms of agreement.

Senator CANTWELL. Great. And so how do you think we inform people of this? Like say we did do something here federally, or how do you think you inform—how do you think we inform people? I mean, since people do not—I guess you are saying you would have larger awareness with the Federal laws.

Mr. STARR. Inform them of what? Of the action on this?

Senator CANTWELL. How do you inform the public about the fact that they have this right, I guess, is my point? That is what I was saying.

Mr. STARR. The public on this right. Oh.

Senator CANTWELL. Yeah, that people understand that that noncompete agreement is a contracting process.

Mr. STARR. That is a great question. I think one of the issues that we have seen in many instances is that when workers or even individuals have contracts in front of them, whether it is a residential agreement, whether it is an employment contract, they believe that those words are law and that they should obey them.

And so I think that any kind of—I mean, one idea that was floated around was to have kind of requirements that firms are not allowed to do this, and you post it kind of like OSHA boards. I am not sure if that is going to be the most effective, but those ideas have been created.

I think that one way that states are kind of going around and making sure that firms do not use these is by trying to impose penalties, either explicit costs for firms caught violating it, or some states have used sort of garden leave provisions. A garden leave provision is when the firm agrees to pay the worker during the prohibition period.

So if John was not going to work for two years afterwards, the firm would then have to pay some amount of money to compensate him for not working. And that payment, then, comes as a cost to the firm and may disincentivize them from using them with workers for whom they do not really get much of a benefit in the first place.

Senator CANTWELL. Or some level of transparency, yes.

Mr. LETTIERI. And I will just note, Senator Young's bill includes public awareness provisions as well, that I think are a good model to use for any kind of Federal legislation. It empowers the Department of Labor to do a public awareness campaign and make sure that employers and employees are aware of what the new standards would be.

Senator CANTWELL. Okay. Great. Thank you, Mr. Chairman.

Senator CARDIN [presiding]. Senator Kennedy.

Senator KENNEDY. Thank you, Mr. Ranking Member. I want to thank the Chairman and the Ranking Member for bringing this issue forward. It is a very interesting issue. I have got mixed feelings about it. I am sorry I missed your opening statements. I was in another committee.

Mr. Lettieri, explain to me, with respect to the federalism issue, what is wrong with having a patchwork of laws? We do it already. We do it all the time, in a system of federalism, like we have dif-

ferent insurance laws and voting laws and tort laws and contract laws and worker's comp laws, state by state. Every state is different. What is wrong with it, in this regard?

Mr. LETTIERI. Thank you, Senator. It is a very important question. I would say there is nothing wrong with it when a fundamental principle is not being violated. In the same way that we would not want a patchwork of child labor laws, we should not want a patchwork of laws that allow for a fundamentally different relationship between employers and employees on such a basic question of whether workers are free to go compete in an open labor market.

And so on this particular issue—and, by the way, that principle would not be as important if we did not have now research showing just how harmful the status quo really is. So there is both a principle violation and a fundamental economic harm being inflicted that I think creates a really strong predicate for Federal action.

Senator KENNEDY. Again, I missed your opening statements and I am sorry, but I take it you are against noncompete clauses, Mr. Lettieri?

Mr. LETTIERI. That is correct, except in a certain set of circumstances.

Senator KENNEDY. Are there any arguments that you know of in favor of them?

Mr. LETTIERI. Yes. Most of those arguments relate to the benefit to employers. So if the presumption is we should protect, at all costs, employers' ability to hedge against competition, which I do not think should be the presumption, then noncompetes are no doubt a very effective way of achieving that. They do exactly what they are intended to do. They restrict workers' options. They reduce the incentive for employers to offer better wages.

Senator KENNEDY. Well, let me put it another way. Do you know of any beneficial reasons in favor——

Mr. LETTIERI. I was going to slowly get there, after I went on my soapbox.

Some research finds that with higher-waged workers who have signed a noncompete that has been negotiated, which is not the case in most noncompetes, that there are individual benefits to both the firm and the worker. But those, in my view, are offset by the broader harms to the labor market and the economy. And again—so those are reasonable arguments, but they are only reasonable inasmuch as you are not looking at the broader effect of the noncompete.

Senator KENNEDY. My guess is what you just described is a minority situation too.

Mr. LETTIERI. That is right.

Senator KENNEDY. Generally, when you are applying for a job, you do not have—even in a robust economy you do not have equal bargaining power. I mean, you want the job.

Mr. LETTIERI. And employers knowingly exploit that asymmetry by offering the noncompete after the job has already been accepted and other jobs have been turned down. So the worker has much less bargaining power.

Senator KENNEDY. Dr. Starr, you have studied this issue, I gather. What are the pros and cons of noncompete?

Mr. STARR. Yeah. I think when I got into this what was interesting to me was exactly this tension, that you have some people saying that noncompetes are a way to spur investment, because if you can be ensured that your investments are not going to go subsidize your competitor, you have stronger incentives to invest in them, much like we think of the U.S. patent system. You provide a temporary monopoly on a particular patent, and that allows the firm to capture value from it, and they thus have incentives to invest.

It is the same logic for noncompetes. I think the difference is that noncompetes are just incredibly blunt tools for workers, and that that bluntness means that there is a propensity to overuse them in ways that they were perhaps not intended to.

Senator KENNEDY. Okay. Mr. Bollinger, do you have anything you would like to add, sir?

Mr. BOLLINGER. Sir, I just know that signing a noncompete ruined my career, ruined me financially, and like I said before, I am now making about equal to what I made 20 years ago, because of that. So I have, naturally, very strong opinions against noncompetes.

Senator KENNEDY. Sure.

Mr. BOLLINGER. I think they are wrong. I think they should be illegal. Thank you.

Senator KENNEDY. Do you think it should be done at the Federal level or the state level?

Mr. BOLLINGER. I think it should be done at the Federal level, where all states have to abide by it.

Senator KENNEDY. Okay. This is my last question. Do either of you gentlemen know of any studies setting forth, quantitatively, the purported drag on the economy?

Mr. STARR. By what metric? What are you looking for—like wages?

Senator KENNEDY. Wages, GDP, consumption, productivity.

Mr. STARR. Yeah. So most of the estimates are usually looking at either wages or new business creation, some measures of innovation. Just to give you a ballpark number, in the most kind of systematic study we have seen so far, they find that an increase of enforceability of noncompetes lowers wages by about 4 or 5 percent for everybody.

Senator KENNEDY. Okay.

Mr. LETTIERI. Another way to translate that, Senator, is that the effect of noncompete reform, which costs nothing to the Federal Government, would be equivalent to the most successful imaginable Federal policy boosting worker wages, worker mobility, and new business formation. There is no equivalent policy I can think of that has had that kind of success, and certainly not the cost benefit of a free policy that is simply stopping doing something rather than creating a new program.

Senator KENNEDY. Well, if we get involved it won't cost nothing, I can assure you. There will be a bureaucracy grow up around it. That I can guarantee you.

Thank you, Mr. Chairman.

Chairman RUBIO [presiding]. Thank you. Mr. Starr, I understand you need to leave. We are almost done anyway so you can go ahead and catch your flight.

Mr. LETTIERI. I have a few minutes.

Chairman RUBIO. I know Senator Cardin had a follow-up.

Senator CARDIN. Just one point that has been brought up on enforcement, and you, I think, mentioned disincentives to employers. Because whatever we do, you still run into the situation that a company could include a noncompete clause that is clearly against state law or Federal law or whatever we do, as an intimidation. And the fact is, it is an intimidation, because an employee has very little capacity to challenge what their company is doing.

So you talked disincentives. I would hope that you would be a little bit more definitive, not necessarily in response right now, but as we consider Federal legislation, what would be appropriate disincentives? You mentioned requiring the employer to pay during this period of time. You have also mentioned potential for fines.

I think we would need some help as to what would be effective so that, in fact, what we do is enforced without requiring the employee to go through a costly litigation. As we saw in Mr. Bollinger's case, it sometimes is not effective. So if you can help us in that regard I would appreciate it.

Chairman RUBIO. Thank you. And just to wrap up, a couple of observations. On the disincentive part, I mean, none of these things are perfect. You could foresee where a firm decides we are not going to let anybody leave, and the way we are going to do it is we are going to sue anyone who leaves here. We are going to go after whoever hired them, and unless you are in a completely different industry, and we are going to say—we are going to claim that you stole some secret sauce that you had access to, and no one is going to want to hire you, because one thing is to hire a worker, but the lower wage, especially, they have got to be a really special worker to hire them and the litigation that is coming with them. So that is something we have got to think through, because no law will be perfect in that regard.

I would say these are my observations on the hearing today and everything we have heard, and really, the goal here is the entrepreneurship part of our jurisdiction, and the notion and the fear that there is somebody out there who is working somewhere, is not necessarily learning some trade secret but is picking up ideas, and says to themselves, you know, I can do this business better than the person I work for. I am going to go out. I am going to open a competitor, and, you know, I am going to hustle and be successful.

And, you know, that is where a lot of great American businesses came from, not because they stole a trade secret but because they actually thought what you were doing could be better, and they could not do it where you were because you were not interested in it. So the entrepreneurship part of this is a very big part of it.

But I would say that there is, I think, some pretty, in my sense, broad agreement that for low-wage workers this really makes no sense. I mean, I would argue, some people are going to tell you, if you are a hairdresser, you are working—you are renting a chair, you are working in my shop, you are attracting clients with my overhead, maybe clients that I even gave you, and then you are

going to pick up and leave and take all those clients with you. The response is, but during the time they were working there, this person was generating revenue for you, so there was some bargain there, right?

But by and large, I think there is broad-based agreement that low-wage workers should not be subject to this. I think the two areas that there is debate is, number one, who else other than that should be covered, and whether it should be a Federal legislation or whether we should rely on the states to do it. Those are the two areas where I think we still have some debate internally.

But I think—and I do not speak for everyone, but I certainly think that my sense is that there would be broad consensus that there are a bunch of workers in America who do not make a lot of money, and really there is no justification for trapping them in employment. And the impact that could have on them going out and starting a business, or them going to work for a startup, you know, who is looking for people like that to join.

So your testimony today was all very, very helpful to us, because I really think we can build on this, and I appreciate the time you have given us. And unless there is anything else—all right. There is this little script I have to read because apparently the republic will collapse if I do not read these things.

The hearing record will stay open for two weeks, and any statements or questions for the record should be submitted by Thursday, November 28th, at 5 p.m. And with that the hearing is adjourned.

[Whereupon, at 11:33 a.m., the Committee was adjourned.]

APPENDIX MATERIAL SUBMITTED

Senate Committee on Small Business and Entrepreneurship Hearing
November 14, 2019
Follow-Up Questions for the Record

Dear Senator Cardin and Senator Hirono,

Many thanks for these excellent questions following up on our hearing from November 14, 2019 "Noncompete Agreements and the American Worker." Below I provide answers to these questions to the best of my ability. If I can clarify or provide any further assistance on these or related issues, please do not hesitate to reach out to me.

Kind Regards,

Evan Starr

Questions from: Ranking Member Cardin

Following the erosion of worker bargaining power over the last several decades, today's U.S. labor market tends to favor the employer over the employee. As such, workers often enter into employment negotiations with significantly less negotiating leverage relative to their employer. This unequal power balance persists throughout the employment relationship.

The ubiquity of noncompetes in today's labor market demonstrates that these agreements are another tool at employers' disposal to diminish employee bargaining power. The unequal employer-employee relationship is exacerbated by the use of noncompete agreements: a worker who is unable to quit and find a better job is a worker with very little bargaining power.

Companies often impose noncompetes even when they know they are unenforceable under state law because they can use it as an intimidation tactic to discourage employees from leaving. These companies know that workers often do not have the means to challenge these unfair practices.

As lawmakers consider federal legislation to ban noncompetes more broadly, it is important that employers are sufficiently deterred from violating the law. Without an appropriate disincentive, employers might choose to continue to impose noncompetes and employees might either 1) believe that they must obey an illegal contract or 2) be forced to engage in costly litigation to fight the illegal noncompete.

QUESTION 1:

How can we on a federal level ensure employers are sufficiently deterred from imposing noncompete agreements?

ANSWER TO QUESTION 1

Thank you for raising this very important question. I think there are several options for federal reform so that firms are sufficiently deterred from imposing noncompete agreements.

Option 1: Make public which firms use noncompetes.
When Amazon was found to be using noncompetes with low-wage workers in 2015, they abruptly eliminated the contracts for warehouse workers.[1] Similarly, when it became public knowledge that Cushman and Wakefield was suing a janitorial supervisor making $18 dollars an hour,[2] they abruptly dropped their lawsuit. These examples highlight what can happen when information is revealed about how firms are using noncompete agreements. In these cases, the firms were overwhelmed with bad publicity and dropped the clauses or the lawsuit.

However, the only reason we know about these cases is because of investigative reporting or tips. Indeed, a tip line was the primary way that the IL and NY AG's offices found out about many of the abuses of noncompetes that they subsequently investigated.[3]

To my knowledge, there is no public information about which firms use noncompetes (or for which jobs). The information is not on Glassdoor.com, Monster.com, Indeed.com, or any job-search website that I am aware of. In fact, I have lobbied several of these companies to add these questions to their surveys so that it can become public knowledge which firms use noncompetes (and for which types of jobs), but in each instance they have declined. In some cases I was told that these job-search companies would risk losing business from other client firms, since those client firms do not want this information revealed.

If firms are using noncompetes and they do not want the public to know about it, then perhaps by making that information public it would encourage firms to limit the use of noncompetes. The public provision of this information would also help job searchers, who would know about the firms contracting practices before accepting any employment offers. It would also help researchers understand the use and effects of these provisions, which may further help guide public policy.

Option 2: Require the firm to pay the worker during the prohibited period.
The basic idea here is to force the firm to internalize the cost of using noncompetes by requiring them to pay the worker during the period which they are prohibited from joining a competitor.

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[1] Here is the initial story on Amazon noncompetes: https://www.theverge.com/2015/3/26/8280309/amazon-warehouse-jobs-exclusive-noncompete-contracts. Here is the follow-up story on Amazon getting rid of noncompetes afterwards: https://www.theverge.com/2015/3/27/8303229/amazon-reverses-noncompete-contract-rules

[2] See the initial article here: https://www.ft.com/content/bfb69d30-ce44-11e8-b276-b9069bde0956. Here is the article describing them dropping the lawsuit: https://www.ft.com/content/154200d6-d319-11e8-a9f2-7574db66bcd5

[3] See Madigan and Flanagan's 2018 paper describing the state AG's experience investigating noncompetes: https://lwp.law.harvard.edu/files/lwp/files/webpage_materials_papers_madigan_flanagan_june_13_2018.pdf

This idea is known as Garden Leave, and it is supposedly common in Europe, though I know of no actual empirical evidence documenting its prevalence.

In the US, Oregon adopted a garden leave provision in 2008 (stipulating pay of the greater of 50% of the salary of the worker or the median income for a household of four) , and Massachusetts did so just last year (although the MA law is a bit more lenient than Oregon's).

The reason this policy would deter firms from imposing noncompetes on workers is that it would increase the cost of their use. Under a garden leave law if a firm wants to use a noncompete with a given worker, they would have to pay the worker during the prohibition period. If this extra cost is not worth the protection that they would receive from the noncompete, then they would likely drop the noncompete provision.

Here the enforcement mechanism would need to ensure that firms are actually paying the garden leave payments. An important point here is that unenforceable noncompetes are used all the time, and so it is possible that firms will use noncompetes and simply not pay the garden leave. So some part of any reform effort would need to provide incentives for the firm to comply—for example, by including such behavior as equivalent to wage theft.

Option 3: Create penalties for violators caught using noncompetes which clearly violate the law, and give the affected employees the right to sue for damages, so as to incentivize them to come forward.

Several recent proposals have banned noncompetes for certain populations, such as low-wage workers. Alongside these bans, these proposals have sought to propose penalties for employers caught using noncompetes with prohibited workers. In the MOVE Act, for example, the proposed fine was $5,000 per worker.

Here are a few ideas that might help this work best. The two key issues here are how to set these penalties and how can the government detect violations of the law? One option could be giving the enforcing agency the power to collect employment contracts or employee handbooks. A second option (which could be employed with the first), is to create a tip line for employees to report wrongdoing, as highlighted above. A third option would be to create in the law incentives for the affected workers to come forward and receive compensation through revealing the wrongdoing of their employer. An important point here is to make using a noncompete illegal, rather than just voidable or unenforceable by a court.

QUESTION 2:
What are the appropriate policy solutions that will ensure proper enforcement?

ANSWER TO QUESTION 2:
In addition to the points noted above, which mostly answer this question, it is important to consider how enforcement actions might be disrupted or otherwise change based on other provisions that workers have agreed to. For example, if workers have class-action waivers, it

might be difficult to bring a lawsuit if firms are using illegal noncompetes with many workers. This might also be the case if workers have forced arbitration agreements.

QUESTION 3:

During the hearing the imposition of financial penalties were discussed. More specifically, for example, requiring an employer to pay a former employee during a post-employment time period during which a noncompete is active and/or the potential for fines levied on employers who include noncompete agreements in employment contracts.

What would be the most effective structure, scope, and amount of these fines or penalties that would have the effect of limiting noncompete agreements and ensuring compliance?

ANSWER TO QUESTION 3

This is an important question about ensuring compliance so that firms do not use illegal noncompetes. If firms are making choices rationally, they will stop using noncompetes when the expected value of using them is lower than the expected cost, where the expected costs include both the size of any fines as well as the firm's perceived likelihood of being required to pay those fines. The government can affect both the firm's perceived probability of detecting illegal noncompetes and the size of the penalty, but the optimal level of these depends upon how much value firms get out of already illegal noncompetes.

If this is right, then there are a few options which can begin to ensure compliance without necessarily imposing specific penalties. For example, passing a law which forces firms using illegal noncompetes to cover the court fees and attorney costs of affected workers should in part deter that firms from using illegal noncompetes. Such a law will increase the expected cost of using noncompetes for the firm, and may increase the probability of detection as workers may know if they have such provisions in their employment contract.

However, this might not be enough to dissuade firms from using illegal noncompetes because workers may not know the law and obey the noncompete anyway (i.e., not even go to court or seek out an attorney). One approach to handling misinformation is to require that information be posted in a publicly available space (similar to OSHA-style requirements), about the fact that it is illegal for the employer to curtail the postemployment options of its employees (as stipulated in the law).

A complementary approach is to give the worker a private right of action, as a way to bring an action based directly on the law, which will give the worker incentive to file suit once they learn that they have signed an illegal contract. Here it might be helpful to also address other provisions like class-action waivers and arbitration agreements, so that it is also in lawyers best interest to bring these cases as large class-action lawsuits, as opposed to individually arbitrated cases.

A similar approach is to provide incentives for other firms to benefit when they reveal that other firms are using illegal noncompetes—which they presumably know because they are likely to

learn this information when firms hire from each other. Such an approach would also raise the likelihood of catching noncompliant firms and thus raise the expected cost of using illegal noncompetes.

The aforementioned approaches are somewhat convenient because they increase both the likelihood of catching noncompliant firms and the expected costs to firms of using illegal noncompetes, without specifying a somewhat arbitrary fine. As noted above, simply providing publicly available information on who is using noncompetes (and for whom) might also get firms to reduce use as well (as in the case of Amazon), though companies like Glassdoor.com seem loathe to gather it, and would probably be even less likely to gather it if their client firms could be sued as a result. Perhaps the FTC could gather this information annually from a sample of firms, given their authority under the FTC Act.

Nevertheless, the remaining question is what should the actual levels of the penalties be. Again, theoretically, it's important to consider that the level of penalties should take into account the firms perceived probability of detection. If firms know there is a 100% chance of being caught immediately, then a small fine would likely be enough to deter use. However, if firms perceive that the chance of being caught using an illegal noncompete is 0%, then it won't matter how large the fine is. It is also important to highlight that if the goal is to deter the use of illegal contracts, the expected cost to the firm of using an illegal noncompete (the probability of detection multiplied by the fine) outweighs the expected benefit.

Accordingly, it is worth spending some time thinking about the precise value firms would get from an illegal noncompete. If that illegal noncompete keeps workers at the firm longer, consistent with empirical evidence, then the firm saves on recruiting and turnover costs over time. If that illegal noncompete prevents information or clients from flowing to competitors, then the firm benefits from that as well. Similarly, the firm may also benefit from preventing workers from becoming their direct competition. Finally, if that illegal noncompete allows the firm to pay the worker lower wages, then the firm saves on wage costs, which are compounded by the fact that workers may stay longer on the job. These sources of benefits encompass both a static dimension (e.g., the firm saves on wage costs in a given year), and a dynamic dimension (e.g., the illegal noncompete causes workers to stay longer). Accordingly, the penalties should be levied at the *per worker-years-under-noncompete level.*

These distinctions highlight some of the challenges with picking the level of a fine. For some workers the value of a noncompete may come only from reduced turnover or somewhat lower wages—a situation in which a small fine may do fine. But for other workers a small fine may not do as well. Unfortunately, there are no existing estimates that convey the value of an illegal noncompete, to the best of my knowledge. The closest estimate that I am aware of is from Marx and Younge (2015)[4], who find that the short term value of publicly traded companies rose by 9% after Michigan started enforcing noncompetes in 1985. Their analysis does not measure, however, the value of a given noncompete, since their analysis does not utilize any information on the actual use of noncompetes. Moreover, the study cannot identify the value of *illegal* noncompetes. These points also apply to the several studies examining changes in the law and

[4] A draft of their paper is available here: https://7485828c-96a0-4ef7-9e65-7e2017fe0ce5.filesusr.com/ugd/30296c_d5a0332c0f1e47a3b1097598df49341b.pdf

how worker mobility, wages, and entrepreneurship response (i.e., they do not generally include information on who signs noncompetes, let alone illegal ones).

As a result it would be highly speculative to provide a simple number here as a threshold, as any specific number would be debatable. Given this ambiguity, I would first and foremost suggest considering alternative benchmarks for wrongdoing in the case of workers, such as penalties for wage theft or discrimination. Another benchmark is the 50% pay that unemployment insurance pays workers in the event they receive unemployment insurance. A related benchmark from state noncompete laws comes from the 2008 Oregon noncompete law, which instituted a payment of 50% of the worker's salary during the prohibition period, with a minimum payment of the median income for a household of four.[5] While these numbers are also arbitrary, they do give a sense of the size of the penalties that are out there.

Moreover, it's important to think about the issues related to whether fine should be uniform or proportional to the worker's wage. If the penalty for noncompliance is fixed at, for example, $10k per worker-year, it might disincentivize firms to use illegal noncompetes with low-wage workers, but it might do little to disincentivize the use of illegal noncompetes for high tech workers or managers, as the chance that they are still effective might well save the firm much more in expectation.

As an aside, the prior point makes it clear that the optimal level of a penalty depends on *which* population noncompetes are made illegal. If it is low-wage workers who do not have access to any valuable information, then firms are likely to benefit less and thus a lower fine is probably ok. But if it is high-wage workers for whom the firm extracts a lot of value from using illegal noncompetes, then the optimal fine would be higher. Counteracting this effect, however, is the possibility that the likelihood of detecting illegal noncompetes among high-wage workers may be higher, such that a fixed penalty could work well, so long as the probability of being caught rises sufficiently with the wage.

If the firm's perceived likelihood of detection does not rise with the wage, then it might more be more effective to propose a penalty proportional to the worker's pay, with a minimum amount of pay so-as to protect low-wage workers—much like the Oregon structure of Garden leave. However, this may be more difficult to implement as it requires knowing every worker's wage who is covered by an illegal noncompete, for each year they are covered by the illegal noncompete. As a result this structure may be less feasible.

I recognize this exposition may not be as helpful as just stating a particular number, but hopefully it elucidates several of the issues involved in coming up with a reasonable number.

[5] The specific language in the Oregon Bill (ORS 653.295) reads, "Provides the employee, for the time the employee is restricted from working, the greater of compensation equal to at least 50 percent of the employee's annual gross base salary and commissions at the time of the employee's termination or 50 percent of the median family income for a four-person family, as determined by the United States Census Bureau for the most recent year available at the time of the employee's termination."

It might be more helpful to run through a specific scenario. Suppose that noncompetes are made illegal for workers making under $50k per year. For each of these workers, there will be some value to the firm of using illegal noncompetes in a given year—it may be $10k for some workers and $0.5k for other workers. If the penalty any policy imposes is uniform per worker-year, the government will have to decide whether it wants to deter the use of all these noncompetes, or target them towards the average or median worker. To deter all illegal noncompete use, the fine will have to be very high to deter firms that receive a lot of value from illegal noncompetes, though such a penalty may seem draconian to the average firm.

Suppose the government chose a fine of $25k per worker per year, and suppose that firms perceive the likelihood that they will be caught is 10%. Then in expectation the firm will still be willing to use noncompetes for workers for whom they expect to capture more than $2.5k per year in value from the noncompete. It may be that this is enough to deter most firms, but it will likely not result in complete deterrence because some firms will simply see it as the cost of doing business.

If I were in your shoes, one of the things I would do is commission a study of the practices of noncompete use in Oregon vs neighboring states by requesting employment contracts from firms before and after 2008 (perhaps using the FTCs authority under section 6(b) of the FTC Act), when the Garden leave provision was put in place in Oregon. This study could really help clarify whether the passage of this law reduced the use of noncompetes, and for which types of workers and firms.

Questions from: Senator Hirono

Hawaii's Experience with Banning Noncompetes: As you acknowledged, Hawaii's experience with banning noncompetes provides evidence that limiting these agreements can have benefits for high-wage workers. With Hawaii, a partial ban for high-wage workers in the technology industry led to improved worker mobility and increased average earnings—particularly for new hires:

QUESTION 1:

Can you elaborate on the implications of Hawaii's experience with banning noncompetes?

ANSWER TO QUESTION 1:
My analysis of the Hawaii experience is detailed in a paper called "Locked In? The Enforceability of Covenants Not to Compete and the Careers of High-Tech Workers," which was written by Natarajan Balasubramanian, Jin Woo Chang, Mariko Sakakibara, Jagadeesh Sivadasan, and myself. That paper is available here: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2905782.

The main focus of our paper was on the question of how Hawaii's 2015 ban on noncompete for high tech workers affect wages and mobility. The findings are relatively straightforward, that wages for new hires rise, while job-to-job mobility also rises. We found little evidence that overall wages rose, but this is most likely because the 2015 law only applied to new contracts and because our data only goes until 2017.

We did not examine other outcomes like entrepreneurship, investment, and productivity.

QUESTION 2:

Short of fully banning noncompetes for all workers, do you think partially banning these agreements for some workers in other industries could benefit workers?

ANSWER TO QUESTION 2:

If the question is whether worker wages will rise in general when noncompetes are banned, then the existing evidence suggests that this will be the case. For an overview of this evidence see a brief I wrote called "Are Noncompetes Holding Down Wages" at http://ssrn.com/abstract=3223659.

One other note here is that "industries" might not be the best way to think about banning noncompetes. If you ban noncompetes in healthcare to protect janitors, then it doesn't make sense for janitors in commercial buildings to not be covered. In this sense "occupation" may make more sense for categorizing workers, which is an approach that Colorado and Oregon have taken.

QUESTION 3:

If yes, then could you speculate about which industries?

ANSWER TO QUESTION 3:

In addition to the study of high-tech workers referenced above, in Lipsitz and Starr (2019), which examines the 2008 ban on noncompetes that Oregon implemented for low-wage workers, we find that workers in almost every industry experienced positive and statistically wage increases. In only two industries were the wage effects statistically indistinguishable from zero, and in no industries did we estimate negative wage effects. Figure 5 in the paper shows the breakdown.[6]

In another recent study, Johnson, Lipsitz, and Lavetti find that moving from the 90th to the 10th percentile of enforceability raises wages by 3-4% for the average worker in the United States.

These results suggest that the wage benefits from banning noncompetes are not confined only to one or a handful of industries.

Here is another way to think about your question: Let's think about the industry where we would expect workers to benefit most from noncompetes. The theoretical arguments would suggest that industries in which noncompetes give firms strong incentives to develop valuable and proprietary information and to invest in providing their workers with this valuable, industry-specific information. In my mind, high-tech fits this description, perhaps better than any other industry. So, the fact that the Hawaii ban for tech workers finds that new hire wages rise after the ban suggests that we do not even see noncompetes benefiting workers in the precise places where theory would suggest we do.

The one occupation that does show some mixed evidence, however, are executives. Allowing noncompetes for executives might be a reasonable carveout, since they do have access to all the valuable information of the firm, they also have access to legal counsel when negotiating their employment contract, and they can most likely afford to fight a lawsuit or sit out a few years.

QUESTION 4:

Noncompetes and Female Entrepreneurs: Recently we celebrated National Women's Small Business Month (October), where we recognized the importance of female entrepreneurs in promoting job creation and driving innovation within local communities.

I have met with many of these entrepreneurs in Hawaii, where they are leading the way in their communities with the support of local SBA resources like the Mink Center for Business and Leadership—our state's only Women's Business Center.

[6] The paper is available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3452240.

As you acknowledged during your testimony noncompetes have been particularly harmful for women:

Can you elaborate on why noncompetes have been particularly harmful for women?

ANSWER TO QUESTION 4
There are three studies examining gender differentials in the effect of noncompetes. Two studies examine wage differentials, while a third looks at entrepreneurship. All three studies find that the enforceability of noncompetes lowers wages more for women than for men, and reduces entrepreneurship for women more than for men.

These studies lay out several reasons for why women have been particularly harmful for women. These include:

- The fact that women are less likely to negotiate over the terms of employment.
- The fact that litigation over noncompetes might be more costly for women because if they sit out of the labor force to abide by a noncompete it might be harder foro them to get back in.
- Women may be risk averse, and so may be more likely to abide by noncompetes rather than face risky legal outcomes.
- There is also some evidence that women are less interested in "competing", and so this may also suggest that they would be less likely to violate a noncompete.

Many of these arguments, it should be noted, could pertain to minorities, as well.

QUESTION 5:

Can you discuss how banning noncompetes could benefit female entrepreneurs?

ANSWER TO QUESTION 5
There is just one study on the gender differences in the impacts of noncompete agreements on women (Marx 2018[7]). The study examines how the likelihood of founding a new venture varies by gender and the enforceability of non-competes, following the dissolution of the worker's firm. The basic idea is that in states that do not enforce noncompetes, workers can start a new firm whenever they want, but that in states that enforce noncompetes they are restricted from starting new firms. As a result, when a worker's firm dissolves and the worker's prior noncompete becomes inapplicable, there may be a sudden increase in entrepreneurship in the states where noncompetes are enforceable. What Marx (2018) finds is that this post-firm-dissolution increase in entrepreneurship is 13% higher for women than for men in the states that more vigorously enforced noncompetes, suggesting that women were held back more by noncompetes than men.

QUESTION 6:

[7] See https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3173831

What particular impact, if any, have noncompetes had on minority entrepreneurs?

ANSWER TO QUESTION 6:

To the best of my knowledge, there are no studies examining differences in the effect of noncompetes or noncompete policies on minority entrepreneurship.

The one study of wage outcomes (Johnson, Lipsitz, and Lavetti 2019) finds that the enforceability of noncompetes dampens wages for black workers relative to white workers.

QUESTION 7:

What impact, if any, have noncompetes had on veteran entrepreneurs?

ANSWER TO QUESTION 7:

To the best of my knowledge, there are no studies examining differences in the effect of noncompetes or noncompete policies on veterans.

QUESTION 8:

Noncompetes and Labor Unions: Recently released data from the Department of Labor indicates that nonunion workers have median weekly earnings that are 82 percent of earnings compared to union workers—$860 versus $1,051. These statistics prove the importance of having union representation and the ability to band together and bargain collectively. That is why I have been an ardent supporter of collective bargaining rights, and why I have introduced S. 1970, the Public Service Freedom to Negotiate Act of 2019, which provides public sector workers with the right to collectively bargain for fair wages and working conditions.

You noted in your testimony that "noncompetes are rarely negotiated over and are regularly presented to workers when they have limited outside options," and elaborated that labor unions are sometimes required to sign noncompete agreements:

Have you found in your research whether labor unions have been able to help workers avoid having to sign noncompetes as a condition of employment?

ANSWER TO QUESTION 8:
To the best of my knowledge, there have been no explicit studies examining the use of noncompetes and labor unions.

The most recent case I am aware of involving a noncompete and unions is Minteq.[8] In that case the key issue was whether the firm can unilaterally implement noncompete agreements without

[8] The decision can be found here: https://www.laborrelationsupdate.com/files/2016/08/Minteq-International-Inc.-364-NLRB-No.-63-July-29-2016.pdf.

bringing them before the union as part of mandatory bargaining. The judge found that noncompete agreements should be a part of mandatory negotiations and that the firm erred when it implemented noncompetes unilaterally for new hires during a 2 day orientation.[9]

QUESTION 9:

If so, then could you elaborate on these findings?

ANSWER TO QUESTION 9:
There are no findings to elaborate on, unfortunately.

QUESTION 10:

If not, then what impact do you think labor unions representing public and private sector employees can have on ending the practice of noncompetes?

ANSWER TO QUESTION 11:
The Minteq case suggests that unions can potentially help to resolve some of the issues related to the lack of negotiation over the use of noncompetes, especially in instances where firms are seeking to implement noncompetes unilaterally. It is possible that the union could argue for an increase in wages as a result of the firm trying to bind workers in this way.

It is also possible that workers may become overconfident in the amount of protection they have from the union in noncompete disputes, thinking they are protected when in fact they are not.

Unfortunately, this is a rather new area and there is a lot we do not know yet.

QUESTION 11:

What other findings have there been related to labor unions and noncompetes?

ANSWER TO QUESTION 11:

There are no other findings that I am aware of. This is an important area for future research.

QUESTION 12:

Noncompetes and Low-Wage Workers: Your testimony addressed noncompetes for low-wage workers, who are often the most vulnerable to these agreements because they are the least able to negotiate their employment contracts:

[9] A summary of the case is available here: https://www.laborrelationsupdate.com/uncategorized/non-compete-agreement-a-mandatory-subject-of-bargaining-nlrb-rules/

Can you elaborate on how noncompetes are harmful for low-wage workers?

ANSWERS TO QUESTION 12:
There is only one study that addresses the effects of banning noncompetes on low-wage workers, and it was written by Michael Lipsitz and myself.[10] This study exploits a ban on noncompetes for hourly workers in Oregon in 2008, by comparing hourly workers in Oregon before and after the ban to hourly workers in neighboring states. The results suggest that the ban on noncompetes for hourly workers raised hourly wages by 2-3% for the average hourly worker, and increased job-to-job mobility by 12-18%, driven mostly be an increase in within-industry mobility.

The study finds that the wage gains are present across most occupations and industries, are present for both low earners and high earners, for those with and without a college education, and for the young and the old. It also shows that the wage effects from the ban are more positive for females than for males.

The study, due to lack of data, cannot fully answer the question of why noncompetes are harmful for low-wage workers (outside of establishing that they are), but it offers several explanations. It finds that noncompetes are very unlikely to negotiate over noncompetes, and it highlights that low-wage workers may be unlikely to have the income to fight even unenforceable noncompetes, which most noncompetes for low-wage workers are likely to be.

QUESTION 13:

Besides banning noncompetes, what other protections should we consider adopting for these workers?

ANSWERS TO QUESTION 13:

First, I think it's important to highlight the difference between some recent legislative approaches. Some states have made noncompetes voidable or unenforceable, but have not made them *illegal*. In contrast some recent proposals (i.e., the MOVE Act) sought to make noncompetes for low-wage workers illegal and proposed fines to firms for violating noncompetes. The key issue is that there is much empirical evidence that noncompetes are still common in states where they are unenforceable, like California. See my answers to Senator Cardin's questions above for some thoughts on enforcement and compliance.

Apart from this distinction, I think it's important to consider several other provisions that workers might agree to that may limit the ability of low-wage workers to fight even unenforceable noncompetes. Two of these are mandatory arbitration and class action waivers. This combination is especially pernicious because they make it difficult for low-wage workers to find legal counsel willing to take their case, even when the wrongdoing extends to many other workers at the firm.

QUESTION 14:

[10] A draft of the paper is available here: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3452240

How can we make it easier for workers to negotiate their employment contracts or better understand the importance of these contracts and what they include?

ANSWER TO QUESTION 14:

This is an excellent question. I think there are a two relatively easy ways to ensure that workers are at least aware of these contracts and understand what they are signing up for.

The first idea is to increase the transparency with which noncompetes are implemented. At least 1/3 of noncompetes are requested after the job offer has been accepted, without any change in responsibilities or job title, often on the first day of the job. At this point in time the worker may have already turned down other job offers, moved their family, and may have very little leverage with which to negotiate these additional terms. To combat this practice, several states, beginning with Oregon in 2008, have implemented policies that require early notification of the noncompete—either alongside the job offer or at least a few weeks before the commencement of employment. The idea behind this policy is to give workers an understanding of important restrictions that might accompany their job, at a point when they have alternative options, or can negotiate over all the relevant terms of the job.

The second idea is to begin systematically collecting information on which jobs require noncompete agreements, and provide that information to workers via job search websites like Glassdoor.com, Monster.com, Indeed.com, etc. To my knowledge, and despite my efforts, no such information exists to inform workers about the restrictions they might be asked to agree to if they were to join that company. It seems the companies mentioned above could easily collect and display this information alongside other information that job-seekers usually look for. This would allow workers to be informed about these provisions ex ante so that they are not surprised to be asked to agree to them when they join the company. A similar approach could be to gather all the litigation events for each firm related to noncompetes and then post them publicly in an easily digestible manner so that workers can see which firms are actively suing their departing employees over these contracts.

A related law could require firms to post the types of restrictive covenants in their job ads, alongside other information, though there is no precedent for this that I am aware of.

Senate Committee on Small Business and Entrepreneurship Hearing
"Noncompete Agreements and American Workers"
November 14, 2019
Follow-Up Questions for the Record

Questions for Mr. John Lettieri

Questions from:

Ranking Member Cardin

Following the erosion of worker bargaining power over the last several decades, today's U.S. labor market tends to favor the employer over the employee. As such, workers often enter into employment negotiations with significantly less negotiating leverage relative to their employer. This unequal power balance persists throughout the employment relationship.

The ubiquity of noncompetes in today's labor market demonstrates that these agreements are another tool at employers' disposal to diminish employee bargaining power. The unequal employer-employee relationship is exacerbated by the use of noncompete agreements: a worker who is unable to quit and find a better job is a worker with very little bargaining power.

Companies often impose noncompetes even when they know they are unenforceable under state law because they can use it as an intimidation tactic to discourage employees from leaving. These companies know that workers often do not have the means to challenge these unfair practices.

As lawmakers consider federal legislation to ban noncompetes more broadly, it is important that employers are sufficiently deterred from violating the law. Without an appropriate disincentive, employers might choose to continue to impose noncompetes and employees might either 1) believe that they must obey an illegal contract or 2) be forced to engage in costly litigation to fight the illegal noncompete.

QUESTION 1:

How can we on a federal level ensure employers are sufficiently deterred from imposing noncompete agreements?

ANSWER 1: The federal government should, at a minimum, set a range of baseline standards applying to the use of noncompete agreements. These standards should include transparency requirements, since many of the negative effects of noncompetes can be reduced simply by

ensuring greater transparency and improving workers' awareness of their bargaining position. For example, this would include requiring that employers notify prospective hires at the start of the interview process whenever a position requires signature of a noncompete. Disincentives for overuse should also be implemented at the federal level, since employers can generally require a noncompete at no cost to themselves under current law. Disincentives could take the form of requiring some "garden leave" compensation of covered workers for the duration of the period in which they are subject to a noncompete. The duration of agreements should be limited to no more than a year and voided in case of layoffs or employee termination without cause. Perhaps most importantly, federal rules should limit the pool of eligible workers to those who have plausible bargaining power. In practice, this would mean establishing an earnings threshold for eligibility so that noncompetes could only be applied to top earners. Last but not least, federal rules should ensure appropriate enforcement mechanisms and penalties for noncompliance.

QUESTION 2:

What are the appropriate policy solutions that will ensure proper enforcement?

During the hearing the imposition of financial penalties were discussed. More specifically, for example, requiring an employer to pay a former employee during a post-employment time period during which a noncompete is active and/or the potential for fines levied on employers who include noncompete agreements in employment contracts.

ANSWER 2: I believe that a nearly universal restriction on noncompete agreements across all occupations and income levels is the right goal, given the disadvantages noncompetes impose on workers and the drag they place on U.S. entrepreneurship, innovation, and economic dynamism writ large. Short of a full ban, federal policy should introduce a cost to the use and abuse of noncompete agreements. For example, employers should be required to provide "garden leave" compensation during the time a noncompete is in effect, which will discourage employers from frivolously requiring such provisions. Additionally, for any federal reform to be effective it must come with penalties for noncompliance. Employers that knowingly insert unenforceable noncompete clauses into their contracts (e.g., in states where they are not valid, or in the contracts of exempted workers) should face monetary penalties.

QUESTION 3:

What would be the most effective structure, scope, and amount of these fines or penalties that would have the effect of limiting noncompete agreements and ensuring compliance?

ANSWER 3: Any fine or penalty should make for a meaningful disincentive, not just be a token fine. At the state level, this has taken the form of a large percentage of the final salary for the

duration of the agreement or other mutually agreed upon compensation. Steep fines for writing (and making employees sign) noncompete agreements that are not enforceable under the applicable state law could also effectively limit the use and abuse of noncompetes. Overly broad noncompetes should also be rendered completely void under federal law, which would preclude them from being re-written by courts to make them enforceable.

Questions from:

Senator Hirono

General Benefits of Banning Noncompetes: Mr. Lettieri, you have strongly advocated for banning noncompete agreements (noncompetes) in all but the narrowest circumstances.

QUESTION 1:

Can you elaborate on the benefits of banning noncompetes?

ANSWER 1: See answers to questions two, three, and four.

QUESTION 2:

Can you elaborate on how banning noncompetes could improve innovation and entrepreneurship, and promote business formation?

ANSWER 2: Noncompete agreements prevent workers from starting any new company that could compete with their former employer within a large geographic area. They do this through the threats of litigation and injunction, which imperil the viability of a new firm. As a result, fewer people covered by a noncompete choose entrepreneurship, given the risks it would entail or the upheaval it would require if they were forced to move to a different part of the country. One recent study found that greater enforceability of noncompete agreements reduced new firm entry rates by 18 percent. The empirical research suggests that women are particularly deterred from starting their own firms when subject to noncompete agreements. Innovation and productivity suffer as fewer new firms start that are better able to create a product or deliver a service than incumbents.

Banning noncompetes would free more people to create new firms and pilot new business models that would intensify competition in the U.S. economy, produce more innovation, and advance productivity growth and living standards. Public policy should promote competition for all of the benefits it brings; in practice, incumbent vested interests now rely on noncompetes to insulate themselves from it, to the detriment of workers and the wider economy, instead.

QUESTION 3:

Can you elaborate on how banning noncompetes could benefit workers?

ANSWER 3: There is little evidence that workers receive adequate compensation to offset the opportunity cost of forgoing alternate employment options inherent in signing a noncompete. In fact, the preponderance of empirical evidence showing that workers' wages increase when noncompetes are restricted suggests that, in reality, workers rarely see any of the theoretical potential benefits of a noncompete (such as increased employer investment in their training or higher bargained wages). Workers bound by a noncompete report staying in their jobs 11 percent longer with no offsetting increase in pay or satisfaction. Banning noncompetes is therefore a policy action that stands to only benefit workers by freeing them to seek out the best opportunities the labor market has to offer them. Based on studies of recent state-level reforms, banning noncompetes should boost worker wages, increase the rate at which they voluntarily change jobs, and improve working conditions as employers are forced to compete to retain their talent -- something that was once considered a bedrock principle of fairness in the U.S. economy.

QUESTION 4:

Can you elaborate on how banning noncompetes could benefit businesses?

ANSWER 4: Existing employers benefit from banning noncompetes primarily by having improved access to the talent they need to thrive and grow. One company's use of a noncompete imposes a negative externality on all other firms in the market, who are deprived of open access to talent. Noncompetes constrain the share of a local labor pool that employers actually have access to, essentially locking up talent. Four recent studies found evidence that employers find it harder to hire in states where noncompete enforceability is strongest. Startups and young companies may be particularly disadvantaged, given that they cannot poach workers covered by a noncompete -- even if they can offer better wages and better working conditions. Research shows that greater enforceability of noncompetes reduces new firm entry by 18 percent. The firms that do start tend to have fewer employees at launch and are more likely to die in their first three years. Ones that survive still tend to remain smaller for their first five years.[1]

QUESTION 5:

What other benefits would you expect from banning noncompetes?

ANSWER 5: Some recent state-level reforms suggest that the benefits from banning noncompetes could be substantial: Hourly workers in Oregon experienced significant increases in wages and job-to-job mobility (as well as an uptick in becoming salaried) following a 2007 ban on noncompetes for hourly workers. Hawaii tech workers experienced similar boosts

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[1] Evan Starr. "The Use, Abuse, and Enforceability of Non-Compete and No-Poach Agreements: A Brief Review of the Theory, Evidence, and Recent Reform Efforts" February 2019. https://eig.org/wp-content/uploads/2019/02/Non-Competes-2.20.19.pdf

following a 2015 ban covering the industry. A ban that covered nearly all workers, including the higher-wage workers most likely to create an entrepreneurial venture, would add innovation and productivity-enhancing benefits on top.

QUESTION 6:

Follow-up: Locally, in Hawaii, it can be especially hard for businesses in certain industries to find talented workers given our relative distance from other states.

ANSWER 6: Absolutely, and this was one of the core rationales for liberalizing noncompetes for tech workers in your state, to make sure that Hawaii-based companies could access the talent and skills they needed to survive in today's economy.

QUESTION 7:

Can you elaborate on how noncompetes could harm businesses in relatively distant or geographically isolated communities?

ANSWER 7: Labor is already a scarce commodity in isolated and rural communities, and noncompetes make it even more so. They gum up local labor markets and make it harder for employers to find qualified workers in their area. Of course, from any individual employer's perspective, scarcity may be a prime motivation for utilizing a noncompete in the first place -- to keep a hold on employees once they are hired. This act restricts employment options and therefore wages for covered workers in rural areas, however, and depresses the local economy in turn. It is a classic collective action dilemma: Embracing noncompetes may be rational for a single employer but devastating collectively and for the region as a whole.

QUESTION 8:

What has been the experience for businesses in rural communities?

ANSWER 8: See answer to question seven.

B | R | R
Beck Reed Riden LLP

Beck Reed Riden LLP
155 Federal Street | Suite 1302
Boston | Massachusetts 02110
Tel. (617) 500-8660 | Fax (617) 500-8665
BeckReedRiden.com

Russell Beck
Direct: (617) 500-8670
rbeck@beckreed.com

November 28, 2019

The Honorable Marco Rubio
Chairman
The Honorable Ben Cardin
Ranking Member
United States Senate Committee on
Small Business & Entrepreneurship
428A Russell Senate Office Building
Washington, D.C. 20515

Re: Written Testimony of Russell Beck for the United States Senate Committee on Small Business and Entrepreneurship Hearing on "Noncompete Agreements and American Workers"

Dear Chairman Rubio, Ranking Member Cardin, and Members of the Committee:

Thank you for the opportunity to submit written testimony for consideration in connection with the Committee's hearing on Noncompete Agreements and American Workers. And, thank you for the bipartisan work the Committee is undertaking toward finding a consensus noncompete bill.

I offer this testimony to provide what I believe is important background, as well as a perspective not articulated during the November 14, 2019 hearing, and to offer practical tools to balance the real-world interests and impacts for the employees, the former employers, and the new employers.

In sum, my testimony below covers four topics:

1. My background in brief, offered for the purpose of enabling the Committee to evaluate the utility of my testimony.
2. The purpose and practicalities of noncompetition agreements.
3. Common misconceptions about the use, enforcement, and impact of noncompetes.
4. Recommendations for a fair approach, consistent with the outcomes in approximately 29 states across the country that have recently been engaged in reevaluating their noncompete laws.

1. MY BACKGROUND

I have been a litigation attorney for 30 years. I have represented employees and employers (from "mom and pop" shops to Fortune 50 companies) in countless trade secrets and noncompete matters. For the past decade, I have also taught the course, *Trade Secrets and Restrictive Covenants*, at Boston University School of Law.

I advised several Massachusetts legislators on, and drafted most of the language in, the new Massachusetts noncompete law, and assisted those legislators with, and revised some of the language in, the new Massachusetts trade secrets law. In 2016, I was invited to the White House to participate in the working group discussions that led to the development by the White House of a Call to Action on noncompetes.[1]

I authored the book, *Trade Secrets Law for the Massachusetts Practitioner* (1st ed. MCLE, Inc. 2019)[2] (covering trade secrets nationally, with a focus on Massachusetts law), and the book, *Negotiating, Drafting, and Enforcing Noncompetition Agreements and Related Restrictive Covenants* (5th ed., MCLE, Inc. 2015)[3] (covering Massachusetts noncompete law).

In addition, I created my firm's widely-used *50 State Noncompete Survey*[4] and *50 State Trade Secrets Comparison Chart*,[5] the former of which was relied upon by the United States Department of the Treasure Office of Economic Policy's report, "Non-compete Contracts: Economic Effects and Policy Implications"[6] (referenced during the Committee's November 14 hearing), and by the White House in connection with the Call to Action and related report.

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1 https://obamawhitehouse.archives.gov/sites/default/files/competition/noncompetes-calltoaction-final.pdf.

2 https://www.mcle.org/product/catalog/code/2190643B01.

3 http://www.mcle.org/product/catalog/code/2150503B05.

4 https://www.beckreedriden.com/50-state-noncompete-chart-2/. (For the Committee's convenience, I have attached a copy of this chart as "Attachment A" to this testimony.)

5 https://www.beckreedriden.com/trade-secrets-laws-and-the-utsa-a-50-state-and-federal-law-survey-chart/. (For the Committee's convenience, I have attached a copy of this chart as "Attachment B" to this testimony.)

6 https://www.treasury.gov/resource-center/economic-policy/Documents/UST%20Non-competes%20Report.pdf.

Finally, I monitor changes to noncompete and trade secrets laws around the country, as detailed on the blog, *Fair Competition Law*.[7]

To be clear, I am not an economist, nor have I researched the theoretical economic effects – pro or con – of noncompetes. I have, however, read many of the studies on the subject, including many written by two of the leading researchers in the field, Evan Starr,[8] Assistant Professor at the Robert H. Smith School of Business of the University of Maryland (who testified at the November 14 hearing) and Matt Marx,[9] Associate Professor at the Questrom School of Business of Boston University. I have also seen first hand (through helping many hundreds of clients) the benefits and detriments of the use of noncompetes.

2. The Purpose And Practicalities Of Noncompetition Agreements

What Noncompetition Agreements Are And How They Are Used

Noncompetition agreements (colloquially referred to as "noncompetes") are, in their most basic form, a particular type of restrictive covenant that imposes restrictions on the competitive conduct of an employee following the end of the employment relationship.[10] Under all applicable laws, they must be reasonable in time (typically one to two years, depending on the state), space (the territory in which the employee is restricted), and scope (the nature of the work that the employee is prohibited from engaging in during the restricted period).

Noncompetes are generally disfavored in the law, and, as a result, unlike most contracts, they are reviewed by courts for reasonableness. Specifically, in all states permitting noncompetes, courts review the reasonableness of the restraint, balancing the interests of the particular employee against the interests of the particular employer in the particular case.

The interests of the employer that a court may take into account are typically circumscribed by law.[11] While state laws vary to some degree, the protection of trade secrets is a

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[7] https://www.faircompetitionlaw.com.

[8] https://www.rhsmith.umd.edu/directory/evan-starr.

[9] https://www.bu.edu/questrom/profile/matt-marx/.

[10] While noncompetes can arise in many contexts, the focus of the Committee is on noncompetes used between employers and employees, and accordingly, my testimony is focused exclusively on those.

[11] There was some question at the hearing about whether most states have rules governing noncompetes. The answer is that they all do. Of the 47 states that allow the use of employee noncompetes (*i.e.*,

fundamental protectable interest in all states that permit the use of employee noncompetes.[12] (See below for an explanation of the relationship among trade secrets, nondisclosure agreements, and noncompetition agreements.)

Other well-recognized employer interests include the protection of customer goodwill developed by the company (through the work it pays its employees to perform). This interest is frequently relied up by staffing companies and other companies with sales teams to protect their continued relationships with their customers. Unlike in the context of trade secrets, where "a secret once lost is . . . lost forever" (*FMC Corp. v. Taiwan Tainan Giant Indus. Co., Ltd.*, 730 F.2d 61, 63 (2nd Cir. 1984)), and policing a former employee's conduct is quite difficult, nonsolicitation agreements[13] are often reasonably effective at achieving their purpose, without the need for the additional restrictions associated with noncompete agreements. Indeed, many judges will not enforce a noncompete against a salesperson absent some other wrongdoing by that person.

The Status Of Noncompete Reform Efforts Around The Country

Over just the past several years, bills to modify noncompete laws have been introduced in no fewer than 29 states.[14] Nineteen of those states have enacted legislation modifying their

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states other than California, Oklahoma, and North Dakota), 21 of them have statutes supplemented by common law, while the rest rely on common law that generally follows the Restatement (Second) of Contracts, § 188.

[12] Only three states prohibit employee noncompetes generally: California, Oklahoma, and North Dakota. (Contrary to frequent confusion, Montana does *not* ban employee noncompete agreements. *See Wrigg v. Junkermier, Clark, Campanella, Stevens, P.C.*, 362 Mont. 496, 503-07 (Mt. Sup. Ct. 2011).)

[13] Nonsolicitation agreements prevent for a specific term (typically one to two years) an employee from soliciting, and sometimes from working with, customers with which they worked while at their former employers or about which they acquired confidential information through their prior employer.

[14] To address an issue raised during the hearing, not only are states looking at noncompete laws, but the surge is likely the result of a confluence of many factors, including the following: Oregon had changed its noncompete law in 2008, as the Great Recession was just beginning. Then, in 2009, Massachusetts began a nearly ten-year journey to update its noncompete laws, starting with the filing of two separate, unrelated bills by Representative Lori Ehrlich and now Senator (then Representative) Will Brownsberger in response to matters brought to their attention. One of those bills was a proposed ban noncompetes and the other to modify the law. The proposed ban in particular caught the attention of the media. Shortly thereafter, Georgia had a state-wide referendum to modify its

preexisting noncompete laws (seven this year alone), some strengthening noncompetes, other making it harder to enforce them.[15] Of those 19 states, seven have banned noncompetes for low-wage workers (with varying methods of determining who qualifies for the exemption).[16]

While many of the states have considered noncompete bans similar to the Field Code[17] adopted in California,[18] North Dakota,[19] and Oklahoma,[20] not a single state has done so.[21] Rather, each state has evaluated the diverse needs of its workforce and industries, and reached a balance of interests that it determined appropriate for its population. Hawaii, for example, in 2015, banned the use of noncompetes for workers in the technology field. Yet, no other state followed its lead.

Discernable Trends in Noncompete Practice

Over the past decade, the number of reported decisions (*i.e.*, published rulings by judges)

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noncompete laws – making noncompetes *more* enforceable in that state, which also caught the attention of the media. But, perhaps most influential, starting around 2014, noncompetes began getting substantial media attention following the firestorm created when a sandwich chain, Jimmy John's, was revealed to have been requiring its sandwich makers to sign noncompetes. In addition, as Professor Starr mentioned during the November 14 hearing, research into the potential impacts of noncompetes was accelerating around the same time.

[15] The states are Alabama, Arkansas, Colorado, Connecticut, Florida, Hawaii, Idaho, Illinois, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Mexico, Oregon, Rhode Island, Utah, Washington, and West Virginia.

[16] Those states are Illinois, Maine, Maryland, Massachusetts, New Hampshire, Rhode Island, and Washington.

[17] https://www.britannica.com/topic/Field-Code.

[18] California's ban went into effect in 1872. *See Edwards v. Arthur Andersen LLP*, 44 Cal.4th 937, 945 (2008).

[19] North Dakota's ban went into effect in 1865 (before North Dakota was even a state). *See Werlinger v. Mutual Service Cas. Ins. Co.*, 496 N.W.2d 26 (N.D. 1993).

[20] Oklahoma's ban went into effect in 1890 (before Oklahoma was a state). *See Noncompetes in Oklahoma Mergers and Acquisitions*, 88 Oklahoma Bar Journal 128, at n.2 (Jan. 21, 2017).

[21] The last time a complete ban on employee noncompetes was adopted was in 1892 (in Oklahoma).

involving noncompetes has largely remained the same[22] despite the growing workforce[23] and perhaps somewhat increased number of job changes per capita.[24] This leveling in numbers may suggest that fewer noncompetes are being used, are being enforced, or both.

In contrast, trade secrets litigation has increased substantially during that same period.[25] And, perhaps not surprisingly, the most trade secrets litigation occurs in California, perhaps suggesting that trade secrets litigation is being used as a substitute for the unavailable tool of a noncompete.[26]

The Relationship Among Trade Secrets, Nondisclosure Agreements, and Noncompetes

Trade Secrets Law: Trade secrets are information having economic value derived from the fact that they are secret – and they must have been the subject of reasonable efforts to maintain secrecy. Trade secrets are protected by state trade secrets laws and, as of May 11, 2016, by federal law as well.

Information failing to qualify as a trade secret is not protectable under trade secrets laws – state or federal. But, just because the information does not qualify as a trade secret, does not mean that it is not important to the business.

For example, a significant source of disagreement in trade secrets lawsuits is customer information (often complete or partial customer lists). Some states include customer information or customer lists in the definition of trade secrets. *See* Attachment B. Others do not. *Id.* In the states that do not, the threshold battle typically involves whether the customer information can even be a trade secret. And, even when it *can* be a trade secret, parties still argue over (among other things) whether the particular customer information is a trade secret. The ease or difficulty

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[22] https://www.faircompetitionlaw.com/2019/09/30/new-trade-secret-and-noncompete-case-growth-graph-updated-september-29-2019/.

[23] https://fred.stlouisfed.org/series/CLF16OV.

[24] *How Many Times Will People Change Jobs? The Myth of the Endlessly-Job-Hopping Millennial*, by Jeffrey R. Young (July 20, 2017) (available at https://www.edsurge.com/news/2017-07-20-how-many-times-will-people-change-jobs-the-myth-of-the-endlessly-job-hopping-millennial).

[25] https://www.faircompetitionlaw.com/2019/09/30/new-trade-secret-and-noncompete-case-growth-graph-updated-september-29-2019/.

[26] https://www.faircompetitionlaw.com/2017/06/25/california-trade-secrets-litigation-supplants-noncompete-litigation/.

of compiling the information and the reasonableness of the efforts taken to maintain their secrecy are also frequent battleground in these cases.

One of the most nuanced issues in trade secrets law is how to handle the fact that trade secrets can often be retained in a person's memory. As a general matter, the mere fact that information is lodged in someone's head does not strip it of its trade secret qualities or the available protections. The secret formula to Coca-Cola is an example. There are reportedly only two people in the world who know it – and, they know all of it, not just a portion of it.[27] And, neither can lawfully disclose it to PepsiCo (or anyone else).

A mundane example of how this issue can present a significant threat to a company unable to use a noncompete is a Chief Marketing Officer (CMO) who worked on the company's strategic plan and then leaves for a competitor to be its CMO, developing its strategic plan. The information the CMO knows about the former employer's plans will necessarily inform decisions about the new employer's plan. How can the CMO avoid taking advantage of the weaknesses in the prior employer's strategy as he or she sets the course for the new company? Similarly, how could he or she not use his or her knowledge to avoid getting tripped up by the strengths of the former employer's plan as he or she maps out the new company's plans?

Another type of information presenting the same problem is the so-called "blind alley" (or "negative information"), *i.e.*, information that was considered and rejected on the path to finding the right solution. The product WD-40 provides a good example. WD-40 is the lubricant that unsticks things and fixes squeaks.[28]

WD-40 stands for "Water Displacement perfected on the 40th try." Anyone setting out to create a similar product would benefit from knowing the rejected formulas. And, someone who knows those failed efforts would not blindly recreate them (knowing they will fail) if they were attempting to make their own similar product; they would reject them out of hand, thereby saving substantial research and development efforts and cost.

Despite all of this, many states will allow the Coca-Cola executives who know the secret formula to work on Pepsi's secret formula, the CMO to work on the new employer's strategic plan, and the WD-40 chemist to work on the new competitive product. And, sometimes the

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[27] https://www.snopes.com/fact-check/coca-cola-fomula/?collection-id=209643.

[28] As they say on their website, "You need only two things in life: duct tape and WD-40; if it moves and shouldn't, use duct tape, if it doesn't move and should, use WD-40."

same result obtains even if the former employee demonstrably stole information on his or her way out the door.

Nondisclosure Agreements: Nondisclosure agreements (NDAs) (sometimes called "confidentiality agreements") are agreements by which someone (frequently an employee or business partner) promises not to use or disclose the other party's information. These agreements are a near-universal predicate to a company's ability to protect its trade secrets and other confidential information.

NDAs serve multiple important purposes, among them, putting employees on notice that the company has information that may be confidential in general, and identifying for the employee particular types of information that the company, in fact, considers confidential. Also, nondisclosure agreements are an important building block in the company's overall efforts to take (and ability to demonstrate that it has taken) reasonable measures to protect its information, including information that does not qualify as a trade secret. They also provide a breach of contract remedy for the taking of company information – though only to the extent not preempted by trade secrets laws.

Like trade secrets laws, NDAs do not prevent an employee from working for a competitor, even in the situations described above (involving the CEO, CMO, and chemist). While courts will typically order the return of information, they will rarely prevent employees from working for the competitor, thereby leaving the former employer to police the former employee's conduct (*i.e.*, use of its trade secrets) without the tools necessary to do so (*i.e.*, the former employer has no ability to know what the employee is doing until, in the worst case, it is too late, and the former employee has used the information).

Noncompetes: Noncompete agreements prevent this scenario. Specifically, noncompetes operate to prevent an employee from taking a role with a competitor that would put the former employer's trade secrets and other confidential business information squarely at risk of being used or disclosed.[29]

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[29] As noted above, states vary on the other interests that can be protected through noncompete agreements. *See also* Attachment A.

3. COMMON MISCONCEPTIONS ABOUT THE USE, ENFORCEMENT, AND IMPACT OF NONCOMPETES[30]

A very common misconception about noncompetes is that they prevent employees from working. They do not. Employees are always free to use their general skill and knowledge. For example, Coca-Cola's CEO can be the CEO at any company that does not compete with Coca-the Cola Company. The CMO described above can be a CMO at any company that does not compete with his former employer. And, the chemist described above can be a chemist working on something other than a product competitive with WD-40. What they cannot do is use their former employer's trade secrets on behalf of a new employer. Yet that is what is routinely happening. (See below.) This is what noncompetes are necessary to prevent. They prevent only *unfair* competition, not fair competition. (The problem is the abuses, which are addressed below.)

Another very common misconception about noncompetes is that they are being used with increasing frequency. We do not actually know if that is true. As noted above, we do know that the number of reported judicial opionins concerning noncompetes (which can serve as a proxy for the use and enforcement of noncompetes) has remained roughly stagnant during the last decade. But, because noncompetes certainly appear (anecdotally) to be more widely used than in the past,[31] many have seized on the perception that employers are increasingly using noncompetes for lower level employees, and have correlated that with slow wage growth since the Great Recession, blaming the latter on the former. However, we do not actually know if either of those assertions is true.

As to whether that use has been increasing, there simply are no longitudinal studies (of which I am aware) that have found that the use of noncompetes has risen over the years. We know only that, as Professor Starr explained, "roughly 18 percent of the U.S. workforce [was] bound by a non-compete [in 2014]. Among low-skill workers, . . . without a college degree, it's

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[30] A more detailed discussion of the misplaced assumptions about the impact of noncompetes and a discussion of the limited research available to date is set forth in "*Misconceptions In The Debate About Noncompetes*," Law360, July 8, 2019 (reprinted on *Fair Competition Law* as "*Correlation Does Not Imply Causation: The False Comparison of Silicon Valley and Boston's Route 128*," available without subscription here: https://www.faircompetitionlaw.com/2019/07/09/correlation-does-not-imply-causation-the-false-comparison-of-silicon-valley-and-bostons-route-128/).

[31] https://www.treasury.gov/resource-center/economic-policy/Documents/UST Non-competes Report.pdf.

about 15 percent."[32] But, we also know that the use of noncompetes dates back at least to medieval times,[33] when master craftsmen tried to restrain their apprentices from using the skills the masters taught them. And, a century ago, noncompetes were already being used for low-wage workers.

As to the effects on wages, we do not know whether there is something about the way noncompetes have been used recently that has stifled wage growth. However, slow wage growth has apparently been a persistent problem for at least the last 50 years – not just since the Great Recession or concomitant supposed increase in use and abuse of noncompetes.[34] And, reports this year indicate that wages have in fact picked up more recently.[35]

In sum, we do not know for sure how noncompete use has changed over years, and we cannot pronounce noncompetes to be the cause of slow wage growth.

Other misconceptions include what a noncompete is. Oftentimes people believe that they are bound by noncompetes, when in fact they are not, but instead have agreed only to nondisclosure or nonsolicitation covenants. (This confusion is a potential foundational problem in some of the data used to assess the effects of noncompetes.)

A related misconception that arises occasionally is that union workers are required to sign noncompetes. Outside of the context of professional athletes and certain media professionals, they are rarely a part of a union contract. Rather, union members are sometimes bound by restrictions on their competitive activities *during* their employment – again demonstrating some of the confusion concerning what restriction has been agreed to.

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[32] https://www.npr.org/2016/11/07/501053238/study-finds-many-companies-require-non-compete-clauses-for-low-wage-workers.

[33] https://www.npr.org/2016/11/07/501053238/study-finds-many-companies-require-non-compete-clauses-for-low-wage-workers.

[34] *America's slow-motion wage crisis*, by John Schmitt, Elise Gould, and Josh Bivens (Sept. 13, 2018) (https://www.epi.org/publication/americas-slow-motion-wage-crisis-four-decades-of-slow-and-unequal-growth-2/.

[35] *See Why Wages Are Finally Rising, 10 Years After the Recession*, by Ben Casselman, *The New York Times* (May 2, 2019) https://www.nytimes.com/2019/05/02/business/economy/wage-growth-economy.html; *U.S. labor costs rise in third quarter*, Reuters (October 31, 2019) https://www.reuters.com/article/us-usa-economy-costs/u-s-labor-costs-rise-in-third-quarter-idUSKBN1XA1PC.

The Abuses Define The Problem

Noncompete agreements are not inherently the problem. As explained above, contrary to much of the colloquial commentary, noncompete agreements cannot (lawfully) be used to prevent an employee from using his or her general skills and knowledge, or prevent any other *fair* competition. However, it is the abuses that capture the headlines and drive an overreaction that would potentially undo nearly 200 years of developed law in the country.

Those abuses are primarily the use of noncompetes for low-wage and healthcare workers, the lack of advance notice given to employees that they will be required to sign a noncompete, and the use (and overly aggressive enforcement) of overly restrictive agreements. Each can be reined in. (See Recommendations For A Fair Approach, below.)

The Abuses – Not The Legitimate Uses – Should Be Curbed

Noncompetes are an important tool in the protection of trade secrets. They offer the protection that trade secrets law and nondisclosure agreements do not. Specifically, they protect against the greatest potential threat to trade secrets: when employees move to a competitor.

When employees change jobs, up to 72 percent of them take – and are willing to use – their employer's trade secrets.[36] Similarly, as reported on CBS Money Watch, "The U.S. Chamber of Commerce estimates that 75% of employees steal from the workplace and that most do so repeatedly."[37]

The economic consequences of this are enormous. The Center for Responsible Enterprise and Trade (CREATe.org) and PricewaterhouseCoopers estimate that the cost of trade secret misappropriation is between one and three percent of U.S. GDP, possibly costing U.S. companies as much as $480 billion per year. Indeed, the threat to the economy and the innovation reflected in our trade secrets is so great that it led to the passage of the Defend Trade Secrets Act of 2016[38] (establishing a federal private right of action for trade secret misappropriation).

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[36] https://datasecurity.dell.com/wp-content/uploads/2017/09/Dell-End-User-Security-Survey-2017.pdf.

[37] http://www.cbsnews.com/news/employee-theft-are-you-blind-to-it/.

[38] https://www.congress.gov/bill/114th-congress/senate-bill/1890/text.

Noncompetes are an important tool to meaningfully protect against such losses. Indeed, one study suggests that 85 percent of trade secret thefts are committed by either an employee or a party to a contract.[39]

Accordingly, with so much focus on the risks posed to companies' trade secrets by the movement of employees, there is a bit of cognitive dissonance in the rush to ban noncompetes, which are oftentimes the best tool to prevent that very risk.

Unintended Consequences

Before considering the remedies, it is also important to understand the other, less-obvious, potential unintended consequences of significant changes in the law (beyond those necessary to curb the abuses), including, for example, significantly increasing the likelihood that trade secrets will be unlawfully taken to a competitor and increasing the volume of more-costly trade secrets litigation.[40]

Further, a ban may be ill-advised in light of a recent study that concluded, "[E]mployees [subject to noncompetes] . . . tended to be more productive, take fewer risks and align their behaviors with the goals of their employers" (at least in the mutual fund industry).[41]

A ban would also harm other theorized positive aspects of noncompetes, including, that employees "presented with a noncompete before accepting the associated job offer earn 9.7% higher wages, receive 11% more training, and are 6.6% more satisfied in their job than those not bound by noncompetes."[42]

Accordingly, the response to the abuses should be proportional, and understand that reliance on early stage empirical evidence and faulty assumptions to change noncompete laws to

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[39] *A Statistical Analysis of Trade Secret Litigation in Federal Courts*," by David Almeling, Darin Snyder, Michael Sapoznikow, Whitney McCollum, and Jill Weader (2010), available at https://www.tradesecretsandemployeemobility.com/files/2014/05/Statistical-Analysis-of-Trade-Secret-Litigation-in.pdf

[40] *California Trade Secrets Litigation Supplants Noncompete Litigation*, https://www.faircompetitionlaw.com/2017/06/25/california-trade-secrets-litigation-supplants-noncompete-litigation/.

[41] https://news.ku.edu/2019/03/25/study-finds-non-compete-clauses-affect-how-employees-behave-benefit-employers.

[42] *Noncompetes in the U.S. Labor Force*, by Evan Starr, J.J. Prescott, and Norman Bishara (August 30, 2019), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2625714.

match California, Oklahoma, and North Dakota is, in the end, not only unnecessary, it may be counterproductive.

Indeed, small companies are likely to suffer the most, as they often only have one trade secret that forms the basis of their value, but cannot afford costly trade secrets litigation when their people leave to go to competitors or are lured away by larger companies that can easily take the trade secrets. We heard many small companies raise that and similar concerns during the Massachusetts hearings and research. In particular, one concern that is often overlooked is that some small business owners have invested their entire life savings in the company, and if they cannot prevent a former employee from working in a competitive role that threatens the existence of the company, their savings, their livelihood, and the remaining employees' jobs, will all be lost.

Further, employers (who can afford it) will always find other means (potentially more detrimental) to try to protect themselves. For example, in addition to being able to obtain narrow post-employment restraints from the federal courts in California (at least until 2008, when the California Supreme Court held that that practice violated California's ban), some employers had entered into tacit agreements to not poach employees from each other. (This practice is on the decline, following United States Department of Justice antitrust enforcement actions and the 2016 Antitrust Guidance For Human Resource Professionals[43] issued jointly by the Department of Justice and Federal Trade Commission.)

4. RECOMMENDATIONS FOR A FAIR APPROACH

Based on the November 14 hearing, it appears that the Committee is seeking input into what an effective consensus law might look like. As a starting point, I note that the Committee's investigation is an undertaking a very thoughtful approach, much like those that have been occurring around the country for the past decade or so, the result of which has been to reject the Field Code-type, full noncompete ban.

Given all of the above, if the Committee determines that noncompete contracts are an appropriate subject of federal regulation, I recommend the following two broad categories of changes:

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[43] https://www.justice.gov/atr/file/903511/download.

A. Fairness and Transparency

There are several changes that would balance the playing field and ensure fairness. They are as follows:

- A **ban** on noncompetes for **low-wage workers** (defined as employees who are not exempt under the Fair Labor Standards Act). There is rarely a need for such workers to be bound by noncompetes, and even when the need exists, the potential detriment to such workers will typically outweigh that risk (unless they have stolen trade secrets).

- A **ban** on noncompetes for **medical professionals**, given the overriding interests of patients to have the right to choose their healthcare providers.

- Require **advance notice** that a noncompete will be required.[44] As Professor Marx has observed, "If it were the case that workers made fully informed decisions about signing a non-compete and could negotiate higher compensation in exchange for doing so, *these agreements could be valuable for both workers and firms*."[45] For example, noncompetes should always be included with any formal offer of employment.

B. Limited Use To Only When Necessary

Recognizing that noncompetes are an important tool in the protection of trade secrets (and other business interests recognized by many states), the following changes would allow the agreements to used only where needed and only in a non-overreaching way.

- Mandate the so-called "**purple pencil**" to address overly broad noncompetes. States take one of three general approaches to overly broad noncompetes: *reformation* (sometimes called "*judicial modification*," in which the court essentially rewrites the language to conform the agreement to a permissible scope); *blue pencil* (in which

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[44] This concern was raised at the hearing through the discussion that noncompetes are usually not freely negotiated and employees often first learn of them when they show up for work.

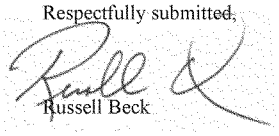
[45] *The Chilling Effect of Non-Compete Agreements*, by Matt Marx and Ryan Nunn (May 20, 2018) https://econofact.org/the-chilling-effect-of-non-compete-agreements (emphasis added).

the court simply crosses out the offending language, leaving the remaining language enforceable or not); and *red pencil* (also referred to as the "all or nothing" approach, as its name implies, requires a court to void any restriction that is overly broad, leaving nothing to enforce). Although in its new law, Massachusetts retained the reformation approach (which it the majority of states have historically used), an equitable, middle-ground approach (which one senator named the "purple pencil") is a hybrid of the reformation and red pencil approach, requiring courts to strike the noncompete in its entirety unless the language reflects a clear intent to draft a narrow restriction, in which case the court may reform it.

- Provide for "**springing**" (or "**time-out**") noncompetes. To encourage employers to limit their use of noncompetes, they must have a clear and viable remedy when employees violate other, less-restrictive obligations such as nondisclosure agreements and nonsolicitation agreements, misappropriate trade secrets, or breach their fiduciary duties to the company. In Massachusetts, the new noncompete law expressly allows a court to, in effect, create a noncompete for someone engaged in this unlawful conduct. We colloquially refer to these as "springing noncompetes" (or sometimes "time out" noncompetes) because they are not required of the employee in the first instance, but are only activated if the employee engages in otherwise unlawful behavior.

Again, thank you for the opportunity to provide this testimony and for taking on such an important and fraught issue. I am prepared to appear and testify live before the Committee, should the Committee so desire. I also offer any other assistance that the Committee may find helpful, include drafting language for an amended bill, should the Committee be so inclined.

Respectfully submitted,



Russell Beck

Attachments

Attachment A

Employee Noncompetes
A State by State Survey

State	Permitted	Protectable / Legitimate Interests	Standards	Exemptions	Continued Employment is Sufficient Consideration	Reformation Blue Pencil Red Pencil	Enforceable Against Employees Terminated w/o Cause
Alabama	Yes. Ala. Code §§ 8-1-190-197 (*§ 8-1-1 repealed effective 1/1/2016*)	Trade secrets; confidential information; commercial relationships or contacts with specific prospective or existing customers, patients, vendors, or clients; customer, patient, vendor, or client goodwill; specialized and unique training involving substantial business expenditure specifically directed to a particular agent, servant, or employee (if identified in writing as consideration for the restriction).	Must be in writing, signed by all parties, and be supported by adequate consideration. Must preserve a protectable interest. A two-year restriction is presumptively reasonable. Employee has burden of proving undue hardship, if raised as a defense.	Professionals	Yes (pre-amendment)	Reformation	Yes, likely (pre-amendment)
Alaska	Yes	Trade secrets; intellectual property; customer lists; goodwill with customers; knowledge of his or her business practices; methods; profit margins; costs; other confidential information (that is confidential, proprietary, and increases in value from not being known by a competitor; training and education of the employer's employees; other valuable employer data that the empoyer has provided to an employee that an employer would reasonably seek to protect or safeguard from a competitor in the interest of fairness.	Factors: limitations in time and space; whether employee was sole contact with customer; employee's possession of trade secrets or confidential information; whether restriction eliminates unfair or ordinary competition; whether the covenant stifles employee's inherent skill and experience; proportionality of benefit to employer and detriment to employee; whether employee's sole means of support is barred; whether employee's talent was developed during employment; whether forbidden employment is incidental to the main employment.	-	Undecided	Reformation	Undecided
Arizona	Yes	Trade Secrets; Confidential Information; Customer Relationships	No broader than necessary to protect the employer's legitimate business interest; not unreasonably restrictive; not contrary to public policy; ancillary to another contract.	Broadcasters; maybe physicians	Yes	Blue Pencil	Undecided

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Arkansas	Yes. Ark. Code 4-70-207 (*effictive 8/6/2015*)	Trade secrets; intellectual property; customer lists; goodwill with customers; knowledge of business practices; methods; profit margins; costs; other confidential information (that is confidential, proprietary, and increases in value from not being known by a competitor); training and education; other valuable employer data (if provided to employee and an employer would reasonably seek to protect or safeguard from a competitor in the interest of fairness).	Limited with respect to time and scope in a manner that is not greater than necessary to defend the protectable business interest of the employer. The lack of a geographic limit does not render the agreement unenforceable, provided that the time and scope limits appropriately limit the restriction. Factors to consider include the nature of the employer's business interest; the geographic scope, including whether a geographic limit is feasible; whether the restriction is limited to specific group of customers or others; and the nature of the employer's business. A two-year restriction is presumptively reasonable unless clearly demonstrated otherwise.	Various professionals (medical, veterinary, social workers, others)	Yes	Reformation (mandatory)	Undecided
California	No, except maybe as to trade secrets. Cal. Business & Professions Code § 16600	Trade secrets	Uncertain status as to trade secrets.	-	-	-	-
Colorado	Yes. Colo. Rev. Stat. § 8-2-113	Trade secrets; recovery of training expenses for short-term employees.	Must fall within statutory exception (executive or management employees and professional staff or to protect trade secrets or recover cost of training); be reasonable; and be narrowly-tailored.	Physicians (damages not barred)	Yes	Reformation	Undecided

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Connecticut	Yes	Trade secrets; confidential information; customer relationships.	Factors: time; geographic reach; fairness of protection afforded to employer; extent of restraint on employee; extent of interference with public interest.	Broadcasters; security guards; limited as to physicians	Yes, likely	Blue Pencil	Yes
Delware	Yes	Trade secrets; confidential information; customer relationships.	Reasonable in time and geographic reach; protects legitimate economic interests; survives balance of equities.	Physicians	Yes	Reformation	Yes
DC	Yes	Trade secrets; confidential knowledge; expert training; fruits of employment	Reasonable in time and geographic area; necessary to protect legitimate business interests; promisee's need outweighs promisor's hardship. [Follows Restatement (Second) of Contracts, secs. 186-88.]	Broadcasters	Yes (if employment continued for sufficient duration)	Reformation or Blue Pencil	Undecided
Florida	Yes. Fla. Stat. Ann. §§ 542.335-336	Trade secrets; confidential business information; substantial customer relationships and goodwill; extraordinary or specialized training	Legitimate business interest; reasonably necessary to protect legitimate business interest. [Rebuttal presumptions exist.]	Mediators; physician specialists (where they are exclusive in a county)	Yes	Reformation (mandatory)	Undecided

Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Georgia	Yes. Ga. Const., Art. III, Sec. VI, Par. V(c), as amended; OCGA § 13-8-53. [*NOTE*: Pre-amendment law was more restrictive and applies to pre-amendment agreements]	Proprietary confidential information and relationships; goodwill; economic advantage; time and monetary investment in employee's skill and training.	Not overbroad in time, space, and scope; interest of individuals in gaining and pursuing a livelihood; commercial concerns in protecting legitimate business interests; public policy.	-	Yes	Blue Pencil (according to the Northern District)	Yes, but it's a factor to be considered.
Hawaii	Yes. Haw. Rev. Stat. § 480-4	Trade secrets; confidential information.	Reasonable in time, space, scope.	Employees in a technology business [effective as of 1/1/2015]	Yes, likely	Reformation	Undecided

BRR Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Idaho	Yes as to "key employees" (defined in statute). Idaho Code §§ 44-2701-2704	Trade secrets; technologies; intellectual property; business plans; business processes and methods of operation; goodwill; customers; customer lists; customer contacts and referral sources; vendors and vendor contacts; financial and marketing information; potentially others.	Reasonable as to duration, geographical area, type of employment or line of business, and does not impose a greater restraint than is reasonably necessary to protect the employer's legitimate business interests; reasonable as to covenantor, covenantee, and public. Rebuttable presumptions of reasonableness: 18 months; geographic area restricted to areas employee provided services or had significant presence or influence; limited to line of business in which employee worked. Presumption that employee is "key employee" if in highest paid 5% employees in company.	Non-"key employees." ("Key employees" are those who have gained a high level of inside knowledge, influence, credibility, notoriety, fame, reputation or public persona as a representative or spokesperson of the employer, and as a result, have the ability to harm or threaten an employer's legitimate business interests.)	Yes (but if no additional consideration, noncompete is limited to 18 months)	Reformation	Yes
Illinois	Yes	Legitimate business interests are based on the totality of the facts and circumstances of the case. Trade secrets, confidential information, and near permenant business relationships are factors.	Ancillary to a valid employment relationship; no greater than required to protect a legitimate business interest; does not impose undue hardship on the employee; not injurious to the public; and reasonable in time, space, and scope. [May require two years of employment before any noncompete can be enforced.]	Broadcasters; government contractors; physicians; low-income workers.	Yes (if employment continued for sufficient duration)	Reformation	Yes

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Indiana	Yes	Trade secrets; confidential information; goodwill; special training or techniques.	Clear and specific (not general) restraint must be reasonable in light of the legitimate interests to be protected; reasonableness is measured by totality of interrelationship of the interest, and the time, space, and scope of the restriction, judged by the needs for the restriction, the effect on the employee, and the public interest.	-	Yes	Blue Pencil	Yes
Iowa	Yes	Trade secrets; goodwill; specialized training.	Whether the restriction is reasonably necessary to protect the employer's business, unreasonably restrictive (time and space), and prejudicial to the public interest.	Franchisees (where franchisor does not renew)	Yes	Reformation	Yes, but it's a factor to be considered.
Kansas	Yes	Trade secrets; confidential business information; loss of clients; goodwill; preserving contact with clients; customer contracts; referral sources; reputation; special training.	Protects a legitimate business interest; not undue burden on employee; not injurious to public welfare; reasonable in time and space.	Accountants (limited)	Yes	Reformation	Yes
Kentucky	Yes	Confidential business information; customer lists; competition; employee training investment in training.	Reasonable in scope and purpose; reasonableness determined by the time, space, and "charter" of the restriction; no undue hardship; does not interfere with public interest	-	No, although threatened loss of job might be a factor.	Reformation	Undecided (but it can be a factor)
Louisiana	Yes. La. Rev. Stat. Ann. § 23:921	Trade secrets; financial information; management techniques; extensive training (if such training is unrecouped through employee's work).	No more than two years; specifies the specific geographic reach (by parishes, municipalities, or their respective parts); defines employer's business; strict compliance with statute.	Automobile salesmen; real estate broker's licensees (procedural requirements)	Yes	Blue Pencil, if allowed by the noncompete	Yes, likely

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Maine	Yes	Trade secrets; confidential information; goodwill.	No broader than necessary to protect the employer's legitimate business interest; reasonable as to time, space, and interests to be protected; no undue hardship to employee. In addition, *for agreements signed on or after September 18, 2019*: employee must receive notice of noncompete by time of offer and a copy of the agreement 3 business days in advance of the deadline to sign; and the employee (except certain physicians) must be employed at least a year or remain employed for at least six months after signed, whichever is longer.	Broadcast industry (presumption); low-wage workers (earning less than or equal to 400% of the federal individual poverty level - $49,960 as of 2019).	Yes	Reformation	Yes, likely
Maryland	Yes	Trade secrets; routes; client lists; established customer relationships; goodwill; unique services.	Duration and space no wider than reasonably necessary to protect legitimate interests; no undue hardship to employee; not contrary to public policy; ancillary to the employment.	*Effective 10/1/2020:* Low-wage employees, *i.e.*, employees earning less than $15 per hour or $31,200 annually.	Yes	Blue Pencil	No, likely

Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Massachusetts	Yes. Mass. Gen. Laws c. 149, § 24L (applies only to agreements signed on or after October 1, 2018)	Trade secrets; confidential information; goodwill.	Narrowly tailored to protect legitimate business interest; limited in time, space, and scope; consonant with public policy. Additional requirements added by 2018 statute: must be signed by both parties; provided to employee 10 days in advance (or prior to a formal offer, if earlier); state that the employee has the right to consult counsel; and satisfy consideration requirements. Presumptions of necessity of the agreement and reasonableness as to place and scope apply.	Broadcasters; physicians; nurses; social workers; psychologists. Additional exemptions added by 2018 statute: FLSA nonexempt employees; student interns/short-term student employees; employees who have been terminated without cause or laid off; and employees that re 18 years old or younger.	No (per new statute; yes before)	Reformation	No (per new statute; yes before)
Michigan	Yes. Mich. Comp. Laws § 445.774a	Trade secrets; confidential business information; goodwill.	Must have an honest and just purpose and to protect legitimate business interests; reasonable in time (no more than one year), space, and scope or line of business; not injurious to the public.	-	Yes	Reformation	Yes

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Minnesota	Yes	Trade secrets; confidential business information; goodwill; prevention of unfair competition.	No broader than necessary to protect the employer's legitimate business interest; does not impose unnecessary hardship on employee.	-	No	Reformation	Yes
Mississippi	Yes	Trade secrets; confidential business information; goodwill; ability to succeed in a competitive market.	Reasonableness and specificity of restriction, primarily, in time and space; hardship to employer and employee; public interest.	-	Yes (though questioned if employee terminated shortly after)	Reformation	Yes
Missouri	Yes. 28 Mo. Stat. Ann. § 431.202 (related)	Trade secrets; confidential business information; customer or supplier relationships, goodwill, or loyalty; customer lists; protection from unfair competition; stability in the workforce.	Reasonably necessary to protect legitimate interests; reasonable in time and space; not an unreasonable restraint on employee; purpose served; situation of the parties; limits of the restraint; specialization of the business. [Absence of legitimate business interest impacts duration, which can be no more than one year.]	Secretaries (limited); clerks (limited)	No	Reformation	Yes
Montana	Yes. Mont. Code Ann. §§ 28-703-05	Trade secrets; proprietary information that would provide an employee with an unfair advantage; goodwill; customer relationships.	Partial or restricted in its operation by being limited in operation either as to time or place; supported by "some good consideration"; protects a legitimate business interest; reasonable, affording only a fair protection to the interests of the party in whose favor it is made, and not so large in its operation as to interfere with (or impose an unreasonable burden upon) the employer, the employee, or the interests of the public.	-	No	Blue Pencil, likely	No

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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State	Permitted	Protectable / Legitimate Interests	Standards	Exemptions	Continued Employment is Sufficient Consideration	Reformation Blue Pencil Red Pencil	Enforceable Against Employees Terminated w/o Cause
Nebraska	Yes	Trade secrets; confidential information; goodwill.	Reasonably necessary to protect legitimate interests; not unduly harsh or oppressive to employee; not injurious to the public. Considerations include: inequality in bargaining power; risk of loss of customers; extent of participation in securing and retaining customers; good faith of employer; employee's job, training, health, education, and family needs; current employment conditions; need for employee to change his calling or residence; relation of restriction to legitimate interest being protected.	-	Yes, likely	Red Pencil	Undecided
Nevada	Yes. Nev. Rev. Stat. § 613.195-200 [effective June 3, 2017]	Trade secrets; goodwill.	Void unless: (a) supported by valuable consideration; (b) not greater than required to protect employer; (c) no undue hardship on employee; and (d) appropriate in relation to the consideration. Cannot restrict employee from providing service to customer/client if (a) customer/client was not solicited; (b) customer/client voluntarily chose to leave or seek services from employee; and (c) employee otherwise complies with time, geographical area, and scope of noncompete.	-	Yes (pre-amendment)	Reformation (mandatory)	Undecided, except in connection with RIF, "reoganization or similar restruction," in which case employee must be paid "salary, benefits or equivalent compensation, " including severance.

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Employee Noncompetes
A State by State Survey

State	Permitted	Protectable / Legitimate Interests	Standards	Exemptions	Continued Employment is Sufficient Consideration	Reformation Blue Pencil Red Pencil	Enforceable Against Employees Terminated w/o Cause
New Hampshire	Yes. RSA 275:70	Trade secrets; confidential business information; goodwill; employee's special influence over the employer's customers.	Not greater than necessary to protect the employer's legitimate business interests; no undue or disproportionate hardship to employee; not injurious to public interest; new employees must be given a copy of the noncompete prior to acceptance of offer for employment. *After September 8, 2019*,	Physicians (RSA 329:31-a *(effective 8/5/2016)*); low-wage employees, *i.e.*, those earning less than or equal to 2x minimum the applicable wage - federal or state for tipped workers	Yes	Reformation	Undecided
New Jersey	Yes	Trade secrets; confidential business information; goodwill in existing customers; preventing employee from working with customer at lower cost than working through employer.	Protects a legitimate business interest; not undue burden on employee; not injurious to the public; not overbroad in time, space, and scope.	In-house counsel; psychologists	Yes	Reformation	Yes, but it's a factor to be considered.

DRAFT Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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New Mexico	Yes. N.M.S.A. 1978, §§ 24-1I-1-5 (creates health care practitioner exemption only)	Maintaining workforce; limitation of competition (but not to stifle competition); customer relationships.	Reasonable as applied to the employer, employee, and public; not great hardship to employee in exchange for small benefits to employer.	Healthcare practitioners (dentists, osteopathic physicians, physicians, podiatrists, certified registered nurse anethetists) to the extent they are providing clinical health care services. [Exemption has limits (including that it does not apply to a covered medical professional if they are a shareholder, owner, partner, or director of a health care practice) and is effective only to agreements from 7/1/2015 and after.]	Yes, likely	Undecided	Undecided

BRR Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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New York	Yes	Trade secrets; confidential information; goodwill; on-air persona of broadcasters; employee's unique or extraordinary services.	Reasonable in time and space, and no greater than is required for the protection of the legitimate interest of the employer; does not impose undue hardship on the employee; not injurious to the public.	-	Yes	Reformation	Cases are split
North Carolina	Yes. N.C. Gen. Stat. § 75-4	Trade secrets; confidential business information; goodwill.	In writing; part of an employment contract; reasonably necessary to protect legitimate business interest; reasonable in time and space; not against public policy.	Physicians, possibly (in underserved areas)	No	Blue Pencil	Yes, likely.
North Dakota	No. N.D. Cent. Code § 9-08-06	-	-	-	-	-	-

BRR Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Ohio	Yes	Trade secrets; confidential information; customer relationships; prevention of the use of proprietary customer information to solicit customers.	Not greater than necessary to protect the employer's legitimate business interests; no undue hardship to employee; not injurious to public interest. Considerations: absence or presence of limitations as to time and space; whether employee is sole contact with customer; employee's possession of trade secrets or confidential information; purpose of restriction (elimination of unfair competition vs. ordinary competition and whether seeks to stifle employee's inherent skill and experience); proportionality of benefit to employer as compared to the detriment to the employee; other means of support for employee; when employee's talent was developed; whether forbidden employment is merely incidental to the main employment.	-	Yes	Reformation	Yes
Oklahoma	No. OK Stat. § 15-219A	-	-	-	-	-	-

Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Oregon	Yes. Or. Rev. Stat. § 653.295	Trade secrets; confidential business or professional information; investment in certain on-air broadcasters; customer contacts and goodwill.	Noncompete provided at least two weeks before employment or with bona fide advancement; employee is in an executive, admininstrative, or professional role and meets minimum compensation threshold; restricted in time or space; application of restriction should afford only a fair protection of the employer's interests; must not interfere with public interest. *As of January 1, 2016*, noncompetes are limited to 18 months. [Qualifying garden leave clauses are enforceable.] *Effective January 1, 2020*, a signed, written copy of the employee's noncompete must be sent within 30 days following termination of employment.	Home healthcare workers	No	Reformation	Undecided
Pennsylvania	Yes	Trade secrets; confidential information; goodwill; investment in specialized training; unique or extraordinary skills.	Ancillary to employment relation or other transaction; reasonably necessary to protect the employer's legitimate interests; reasonable in time and space.	-	No	Reformation	Yes, but it's a factor to be considered.

Draft Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Rhode Island	Yes	Trade secrets; confidential information; customer lists; goodwill; special training or skills.	Reasonable in light of protectable interests.	Physicians. *Effective 1/15/2020 (with retroactive effect)*: employees who are 18 years old or younger; student interns/short-term student employees; FLSA nonexempt employees and other low-wage employees, *i.e.*, employees earning no more than two 2.5x the federal poverty level (currently $31,225, plus another $11,050 for each additional person in the household – based on the employee's "regular," *i.e.*, non-overtime, non-weekend, non-holiday hours).	Undecided, but likely	Reformation	Undecided

B|R|R
Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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South Carolina	Yes	Business and customer contacts; existing employees; existing payroll deduction accounts.	Necessary to protect legitimate business interest; reasonably limited in time and space; not unduly harsh and oppressive to employee's efforts to earn a living; reasonable from standpoint of public policy.	-	No	Blue pencil, likely. (SC S.Ct rejected blue pencil doctrine by name, but case involved reformation; SC Ct. App. has since permitted step-down provisions.)	Undecided
South Dakota	Yes. S.D. Codified Laws §§ 53-9-8, *et seq*.	Trade secrets; protection from unfair competition; existing customers.	Restriction is in the same business or profession as that carried on by employer and does not exceed two years and in a specified geographic area; reasonableness in time, space, and scope is a factor only in certain circumstances.	-	Yes	Reformation, likely.	Yes, but it's a factor to be considered.
Tennessee	Yes	Trade secrets; confidential information; retention of existing customers; investment in training or enhancing the employee's skill and experience.	Restriction must be reasonable in time and space and necessary to protect legitimate interest; public interest not adversely affected; no undue hardship to the employee.	Physicians (in certain circumstances).	Yes (if employment continued for appreciably long period)	Reformation	Yes, but it's a factor to be considered.

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Texas	Yes. Tex. Bus. & Com. Code §§ 15.50-.52	Trade secrets; confidential or proprietary information; goodwill; special training or knowledge acquired during employment.	Ancillary to an otherwise enforceable agreement; reasonable in time, space, and scope; does not impose a greater restraint than necessary to protect legitimate business interest. **In December 2011, the Texas Supreme Court withdrew its June 2011 landmark decision, but still eliminated the requirement that the consideration given by the employer in exchange for the noncompete must give rise to the interest protected by the noncompete, and held that the consideration for the noncompete agreement must be reasonably related to the company's interest sought to be protected.*	Physicians (in certain circumstances)	No	Reformation (mandatory)	Yes
Utah	Yes. Utah Code Ann. §§ 34-51-101-301 [Certain changes apply to agreements starting May 10, 2016 and others May 14, 2019]	Trade secrets; goodwill; extraordinary investment in training or education.	No bad faith in the negotiations; necessary to protect legitimate business interest; reasonable in time, space, and scope; consideration of hardship. One year limit for agreements entered on or after May 10, 2016.	Broadcasters (under certain circumstances)	Yes	Undecided	Yes
Vermont	Yes	Proprietary confidential information; goodwill; relationships with customers; investments in special training.	Necessary to protect legitimate business interest; not unnecessarily restrictive to employee; limited in time, space, and/or industry; not contrary to public policy.	Beauticians and cosmetologists (by their school)	Yes	No, but possibly if contract provides	Undecided

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Virgina	Yes	Trade secrets; confidential information; knowledge of methods of operation; protection from detrimental competition; customer contacts.	Narrowly drawn (no greater than necessary) to protect the employer's legitimate business interest; reasonable in time, space, and scope; not unduly harsh or oppressive (or burdensome on the employee) in curtailing the employee's ability to earn a livelihood; not against, and reasonable in light of, sound public policy.	-	Yes	Red Pencil, but severable portions can be enforced if remaining restrictions are otherwise enforceable	Yes

BRR
Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Washington	Yes	Customer information and contacts; goodwill.	Restriction is necessary to protect employer's business or goodwill; restriction is no greater than reasonably necessary to secure employer's business or goodwill; reasonable in time and space; injury to public does not outweigh benefit to employer. *Effective* 1/1/2020: notice must be provided before acceptance of offer or before agreement becomes effective (whichever applies); independent consideration for mid-employment agreements; and presumption (rebuttable by clear and convincing evidence to the contrary) that a noncompetes with a duration longer than 18 months are unreasonable and unenforceable; must not avoid Washington law; must not require adjudication outside of Washington; attorney's fees to employee if noncompete violates the statute.	Broadcasters (under certain circumstances). *Effective 1/1/202*: Employees earning less than or equal to $100,000 for employees and independent contractors earning less than or equal to $250,000 (both adjusted for inflation); employees who are laid off (unless paid base salary, less new earnings). *Also effective 1/1/2020*: cannot prohibit moonlighting for low-wage workers, *i.e.*, those earning less than 2x minimum hourly rate.	No	Reformation	Yes, likely.

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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West Virginia	Yes	Trade secrets; confidential or unique information; customer lists; direct investment in employee's skills; goodwill.	Ancillary to a lawful contract; not greater than reasonably necessary to protect legitimate business interest; reasonable in time and space; no undue hardship on employee; not injurious to public.	-	No	Reformation	Undecided
Wisconsin	Yes. Wis. Stat. Ann. § 103.465	Trade secrets; confidential business information; customer relationships.	Necessary to protect legitimate business interest; reasonable in time and space; not harsh or oppressive to the employee; not contrary to public policy.	-	Yes, if continued employment is conditioned on signing the agreement	Red pencil, but, courts (and legislature) may be moving toward a more tolerant approach	Undecided
Wyoming	Yes	Trade secrets; confidential information; special influence of employee over customers to the extent gained during employment.	Restraint must be ancillary to otherwise valid agreement and fair; no greater than necessary to protect legitimate business interests; reasonable in time and space; no undue hardship on employee; employer's need outweighs harm to employee and public; not injurious to public.	-	No	Reformation	Yes, likely.

Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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		Customer lists are frequently considered trade secrets or confidential information. Some states, however, separately identify them as protectable interests.	*Consideration for the noncompete is always a requirement. That requirement is not typically an issue when the agreement is entered into at the inception of an employment relationship.*	*Attorneys and certain persons in the financial services industry are subject to industry regulations not addressed in this chart.*	*The continued employment issue addresses only at-will employment relationships.*	*Reformation is also sometimes called "Judicial Modification," the "Rule of Reasonablen ess," the "Reasonable Alteration Approach," or the "Partial-Enforcement" rule. Red*	*Addresses only not-for-cause terminations and assumes no breach or bad faith by the employer.*

Originally drafted in 2010, this chart is updated periodically and is current as of the date indicated.
Please contact Russell Beck (*rbeck@beckreed.com* | 617-500-8670) if you would like to receive updates.

BECK REED RIDEN LLP
Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Attachment B

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Trade Secrets Acts Compared to the UTSA

Fed/State	Uniform Trade Secrets Act	Federal 18 U.S.C. §§ 1831 - 1839 Economic Espionage Act / Defend Trade Secrets Act
UTSA Version Adopted	1985 version	1985
Definition: Preamble and Improper Means	As used in this [Act], 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.	§ 1839. Definitions As used in this chapter, ~~unless the context requires otherwise~~ (6) the term "improper means"-- (A) includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means; and (B) does not include reverse engineering, independent derivation, or any other lawful means of acquisition.
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 1839(5) *Substantively identical to UTSA*
Definition: Person	(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.	1 U.S.C. § 1. Words denoting number, gender and so forth The words "person" and "whoever" ~~means a natural person,~~ include corporations, business trust, estate, trust, joint venture, companies, associations, firms, partnerships, societies, and joint stock companies, ~~government, governmental subdivision or agency, or any other legal or commercial entity~~ as well as individuals.
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 1839(3) [T]he term "trade secret" means all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, *program[*]* devices, formulas, designs, prototypes, methods, techniques, processes, that procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if-- (A) ~~is the subject of efforts that are reasonable under the circumstances to maintain its secrecy,~~ the owner thereof has taken reasonable measures to keep such 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. *This reference to "program" is likely a typo.
Definition: Not in UTSA		§1839(4) [T]he term "owner", with respect to a trade secret, means the person or entity, in whom or in which rightful legal or equitable title to, or license in, the trade secret is reposed. *[Definitions related only to criminal aspects of the statute have been omitted from the chart.]*

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts
Compared to the UTSA

Fed/State	Uniform Trade Secrets Act	Federal 18 U.S.C. §§ 1831 - 1839 Economic Espionage Act / Defend Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 1836(b)(3) *[Annotations reflect significant substantive textual differences.]* In a civil action brought under this subsection with respect to the misappropriation of a trade secret, a court may-- (A) grant an injunction-- (i) to prevent any actual or threatened misappropriation described in paragraph (1) on such terms as the court deems reasonable, provided the order does not-- (I) prevent a person from entering into an employment relationship, and that conditions placed on such employment shall be based on evidence of threatened misappropriation and not merely on the information the person knows; or (II) otherwise conflict with an applicable State law prohibiting restraints on the practice of a lawful profession, trade, or business; (ii) if determined appropriate by the court, requiring affirmative actions to be taken to protect the trade secret; and (iii) in exceptional circumstances that render an injunction inequitable, that conditions future use of the trade secret upon payment of a reasonable royalty for no longer than the period of time for which such use could have been prohibited. ~~Exceptional circumstances include, but are not 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.~~ ~~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.~~
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 1836(b)(3) In a civil action brought under this subsection with respect to the misappropriation of a trade secret, ~~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 court may (B) award-- (i)(I) damages for actual loss caused by the misappropriation of the trade secret; and (II) damages for any unjust enrichment caused by the misappropriation of the trade secret that is not addressed in computing damages for actual loss; or (ii) in lieu of damages measured by any other methods, the damages caused by the misappropriation measured by imposition of liability for a reasonable royalty for the misappropriator's unauthorized disclosure or use of the trade secret; (C) if the trade secret is willfully and maliciously misappropriated, award exemplary damages in an amount not more than 2 times the amount of the damages awarded under subparagraph (B); and **Material change concept picked up by definition of misappropriation as an exclusion to misappropriation*
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 1836(b)(3)(D) If a claim of the misappropriation is made in bad faith, which may be established by circumstantial evidence, a motion to terminate an injunction is made or opposed in bad faith, or the trade secret was willfully and maliciously misappropriated, award reasonable attorney's fees to the prevailing party.
Preservation of Secrecy	In an action under this [Act], 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.	§ 1835 *Annotation is exclusively substantive rather than textual.* (a) In general.--In any prosecution or other proceeding under this chapter, the court shall enter such orders and take such other action as may be ~~reasonable~~ necessary and appropriate to preserve the confidentiality of trade secrets, consistent with the requirements of the Federal Rules of Criminal and Civil Procedure, the Federal Rules of Evidence, and all other applicable laws. (b) Rights of trade secret owners.--The court may not authorize or direct the disclosure of any information the owner asserts to be a trade secret unless the court allows the owner the opportunity to file a submission under seal that describes the interest of the owner in keeping the information confidential. No submission under seal made under this subsection may be used in a prosecution under this chapter for any purpose other than those set forth in this section, or otherwise required by law. *[Text applicable to only criminal proceedings or otherwise inapplicable to private parties has been omitted.]*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 1836(d) *Substantively Identical to UTSA*

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts
Compared to the UTSA

Fed/State	Uniform Trade Secrets Act	Federal 18 U.S.C. §§ 1831 - 1839 Economic Espionage Act / Defend Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 1838. Construction with other laws Except as provided in section 1833(b), this chapter shall not be construed to preempt or displace any other remedies, whether civil or criminal, provided by United States Federal, State, commonwealth, possession, or territory law for the misappropriation of a trade secret, or to affect the otherwise lawful disclosure of information by any Government employee under section 552 of title 5 (commonly known as the Freedom of Information Act).
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	*Not applicable*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	*None*
Additions or Notes (including "Time of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____, and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	§ 1836(e) Effective date.--The amendments made by this section shall apply with respect to any misappropriation of a trade secret . . . for which any act occurs on or after the date of the enactment of this Act. *The most significant difference* between the UTSA and the DTSA is the DTSA's provision for *Ex Parte* Seizures in §1836(b)(2). The procedure is summarized as follows: Civil seizure is available only in "extraordinary circumstances" "necessary to prevent the propagation or dissemination of [a] trade secret . . ." The requirements for initiating a civil seizure (which must "clearly appear[] from specific facts") include the typical (though heightened) TRO/PI elements, plus: (a) an insufficiency of injunctive relief otherwise available; (b) a description "with reasonable particularity [of] the matter to be seized" and its location; (c) a showing that if notice were provided, the evidence would be destroyed, moved, hidden, or otherwise made inaccessible to the court; and (d) the requested seizure has not been publicized. The order must: (a) Set out findings and rulings; (b) Provide the narrowest seizure and order execution to minimize interruption to third parties; (c) Be accompanied by an order protecting the confidentiality of the seized property; (d) Provide "guidance" to law enforcement, including for hours of execution and force; (e) Require security; and (f) Set a hearing date - which must follow as soon as possible - no more than 7 days.

Beck Reed Riden
Beck Reed Riden

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Federal 18 U.S.C. §§ 1831 - 1839 Economic Espionage Act / Defend Trade Secrets Act
Additions II		Additionally, the court must protect person(s) targeted by the order from publicity about the order and seizure, and retain custody of the seized property or appoint a federal officer to seize it. The court may consider an ex parte encryption motion. Wrongfully-obtained or excessive order = relief provided under the Trademark Act §§ 1831 - 1834 (which are criminal provisions) have been omitted from this chart. § 1837 (which discusses the applicability to conduct outside the United States) has been omitted from this chart.
In General and Unless Otherwise Specified	• *Comments denote UTSA 1985 version.* • *White cells indicate that the respective provision is substantively identical to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Where a statutory provision is marked as "Same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced, but still do not present substantive distinctions from the UTSA, the cells are marked "Substantively Identical to UTSA."* • *Yellow cells indicate that the respective provision is substantively modified version of the UTSA, to positive effect of their modifications may ultimately be insignificant. In other cases, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA. Though non-substantive and minor variations may not be annotated.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red.* • *Some states have omitted specific UTSA provisions from their version, as the provision would be redundant of existing state law. Applicable state statute or citation is in most instances provided above.* *Annotations:* •*Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. That text is hidden through a language included within the UTSA that a state has omitted from its statute.* • *Annotations are primarily intended to denote substantive, rather than textual differences. As such, some small differences in phrasing, punctuation, and formatting have not been noted. In some cases, where identified, annotations are entirely substantive and indicate only where a state's provision differs in meaning from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its inter-amendments. These states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Beck Reed Riden LLP
Beck Reed Riden.com

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts
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Fed/State	Uniform Trade Secrets Act	Alabama Ala. Code 1975 §§ 8-27-1 - 8-27-9 Alabama Trade Secrets Act
UTSA Version Adopted	1985 version	UTSA not adopted, though aspects of it are (see § 8-27-2, comment)
Definition: Preamble and Improper Means	As used in this [Act], 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;	§ 8-27-2. Definitions. As used in this chapter, the following terms shall have the following meanings, respectively, unless the context clearly indicates otherwise: (2) Improper Means. "Improper means" are means such as: a. Theft; b. Bribery; c. Misrepresentation; d. Inducement of a breach of confidence; e. Trespass; or f. Other deliberate acts taken for the specific purpose of gaining access to the information of another by means such as electronic, photographic, telescopic or other aids to enhance normal human perception, where the trade secret owner reasonably should be able to expect privacy.
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 8-27-3. Misappropriation. A person who discloses or uses the trade secret of another, without a privilege to do so, is liable to the other for misappropriation of the trade secret if: (1) That person discovered the trade secret by improper means; (2) That person's disclosure or use constitutes a breach of confidence reposed in that person by the other; (3) That person learned the trade secret from a third person, and knew or should have known that (i) the information was a trade secret and (ii) that the trade secret had been appropriated under circumstances which violate the provisions of (1) or (2), above; or (4) That person learned the information and knew or should have known that it was a trade secret and that its disclosure was made to that person by mistake.
Definition: Person	(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.	§ 8-27-2 (3) *Same as UTSA*
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 8-27-2 (1) Trade Secret. A "trade secret" is information that: a. Is used or intended for use in a trade or business; b. Is included or embodied in a formula, pattern, compilation, computer software, drawing, device, method, technique, or process; c. Is not publicly known and is not generally known in the trade or business of the person asserting that it is a trade secret; d. Cannot be readily ascertained or derived from publicly available information; e. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; and f. Has significant economic value.
Definitions Not in UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Alabama Ala. Code 1975 §§ 8-27-1 - 8-27-9 Alabama Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 8-27-4. Remedies for actual or threatened misappropriation, intentional remuneration of a third person for misappropriation. (a) The remedies available for actual or threatened misappropriation of a trade secret are: (1) To the extent that they are not duplicative: a. Such injunctive and other equitable relief as may be appropriate with respect to any actual or threatened misappropriation of a trade secret.
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 8-27-4. Remedies for actual or threatened misappropriation, intentional remuneration of a third person for misappropriation. (a) The remedies available for actual or threatened misappropriation of a trade secret are: (1) To the extent that they are not duplicative: b. Recovery of any profits and other benefits conferred by the misappropriation that are attributable to the misappropriation [in establishing the misappropriator's profits, the complainant is required to present proof only of the misappropriator's gross revenue, and the misappropriator is required to present proof of his or her deductible expenses and the elements of profit attributable to factors other than the trade secret.], and c. The actual damages suffered as a result of the misappropriation; [a](3) Exemplary damages in an amount not to exceed the actual award made under subdivision (1), but not less than ten thousand dollars ($10,000), if willful and malicious misappropriation exists.
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 8-27-4. Remedies for actual or threatened misappropriation, intentional remuneration of a third person for misappropriation. (2) Reasonable attorney's fees to the prevailing party if: a. A claim of actual or threatened misappropriation is made <u>or resisted</u> in bad faith, b. A motion to terminate an injunction is made or resisted in bad faith, or c. Willful and malicious misappropriation exists;
Preservation of Secrecy	In an action under this [Act], 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.	*No directly corresponding provision* § 8-27-4. Remedies for actual or threatened misappropriation, intentional remuneration of a third person for misappropriation. (a) The remedies available for actual or threatened misappropriation of a trade secret are: (1) To the extent that they are not duplicative: a. Such injunctive and other equitable relief as may be appropriate with respect to any actual or threatened misappropriation of a trade secret.
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 8-27-5. Statute of limitation. An action for misappropriation must be brought within ~~three~~ <u>two</u> years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered.

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Alabama Ala. Code 1975 §§ 8-27-1 - 8-27-9 Alabama Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 8-27-6. Effect on other law. Those provisions of this chapter that are inconsistent with the common law of trade secrets supersede the common law; otherwise, this chapter should be construed to be consistent with the common law of trade secrets.
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	*None*
Severability	If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	Ala. Code 1975 § 1-1-16. Severability of provisions of Code and statutes. If any provision of this Code or any amendment hereto, or any other statute, or the application thereof to any person, thing or circumstance, is held invalid by a court of competent jurisdiction, such invalidity shall not affect the provisions or application of this Code or such amendment or statute that can be given effect without the invalid provisions or application, and to this end, the provisions of this Code and such amendments and statutes are declared to be severable.
Additions or Notes (including "Time of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____, and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	§ 8-27-9. Remedies for actual or threatened misappropriation; intentional remuneration of a third person for misappropriation. (b) In addition to the civil damages and penalties provided in subsection (a), a person who intentionally remunerates or recruits a third person for actual or threatened misappropriation of a trade secret and any person who misappropriates a trade secret shall be guilty of a Class C felony. In any criminal prosecution under this subsection against an employer based on misappropriation of a trade secret by its employee, the term intentionally shall mean that the employer remunerated an employee with the intent that the employee would misappropriate the trade secrets of another. The trade secret that was misappropriated shall be clearly identified. Mere acceptance or receipt by an employer of a trade secret of another, by itself, shall be insufficient to prove criminal liability. Each act committed under this subsection shall constitute a separate offense.

B R L P
Beck Reed Riden

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts Compared to the UTSA

Fed/State	Uniform Trade Secrets Act	Alabama Ala. Code 1975 §§ 8-27-1 - 8-27-9 Alabama Trade Secrets Act
Additions If		
In General and Unless Otherwise Specified	• *Green cells denote UTSA 1985 version* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Where a statutory provision is entitled as "Same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced, but still do not prevent substantive distinctions from the UTSA, the cells are marked "Substantively Identical to UTSA."* • *Yellow cells indicate that the respective provision is a substantively modified version of the UTSA. In practice some of these modifications may ultimately be insignificant. In other cases, the substantive differences require attention. Language in the yellow cells is provided to indicate how it varies from the 1985 UTSA, though non-substantive and minor variations may not be noted.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no State law provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red.* • *Some states have omitted specific UTSA provisions from their version, as the provision would be redundant of existing state law. Applicable state statutes or citation is in most instances provided above.* Annotations: •*Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is stricken through is language included within the UTSA that a state has omitted from its statute.* • *Annotations are primarily intended to denote substantive, rather than textual, differences. As such, some small differences in phrasing, punctuation, and formatting have not been noted. In some cases, where identified, annotations are entirely substantive and indicate only where a state's provision differs in meaning from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. These states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts
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Fed/State	Uniform Trade Secrets Act	Alaska Alaska Stat. §§ 45.50.910 - 45.50.945 Alaska Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	1979
Definition: Preamble and Improper Means	As used in this [Act], 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.	§ 45.50.940(1) *Same as UTSA*
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 45.50.940(2) *Same as UTSA*
Definition: Person	(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.	Alaska Stat. § 45.01.211(30) "person" means ~~a natural person~~ an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or another legal or commercial entity.
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 45.50.940(3) *Same as UTSA*
Definitions Not in UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Alaska Alaska Stat. §§ 45.50.910 – 45.50.945 Alaska Uniform Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 45.50.910. Injunctive relief for misappropriation of trade secrets (a) A court may enjoin actual or threatened misappropriation of trade secrets. 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. (b) ~~In exceptional circumstances,~~ If the court determines that it would be unreasonable to prohibit future use of a trade secret, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time the use could have been prohibited ~~Exceptional circumstances include, but are not 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.~~ (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 45.50.915. Damages (a) ~~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,~~ In addition to or in lieu of injunctive relief, a complainant ~~is entitled to~~ may recover damages for ~~misappropriation. Damages can include both~~ the actual loss caused by misappropriation, and A complainant also may recover for the unjust enrichment caused by misappropriation that is not taken into account in computing damages for 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 exists, the court may award exemplary damages in an amount not exceeding twice the damages awarded under (a) of this section.
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	None
Preservation of Secrecy	In an action under this [Act], 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.	§ 45.50.920. Preservation of Secrecy *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 45.50.925. Limitation of actions *Same as UTSA*

Beck Reed Riden

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Alaska Alaska Stat. §§ 45.50.910 - 45.50.945 Alaska Uniform Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 45.50.920. Effect on other laws (a) Except as provided in subsection (b) AS 45.50.910 - 45.50.945 displace conflicting tort, restitutionary, and other state laws pertaining to civil liability for misappropriation of a trade secret. (b) AS 45.50.910 - 45.50.945 do not affect (1) ~~contractual remedies, whether~~ or contractual or other civil liability or relief that is not based upon misappropriation of a trade secret; or ~~(2) other civil remedies that are not based upon misappropriation of a trade secret; or~~ (2) criminal ~~remedies, whether or not based upon~~ liability for misappropriation of a trade secret. (c) AS 45.50.910 - 45.50.945 do not apply to investigations or actions by the attorney general under AS 45.50.471 - 45.50.561 (unfair trade practices and consumer protection) or under AS 45.50.562 - 45.50.596 (restraint of trade).
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	§ 45.50.935 *Same as UTSA*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not effect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	Alaska Stat. § 01.10.030. Severability Any law heretofore or hereafter enacted by the Alaska legislature which lacks a severability clause shall be construed as though it contained the clause in the following language: "If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application to other persons or circumstances shall not be affected thereby."
Additions or Notes Including "Time of Taking Effect" where provided in statutory text	This [Act] takes effect on _____, and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	

B|R|R
Beck Reed Riden

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Alaska Alaska Stat. §§ 45.50.910 - 45.50.945 Alaska Uniform Trade Secrets Act
Additions II		
In General and Unless Otherwise Specified	• *Green cells denote UTSA 1985 version.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Where a statutory provision is marked as "Same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced, but still do not present substantive distinctions from the UTSA, the cells are marked "Substantively identical to UTSA."* • *Yellow cells indicate that the respective provision is a substantively modified version of the UTSA. In certain cases of these modifications may ultimately be insignificant. In other cases, the substantive differences require attention. Language in the yellow cells is intended to indicate how it varies from the 1985 UTSA. Straight non-substantive, but minor variations may not be annotated.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red when no state law provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red.* • *Some states have omitted specific UTSA provisions from their version, as the provision would be redundant of existing state law. Applicable state statute or citation is in most instances provided above.* *Annotations:* •*Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is struck-through is language included within the UTSA that a state has omitted from its statute.* • *Annotations are primarily intended to denote substantive, rather than textual, differences. As such, some small differences in phrasing, punctuation, and formatting have not been noted. In some cases, where identified, annotations are entirely substantive and indicate only where a state's provision differs in meaning from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, in doing so, drafters have adopted the original 1979 UTSA, but not its later amendments. These states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Arizona Ariz. Rev. Stat. Ann. §§ 44-401 - 44-407
UTSA Version Adopted	1985 version	1985
Definition: Preamble and Improper Means	As used in this [Act], 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.	§ 44-401(1) *Same as UTSA*
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who: (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 44-401(2) *Same as UTSA*
Definition: Person	(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.	§ 44-401(3) *Same as UTSA*
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 44-401(4) *Same as UTSA*
Definition: Not in UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Arizona Ariz. Rev. Stat. Ann. §§ 44-401 - 44-407
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 44-402. Injunctive relief *Same as UTSA*
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 44-403 *Same as UTSA*
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 44-404. Attorney fees *Same as UTSA*
Preservation of Secrecy	In an action under this [Act], 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.	§ 44-405. Preservation of secrecy; definition *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 44-406 *Same as UTSA*

Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Arizona Ariz. Rev. Stat. Ann. §§ 44-401 - 44-407
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 44-407 *Same as UTSA*
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	*None*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	*Cohen v. State*, 588P.2d 209, 302 (1978). *Statutes should be severed when possible and consistent with legislative intent.*
Additions or Notes (including "Time of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____ and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	§§ 44-408 to 44-565. Repealed.

B|R|R
Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Arizona Ariz. Rev. Stat. Ann. §§ 44-401 - 44-407
Additions ||		
In General and Unless Otherwise Specified	• *Green cells denote UTSA 1985 version.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Where a statutory provision is marked as "Same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced, but still do not represent substantive distinctions from the UTSA, the cells are marked "Substantively Identical to UTSA."* • *Yellow cells indicate that the respective provision is a substantively modified version of the UTSA. In certain cases of these modifications may ultimately be insignificant, in other cases, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA, though non-substantive and minor variations may not be annotated.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red.* • *Some states have omitted specific UTSA provisions from their version, as the provision would be redundant of existing state law. Applicable state statute or citation is in most instances provided above.* *Annotations:* •*Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is italicized through is language included within the UTSA that a state has omitted from its statute.* • *Annotations are primarily intended to denote substantive, rather than textual, differences. As such, some small differences in phrasing, punctuation, and formatting have not been noted. In some cases, where identical annotations will satisfy substantive and indicate why where a state's provision differs is missing from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. These states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Arkansas Ark. Code Ann. §§ 4-75-601 - 4-75-607
UTSA Version Adopted	1985 version	1979
Definition: Proper/Improper Means	As used in this [Act], 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;	§4-75-601(1) *Same as UTSA*
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§4-75-601(2) *Same as UTSA*
Definition: Person	(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.	§4-75-601(3) *Same as UTSA*
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§4-75-601(4) *Same as UTSA*
Definitions Not in UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Arkansas Ark. Code Ann. §§ 4-75-601 - 4-75-607
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 4-75-604. Injunctions (a) Actual or threatened misappropriation may be enjoined. (b) Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, however, 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. (c) ~~In exceptional circumstances~~ If the court determines that it would be unreasonable to prohibit future use, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time the use could have been prohibited. ~~Exceptional circumstances include, but are not 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.~~ (d) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 4-75-606. Damages (a) ~~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.~~ In addition to or in lieu of injunctive relief, a complainant ~~is entitled to~~ may recover damages for ~~misappropriation. Damages can include both~~ the actual loss caused by misappropriation, ~~and~~ (b) A complainant also may recover for the unjust enrichment caused by misappropriation that is not taken into account in computing damages for 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.~~ ~~(c) If willful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice the damages awarded under (a) of this section.~~
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 4-75-607. Attorney fees *Same as UTSA*
Preservation of Secrecy	In an action under this [Act], 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.	§ 4-75-603 *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 4-75-603 *Same as UTSA*

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Arkansas Ark. Code Ann. §§ 4-75-601 - 4-75-607
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 4-75-602. Effect on other law (a) Except as provided in subsection (b) This subchapter displaces conflicting tort, restitutionary, and other state laws pertaining to civil liability for misappropriation of a trade secret. (b) This subchapter does not affect: (1) ~~contractual remedies, whether or~~ contractual or other civil liability or relief that is not based upon misappropriation of a trade secret; or ~~(2) other civil remedies that are not based upon misappropriation of a trade secret; or~~ (2) criminal ~~remedies, whether or not based upon~~ liability for misappropriation of a trade secret.
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	*None*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	Ark. Code Ann. § 1-2-205. Severability of provisions. The provisions of each and every act enacted by the General Assembly after July 24, 1973, are declared to be severable and, unless it is otherwise specifically provided in the particular act, the invalidity of any provision of that act shall not affect other provisions of the act which can be given effect without the invalid provision.
Addition or Notes (including "Time of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____, and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	

B R R LLP
Beck Reed Riden

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Arkansas Ark. Code Ann. §§ 4-75-601 - 4-75-607
Additions II		
In General and Unless Otherwise Specified	• *Green cells denote UTSA 1985 version.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Where a statutory provision is marked as "Same as UTSA" minor textual or formatting differences may exist. Where there differences are more pronounced, but still do not present substantive deviations from the UTSA, the cells are marked "Substantively Identical to UTSA."* • *Yellow cells indicate that the respective provision is a substantively modified version of the UTSA. In positive terms of there modification may ultimately be insignificant. In other cases, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA. Though non-substantive and minor variations may not be noted.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red.* • *Some states have omitted specific UTSA provisions from their version, as the provision would be redundant of existing state law. Applicable state statute or citation is in most instances provided above.* *Annotations:* • *Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is struck-through is language included within the UTSA that a state has omitted from its statute.* • *Annotations are primarily intended to denote substantive, rather than textual, differences. As such, minor textual differences in phrasing, punctuation, and formatting have not been noted. In some cases, where identified, deviations are entirely substantive and indicate situations where a state's provision differs in meaning from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. These states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	California Cal Civ.Code § 3426 Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	1979
Definition: Preamble and Improper Means	As used in this [Act], 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.	§ 3426.1(a) "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. Reverse engineering or independent derivation alone shall not be considered improper means.
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy, or limit its use; or (C) before a material change of his [or her] 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.	§ 3426.1(b) *Same as UTSA*
Definition: Person	(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.	§ 3426.1(c) "Person" means a natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 3426.1(d) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) Derives independent economic value, actual or potential, from not being generally known to ~~or readily ascertainable by proper means by~~ the public or to other persons who can obtain economic value from its disclosure or use, and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.
Definitions Not in UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts Compared to the UTSA

Fed/State	Uniform Trade Secrets Act	California Cal.Civ.Code § 3426 Uniform Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 3426.2. Injunctions (a) 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. (b) If the court determines that it would be unreasonable to prohibit future use ~~In exceptional circumstances,~~ an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time the ~~for which~~ use could have been prohibited. ~~Exceptional circumstances include, but are not 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.~~ (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 3426.3. Damages; royalties; exemplary damages (a) ~~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 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.~~ A complainant may recover damages for the actual loss caused by misappropriation. A complainant also may recover for the unjust enrichment caused by misappropriation that is not taken into account in computing damages for actual loss. (b) ~~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.~~ If neither damages nor unjust enrichment caused by misappropriation are provable, the court may order payment of a reasonable royalty for no longer than the period of time the use could have been prohibited. (c) If willful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice any award made under subdivision (a) or (b).
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 3426.4. Awarding attorney's fees and costs 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 and costs to the prevailing party. Recoverable costs hereunder shall include a reasonable sum to cover the services of expert witnesses, who are not regular employees of any party, actually incurred and reasonably necessary in either, or both, preparation for trial or arbitration, or during trial or arbitration, of the case by the prevailing party.
Preservation of Secrecy	In an action under this [Act], 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.	§ 3426.5. Preservation of secrecy in judicial proceedings *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 3426.6. Time for bringing action *Same as UTSA*

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts
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Fed/State	Uniform Trade Secrets Act	California CalCiv.Code § 3426 Uniform Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 3426.7. Construction with other statutes; other remedies; disclosure of public records ~~(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret.~~ Except as otherwise expressly provided, this title does not supersede any statute relating to misappropriation of a trade secret, or any statute otherwise regulating trade secrets. (b) This title 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) This title does not affect the disclosure of a record by a state or local agency under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). Any determination as to whether the disclosure of a record under the California Public Records Act constitutes a misappropriation of a trade secret and the rights and remedies with respect thereto shall be made pursuant to the law in effect before the operative date of this title.
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	§ 3426.8. Application and construction of title *Same as UTSA*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	§ 3426.9. Severability of provisions *Same as UTSA*
Additions or Notes including "Time of Taking Effect" where provided in statutory text.	This [Act] takes effect on _____, and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	§ 3426.10. Misappropriations occurring prior to January 1, 1985; application of title This title does not apply to misappropriation occurring prior to January 1, 1985. If a continuing misappropriation otherwise covered by this title began before January 1, 1985, this title does not apply to the part of the misappropriation occurring before that date. This title does apply to the part of the misappropriation occurring on or after that date unless the appropriation was not a misappropriation under the law in effect before the operative date of this title. § 3426.11. Privileged communications; trade secrets disclosed in official proceedings Notwithstanding subdivision (b) of Section 47, in any legislative or judicial proceeding, or in any other official proceeding authorized by law, or in the initiation or course of any other proceeding authorized by law and reviewable pursuant to Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure, the voluntary, intentional disclosure of trade secret information, unauthorized by its owner, to a competitor or potential competitor of the owner of the trade secret information or the agent or representative of such a competitor or potential competitor is not privileged and is not a privileged communication for purposes of Part 2 (commencing with Section 43) of Division 1. This section does not in any manner limit, restrict, impair, or otherwise modify either the application of the other subdivisions of Section 47 to the conduct to which this section applies or the court's authority to control, order, or permit access to evidence in any case before it. Nothing in this section shall be construed to limit, restrict, or otherwise impair, the capacity of persons employed by public entities to report improper government activity, as defined in Section 10542 of the Government Code, or the capacity of private persons to report improper activities of a private business.

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts
Compared to the UTSA

Not Intended As Legal Advice

Fed/State	Uniform Trade Secrets Act	California Cal.Civ.Code § 3426 Uniform Trade Secrets Act
Additions %		
In General and Unless Otherwise Specified	• *Green cells denote UTSA 1985 version.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Minor statutory provisions ranked as "Same as UTSA" minor textual or formatting differences may exist. Where there differences are more pronounced, but still do not present substantive distinctions from the UTSA, the cells are marked "Substantively Identical to UTSA."* • *Yellow cells indicate that the respective provision is a substantively modified version of the UTSA. In practice some of these modifications may ultimately be insignificant. In other cases, the substantive differences require attention. Language in the yellow cells is mentioned to indicate how it varies from the 1985 UTSA. Though non-substantive and minor variations may not be annotated.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been identified that corresponds to a particular UTSA section. Cells reserved for inhibition information are also marked red.* • *Some states have omitted specific UTSA provisions from their version, so the provision would be redundant of existing state law. Applicable state statute or citation is in most instances provided above.* *Annotations:* •*Annotated text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is struck-through is language included within the UTSA that a state has omitted from its statute.* • *Annotations are primarily intended to denote substantive, rather than textual differences. In such cases small differences in phrasing punctuation, and formatting have not been noted. In some cases, where identical annotations are certainly substantive and indicate only where a state's provision differs in meaning from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. There states will have significant differences in their "Injunction Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts
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Fed/State	Uniform Trade Secrets Act	Colorado Colo. Rev. Stat. Ann. §§ 7-74-101 - 7-74-110 Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	1985
Definition: Preamble and Improper Means	As used in this [Act], 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;	§ 7-74-102(1) *Same as UTSA*
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 7-74-102(2) *Substantively identical to UTSA*
Definition: Person	(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.	Colo. Rev. Stat. Ann. § 2-4-401(8) "Person" means a ~~natural person~~ any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, limited liability company, partnership, association, or other legal ~~or commercial~~ entity. § 7-74-102(3) Repealed by Laws 2003, Ch. 352, § 347, eff. July 1, 2004.
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 7-74-102(4) "Trade secret" means information including the whole or any portion or phase of any scientific or technical information, ~~pattern, compilation, program, device, method, technique~~ design, process, procedure, formula, improvement, confidential business or financial information, listing of names, addresses, or telephone numbers, or other information relating to any business or profession ~~that 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~~ which is secret and of value. ~~is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.~~ To be a "trade secret" the owner thereof must have taken measures to prevent the secret from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.
Definitions Not in UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts Compared to the UTSA

Fed/State	Uniform Trade Secrets Act	Colorado Colo. Rev. Stat. Ann. §§ 7-74-101 - 7-74-110 Uniform Trade Secrets Act
Injunction Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 7-74-103. Injunctive relief Temporary and final injunctions including affirmative acts may be granted on such equitable terms as the court deems reasonable to prevent or restrain actual or threatened misappropriation of a trade secret.
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 7-74-104. 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 is entitled to recover damages for misappropriation. Damages can 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,~~ If the misappropriation is attended by circumstances of fraud, malice, or a willful and wanton disregard of the injured party's right and feelings, the court or the jury may award exemplary damages in an amount not exceeding twice the award made under subsection (1) of this section.
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 7-74-105. Attorney's fees *Same as UTSA*
Preservation of Secrecy	In an action under this (Act), 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.	§ 7-74-106. Preservation of secrecy *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 7-74-107. Statute of limitations *Same as UTSA*

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Colorado Colo. Rev. Stat. Ann. §§ 7-74-101 - 7-74-110 Uniform Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 7-74-108. Effect on other law *Same as UTSA*
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	§ 7-74-109. Uniformity of application and construction *Same as UTSA*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	§ 7-74-110. Severability *Same as UTSA*
Additions or Notes (including "Time of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____, and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	

BRR Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Colorado Colo. Rev. Stat. Ann. §§ 7-74-101 - 7-74-110 Uniform Trade Secrets Act
Additions II		
In General and Unless Otherwise Specified	• *Green cells denote UTSA 1985 version.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Where a statutory provision is marked as "Same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced, but still do not present substantive distinctions from the UTSA, the cells are marked "Substantively Identical to UTSA."* • *Yellow cells indicate that the respective provision is a substantively modified version of the UTSA. In positive sense of these modifications may ultimately be insignificant, in other cases, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA, though non-substantive and minor variations may not be noted.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red.* • *Some states have omitted specific UTSA provisions from their version, as the provision would be redundant of existing state law. Applicable state statute or citation is in most instances provided above.* *Annotations:* •*underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Red text is deletions through is language included within the UTSA that a state has omitted from its statute.* • *Annotations are primarily intended to denote substantive, rather than textual differences. As such, some small differences in phrasing (punctuation, word formatting) have not been noted. In some cases, where identified, annotations and entirely substantive cites indicate only where a state's provision differs in meaning from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. These states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Connecticut Conn. Gen. Stat. Ann. §§ 35-50 - 35-58 Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	1979
Definition: Proper Means and Improper Means	As used in this [Act], 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;	§ 35-51(a) "Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of duty to maintain secrecy, or espionage through electronic or other means, including searching through trash;
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 35-51(b) (1) 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 (2) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (i) derived from or through a person who had utilized improper means to acquire it; (ii) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use, including but not limited to disclosures made under section 1-210, sections 31-40h to 31-40p, inclusive, or subsection (c) of section 12-62; or (iii) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) 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.
Definition: Person	(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.	§ 35-51(c) "Person" means a natural person, corporation, limited liability company, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 35-51(d) Notwithstanding the provisions of sections 1-210, 31-40j to 31-40p, inclusive, and subsection (c) of section 12-62, "trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, process, drawing, cost data or customer list that: (1) 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 (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.
Definition: Not in UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts Compared to the UTSA

Fed/State	Uniform Trade Secrets Act	Connecticut Conn. Gen. Stat. Ann. §§ 35-50 - 35-58 Uniform Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 35-52. Injunctive relief (a) Actual or threatened misappropriation may be enjoined upon application to any court of competent jurisdiction. ~~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. (b) If the court determines that it would be unreasonable to prohibit future use ~~In exceptional circumstances,~~ an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time the ~~for which~~ use could have been prohibited. ~~Exceptional circumstances include, but are not 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.~~ (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 35-53. Damages. Punitive damages for willful and malicious misappropriation (a) ~~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. Damages can include both~~ In addition to or in lieu of injunctive relief, a complainant may recover damages for the actual loss caused by misappropriation. A complainant also may recover for ~~and~~ the unjust enrichment caused by misappropriation that is not taken into account in computing damages for 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) In any action brought pursuant to subsection (a) of this section, if the court finds willful and malicious misappropriation, the court may award punitive damages in an amount not exceeding twice any award made under subsection (a) and may award reasonable attorney's fees to the prevailing party.
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 35-54. Attorney's fees *Substantively identical to UTSA* *Attorney's fees for willful and malicious misappropriation are included within § 35-53(b) but are substantively unchanged.*
Preservation of Secrecy	In an action under this [Act], 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.	§ 35-55. Protection of trade secrets by court *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 35-56. Limitation of action for misappropriation *Substantively identical to UTSA*

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Connecticut Conn. Gen. Stat. Ann. §§ 35-50 - 35-58 Uniform Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 35-57. Provisions of chapter supersede conflicting law re civil liability. Limitation (a) Unless otherwise agreed by the parties, the provisions of this chapter supersede any conflicting tort, restitutionary, or other law of this state pertaining to civil liability 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,~~ or other civil liability or relief that is not based upon misappropriation of a trade secret; ~~(2) other civil remedies that are not based upon misappropriation of a trade secret; or~~ (2) criminal ~~remedies, whether or not based upon misappropriation of a trade secret~~liability for misappropriation of a trade secret; or (3) the duty of any person or state or municipal agency to disclose information pursuant to section 1-210, sections 31-40l to 31-40p, inclusive, or subsection (c) of section 12-62, or wherever expressly provided by law.
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	§ 35-58. Rules of construction *Same as UTSA*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	Conn. Gen. Stat. Ann. § 1-1. Validity of separate provisions of acts If any provision of any act passed by the general assembly or its application to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of such act.
Additions or Notes (including "Time of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____ and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	§ 1-210, §§ 31-40l - 31-40p, and § 12-62(c), respectively deal with access to public records, the protection of employees, and records to be made available by real estate assessors.

BRR LLP
Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Connecticut Conn. Gen. Stat. Ann. §§ 35-50 - 35-58 Uniform Trade Secrets Act
Additions II		
In General and Unless Otherwise Specified	• *Green cells denote UTSA 1985 version.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no substantive difference. Where a statutory provision is marked as "Same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced, but still do not present substantive distinctions from the UTSA, the cells are marked "Substantively Identical to UTSA."* • *Yellow cells indicate that the respective provision is a substantively modified version of the UTSA, to provide some of these modifications may ultimately be insignificant, in other cases, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA, though non-substantive and minor variations may not be annotated.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red.* • *Some states have omitted specific UTSA provisions from their version, as the provision would be redundant of existing state law. Applicable state statute or citation is in most instances provided above.* Annotations: •*Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is stricken through is language included within the UTSA that a state has omitted from its statute.* • *Annotations are primarily intended to denote substantive, rather than textual differences. As such, some small differences in phrasing, punctuation, and formatting have not been noted, in some cases, where identified, annotations are mainly substantive and indicate only when a state's provision differs in meaning from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. These states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Beck Reed Riden LLP
Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Delaware Del. Code. Ann. tit. 6, §§ 2001 - 2009 Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	1985
Definition: Preamble and Improper Means	As used in this [Act], 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;	§ 2001. Definitions ~~As used in this [Act], unless the context requires otherwise:~~ The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning: (1) "Improper means" *[Same as UTSA.]*
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 2001(2) *Substantively identical to UTSA*
Definition: Person	(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.	§ 2001(3) "Person" shall mean a natural person, corporation, statutory trust, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 2001(4) *Substantively identical to UTSA*
Definition: Not in UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Delaware Del. Code. Ann. tit. 6, §§ 2001 - 2009 Uniform Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 2002 Injunctive relief *Same as UTSA*
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 2003. Damages *Same as UTSA*
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 2004. Attorney's fees *Same as UTSA*
Preservation of Secrecy	In an action under this [Act], 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.	§ 2005. Preservation of secrecy *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 2006. Statute of limitations *Same as UTSA*

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Delaware Del. Code. Ann. tit. 6, §§ 2001 - 2009 Uniform Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 2007. Effect on other law *Same as UTSA*
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	§ 2008. Application and construction of chapter *Same as UTSA*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For those states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	Del. Code. Ann. tit. 1, § 308. Severability of provisions If any provision of this Code or amendments hereto, or the application thereof to any person, thing or circumstances is held invalid, such invalidity shall not affect the provisions or application of this Code or such amendments that can be given effect without the invalid provisions or application, and to this end the provisions of this Code and such amendments are declared to be severable.
Additions or Notes (including "Time of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____ and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	

Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Delaware Del. Code. Ann. tit. 6, §§ 2001 - 2009 Uniform Trade Secrets Act
Additions !!		
In General and Unless Otherwise Specified	• *Green cells denote UTSA 1985 version.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Where a statutory provision is marked as "Same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced, but still do not prevent substantive distinctions from the UTSA, the cells are marked "Substantively Identical to UTSA."* • *Yellow cells indicate that the respective provision is a substantively modified version of the UTSA. In practice some of these modifications may ultimately be insignificant. In other cases, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA. Slightly non-substantive and minor variations may not be annotated.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red.* • *Some states have omitted specific UTSA provisions from their version, or the provision would be redundant of existing state law. Applicable state statutes or citation is in most instances provided above.* *Annotations:* •*Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is struck-through is language included within the UTSA that a state has omitted from its statute.* • *Annotations are primarily intended to denote substantive, rather than textual, differences. As such, some small differences in phrasing, punctuation, and formatting have not been noted. In some cases, where identified, annotations will entirely substantive and indicate only where a state's provision differs in meaning from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. These states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Florida Fla. Stat. §§ 688.001 - 688.009 Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	1985
Definition: Preamble and Improper Means	As used in this [Act], 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.	§ 688.002(1) *Same as UTSA*
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 688.002(2) *Same as UTSA*
Definition: Person	(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.	§ 688.002(3) *Same as UTSA*
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 688.002(4) *Same as UTSA*
Definitions Not in UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Florida Fla. Stat. §§ 688.001 - 688.009 Uniform Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 688.003. Injunctive relief *Same as UTSA*
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 688.004. Damages *Same as UTSA*
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 688.005. Attorney's fees *Same as UTSA*
Preservation of Secrecy	In an action under this [Act], 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.	§ 688.006. Preservation of secrecy *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 688.007. Statute of limitations *Same as UTSA*

Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Florida Fla. Stat. §§ 688.001 - 688.009 Uniform Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 688.008. Effect on other law *Same as UTSA*
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its *general purpose* to make uniform the law with respect to the subject of this [Act] among states enacting it.	§ 688.009. Uniformity of application and construction *Same as UTSA*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	*Schmitt v. State*, 590 So.2d 404, 414-15 (1991). *Statutes should be severed when possible and consistent with legislative intent.*
Additions or Notes (including "Time of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____ and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	

Beck Reed Riden

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts Compared to the UTSA

Fed/State	Uniform Trade Secrets Act	Florida Fla. Stat. §§ 688.001 - 688.009 Uniform Trade Secrets Act
Addition II		
In General and Unless Otherwise Specified	• Italics cells denote UTSA 1985 version • White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material/substantive difference. Where a statutory provision is marked as "Same as UTSA" minor tweaks or formatting differences may exist. Where these differences are more pronounced, but still do not present substantive distinctions from the UTSA, the cells are marked "Substantively identical to UTSA." • Yellow cells indicate that the respective provision is a substantively modified version of the UTSA. In specific cases of these modifications may ultimately be insignificant, in other cases, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA, though non-substantive and minor variations may not be annotated. • Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red. • Some states have omitted specific UTSA provisions from their version, as the provision would be redundant of existing state law. Applicable state statute citation is in most instances provided above. *Annotations:* •Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is struck-through is language included within the UTSA that a state has omitted from its statute. • Annotations are primarily intended to denote substantive, rather than stylistic differences. As such, some stylistic differences in phrasing, punctuation, and formatting have not been noted. In some cases, where identified, annotations will actually substantive and indicate only where a state's provision differs in meaning from a corresponding provision in the UTSA. • All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. These states will have significant differences in their "injunctive relief," "damages," and "Effect on Other Law" sections (in particular).	

Beck Reed Riden LLP
Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Georgia Ga. Code Ann., §§ 10-1-760 - 10-1-767 Georgia Trade Secrets Act of 1990
UTSA Version Adopted	1985 version	1985
Definition: Preamble and Improper Means	As used in this (Act), 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.	§ 10-1-761 Definitions As used in this article, the term ~~unless the context requires otherwise~~: (1) "Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a confidential relationship or other duty to maintain secrecy or limit use, or espionage through electronic or other means. Reverse engineering of a trade secret not acquired by misappropriation or independent development shall not be considered improper means.
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 10-1-761(2) *Same as UTSA*
Definition: Person	(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.	§ 10-1-176(3) *Same as UTSA*
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 10-1-176(4) "Trade secret" means information, without regard to form, including, but not limited to, technical or nontechnical data, a formula, a pattern, a compilation, a program, a device, a method, a technique, a drawing, a process, financial data, financial plans, product plans, or a list of actual or potential customers or suppliers, which is not commonly known by or available to the public and which information: (A) Derives 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.
Definitions Not in UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Georgia Ga. Code Ann., §§ 10-1-760 - 10-1- 767 Georgia Trade Secrets Act of 1990
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 10-1-762. Injunctive relief (a) 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 appropriate circumstances for reasons including, but not limited to, an elimination of ~~in order to eliminate~~ commercial advantage that otherwise would be derived from the misappropriation or where the trade secret ceases to exist due to the fault of the enjoined party or others by improper means. (b) In exceptional circumstances, If the court determines that it would be unreasonable to prohibit future use, 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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order. (d) In no event shall a contract be required in order to maintain an action or to obtain injunctive relief for misappropriation of a trade secret.
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 10-1-763. Damages (a) In addition to or in lieu of the relief provided by Code Section 10-1-762, a person ~~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~~ 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~~ If neither damages nor unjust enrichment caused by the misappropriation are proved by a preponderance of the evidence, the court may award damages caused by misappropriation measured in terms ~~by imposition~~ of ~~liability for~~ a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret for no longer than the period of time for which use could have been prohibited. (b) If willful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a) of this Code section. (c) In no event shall a contract be required in order to maintain an action or to recover damages for misappropriation of a trade secret.
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 10-1-764. Attorney's fees *Same as UTSA*
Preservation of Secrecy	In an action under this [Act], 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.	§ 10-1-765. Preservation of Secrecy *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 10-1-766. Limitations of actions An action for misappropriation must be brought within ~~three~~ five years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this Code section, a continuing misappropriation by any person constitutes a single claim against that person, but this Code section shall be applied separately to the claim against each person who receives a trade secret from another person who misappropriated that trade secret.

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Georgia Ga. Code Ann., §§ 10-1-760 - 10-1-767 Georgia Trade Secrets Act of 1990
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 10-1-767. Effect on other laws (a) Except as provided in subsection (b) of this Code section, this article ~~displaces~~ shall supersede conflicting tort, restitutionary, and other laws of this state providing civil remedies for misappropriation of a trade secret. (b) This article shall not affect: (1) Contractual duties or remedies, whether or not based upon misappropriation of a trade secret; provided, however, that a contractual duty to maintain a trade secret or limit use of a trade secret shall not be deemed void or unenforceable solely for lack of a durational or geographical limitation on the duty; (2) Other civil remedies that are not based upon misappropriation of a trade secret; or (3) The definition of a trade secret contained in Code Section 16-8-13, pertaining to criminal offenses involving theft of a trade secret or criminal remedies, whether or not based upon misappropriation of a trade secret.
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	*None*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	Ga. Code Ann. § 1-1-3. Invalid or unconstitutional provisions Except as otherwise specifically provided in this Code or in an Act or resolution of the General Assembly, in the event any title, chapter, article, part, subpart, Code section, subsection, paragraph, subparagraph, item, sentence, clause, phrase, or word of this Code or of any Act or resolution of the General Assembly is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of this Code or of such Act or resolution, which shall remain of full force and effect as if such portion so declared or adjudged invalid or unconstitutional were not originally a part of this Code or of such Act or resolution. The General Assembly declares that it would have enacted the remaining parts of this Code if it had known that such portion hereof would be declared or adjudged invalid or unconstitutional. The General Assembly further declares that it would have enacted the remaining parts of any other Act or resolution if it had known that such portion thereof would be declared or adjudged invalid or unconstitutional unless such Act or resolution contains an express provision to the contrary.
Additions or Notes (including "Year of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____, and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts
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Fed/State	Uniform Trade Secrets Act	Georgia Ga. Code Ann., §§ 10-1-760 - 10-1-767 Georgia Trade Secrets Act of 1990
Addition II		
In General and Unless Otherwise Specified	• Green cells denote UTSA 1985 version. • White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Where a statutory provision is marked as "Same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced, but still do not present substantive distinctions from the UTSA, the cells are marked "Substantively Identical to UTSA." • Yellow cells indicate that the respective provision is a substantively modified version of the UTSA, to provide some of these modifications may ultimately be insignificant, in other cases, the substantive differences require attention. Language in the yellow cells is intended to indicate how it varies from the 1985 UTSA, though non-substantive and minor variations may not be annotated. • Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state that provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red. • Some states have omitted specific UTSA provisions from their version, as the provision would be redundant of existing state law. Applicable state statute or citation is in most instances provided above. *Annotations:* •Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is struck-through is language included within the UTSA that a state has omitted from its statute. • Annotations are primarily intended to denote substantive, rather than textual differences. As such, some small differences in phrasing, punctuation, and formatting have not been noted, in some cases, where identified, annotations are neither substantive, and indicate only where a state's provision differs in meaning from a corresponding provision in the UTSA. • All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. There states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Hawaii Haw. Rev. Stat. §§ 482B-1 - 482B-9 Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	1985
Definition: Proximate and Improper Means	As used in this [Act], 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.	§ 482B-2 *Same as UTSA*
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 482B-2 *Same as UTSA*
Definition: Person	(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.	§ 482B-2 *Same as UTSA*
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 482B-2 *Same as UTSA*
Definitions Not in UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Hawaii Haw. Rev. Stat. §§ 482B-1 - 482B-9 Uniform Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 482B-3. Injunctive relief *Same as UTSA*
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 482B-4. Damages *Same as UTSA*
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 482B-5. Attorney's fees *Same as UTSA*
Preservation of Secrecy	In an action under this [Act], 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.	§ 482B-6. Preservation of secrecy *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 482B-7. Statute of limitations *Same as UTSA*

Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Hawaii Haw. Rev. Stat. §§ 482B-1 - 482B-9 Uniform Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 482B-8. Effect on other law *Same as UTSA*
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	*None*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	§ 482B-9. Severability *Same as UTSA*
Additions or Notes (including "Time of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____ and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	

BRR LLP
Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Hawaii Haw. Rev. Stat. §§ 482B-1 - 482B-9 Uniform Trade Secrets Act
Addition II		
In General and Unless Otherwise Specified	• *Green cells denote UTSA 1985 version.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Where a statutory provision is marked as "Same as UTSA" unless textual or formatting differences may exist. Where these differences are more pronounced, but still do not present substantive distinctions from the UTSA, the cells are marked "Substantively Identical to UTSA."* • *Yellow cells indicate that the respective provision is a substantively modified version of the UTSA. In prefix cases of these modifications may ultimately be insignificant. In other cases, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA, though non-substantive and minor variations may not be annotated.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red.* • *Some states have omitted specific UTSA provisions from their version, so the result has resulted in a reduction of existing state law. Applicable state statute or citation is in most instances provided above.* *Annotations:* •*Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is stricken through is language included within the UTSA that a state has omitted from its statute.* • *Annotations are primarily intended to denote substantive, rather than textual, differences. As such, some small differences in phrasing, punctuation, and formatting have not been noted. In some cases, where identified, annotations are entirely substantive and indicate only where a state's provision differs in meaning from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have enacted the original 1979 UTSA, but not its later amendment. These states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Idaho Idaho Code Ann. §§ 48-801 – 48-807 Idaho Trade Secrets Act
UTSA Version Adopted	1985 version	1985
Definition: Preamble and Improper Means	As used in this [Act], 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;	§ 48-801(1) *Same as UTSA*
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 48-801(2) *Same as UTSA*
Definition: Person	(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.	§ 48-801(3) *Same as UTSA*
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 48-801(5) (5) "Trade secret" means information, including a formula, pattern, compilation, program, computer program, 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. Trade secrets as defined in this subsection are subject to disclosure by a public agency according to chapter 1, title 74, Idaho Code.
Definitions Not in UTSA		§ 48-801(4) (4) "Computer program" means information which is capable of causing a computer to perform logical operation(s) and: (a) Is contained on any media or in any format; (b) Is capable of being input, directly or indirectly, into a computer; and (c) Has prominently displayed a notice of copyright, or other proprietary or confidential marking, either within or on the media containing the information.

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Idaho Idaho Code Ann. §§ 48-801 - 48-807 Idaho Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 48-802. Injunctive relief *Same as UTSA*
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 48-803. Damages *Same as UTSA*
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	None
Preservation of Secrecy	In an action under this [Act], 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.	§ 48-804. Preservation of secrecy *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 48-805. Statute of limitations *Same as UTSA*

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Idaho Idaho Code Ann. §§ 48-801 – 48-807 Idaho Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 48-806. Effect on other law *Substantively identical to UTSA*
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	*None*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	*State v. Nielsen*, 960 P.2d 177, 180 (1998) *Statutes should be severed when possible and consistent with legislative intent.*
Additions or Notes (including "Time of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____, and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	

B|R|R
Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Idaho Idaho Code Ann. §§ 48-801 - 48-807 Idaho Trade Secrets Act
Additions if		
In General and Unless Otherwise Specified	• *Green cells denote UTSA 1985 version.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Where a statutory provision is marked as "Same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced, but still do not prevent substantive deviations from the UTSA, the cells are marked "Substantively identical to UTSA."* • *Yellow cells indicate that the respective provision is a substantively modified version of the UTSA. In practice some of these modifications may ultimately be insignificant. In other cases, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA, though minor substantive and stylistic variations may not be annotated.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red.* • *Some states have omitted specific UTSA provisions from their version, so the problem would be redundant of existing state law. Applicable state statute or citation is in most instances provided above.* *Annotations:* •*Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is struck-through is language included within the UTSA that a state has omitted from its statute.* • *Annotations are primarily intended to denote substantive, rather than textual, differences. As such, minor small differences in phrasing, punctuation, and formatting have not been noted, in some cases, where identified, annotations not entirely substantive and indicate only where a state's provision differs in meaning from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. There states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Illinois 765 Ill. Comp. Stat. Ann. §§ 1065/1 - 1065/9 Illinois Trade Secrets Act
UTSA Version Adopted	1985 version	1079 *[1985 version appears to have been considered insofar as its language is present in § 1065/8.]*
Definition: Preamble and Improper Means	As used in this [Act], 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.	§ 1065/2(a) "Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a confidential relationship or other duty to maintain secrecy or limit use, or espionage through electronic or other means. Reverse engineering or independent development shall not be considered improper means.
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 1065/2(b) *Same as UTSA*
Definition: Person	(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.	§ 1065/2(c) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other for-profit or not-for-profit legal ~~or commercial~~ entity.
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 1065/2(d) "Trade secret" means information, including but not limited to, technical or non-technical data, a formula, pattern, compilation, program, device, method, technique, drawing, process, financial data, or list of actual or potential customers or suppliers, that: (1) ~~Derives independent~~ is sufficiently secret to derive economic value, actual or potential, from not being generally known to other persons who can obtain economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy or confidentiality.
Definition: Not in UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Illinois 765 Ill. Comp. Stat. Ann. §§ 1065/1 - 1065/9 Illinois Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 1065/3. Injunctions (a) Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction may be terminated when the trade secret has ceased to exist, provided that the injunction may be continued for an additional reasonable period of time in appropriate circumstances for reasons including, but not limited, to an elimination of the ~~in order to eliminate~~ commercial advantage that otherwise would be derived from the misappropriation, deterrence of willful and malicious misappropriation, or where the trade secret ceases to exist due to the fault of the enjoined party or others by improper means. (b) If the court determines that it would be unreasonable to prohibit future use due to an overriding public interest, ~~In exceptional circumstances,~~ an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time the use could have been prohibited ~~Exceptional circumstances include, but are not 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.~~ (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by a court order.
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 1065/4. Damages (a) ~~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~~ In addition to the relief provided for by Section 3, a person 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~~ If neither damages nor unjust enrichment caused by the misappropriation are proved by a preponderance of the evidence, the court may award damages caused by misappropriation measured in terms ~~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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 1065/5. Attorney's fees *Same as UTSA*
Preservation of Secrecy	In an action under this [Act], 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.	§ 1065/6. Protection of secrecy *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 1065/7. Limitations An action for misappropriation must be brought within ~~three~~ 5 years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this Act, a continuing misappropriation constitutes a single claim.

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts
Compared to the UTSA

Fed/State	Uniform Trade Secrets Act	Illinois 765 Ill. Comp. Stat. Ann. §§ 1065/1 - 1065/9 Illinois Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 1065/8. Legislative intent, exceptions (a) Except as provided in subsection (b), this Act ~~displaces~~ is intended to displace conflicting tort, restitutionary, unfair competition, and other laws of this State providing civil remedies for misappropriation of a trade secret. (b) This Act does not affect: (1) contractual remedies, whether or not based upon misappropriation of a trade secret, provided, however, that a contractual or other duty to maintain secrecy or limit use of a trade secret shall not be deemed to be void or unenforceable solely for lack of durational or geographical limitation on the duty; (2) other civil remedies that are not based upon misappropriation of a trade secret; (3) criminal remedies, whether or not based upon misappropriation of a trade secret; or (4) the definition of a trade secret contained in any other Act of this State.
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	None
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	§ Ill. Comp. Stat. Ann. § 70/1.31. Severability If any provision of an Act enacted after the effective date of this amendatory Act or application thereof to any person or circumstance is held invalid, such invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid application or provision, and to this end the provisions of each Act enacted after the effective date of this amendatory Act are severable, unless otherwise provided by the Act.
Additions or Notes (including "Time of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____, and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	§ 1065/9. Effective date and application This Act takes effect on January 1, 1988, and does not apply to misappropriation occurring prior to its effective date.

B R R LLP
Beck Reed Riden

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts
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Fed/State	Uniform Trade Secrets Act	Illinois 765 Ill. Comp. Stat. Ann. §§ 1065/1 - 1065/9 Illinois Trade Secrets Act
Additions II		
In General and Unless Otherwise Specified	• Green cells denote UTSA 1985 version. • White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material/substantive difference. Where a statutory provision is marked as "Same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced, but still do not present substantive distinctions from the UTSA, the cells are marked "Substantively Identical to UTSA." • Yellow cells indicate that the respective provision is a substantively modified version of the UTSA, to provide some of these modifications may ultimately be insignificant, in other cases, the substantive differences require attention. Language in the yellow cells is maintained to indicate how it varies from the 1985 UTSA, though most substantive and minor variations may not be annotated. • Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state true provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red. • Some states have omitted specific UTSA provisions from their version, as the provision would be redundant of existing state law. Applicable state statute or citation is in most instances provided above. *Annotations:* •Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is stricken through is language included within the UTSA that a state has omitted from its statute. • Annotations are primarily intended to denote substantive, rather than textual, differences. As such, some small differences in phrasing, punctuation, and formatting have not been noted. In some cases, where identical, substantive but certain substantive and substitute only where a state's provision differs in meaning from a corresponding provision in the UTSA. • All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. Many states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts
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Fed/State	Uniform Trade Secrets Act	Indiana Ind. Code §§ 24-2-3-1 - 24-2-3-8 Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	1979
Definition: Preamble and Improper Means	As used in this [Act], 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;	§ 24-2-3-2 Definitions *Same as UTSA*
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who: (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 24-2-3-2 Definitions *Same as UTSA*
Definition: Person	(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.	§ 24-2-3-2 Definitions "Person" means a natural person, limited liability company, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 24-2-3-2 Definitions *Same as UTSA*
Definitions Not in UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts Compared to the UTSA

Fed/State	Uniform Trade Secrets Act	Indiana Ind. Code §§ 24-2-3-1 - 24-2-3-8 Uniform Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 42-3-2-3. Injunction against misappropriation; exceptional circumstances (a) 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. (b) If the court determines in exceptional circumstances that it would be unreasonable to prohibit future use, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time the use could have been prohibited. ~~Exceptional circumstances include, but are not 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.~~ (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by a court order.
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 24-2-3-4 Damages for misappropriation and unjust enrichment; royalty; exemplary damages (a) ~~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, Damages can include both~~ In addition to or in lieu of injunctive relief, a complainant may recover damages for the actual loss caused by misappropriation. A complainant also may recover for ~~and~~ the unjust enrichment caused by misappropriation that is not taken into account in computing damages for actual loss. b) When neither damages nor unjust enrichment are provable, the court may order payment of a reasonable royalty for no longer than the period during which the use could have been prohibited. ~~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.~~ (c) If willful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 24-2-3-5 Attorney's fees; conditions *Same as UTSA*
Preservation of Secrecy	In an action under this [Act], 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.	§ 24-2-3-6 Preservation of secrecy of trade secret *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 24-2-3-7. Limitation of action *Same as UTSA*

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts
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Fed/State	Uniform Trade Secrets Act	Indiana Ind. Code §§ 24-2-3-1 - 24-2-3-8 Uniform Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 24-2-3-1(c) The chapter displaces all conflicting law of this state pertaining to the misappropriation of trade secrets, except contract law and criminal law. ~~(a) Except as provided in subsection (b), the [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret.~~ ~~(b) This [Act] 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.~~
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	§ 24-2-3-1(b) *Same as UTSA*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	Ind. Code § 1-1-1-8 Severability (a) If any provision of this Code as now or later amended or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application. (b) Except in the case of a statute containing a nonseverability provision, each part and application of every statute is severable. If any provision or application of a statute is held invalid, the invalidity does not affect the remainder of the statute unless: (1) the remainder is so essentially and inseparably connected with, and so dependent upon, the invalid provision or application that it cannot be presumed that the remainder would have been enacted without the invalid provision or application; or (2) the remainder is incomplete and incapable of being executed in accordance with the legislative intent without the invalid provision or application. This subsection applies to every statute, regardless of whether enacted before or after the passage of this subsection. The general assembly may preserve the legislative history of this subsection by adoption of a concurrent resolution and publication of the resolution in the legislative journals. (c) The repeal of a statute stating that the provisions of an act are severable as provided in subsection (b) does not affect the operation of subsection (b) with respect to that act.
Additions or Notes including "Time of Taking Effect" where provided in statutory text	This [Act] takes effect on _____, and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	§ 24-2-3-8 Continuing misappropriation commenced prior to September 1, 1982 Sec. 8. If a continuing misappropriation otherwise covered by this chapter began before September 1, 1982, the chapter does not apply to the part of the misappropriation that occurred before that date. It does apply to the part that occurs after August 31, 1982, unless the appropriation was not a misappropriation under the law displaced by this chapter.

Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts Compared to the UTSA

Fed/State	Uniform Trade Secrets Act	Indiana Ind. Code §§ 24-2-3-1 - 24-2-3-8 Uniform Trade Secrets Act
Additions II		
In General and Unless Otherwise Specified	• *Inserted cells denote UTSA 1985 version.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Where a statutory provision is marked as "Same as UTSA" same textual or formatting difference may exist. Where these differences are more pronounced, but still do not present substantive distinctions from the UTSA, the cells are marked "Substantively Identical to UTSA."* • *Yellow cells indicate that the respective provision is a substantively modified version of the UTSA, to provide some of these modifications may ultimately be insignificant. In other cases, the substantive differences require attention. Language in the yellow cells is maintained to indicate how it varies from the 1985 UTSA, though non-substantive and minor variations may not be annotated.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red.* • *Some states have omitted specific UTSA provisions from their version, as the provision would be redundant of existing state law. Applicable state statute or citation is in most instances provided above.* *Annotations:* •*underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is struck through is language included within the UTSA that a state has omitted from its statute.* • *Annotations are primarily intended to denote substantive, rather than textual differences. As such, some small differences in phrasing, punctuation, and formatting have not been noted, in some cases, where identified annotations are minor substantive and indicate only where a state's provision differs in meaning from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. These states will have significant differences in their "injunctive relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts
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Fed/State	Uniform Trade Secrets Act	Iowa Iowa Code Ann. §§ 550.1 - 550.8 Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	1985
Definition: Preamble and Improper Means	As used in this [Act], 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.	§ 550.2(1) *Substantively identical to UTSA*
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 550.2(3) *Substantively identical to UTSA*
Definition: Person	(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.	Iowa Code Ann. § 4.1(20) Unless otherwise provided by law, "person" means ~~natural person~~ individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal ~~or commercial~~ entity.
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 550.2(4) *Substantively identical to UTSA*
Definition: Not in UTSA		§ 550.2(2) "Knows" or "knowledge" means that a person has actual knowledge of information or a circumstance or that the person has reason to know of the information or circumstance.

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts Compared to the UTSA

Fed/State	Uniform Trade Secrets Act	Iowa Iowa Code Ann. §§ 550.1 - 550.8 Uniform Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 550.3. Injunctive relief *Substantively identical to UTSA*
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 550.4. Damages *Substantively identical to UTSA, except for the following annotation to the UTSA language:* 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~~ an owner of a trade secret is entitled to recover damages for misappropriation.
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 550.6. Attorney's fees *Substantively identical to UTSA*
Preservation of Secrecy	In an action under this [Act], 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.	§ 550.7. Preservation of secrecy *Substantively identical to UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 550.8. Statute of limitations *Substantively identical to UTSA*

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Not Intended As Legal Advice

Fed/State	Uniform Trade Secrets Act	Iowa Iowa Code Ann. §§ 550.1 - 550.8 Uniform Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	None
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	None
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	Iowa Code Ann. § 4.12. Acts or statutes are severable If any provision of an Act or statute or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act or statute which can be given effect without the invalid provision or application, and to this end the provisions of the Act or statute are severable.
Additions or Notes (including "Time of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____, and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	§ 550.5. Defense—consent of disclosure In an action for injunctive relief or damages against a person under this chapter, it shall be a complete defense that the person disclosing a trade secret made the disclosure with the implied or express consent of the owner of the trade secret.

B/R/R Beck Reed Riden

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts
Compared to the UTSA

Fed/State	Uniform Trade Secrets Act	Iowa Iowa Code Ann. §§ 550.1 - 550.8 Uniform Trade Secrets Act
Addition II		
In General and Unless Otherwise Specified	• *Green cells denote UTSA 1985 version* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Where a statutory provision is marked as "Same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced, but still do not present substantive distinctions from the UTSA, the cells are marked "Substantively Identical to UTSA."* • *Yellow cells indicate that the respective provision is a substantively modified version of the UTSA, to practice some of their modification may ultimately be insignificant. In other cases, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA. Though non-substantive and minor variations may not be annotated.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been identified that corresponds to a particular UTSA section. Cells reviewed for additional information are also marked red.* • *Some states have omitted specific UTSA provisions from their version, so the provision would be redundant of existing state law. Applicable state statute or citation is in most instances provided above.* *Annotations:* *•Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is italicized is language included within the UTSA that a state has omitted from its statute.* *• Annotations are primarily intended to denote substantive, rather than textual, differences. As such, some small differences in phrasing, punctuation, and formatting have not been noted. In some cases, where identified, annotations are entirely substantive and indicate only where a state's provision differs in meaning from a corresponding provision in the UTSA.* *• All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. These states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts
Compared to the UTSA

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Fed/State	Uniform Trade Secrets Act	Kansas Kan. Stat. Ann. §§ 60-3320 - 60-3330 Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	1985
Definition: Preamble and Improper Means	As used in this [Act], 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.	§ 60-3320(1) *Same as UTSA*
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who: (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 60-3320(2) *Same as UTSA*
Definition: Person	(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.	§ 60-3320(3) *Same as UTSA*
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 60-3320(4) *Same as UTSA*
Definitions Not in UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts Compared to the UTSA

Fed/State	Uniform Trade Secrets Act	Kansas Kan. Stat. Ann. §§ 60-3320 - 60-3330 Uniform Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 60-3321. Misappropriation of trade secret, injunctive or other protective relief *Same as UTSA*
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 60-3322. Same; damages *Same as UTSA*
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 60-3323. Award of attorney fees, when *Same as UTSA*
Preservation of Secrecy	In an action under this [Act], 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.	§ 60-3324. Preservation of trade secret during action *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 60-3325. Time limit for bringing action *Same as UTSA*

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Kansas Kan. Stat. Ann. §§ 60-3320 - 60-3330 Uniform Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 60-3326. Application of act *Same as UTSA*
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	§ 60-3327. Uniformity of act *Same as UTSA*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	§ 60-3329. Severability of provisions of act *Same as UTSA*
Addition or Notes including "Time of Taking Effect" where provided in statutory text	This [Act] takes effect on _____, and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, this [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	§ 60-3330. Act not retroactive This act does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the act also does not apply to the continuing misappropriation that occurs after the effective date.

Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Kansas Kan. Stat. Ann. §§ 60-3320 - 60-3330 Uniform Trade Secrets Act
Additions II		
In General and Unless Otherwise Specified	• *Green cells denote UTSA 2005 version.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and numbering may differ, there is no material substantive difference. Where a statutory provision is marked as "Same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced, but still do not present substantive distinctions from the UTSA, the cells are marked "Substantively identical to UTSA."* • *Yellow cells indicate that the respective provision is a substantively modified version of the UTSA. In practice some of these modifications may ultimately be insignificant. In other cases, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA. Though some substantive and minor variations may still be noted.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red.* • *Some states have omitted specific UTSA provisions from their version, as the provision would be redundant of existing state law. Applicable state statute is cited in such instances provided above.* *Annotations:* •*Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is struck-through is language included within the UTSA that a state has omitted from its statute.* • *Annotations are primarily intended to denote substantive, rather than textual, differences. As such, some small differences in phrasing, punctuation, and formatting have not been noted. In some cases, where identified, annotations are critical substantive and indicate why where a state's provision differs in meaning from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. These states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Kentucky Ky. Rev. Stat. Ann. §§ 365.880 - 365.900 Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	1985
Definition: Freemble and Improper Means	As used in this [Act], 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.	§ 365.880(1) *Same as UTSA*
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his (or her) 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.	§ 365.880(2) *Same as UTSA*
Definition: Person	(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.	§ 365.880(3) *Same as UTSA*
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 365.880(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.
Definitions Not in UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Kentucky Ky. Rev. Stat. Ann. §§ 365.880 - 365.900 Uniform Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 365.882 Injunctive relief *Same as UTSA*
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 365.884 Damages *Substantively identical to UTSA*
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 365.886 Attorney's fees *Same as UTSA*
Preservation of Secrecy	In an action under this [Act], 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.	§ 365.888 Preservation of secrecy *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 365.890 Statute of limitations *Same as UTSA*

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Kentucky Ky. Rev. Stat. Ann. §§ 365.880 - 365.900 Uniform Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 365.892 Effect on other laws *Substantively identical to UTSA*
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	§ 365.894 Uniformity of application and construction *Same as UTSA*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	§ 365.898 Severability *Same as UTSA*
Additions or Notes (including "Time of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____, and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	§ 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.

BRR LLP
Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Kentucky Ky. Rev. Stat. Ann. §§ 365.880 - 365.900 Uniform Trade Secrets Act
Additions If		
In General and Unless Otherwise Specified	• *Green cells denote UTSA 1985 version.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Where a statutory provision is marked as "Same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced, but still do not present substantive deviations from the UTSA, the cells are marked "Substantively Identical to UTSA."* • *Yellow cells indicate that the respective provision is a substantively modified version of the UTSA. In positive sense of these modifications may ultimately be insignificant. In other cases, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA, though non-substantive and minor variations may not be annotated.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red.* • *Some states have retained specific UTSA provisions from their version, or the provision would be redundant of existing state law. Applicable state statute or citation is in most instances provided above.* *Annotations:* • *Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is hidden in through is language included within the UTSA that a state has omitted from its statute.* • *Annotations are primarily intended to denote substantive, rather than textual, differences. As such, some small differences in phrasing, punctuation, and formatting have not been noted. In some cases, where identified, annotations will entirely substantive and indicate only where a state's provision differs in meaning from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. There states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Louisiana La. Stat. Ann. §§ 51:1431 - 51:1439 Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	1979
Definition: Preamble and Improper Means	As used in this [Act], 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;	§ 1431(1) *Same as UTSA*
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his (or her) 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.	§ 1431(2) *Same as UTSA*
Definition: Person	(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.	§ 1431(3) *Same as UTSA*
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 1431(4) *Same as UTSA*
Definitions Not in UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Louisiana La. Stat. Ann. §§ 51:1431 - 51:1439 Uniform Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 1432. Injunctive relief A. 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. B. ~~In exceptional circumstances,~~ If the court determines that it would be unreasonable to prohibit future use, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time the use could have been prohibited. ~~Exceptional circumstances include, but are not 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.~~ C. In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 1433. Damages A. ~~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. Damages can include both~~ In addition to or in lieu of injunctive relief, a complainant may recover damages for the actual loss caused by misappropriation. A complainant also may recover for ~~and~~ the unjust enrichment caused by misappropriation that is not taken into account in computing damages for 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).~~
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 1434. Attorney's fees *Same as UTSA*
Preservation of Secrecy	In an action under this (Act), 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.	§ 1435. Preservation of secrecy *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 1436. Prescriptive period *Same as UTSA*

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Louisiana La. Stat. Ann. §§ 51:1431 - 51:1439 Uniform Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 1437 Effect on other law A. This Chapter displaces conflicting tort, restitutionary, and other laws of this state pertaining to civil liability 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,~~ or other civil liability or relief that is not based upon misappropriation of a trade secret; ~~(2) other civil remedies that are not based upon misappropriation of a trade secret; or~~ (2) ~~criminal remedies, whether or not based upon misappropriation of a trade secret~~liability for misappropriation of a trade secret; or.
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	§ 1438. Uniformity of application and construction *Same as UTSA*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	La. Stat. Ann. 24:175. Severability A. Unless otherwise specifically provided therein, the provisions of each act of the legislature are severable, whether or not a provision to that effect is included in the act. If any provision or item of an act, or the application thereof, is held invalid, such invalidity shall not affect other provisions, items, or applications of the act which can be given effect without the invalid provision, item, or application. B. This Section shall apply to acts of the legislature affecting general, and local and special laws, and statutes of the state, including the Louisiana Revised Statutes of 1950, the Civil Code of the state of Louisiana, the Louisiana Code of Civil Procedure, the Louisiana Code of Criminal Procedure, the Louisiana Code of Evidence, and the Louisiana Code of Juvenile Procedure.
Additions or Notes Including "Time of Taking Effect" where provided in statutory text.	This [Act] takes effect on _____, and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	

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Beck Reed Riden

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts Compared to the UTSA

Fed/State	Uniform Trade Secrets Act	Louisiana La. Stat. Ann. §§ 51:1431 - 51:1439 Uniform Trade Secrets Act
Additions II		
In General and Unless Otherwise Specified	• *Green cells denote UTSA 1985 version.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material/substantive difference. Where a statutory provision is marked as "Same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced, but still do not present substantive deviations from the UTSA, the cells are marked "Substantively identical to UTSA."* • *Yellow cells indicate that the respective provision is a substantively modified version of the UTSA. In practice some of these modifications may ultimately be insignificant. In other cases, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA. Though non-substantive and minor variations may not be annotated.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been identified that corresponds to particular UTSA section. Cells reviewed for additional information are also marked red.* • *Some states have omitted specific UTSA provisions from their version, so the provision would be redundant of existing state law. Applicable state statute or citation is in most instances provided above.* *Annotations:* •*Jurisdictional text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is stricken through is language included within the UTSA that a state has omitted from its statute.* • *Annotations are primarily intended to denote substantive, rather than textual, differences. As such, some small differences in phrasing, punctuation, and formatting have not been noted. In some cases, where small textual annotations will conflict substantive and indicate otherwise, a state's provision differs in meaning from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. These states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts
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Not Intended As Legal Advice

Fed/State	Uniform Trade Secrets Act	Maine Me. Rev. Stat. Ann. tit 10, §§ 1541 - 1548 Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	1985
Definition: Preamble and Improper Means	As used in this [Act], 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.	§ 1542(1) *Same as UTSA*
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 1542(2) *Same as UTSA*
Definition: Person	(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.	§ 1542(3) *Same as UTSA*
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 1542(4) *Same as UTSA*
Definitions Not in UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Maine Me. Rev. Stat. Ann. tit 10, §§ 1541 - 1548 Uniform Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 1543. Injunctive relief 1. Misappropriation restrained or enjoined. Actual or threatened misappropriation may be <u>restrained or</u> 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. Exceptional circumstances. 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. A. Exceptional circumstances include, but are not 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. Protection of trade secret compelled. In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order. 4. Application. <u>This section applies to all forms of injunctive relief, including temporary restraining orders, preliminary injunctions and permanent injunctions.</u>
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 1544. Damages *Substantively identical to UTSA*
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 1545. Attorney's fees *Same as UTSA*
Preservation of Secrecy	In an action under this [Act], 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.	§ 1546. Preservation of secrecy *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 1547. 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.

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Maine Me. Rev. Stat. Ann. tit 10, §§ 1541 - 1548 Uniform Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 1548. Effect on other laws 1. No effect. Except as provided in this section, this Act displaces conflicting tort, restitutionary and other laws of this State providing civil remedies for misappropriation of a trade secret. This Act does 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; C. Criminal remedies, whether or not based upon misappropriation of a trade secret; D. The duty of any person to disclose information where expressly required by law; or E. The provisions of the Maine Tort Claims Act, Title 14, chapter 741.
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	None
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For those states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	Me. Rev. Stat. Ann. tit 1, § 71(8) Severability. The provisions of the statutes are severable. The provisions of any session law are severable. If any provision of the statutes or of a session law is invalid, or if the application of either to any person or circumstance is invalid, such invalidity does not affect other provisions or applications which can be given effect without the invalid provision or application. The repeal of a severability clause located in and applicable to any title or a division of a title, chapter, section or Act, must be construed as the removal of surplus language unless the law indicates otherwise.
Additions or Notes (including "Time of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____ and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	

B R | R
Beck Reed Riden

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts Compared to the UTSA

Fed/State	Uniform Trade Secrets Act	Maine Me. Rev. Stat. Ann. tit 10, §§ 1541 - 1549 Uniform Trade Secrets Act
Additions !!		
In General and Unless Otherwise Specified	• *Crosscutch denote UTSA 1985 version.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Maine's statutory provision is marked as "Same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced, but still do not present substantive distinctions from the UTSA, the cells are marked "Substantively Identical to UTSA."* • *Yellow cells indicate that the respective provision is a substantively modified version of the UTSA. In positive terms of these modifications may ultimately be insignificant, in other cases, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA. Though non substantive and minor variations may not be annotated.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been identified that corresponds to particular UTSA section. Cells reserved for additional information are also marked red.* • *Some states have omitted specific UTSA provisions from their version, as the provision would be redundant of existing state law. Applicable state statute or citation is in most instances provided above.* *Annotations:* •*Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is italicized though is language included within the UTSA that a state has omitted from its statute.* • *Annotations are primarily intended to denote substantive, rather than textual differences. As such, some small differences in phrasing, punctuation, and formatting have not been noted, in some cases, where identical annotations will indicate substantive and textual variations, a state's provision differs in meaning from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. This a state will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts Compared to the UTSA

Fed/State	Uniform Trade Secrets Act	Maryland Md. Code Ann., Com. Law §§ 11-1201 - 11-1209 Maryland Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	1985
Definition: Preamble and Improper Means	As used in this [Act], 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;	§ 11-1201. Definitions *Substantively identical but for:* (a) In this subtitle the following words have the meanings indicated ~~unless the context requires otherwise~~.
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 11-1201(c) *Same as UTSA*
Definition: Person	(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.	§ 11-1201(d) *Same as UTSA*
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 11-1201(e) *Same as UTSA*
Definitions Not in UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts
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Fed/State	Uniform Trade Secrets Act	Maryland Md. Code Ann., Com. Law §§ 11-1201 - 11-1209 Maryland Uniform Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 11-1202. Injunctive Relief *Same as UTSA*
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 11-1203. Damages *Substantively identical to UTSA*
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 11-1204. Attorney's fees *Same as UTSA*
Preservation of Secrecy	In an action under this [Act], 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.	§ 11-1205. Preservation of secrecy *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 11-1206. Statute of limitations *Same as UTSA*

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts Compared to the UTSA

Fed/State	Uniform Trade Secrets Act	Maryland Md. Code Ann., Com. Law §§ 11-1201 - 11-1209 Maryland Uniform Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 11-1207. Effect on other law *Same as UTSA but for the addition of:* (2) Nothing contained in this act may be applied or construed to waive or limit any common law or statutory defense or immunity conferred by State personnel as defined under § 12-101 of the State Government Article.
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	§ 11-1208. Uniformity of application and construction *Same as UTSA*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	Md. Code Ann., General Provisions § 1-210. Severability In general (a) Except as otherwise provided, the provisions of all statutes enacted after July 1, 1973, are severable. When part of statute found to be unconstitutional or void (b) The finding by a court that part of a statute is unconstitutional or void does not affect the validity of the remaining portions of the statute, unless the court finds that the remaining valid provisions alone are incomplete and incapable of being executed in accordance with the legislative intent.
Additions or Notes (including "Time of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____ and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	

BRR LLP
Beck Reed Riden

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts Compared to the UTSA

Fed/State	Uniform Trade Secrets Act	Maryland Md. Code Ann., Com. Law §§ 11-1201 - 11-1209 Maryland Uniform Trade Secrets Act
Additions II.		
In General and Unless Otherwise Specified	• *Green cells denote UTSA 1985 version.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Where a statutory provision is marked as "Same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced, but still do not present substantive distinctions from the UTSA, the cells are marked "Substantively Identical to UTSA."* • *Yellow cells indicate that the respective provision is a substantively non-identical version of the UTSA. In practice some of these modifications may ultimately be insignificant. In other areas, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA. Though non-substantive and minor variations also may be annotated.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been identified that meaningfully is equivalent to UTSA section. Cells reserved for additional information are also marked red.* • *Some states have omitted specific UTSA provisions from their version as the provision would be redundant of existing state law. Applicable state statute or citation is in most instances provided above.* *Annotations:* •*Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is stricken through is language included within the UTSA that a state has omitted from its statute.* • *Annotations are primarily intended to denote substantive, rather than textual, differences. At times, minor textual differences in phrasing, punctuation, and formatting have not been noted. In some cases, where the differed annotations are extremely substantive and significant only where a state's provision differs in meaning from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. These states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Massachusetts MA S.2419, 189th Gen. Ct. (Ma. 2016) *[H.4434 substantially the same]* Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	1985
Definition: Preamble and Improper Means	As used in this [Act], 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;	Section 1. As used in this chapter, the following words shall have the following meanings unless the context clearly requires otherwise: "Improper means", without limitation, theft, bribery, misrepresentation, unreasonable intrusion into private, physical or electronic space or breach or inducement of a breach of a confidential relationship or other duty ~~maintain secrecy, or espionage through electronic or other means~~ to limit acquisition, disclosure or use of information; provided, however, that "improper means" shall not include reverse engineering from properly acquired materials or information.
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	Section 1. *Substantively identical to UTSA but for:* (ii)(C) before a material change of the actor's position, knew or had reason to know that what was disclosed it was a trade secret and that such person's knowledge of the trade secret it had been acquired by accident, mistake or through another person's act described in subclause (A) of clause (ii) or subclauses (1) or (2) of subclause (B) of said clause (ii).
Definition: Person	(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.	Section 1. *Same as UTSA*
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	Section 1(4) "Trade secret", specified or specifiable information, whether or not fixed in tangible form or embodied in any tangible thing, including, but not limited to, a formula, pattern, compilation, program, device, method, technique, process, business strategy, customer list, invention or scientific, technical, financial or customer data that, at the time of the alleged misappropriation: [i] ~~derives~~ provided economic ~~value~~ advantage, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, others who ~~can~~ might obtain economic ~~value~~ advantage from its acquisition, disclosure or use; and [ii] is was the subject of efforts that were reasonable under the circumstances, ~~to maintain its secrecy~~, to protect against the acquisition, disclosure or use of such information without the consent of the person properly asserting rights therein or such person's predecessor in interest including, but not limited to, reasonable notice.
Definitions Not in UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Massachusetts MA S.2418, 189th Gen. Ct. (Mar. 2016) *(H.4424 substantially the same)* Uniform Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	Section 2 (a) Actual or threatened misappropriation may be enjoined upon principles of equity, including, but not limited to, consideration of prior conduct and the circumstances of potential use, upon a showing that information qualifying as a trade secret has been or is threatened to be misappropriated. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist; provided, however, that but the injunction may be continued for an additional reasonable period of time if necessary in order to eliminate any economic ~~commercial~~ advantage that otherwise would be derived from misappropriation. (b) In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for not longer than the period of time for which use could have been prohibited. For purposes of this subsection, "exceptional circumstances" shall include, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	Section 3. (a) 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 is entitled to recover damages for misappropriation of information qualifying as a trade secret. 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 the 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 exists, the court may award exemplary damages in an amount not exceeding twice the amount of an award made under subsection (a).
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	Section 4 The court may award reasonable attorneys' fees and costs to the prevailing party if: (i) a claim of misappropriation is made or defended in bad faith; (ii) a motion to enter or to terminate an injunction is made or resisted in bad faith; or (iii) willful and malicious misappropriation exists. In considering an award of reasonable attorneys' fees, the court may take into account the claimant's specification of trade secrets and the proof that the alleged trade secrets were misappropriated.
Preservation of Secrecy	In an action under this [Act], 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.	Section 5 (a) In an action under this chapter, 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. (b) In an action alleging misappropriation under this chapter, a party shall state with reasonable particularity the circumstances thereof, including the nature of the trade secret and the basis for its protection. Before commencing discovery relating to an alleged trade secret, the party alleging misappropriation shall identify the trade secret with sufficient particularity under the circumstances of the case to allow the court to determine the appropriate parameters of discovery and to reasonably enable other parties to prepare their defense.
Statute of Limitations	An action for misappropriation must be brought within 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.	Section 6 *Substantially identical to the UTSA*

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Massachusetts MA S.2438, 189th Gen. Ct. (Ma. 2016) *[H.4434 substantially the same]* Uniform Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	Section 7 (a) Except as provided in subsection (b), this chapter ~~displaces~~ shall supersede any conflicting ~~tort, restitutionary, and other~~ laws of the Commonwealth ~~this state~~ that provide ~~providing~~ civil remedies for ~~the~~ misappropriation ~~of a trade secret~~. (b) This chapter shall not affect: (1) contractual remedies ~~, whether or not based upon misappropriation of a trade secret,~~ provided that, to the extent such remedies are based on an interest in the economic advantage of information claimed to be confidential, such confidentiality shall be determined according to the definition of trade secret in section 1 and the terms and circumstances of the underlying contract shall be considered in such determination; (2) remedies based on submissions to governmental units; (3) other civil remedies to the extent that those remedies are not based upon misappropriation of a trade secret; or (4) criminal remedies, whether or not based upon misappropriation of a trade secret.
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	Section 8 *Same as UTSA*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	G.L. c. 4, § 6. Rules for construction of statutes. Eleventh, The provisions of any statute shall be deemed severable, and if any part of any statute shall be adjudged unconstitutional or invalid, such judgment shall not affect other valid parts thereof.
Additions or Notes including "Time of Taking Effect" where provided in statutory text.	This [Act] takes effect on _____ and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	

B R L P
Beck Reed Riden

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Massachusetts MA S.2438, 189th Gen. Ct. (Ma. 2016) *[H.4604 substantially the same]* Uniform Trade Secrets Act
Additions II		
In General and Unless Otherwise Specified	• *Green cells denote UTSA 1985 version.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Where a statutory provision is marked or "Same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced, but still do not present substantive deviations from the UTSA, the cells are marked "substantively identical to UTSA."* • *Yellow cells indicate that the respective provision is a substantively modified version of the UTSA. In practice some of these modifications may ultimately be insignificant. In other cases, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA. Though non-substantive deviations existing may not be annotated.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells not marked red where no state law provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red.* • *Some states have omitted specific UTSA provisions from their version, as the provision would be redundant of existing state law. Applicable state statute or citation is in most instances provided above.* *Annotations:* •*Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is struck-through is language included within the UTSA but a state has omitted from its statute.* • *Annotations are primarily intended to denote substantive, rather than textual differences. As such, some small differences in phrasing, punctuation, and formatting have not been noted. In some cases, where identified, innovations are entirely substantive and indicate only where a state's provision differs in meaning from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but are in later amendment. These states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Michigan Mich. Comp. Laws Ann. §§ 445.1901 - 445.1910 Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	1985
Definition: Preamble and Improper Means	As used in this [Act], 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.	445.1902. Definitions *Same as UTSA but for:* Sec. 2. As used in this act ~~unless the context requires otherwise~~:
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 445.1902(b) *Substantively identical to UTSA*
Definition: Person	(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.	§ 445.1902(c) *"Person" means* ~~*a natural person*~~ *an individual, corporation,* ~~*business trust, estate, trust,*~~ *partnership, association,* ~~*joint venture, government, governmental subdivision or agency,*~~ *governmental entity, or any other legal* ~~*or commercial*~~ *entity.*
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 445.1902(a) *Same as UTSA*
Definition: Not in UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Michigan Mich. Comp. Laws Ann. §§ 445.1901 - 445.1910 Uniform Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 445.1903. Actual or threatened misappropriation of trade secrets; injunction (1) Actual or threatened misappropriation may be enjoined. Upon application to the court of competent jurisdiction, 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,~~ If a court determines that it would be unreasonable to prohibit future use of a trade secret, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time the use could have been prohibited. ~~Exceptional circumstances include, but are not 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.
Damages:	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 445.1904. Recovery of damages for misappropriation, exceptions 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).~~
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 445.1905. Claims made in bad faith; motion to terminate injunction *Same as UTSA*
Preservation of Secrecy:	In an action under this [Act], 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.	§ 445.1906. Preservation of secrecy of alleged trade secret; means *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 445.1907. Statute of limitations for bringing misappropriation action *Same as UTSA*

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Michigan Mich. Comp. Laws Ann. §§ 445.1901 - 445.1910 Uniform Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 445.1908. Displacement of other civil remedies *Same as UTSA*
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	§ 445.1909. Application and construction of act *Same as UTSA*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	Mich. Comp. Laws Ann. § 8.5. Severability. In the construction of the statutes of this state the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the legislature, that is to say: If any portion of an act or the application thereof to any person or circumstances shall be found to be invalid by a court, such invalidity shall not affect the remaining portions or applications of the act which can be given effect without the invalid portion or application, provided such remaining portions are not determined by the court to be inoperable, and to this end acts are declared to be severable.
Additions or Notes (including "Time of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____ and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	§ 445.1910. Effective date of act; application This act takes effect October 1, 1998 and does not apply to misappropriation occurring before the effective date. With respect to a continuing misappropriation that began before the effective date, this act does not apply to the continuing misappropriation that occurs after the effective date.

B/R/R
Beck Reed Riden

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Michigan Mich. Comp. Laws Ann. §§ 445.1901 - 445.1910 Uniform Trade Secrets Act
Additions If		
In General and Unless Otherwise Specified	• Unencircled denote UTSA 1985 version. • White cells indicate that the respective provision is substantively identical to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Where a statutory provision is marked as "Same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced, but still do not present substantive distinctions from the UTSA, the cells are marked "Substantively Identical to UTSA." • Yellow cells indicate that the respective provision is a substantively modified version of the UTSA. In practice some of these modifications may ultimately be insignificant. In other cases, the substantive difference require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA, though non-substantive and minor variations may not be annotated. • Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red. • Some states have omitted specific UTSA provisions from their version, as the provision would be redundant of existing state law. Applicable state statute or citation is in most instances provided above. Annotations: •Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is stricken through is language included within the UTSA that a state has omitted from its statute. • Annotations are primarily intended to denote substantive, rather than textual differences. As such, minor textual differences in phrasing, punctuation, and formatting have not been noted, in some cases, where identical annotations have arisen substantive and textual differences where a state's provision differs in meaning from a corresponding provision in the UTSA. • All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. These states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Minnesota Minn. Stat. Ann. §§ 325C.01 - 325C.08 Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	1985
Definition: Preamble and Improper Means	As used in this [Act], 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.	§ 325C.01 *Same as UTSA*
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 325C.01(3) *Same as UTSA*
Definition: Person	(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.	§ 325C.01(4) *Same as UTSA*
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 325C.01(5) *Same as UTSA but for the addition of:* The existence of a trade secret is not negated merely because an employee or other person has acquired the trade secret without express or specific notice that it is a trade secret if, under all the circumstances, the employee or other person knows or has reason to know that the owner intends or expects the secrecy of the type of information comprising the trade secret to be maintained.
Definitions Not in UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Minnesota Minn. Stat. Ann. §§ 325C.01 - 325C.09 Uniform Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 325C.02. Injunctive relief *Same as UTSA*
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 325C.03. Damages *Same as UTSA*
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 325C.04. Attorney's fees *Same as UTSA*
Preservation of Secrecy	In an action under this [Act], 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.	§ 325C.05. Preservation of secrecy *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 325C.06. Statute of limitations *Same as UTSA*

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Minnesota Minn. Stat. Ann. §§ 325C.01 - 325C.08 Uniform Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 325C.07. Effect on other law *Same as UTSA*
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	*None*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not effect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	Minn. Stat. Ann. § 645.20. Construction of severable provisions Unless there is a provision in the law that the provisions shall not be severable, the provisions of all laws shall be severable. If any provision of a law is found to be unconstitutional and void, the remaining provisions of the law shall remain valid, unless the court finds the valid provisions of the law are so essentially and inseparably connected with, and so dependent upon, the void provisions that the court cannot presume the legislature would have enacted the remaining valid provisions without the void one; or unless the court finds the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.
Additions or Notes including "Time of Taking Effect" where provided in statutory text	This [Act] takes effect on_____, and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	

B R I P
Beck Reed Riden

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Minnesota Minn. Stat. Ann. §§ 325C.01 - 325C.08 Uniform Trade Secrets Act
Addition II		
In General and Unless Otherwise Specified	• *Green cells denote UTSA 1985 version.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Where a statutory provision is marked as "Same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced, but still do not present substantive distinctions from the UTSA, the cells are marked "Substantively Identical to UTSA."* • *Yellow cells indicate that the respective provision is substantively modified version of the UTSA, in spite some of these modifications may ultimately be insignificant. In other words, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA, though non-substantive and minor variations may not be annotated.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red.* • *Some states have omitted specific UTSA provisions from their version, or the provision would be redundant of existing state law. Applicable state statutes or citations is most instances provided above.* *Annotations:* •*Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is stricken through is language included within the UTSA that a state has omitted from its statute.* • *Annotations are primarily intended to denote substantive, rather than textual, differences. As such, some small differences in phrasing, punctuation, and formatting have not been noted. In some cases, where identified, annotations will include substantive and artificial rule when a state's provision differs in meaning from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. These states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts
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Fed/State	Uniform Trade Secrets Act	Mississippi Miss. Code Ann. §§ 75-26-1 - 75-26-19 Mississippi Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	1989
Definition: Preamble and Improper Means	As used in this [Act], 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;	§ 75-26-3(a) *Same as UTSA*
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his (or her) 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.	§ 75-26-3(b) *Same as UTSA*
Definition: Person	(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.	§ 75-26-3(c) *Same as UTSA*
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 75-26-3(d) *Same as UTSA*
Definitions Not in UTSA		

Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Mississippi Miss. Code Ann. §§ 75-26-1 - 75-26-19 Mississippi Uniform Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 75-26-5. Injunctions, protective orders *Same as UTSA*
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 75-26-7. 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 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. (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)~~.
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 75-26-9. Attorney's fees for prevailing party *Same as UTSA*
Preservation of Secrecy	In an action under this [Act], 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.	§ 75-26-11. Preservation of secrecy during litigation *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 75-26-13. Limitations period *Same as UTSA*

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Mississippi Miss. Code Ann. §§ 75-26-1 - 75-26-19 Mississippi Uniform Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 75-26-15. Applicability of chapter *Same as UTSA*
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	§ 75-26-17. Construction *Same as UTSA*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	§ 75-26-19. Severability *Same as UTSA*
Additions in Notes (including "Time of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____ and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts Compared to the UTSA

Fed/State	Uniform Trade Secrets Act	Mississippi Miss. Code Ann. §§ 75-26-1 - 75-26-19 Mississippi Uniform Trade Secrets Act
Additions II		
In General and Unless Otherwise Specified	• *Green cells denote UTSA 1985 version.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material/substantive difference. Where a statutory provision is contained or "frame in UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced, but still do not prevent substantive distinctions from the UTSA, the cells are marked "Substantively Identical to UTSA."* • *Yellow cells indicate that the respective provision is substantively modified version of the UTSA, in practice some of these modifications may ultimately be insignificant. In other cases, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA, though non-substantive and minor variations may still be unannotated.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been identified that corresponds to a particular UTSA version. Cells reserved for additional information are also marked red.* • *Some states have omitted specific UTSA provisions from their version, so the provision would be redundant of enabling state law. Applicable state statute or citation is in most instances provided above.* *Annotations:* •*Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is stricken through is language included within the UTSA that a state has omitted from its statute.* • *Annotations are primarily intended to denote substantive, rather than textual, differences. As such, minor word differences in phrasing, punctuation, and formatting have not been noted. In some cases, where identified, annotations are unlikely substantive and indicate only where a state's provision differs in wording from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. These states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts
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Fed/State	Uniform Trade Secrets Act	Missouri Mo. Ann. Stat. §§ 417.450 - 417.467 Missouri Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	1985
Definition: Preamble and Improper Means	As used in this [Act], 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.	§ 417.453(1) *Same as UTSA*
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 417.453(2) *Same as UTSA*
Definition: Person	(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.	§ 417.453(3) "Person", a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, governmental subdivision or agency, or any other legal or commercial entity, whether for profit or not for profit.
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 417.453(1)(4) "Trade secret", information, including but not limited to, technical or nontechnical data, a formula, pattern, compilation, program, 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.
Definitions Not in UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Missouri Mo. Ann. Stat. §§ 417.450 - 417.467 Missouri Uniform Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 417.455. Actual or threatened misappropriation—injunction *Same as UTSA*
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 417.457. Damages for misappropriation 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 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. 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).~~ If misappropriation is outrageous because of the misappropriator's evil motive or reckless indifference to the rights of others, the court may award punitive damages.
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	None
Preservation of Secrecy	In an action under this [Act], 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.	§ 417.459. Preservation of secrecy by court *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 417.461. Limitation of actions An action for misappropriation shall be brought within ~~three~~ five 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.

Beck Reed Riden

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Missouri Mo. Ann. Stat. §§ 417.450 – 417.467 Missouri Uniform Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 417.463. Available remedies 1. Except as provided in subsection 2 of this section, sections 417.450 to 417.467 displace conflicting tort, restitutionary, and other laws of this state providing civil remedies for misappropriation of a trade secret. 2. Sections 417.450 to 417.467 shall not affect: (1) Contractual remedies, whether or not based upon misappropriation of a trade secret; or (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; or (4) The discovery of facts, opinions, information, documents, things, and any other matters discoverable in litigation, except in litigation which alleges misappropriation of trade secrets as a cause of action.
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	417.465. Application and construction of act *Same as UTSA*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	Mo. Ann. Stat. § 1.140. Severability of statute provisions The provisions of every statute are severable. If any provision of a statute is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions of the statute are valid unless the court finds the valid provisions of the statute are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed the legislature would have enacted the valid provisions without the void one; or unless the court finds that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.
Additions or Notes (including "Time of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____ and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	

B R | R
Beck Reed Riden

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Missouri Mo. Rev. Stat. §§ 417.450 - 417.467 Missouri Uniform Trade Secrets Act
Additions &		
In General and Unless Otherwise Specified	• *Cites cells denote UTSA 1985 version.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Where a statutory provision is marked as "Same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced, but still do not present substantive distinctions from the UTSA, the cells are marked "Substantively Identical to UTSA."* • *Yellow cells indicate that the respective provision is a substantively modified version of the UTSA, in practice some of these modifications may ultimately be insignificant. In other cases, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA. Though non-substantive and minor variations may not be annotated.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red.* • *Some states have omitted specific UTSA provisions from their version, as the provision would be redundant of existing state law. Applicable state statute or citation is in most instances provided above.* *Annotations:* •*Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is stricken through is language included within the UTSA that a state has omitted from its statute.* • *Annotations are primarily intended to denote substantive, rather than textual differences. As such, some small differences in phrasing, punctuation, and formatting have not been noted. In some cases, where identified, textual but not substantive and indicate only where a state's provision differs in wording from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. These states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts Compared to the UTSA

Fed/State	Uniform Trade Secrets Act	Montana Mont. Code Ann. §§ 30-14-401 - 30-14-409 Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	1985
Definition: Proximate and Improper Means	As used in this [Act], 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;	§ 30-14-402(1) *Same as UTSA*
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 30-14-402(2) *Same as UTSA*
Definition: Person	(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;	§ 30-14-402(3) *Same as UTSA*
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 30-14-402(4) (4) "Trade secret" means information or computer software, including a formula, pattern, compilation, program, 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.
Definitions Not in UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Montana Mont. Code Ann. §§ 30-14-401 - 30-14-409 Uniform Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 30-14-403. Injunctive relief--royalty *Same as UTSA*
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 30-14-404. 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 is 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 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 (a).~~
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 30-14-405. Costs and attorney fees *Same as UTSA*
Preservation of Secrecy	In an action under this (Act), 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.	§ 30-14-406. Preservation of secret *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 30-14-407. Statute of limitations *Same as UTSA*

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Montana Mont. Code Ann. §§ 30-14-401 - 30-14-409 Uniform Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 30-14-408. Effect on other law *Same as UTSA*
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	§ 30-14-409. Uniformity of application and construction *Same as UTSA*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	*Reichert v. State ex rel. McCulloch*, 278 P.3d 455, 462 (2012). *Severability is a principle established by caselaw.*
Additions or Notes Including "Time of Taking Effect" where provided in statutory text.	This [Act] takes effect on _____ and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Montana Mont. Code Ann. §§ 30-14-401 - 30-14-409 Uniform Trade Secrets Act
Addition ?		
In General and Unless Otherwise Specified	• *Green cells denote UTSA 1985 version.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Where a statutory provision is marked as "Same as UTSA" minor textual or formatting differences may exist. Where there differences are more pronounced, but still do not present substantive distinctions from the UTSA, the cells are marked "Substantively identical to UTSA."* • *Yellow cells indicate that the respective provision is a substantively modified version of the UTSA. In certain cases of these modifications any substantive be significant, in other cases, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA, though non-substantive and minor variations may not be annotated.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red when no state law provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red.* • *Some states have omitted specific UTSA provisions from their version, as the provision would be redundant of existing state law. Applicable state statutes or citation is noted in text cells provided above.* *Annotations:* •*Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is stricken through is language included within the UTSA that a state has omitted from its statute.* • *Annotations are primarily intended to denote substantive, rather than textual, differences. As such, minor textual differences in phrasing, punctuation, and formatting have not been noted. In some cases, where identified, annotations will entirely substantive and indicate only where a state's provision differs in meaning from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. These states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Nebraska Neb. Rev. Stat. §§ 87-501 - 87-507 Trade Secrets Act
UTSA Version Adopted	1985 version	1985
Definition: Proximate and Improper Means	As used in this [Act], 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;	§ 87-502(1) *Same as UTSA*
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 87-502(2) *Same as UTSA*
Definition: Person	(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.	§ 87-502(3) Person shall mean a natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity; and
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 87-502(4) Trade secret shall mean information, including, but not limited to, a drawing, formula, pattern, compilation, program, device, method, technique, code, or process that: (a) Derives independent economic value, actual or potential, from not being known to, and not being 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.
Definitions Not in UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Nebraska Neb. Rev. Stat. §§ 87-501 - 87-507 Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 87-503. Misappropriation, injunction, royalty, affirmative acts *Same as UTSA*
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 87-504. Misappropriation, damages Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or having reason to know of the 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. ~~(b) If willful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).~~
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	*None*
Preservation of Secrecy	In an action under this [Act], 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.	§ 87-505. Court proceedings; preserve secrecy In an action under the Trade Secrets Act, the court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include, but not be limited to, 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~~, and ordering nondisclosure of the alleged trade secret by the parties' attorneys, witnesses, or experts. The disclosure or publication of a trade secret in a court proceeding or as a result thereof shall not constitute an abandonment of the secret.
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 87-506. Statute of limitation An action for misappropriation shall be brought within ~~three~~ four years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For purposes of this section, a continuing misappropriation shall constitute a single claim.

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Nebraska Neb. Rev. Stat. §§ 87-501 - 87-507 Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	*None*
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	*None*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	*Ewing v. Scotts Bluff County Bd. of Equalization*, 420 N.W.2d 685, 690-91 (1988). Severability is a principle established by caselaw.
Additions or Notes (including "Effective Taking Effect" where provided in statutory text.	This [Act] takes effect on _____, and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	§ 87-507. Applicability of act The Trade Secrets Act shall not apply to any misappropriation occurring prior to July 9, 1988. With respect to a continuing misappropriation that began prior to July 9, 1988, such act also shall not apply to the continuing misappropriation that occurs after such date.

B|R|R
Beck Reed Riden

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Nebraska Neb. Rev. Stat. §§ 87-501 - 87-507 Trade Secrets Act
Addition ☐		
In General and Unless Otherwise Specified	• *Green cells denote UTSA 1985 sections.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Where a statutory provision is marked as "Same as UTSA" minor textual or formatting differences may exist. Where there differences are more pronounced, but still do not present substantive distinctions from the UTSA, the cells are marked "Substantively Identical to UTSA."* • *Yellow cells indicate that the respective provision is a substantively modified version of the UTSA. In some cases of these modifications may ultimately be insignificant, in other cases, the substantive differences require attention. Language in the yellow cells is maintained to indicate how it varies from the 1985 UTSA. Though non-substantive and minor variations also may be noted.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red.* • *Some states have omitted specific UTSA provisions from their version, as the provision would be redundant of existing state law. Applicable state statute or citation is in most instances provided above.* *Annotations:* •*Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is struck through is language included within the UTSA that a state has omitted from its version.* • *Annotations are primarily intended to denote substantive, rather than textual differences. As such, some small differences in phrasing, punctuation, and formatting have not been noted. In some cases, where identified, annotations are entirely informative and indicate only where a state's provision differs in meaning from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but are in turn amendment. These states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Nevada Rev. Rev. Stat. Ann. §§ 600A.010 - 600A.100 Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	1985
Definition: Preamble and Improper Means	As used in this [Act], 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.	§ 600A.030(1) "Improper means" includes, without limitation: (a) Theft; (b) Bribery; (c) Misrepresentation; (d) Willful breach or willful inducement of a breach of a duty to maintain secrecy; (e) Willful breach or willful inducement of a breach of a duty imposed by common law, statute, contract, license, protective order or other court or administrative order; and (f) Espionage through electronic or other means.
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 600A.030(2) *Same as UTSA but for the addition of:* (a) Acquisition of the trade secret of another by a person by improper means;
Definition: Person	(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.	§ 600A.030(4) *Same as UTSA*
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 600A.030(5) "Trade secret" means information, including, without limitation, a formula, pattern, compilation, program, device, method, technique, product, system, process, design, prototype, procedure, computer programming instruction or code that: (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other persons who can obtain commercial or economic value from its disclosure or use; and (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.
Definition: Not in UTSA		§ 600A.31(3) "Owner" means the person who holds legal or equitable title to a trade secret.

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Nevada Nev. Rev. Stat. Ann. §§ 600A.010 - 600A.100 Uniform Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 600A.040. Actual or threatened misappropriation: Injunctive relief *Substantively identical to UTSA but for the addition of:* 3. In appropriate circumstances, the court may order affirmative acts to protect a trade secret. As used in this subsection, "affirmative acts" includes, without limitation, issuing an injunction or order requiring that a trade secret which has been misappropriated and posted, displayed or otherwise disseminated on the Internet be removed from the Internet immediately.
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 600A.050. Misappropriation: Damages *Same as UTSA but for:* 2. If willful, wanton or reckless misappropriation or disregard of the rights of the owner of the trade secret exists, the court may award exemplary damages in an amount not exceeding twice the award made under subsection 1.
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 600A.060. Attorney's fees *Same as UTSA*
Preservation of Secrecy	In an action under this [Act], 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.	§ 600A.070. Preservation of secrecy ~~In any action under this [Act]~~ civil or criminal action, the court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include, without limitation: 1. Granting protective orders in connection with discovery proceedings; 2. Holding hearings in camera; 3. Sealing the records of the action; 4. Determining the need for any information related to the trade secret before allowing discovery; 5. Allowing the owner of the trade secret to obtain a signed agreement of confidentiality from any party who obtains knowledge of the trade secret; 6. Ordering a person who obtains knowledge of the trade secret to return to the owner of the trade secret any writing which reflects or contains the trade secret; and 7. Ordering any person involved in the litigation not to disclose an alleged trade secret without previous court approval.
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 600A.090. Limitation of actions *Same as UTSA*

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Nevada Rev. Rev. Stat. Ann. §§ 600A.010 - 600A.100 Uniform Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 600A.090. Effect of chapter on other law and remedies 1. Except as otherwise provided in subsection 2, this chapter displaces conflicting tort, restitutionary, and other law of this state providing civil remedies for misappropriation of a trade secret. 2. This chapter does 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) Except as otherwise provided in NRS 600A.035, criminal sanctions, whether or not based upon misappropriation of a trade secret.
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	*None*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For those states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	Nev. Rev. Stat. Ann. § 0.020. Severability 1. If any provision of the Nevada Revised Statutes, or the application thereof to any person, thing or circumstance is held invalid, such invalidity shall not affect the provisions or application of NRS which can be given effect without the invalid provision or application, and to this end the provisions of NRS are declared to be severable. 2. The inclusion of an express declaration of severability in the enactment of any provision of NRS or the inclusion of any such provision in NRS, does not enhance the severability of the provision so treated or detract from the severability of any other provision of NRS.
Additions or Notes (including "Time of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____, and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	§ 600A.020. Repealed § 600A.032. Presumption of reasonable effort by owner to maintain secrecy; rebuttal of presumption The owner of a trade secret is presumed to make a reasonable effort to maintain its secrecy if the word "Confidential" or "Private" or another indication of secrecy is placed in a reasonably noticeable manner on any medium or container that describes or includes any portion of the trade secret. This presumption may be rebutted only by clear and convincing evidence that the owner did not take reasonable efforts to maintain the secrecy of the trade secret. § 600A.035. Theft of trade secrets prohibited; criminal penalties *[Omitted from chart]* § 600A.055. Misappropriation and posting or dissemination on Internet: Effect A trade secret that is misappropriated and posted, displayed or otherwise disseminated on the Internet shall be deemed to remain a trade secret as defined in NRS 600A.030 and not to have "ceased to exist" for the purposes of subsection 1 of NRS 600A.040 if: 1. The owner, within a reasonable time after discovering that the trade secret has been misappropriated and posted, displayed or otherwise disseminated on the Internet, obtains an injunction or order issued by a court requiring that the trade secret be removed from the Internet; and 2. The trade secret is removed from the Internet within a reasonable time after the injunction or order requiring removal of the trade secret is issued by the court. § 600A.100. Inapplicability of chapter to acts which occurred before, or began before and continue after, July 1, 1987 This chapter does not apply to a misappropriation that occurred before July 1, 1987, or to a misappropriation that began before and continues after July 1, 1987.

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Nevada Nev. Rev. Stat. Ann. §§ 600A.010 - 600A.100 Uniform Trade Secrets Act
Additions II		
In General and Unless Otherwise Specified	• *Generally denotes UTSA 1985 version.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and/or punctuation may differ, there is no material substantive difference. Where a statutory provision is marked as "Same as UTSA" it does so for formatting differences only. Where these differences are more pronounced, but still do not present substantive deviations from the UTSA, the cells are marked "Substantively Identical to UTSA."* • *Yellow cells indicate that the respective provision is a substantively modified version of the UTSA. In such the cases of these modifications may ultimately be insignificant. In other cases, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA. Though non-substantive and minor variations may not be annotated.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. There are either no parallels or annotations. Cells are marked red where no state the provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red.* • *Some states have omitted a specific UTSA provision from their version, or the provision would be redundant of existing state law. Applicable state statutes or citation is in most instances provided above.* *Annotations:* •*Underlined text is language that has been included in state's statute, but does not exist in the UTSA. Text that is struck-through is language included within the UTSA that a state has omitted from its statute.* • *Annotations are primarily intended to denote substantive, rather than textual, differences. As such, some overall differences in phrasing, punctuation, and formatting have not been noted. In some cases, where identified, annotations are exclusively substantive and indicate only where a state's provision differs in meaning from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. These states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	New Hampshire N.H. Rev. Stat. §§ 350-B:1 - 350-B:9 Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	1985
Definition: Preamble and Improper Means	As used in this [Act], 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.	§ 350-B:1(I) *Same as UTSA*
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who: (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 350-B:1(II) *Same as UTSA*
Definition: Person	(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.	§ 350-B:1(III) *Same as UTSA*
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 350-B:1(IV) *Same as UTSA*
Definitions Not in UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	New Hampshire N.H. Rev. Stat. §§ 350-B:1 - 350-B:9 Uniform Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 350-B:2 Injunctive Relief *Same as UTSA*
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 350-B:3 Damages *Same as UTSA*
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 350-B:4 Attorney's fees *Same as UTSA*
Preservation of Secrecy	In an action under this [Act], 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.	§ 350-B:5 Preservation of secrecy *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 350-B:6 Statute of limitations *Same as UTSA*

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	New Hampshire N.H. Rev. Stat. §§ 350-B:1 - 350-B:9 Uniform Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 350-B:7 Effect on other law *Same as UTSA*
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	§ 350-B:8 Uniformity of construction and application *Same as UTSA*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	*Associated Press v. State*, 898 A.2d 1236, 1255 (2005): *Statutes should be severed when possible and consistent with legislative intent.*
Additions or Notes (including "Time of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____ and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	

B|R|R LLP
Beck Reed Riden

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	New Hampshire N.H. Rev. Stat. §§ 350-B:1 - 350-B:9 Uniform Trade Secrets Act
Additions ↑		
In General and Unless Otherwise Specified	• *Green cells denote UTSA 1985 version.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Where a statutory provision is marked as "Same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced, but still do not present substantive distinctions from the UTSA, the cells are marked "Substantively Identical to UTSA."* • *Yellow cells indicate that the respective provision is a substantively modified version of the UTSA. In practice some of these modifications may ultimately be insignificant. In other cases, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA. Though non-substantive and minor variations may not be annotated.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been identified that corresponds to a particular UTSA section. Cells reviewed for additional information are also marked red.* • *Some states have omitted specific UTSA provisions from their version, as the provision would be redundant of existing state law. Applicable state statute or citation is in most instances provided above.* *Annotations:* •*Unstriked text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is struck-through is language included within the UTSA that a state has omitted from its statute.* • *Annotations are primarily intended to denote substantive, rather than textual, differences. As such, minor small differences in phrasing, punctuation, and formatting have not been noted. In some cases, where identified, annotations are entirely substantive and indicate instances where a state's provision differs in meaning from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. These states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	New Jersey N.J. Stat. Ann. §§ 56:15-1 - 56:15-9 New Jersey Trade Secrets Act
UTSA Version Adopted	1985 version	1985
Definition: Preamble and Improper Means	As used in this [Act], 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;	§ 56:15-2. Definitions As used in this act, ~~unless the context requires otherwise~~: "Improper means" means the theft, bribery, misrepresentation, breach or inducement of a breach of an express or implied duty to maintain the secrecy of, or to limit the use or disclosure of, a trade secret, or espionage through electronic or other means, access that is unauthorized or exceeds the scope of authorization, or other means that violate a person's rights under the laws of this State.
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 56:15-2 "Misappropriation" means: (1) 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 (2) Disclosure or use of a trade secret of another without express or implied consent of the trade secret owner by a person who: (a) used improper means to acquire knowledge of the trade secret; or (b) at the time of disclosure or use, knew or had reason to know that the knowledge of the trade secret was derived from or acquired through improper means; or ~~(I) derived from or through a person who had utilized improper means to acquire it;~~ ~~(II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or~~ ~~(III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or~~ (c) before a material change of 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~~ through improper means.
Definition: Person	(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.	§ 56:15-2 "Person" *Same as UTSA*
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 56:15-2 "Trade Secret" "Trade secret" means information, held by one or more people, without regard to form, including a formula, pattern, business data compilation, program, device, method, technique, design, diagram, drawing, invention, plan, procedure, prototype or process, that: (1) 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 (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.
Definitions Not in UTSA		§ 56:15-2 Definitions "Proper means" means discovery by independent invention, discovery by reverse engineering, discovery under a license from the owner of the trade secret, observation of the information in public use or on public display, obtaining the trade secret from published literature, or discovery or observation by any other means that is not improper. "Reverse engineering" means the process of starting with the known product and working backward to find the method by which it was developed so long as the acquisition of the known product was lawful or from sources having the legal right to convey it, such as the purchase of the item on the open market.

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	New Jersey N.J. Stat. Ann. §§ 56:15-1 - 56:15-9 New Jersey Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 56:15-3. Injunctive relief for actual or threatened misappropriation, additional relief for exceptional circumstances *Same as UTSA*
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 56:15-4. Award of damages; punitive damages a. Except to the extent that circumstances, including a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant 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 exists, the court may award punitive damages in an amount not exceeding twice any award made under subsection a. of this section.
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 56:15-6. Attorney's fees and costs; bad faith litigation The court may award to the prevailing party reasonable attorney's fees and costs, including a reasonable sum to cover the service of expert witnesses, if: a. willful and malicious misappropriation exists; b. a claim of misappropriation is made in bad faith; or c. a motion to terminate an injunction is made or resisted in bad faith. For purposes of this section, "bad faith" is that which is undertaken or continued solely to harass or maliciously injure another, or to delay or prolong the resolution of the litigation, or that which is without any reasonable basis in fact or law and not capable of support by a good faith argument for an extension, modification or reversal of existing law.
Preservation of Secrecy	In an action under this [Act], 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.	§ 56:15-7. Preservation of secrecy In an action under this act, 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~~ consistent with the Rules of Court as adopted by the Supreme Court of New Jersey.
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 56:15-8. Statute of limitations; continuing misappropriations *Same as UTSA*

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	New Jersey N.J. Stat. Ann. §§ 56:15-1 - 56:15-9 New Jersey Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 56:15-9. Rights and remedies deemed supplemental; governing law a. The rights, remedies and prohibitions provided under this act are in addition to and cumulative of any other right, remedy or prohibition provided under the common law or statutory law of this State and nothing contained herein shall be construed to deny, abrogate or impair any common law or statutory right, remedy or prohibition except as expressly provided in subsection b. of this section. b. ~~Except as provided in subsection (c)~~ This act ~~displaces~~ shall supersede conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. ~~(c) This [Act] 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. In any action for misappropriation of a trade secret brought against a public entity or public employee, the provisions of the "New Jersey Tort Claims Act" (N.J.S.59:1-1 et seq.) shall supersede any conflicting provisions of this act
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	*None*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	N.J. Stat. Ann. § 1:1-10. Partial unconstitutionality If any title, subtitle, chapter, article or section of the Revised Statutes, or of any statute or any provision thereof, shall be declared to be unconstitutional, invalid or inoperative, in whole or in part, by a court of competent jurisdiction, such title, subtitle, chapter, article, section or provision shall, to the extent that it is not unconstitutional, invalid or inoperative, be enforced and effectuated, and no such determination shall be deemed to invalidate or make ineffectual the remaining titles, subtitles, chapters, articles, sections or provisions.
Addition to Notes Including "Time of Taking Effect" where provided in statutory text	This [Act] takes effect on _____, and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	§ 56:15-5. Defenses deemed negated A person who misappropriates a trade secret shall not use as a defense to the misappropriation that proper means to acquire the trade secret existed at the time of the misappropriation.

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	New Jersey N.J. Stat. Ann. §§ 56:15-1 - 56:15-9 New Jersey Trade Secrets Act
Additions II		
In General and Unless Otherwise Specified	• Green cells denote UTSA 1985 version. • White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Where a statutory provision is marked as "Same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced, but still do not present substantive distinctions from the UTSA, the cells are marked "Substantively identical to UTSA." • Yellow cells indicate that the respective provision is a substantively modified version of the UTSA, to provide some of these modifications may ultimately be insignificant. In other cases, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA, though non-substantive and minor variations may not be annotated. • Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red. • Some states have omitted specific UTSA provisions from their version, as the provision would be redundant of existing state law. Applicable state statute or citation is noted in instances provided above. *Annotations:* •Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is strikethrough is language included within the UTSA that a state has omitted from its statute. • Annotations are primarily intended to denote substantive, rather than textual, differences. As such, some small differences in phrasing, punctuation, and formatting have not been noted. In some cases, where identified, annotations will embody substantive and indicate only where a state's provision differs in meaning from a corresponding provision in the UTSA. • All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. These states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts Compared to the UTSA

Fed/State	Uniform Trade Secrets Act	New Mexico N.M. Stat. Ann. §§ 57-3A-1 - 57-3A-7 Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	1985
Definition: Preamble and Improper Means	As used in this [Act], 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;	§ 57-3A-2. Definitions. As used in the Uniform Trade Secrets Act ~~unless the context requires otherwise~~: A. "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;
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 57-3A-2(B) *Same as UTSA*
Definition: Person	(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.	§ 57-3A-2(C) *Same as UTSA*
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 57-3A-2(D) *Same as UTSA*
Definitions Not In UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	New Mexico N.M. Stat. Ann. §§ 57-3A-1 - 57-3A-7 Uniform Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 57-3A-3. Injunctive relief *Same as UTSA*
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 57-3A-4. Damages *Same as UTSA*
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 57-3A-5. Attorney's fees *Substantively identical to UTSA*
Preservation of Secrecy	In an action under this [Act], 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.	§ 57-3A-6. Preservation of secrecy *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 57-3A-7. Statute of Limitations *Same as UTSA*

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	New Mexico N.M. Stat. Ann. §§ 57-3A-1 - 57-3A-7 Uniform Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	None
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	None
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	*Baca v. New Mexico Dept. of Public Safety*, 47 P.3d 441, 444-45 (2002). *Absence of provision creates weak presumption against severability but statutes should be severed when possible and consistent with legislative intent.*
Additions or Notes (including "Time of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____ and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	

BRR | Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts
Compared to the UTSA

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Fed/State	Uniform Trade Secrets Act	New Mexico N.M. Stat. Ann. §§ 57-3A-1 - 57-3A-7 Uniform Trade Secrets Act
Addition II		
In General and Unless Otherwise Specified	• *Green cells denote UTSA 1985 version.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Where a statutory provision is marked as "Same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced, but still do not present substantive distinctions from the UTSA, the cells are marked "Substantively Identical to UTSA."* • *Yellow cells indicate that the respective provision is a substantively modified version of the UTSA, to varying some of these modifications may ultimately be insignificant. In other cases, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA. Though non-substantive and minor variations may not be annotated.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red.* • *Some states have omitted specific UTSA provisions from their version, as the provision would be redundant of existing state law. Applicable state statute or citation is as most relevant provided above.* *Annotations:* •*Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is struck-through is language included within the UTSA that a state has omitted from its version.* • *Annotations are primarily intended to denote substantive, rather than textual differences. As such, some small differences in phrasing, punctuation, and formatting have not been noted, in some cases, where identified, annotations are actually substantive and indicate subtle nuances in a state's provision differs in meaning from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. These states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts
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Fed/State	Uniform Trade Secrets Act	New York 2015 NY Senate Bill S3770 Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	Proposed Legislation
Definition: Preamble and Improper Means	As used in this [Act], 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;	§ 279-N(a) *Same as UTSA*
Definition: Misappropriation	(2). "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was (i) derived from or through a person who had utilized improper means to acquire it; (ii) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (iii) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 279-N(b) Misappropriation means: (1) 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 (2) duplicating, sketching, drawing, photographing, downloading, uploading, concealing, altering, destroying, replicating, transmitting, delivering, sending, mailing, communicating, or conveying a trade secret without authorization; or (3) receiving, buying, or possessing a trade secret, knowing the same to have been stolen or appropriated, obtained, or converted without authorization; or (4) 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; or (ii) at the time of disclosure or use, knew or had reason to know that his or her 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 (iii) before a material change of his or her 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.
Definition: Person	(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.	§ 279-N(c) Person means a natural person, corporation, limited liability company, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.
Definition: Trade Secret	(4). "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 279-N(d) Trade secret means: any form and type of financial, business, scientific, technical, economic, or engineering information, including a pattern, plan, compilation, program device, formula, design, prototype, method, technique, process, procedure, program, or code, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically or in writing, that: (1) 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 (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.
Definitions Not in UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	New York 2015 NY Senate Bill S3770 Uniform Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 279-O. Injunctive Relief *Substantively identical to UTSA*
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 279-P. Damages *Same as UTSA*
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 279-Q. Attorney's fees If (a) a claim of misappropriation is made or continued in bad faith, (b) a motion to terminate an injunction is made or resisted or continued in bad faith, or (c) a willful or malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party. For purposes of this section, a claim of misappropriation is made or continued in bad faith or a motion to terminate an injunction is made or resisted or continued in bad faith if it is undertaken or continued solely to harass or maliciously injure another or to delay or prolong the resolution of the litigation; or it is undertaken or continued without any reasonable basis in fact or law and could not be supported by a good faith argument for an extension, modification or reversal of existing law.
Preservation of Secrecy	In an action under this [Act], 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.	§ 279-R. Preservation of secrecy In an action under this article, a court shall preserve the secrecy of an alleged trade secret by reasonable means, including but not limited to, granting protective orders in connection with discovery ~~proceedings~~, devices pursuant to the provisions of section thirty-one hundred three of the civil practice law and rules, 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.
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 279-S. Statute of limitations *Same as UTSA*

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	New York 2015 NY Senate Bill S3770 Uniform Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 279-T. Effect on other law *Same as UTSA*
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	§ 279-U. Uniformity of application and construction *Same as UTSA*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	§ 279-V. Severability *Same as UTSA*
Additions or Notes (including "Time of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____ and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	

Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	New York 2015 NY Senate Bill S3770 Uniform Trade Secrets Act
Addition II		
In General and Unless Otherwise Specified	• *Green cells denote UTSA 1985 versions.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Where a statutory provision is marked as "Same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced, but still do not present substantive distinctions from the UTSA, the cells are marked "Substantively Identical to UTSA."* • *Yellow cells indicate that the respective provision is a substantively modified version of the UTSA. In practice some of these modifications may ultimately be insignificant. In other cases, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA. Drafting nuances and minor variations may not be annotated.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where an item that provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red.* • *Some states have omitted specific UTSA provisions from their version, or the provision would be redundant of existing state law. Applicable state statute or citation is in most instances provided above.* *Annotations:* •*Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is struck-through is language included within the UTSA that a state has omitted from its statute.* • *Annotations are primarily intended to denote substantive, rather than textual, differences. As such, some small differences in phrasing punctuation and formatting have not been noted, in some cases, where substantive, innovations and entirely substantive and uniform cells where a state's provision differs in meaning from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. These states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	North Carolina N.C. Gen. Stat. Ann. §§ 66-152 - 66-162 Trade Secrets Protection Act
UTSA Version Adopted	1985 version	Not Officially Adopted
Definition: Preamble and Improper Means	As used in this [Act], 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;	*None*
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 66-152(1) "Misappropriation" means acquisition, disclosure, or use of a trade secret of another without express or implied authority or consent, unless such trade secret was arrived at by independent development, reverse engineering, or was obtained from another person with a right to disclose the trade secret
Definition: Person	(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.	§ 66-152(2) *Substantively identical to UTSA*
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 66-152(3) "Trade secret" means business or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process that: a. Derives independent ~~economic value,~~ actual or potential commercial value from not being generally known ~~to~~ or readily ascertainable ~~by proper means~~ through independent development or reverse engineering 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. The existence of a trade secret shall not be negated merely because the information comprising the trade secret has also been developed, used, or owned independently by more than one person, or licensed to other persons.
Definition: Not in UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts
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Fed/State	Uniform Trade Secrets Act	North Carolina N.C. Gen. Stat. Ann. §§ 66-152 - 66-162 Trade Secrets Protection Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 66-154. Remedies (a) Except as provided herein, actual or threatened misappropriation of a trade secret may be preliminarily enjoined during the pendency of the action and shall be permanently enjoined upon judgment finding misappropriation for the period that the trade secret exists plus an additional period as the court may deem necessary under the circumstances to eliminate any inequitable or unjust advantage arising from the misappropriation. (1) If the court determines that it would be unreasonable to enjoin use after a judgment finding misappropriation, an injunction may condition such use upon payment of a reasonable royalty for any period the court may deem just. In appropriate circumstances, affirmative acts to protect the trade secret may be compelled by order of the court. (2) A person who in good faith derives knowledge of a trade secret from or through misappropriation or by mistake, or any other person subsequently acquiring the trade secret therefrom or thereby, shall be enjoined from disclosing the trade secret, but no damages shall be awarded against any person for any misappropriation prior to the time the person knows or has reason to know that it is a trade secret. If the person has substantially changed his position in good faith reliance upon the availability of the trade secret for future use, he shall not be enjoined from using the trade secret but may be required to pay a reasonable royalty as deemed just by the court. If the person has acquired inventory through such knowledge or use of a trade secret, he can dispose of the inventory without payment of royalty. If no use of the trade secret has no adverse economic effect upon the owner of the trade secret, the only available remedy shall be an injunction against disclosure.
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 66-154. Remedies (b) In addition to the relief authorized by subsection (a), actual damages may be recovered, measured by the economic loss or the unjust enrichment caused by misappropriation of a trade secret, whichever is greater. (c) If willful and malicious misappropriation exists, the trier of fact also may award punitive damages in its discretion.
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 66-154(d) If a claim of misappropriation is made in bad faith, ~~a motion to terminate an injunction is made or resisted in bad faith,~~ or if willful and malicious misappropriation exists, the court may award reasonable attorneys' fees to the prevailing party.
Preservation of Secrecy	In an action under this [Act], 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.	§66-156. Preservation of secrecy *Substantively identical*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 66-157. Statute of limitations *Substantively identical but for:* An action for misappropriation of a trade secret must be commenced within three years after the misappropriation complained of is or reasonably should have been discovered. ~~For the purposes of this section, a continuing misappropriation constitutes a single claim.~~

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	North Carolina N.C. Gen. Stat. Ann. §§ 66-152 - 66-162 Trade Secrets Protection Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	None
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	None
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For those states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	*State v. Webb*, 591 S.E.2d 505, 511-12 (2004). *Statute should be severed when possible and consistent with legislative intent.*
Additions or Rules (including "Time of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____ and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, this [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	§ 66-153. Action for misappropriation The owner of a trade secret shall have remedy by civil action for misappropriation of his trade secret. § 66-155. Burden of proof Misappropriation of a trade secret is prima facie established by the introduction of substantial evidence that the person against whom relief is sought both: (1) Knows or should have known of the trade secret; and (2) Has had a specific opportunity to acquire it for disclosure or use or has acquired, disclosed, or used it without the express or implied consent or authority of the owner. This prima facie evidence is rebutted by the introduction of substantial evidence that the person against whom relief is sought acquired the information comprising the trade secret by independent development, reverse engineering, or it was obtained from another person with a right to disclose the trade secret. This section shall not be construed to deprive the person against whom relief is sought of any other defenses provided under the law. §§ 66-158 - 66-162. Reserved

B/R/R LLP
Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts Compared to the UTSA

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Fed/State	Uniform Trade Secrets Act	North Carolina N.C. Gen. Stat. Ann. §§ 66-152 - 66-162 Trade Secrets Protection Act
Addition:[1]		
In General and Unless Otherwise Specified:	• Green cells denote UTSA 1985 version. • White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material/substantive difference. Where a statutory provision is marked as "Same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced but still do not present substantive deviations from the UTSA, the cells are marked "Substantively Identical to UTSA." • Yellow cells indicate that the respective provision is a substantively modified version of the UTSA. In positive sense of these modifications may ultimately be insignificant. In other cases, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA, though non-substantive and minor variations may not be annotated. • Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells and marked red where no state law provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red. • Some states have omitted specific UTSA provisions from their version, as the provision would be redundant of existing state law. Applicable state statute or citation is in most instances provided above. Annotations: •Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is italicized is language included within the UTSA that a state has omitted from its statute. • Annotations are primarily intended to denote substantive, rather than textual differences. As such, some small differences in phrasing, punctuation, text formatting may not have noted. In some cases, where identified annotations are certainly substantive, and indicate only where a state's provision differs in meaning from a corresponding provision in the UTSA. • All accounts compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. These states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Guilford Trade Secrets Act	North Dakota N.D. Cent. Code §§ 47-25.1-01 - 47-25.1-08 Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	1985
Definition: Preamble and Improper Means	As used in this [Act], 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.	§ 47-25.1-01(1) *Same as UTSA*
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his (or her) 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.	§ 47-25.1-01(2) *Same as UTSA*
Definition: Person	(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.	§ 47-25.1-01(3) "Person" means a natural person, corporation, limited liability company, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 47-25.1-01(4) *Same as UTSA*
Definitions Not in UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts
Compared to the UTSA

Fed/State	Uniform Trade Secrets Act	North Dakota N.D. Cent. Code §§ 47-25.1-01 - 47-25.1-08 Uniform Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 47-25.1-02. Injunctive relief *Same as UTSA*
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 47-25.1-03. Damages *Same as UTSA*
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 47-25.1-04. Attorney's fees *Same as UTSA*
Preservation of Secrecy	In an action under this [Act], 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.	§ 47-25.1-05. Preservation of secrecy *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 47-25.1-06. Statute of limitations *Same as UTSA*

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts
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Fed/State	Uniform Trade Secrets Act	North Dakota N.D. Cent. Code §§ 47-25.1-01 - 47-25.1-08 Uniform Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 47-25.1-07. Effect on other law *Same as UTSA*
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	*None*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	N.D. Cent. Code § 1-02-20. Severability In the event that any clause, sentence, paragraph, chapter, or other part of any title, is adjudged by any court of competent or final jurisdiction to be invalid, such judgment does not affect, impair, nor invalidate any other clause, sentence, paragraph, chapter, section, or part of such title, but is confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment has been rendered.
Additions or Notes (including "Time of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____, and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	

B R L P
Beck Reed Riden

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	North Dakota N.D. Cent. Code §§ 47-25.1-01 - 47-25.1-08 Uniform Trade Secrets Act
Addition II		
In General and Unless Otherwise Specified	• *Unencircled denotes UTSA 1985 version.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material/substantive difference. Where a statutory provision is marked as "Same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced, but still do not present substantive deviations from the UTSA, the cells are marked "Substantively Identical to UTSA."* • *Yellow cells indicate that the respective provision is a substantively modified version of the UTSA, to which some of these modifications may ultimately be insignificant. In other cases, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA. Though non-substantive and minor variations may not be annotated.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red.* • *Some states have omitted specific UTSA provisions from their version, as the provision would be redundant of existing state law. Applicable state statute or citation is in most instances provided above.* *Annotations:* •*Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is italicized through is language included within the UTSA that a state has omitted from its statute.* • *Annotations are primarily intended to denote substantive, rather than textual, differences. As such, some small differences in phrasing, punctuation, and formatting have not been noted. In some cases, where identified, annotations also contain sub-sections and indicate otherwise where a state's provision differs in meaning from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. These states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts
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Fed/State	Uniform Trade Secrets Act	Ohio Ohio Rev. Code. Ann. §§ 1333.61 - 1333.69 Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	1985
Definition: Preamble and Improper Means	As used in this [Act], 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;	§ 1333.61(A) *Same as UTSA*
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 1333.61(B) *Same as UTSA*
Definition: Person	(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.	§ 1333.61(C) "Person" has the same meaning as in division (C) of section 1.59 of the Revised Code and includes governmental entities. § 1.59(C) "Person" includes ~~a natural person~~ an individual, corporation, business trust, estate, trust, partnership, and association, ~~joint venture, government governmental subdivision or agency, or any other legal or commercial entity.~~
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 1333.61(D) "Trade secret" means information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers, that satisfies both of the following: (1) It 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. (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.
Definition: Not in UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts Compared to the UTSA

Fed/State	Uniform Trade Secrets Act	Ohio Ohio Rev. Code Ann. §§ 1333.61 - 1333.69 Uniform Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 1333.62 Injunctions (A) 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~~ unless the court finds that termination of the injunction is likely to provide a person who committed an actual or threatened misappropriation with a resulting commercial advantage, in which case the injunction shall be continued for an additional reasonable 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 time for which use could have been prohibited. Exceptional circumstances include a material and prejudicial change of position prior to 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.
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 1333.63 Damages (A) 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 in a civil action is 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 that is equitable under the circumstances considering the loss to the complainant, the benefit to the misappropriator, or both, for a misappropriator's unauthorized disclosure or use of a trade secret. (B) If willful and malicious misappropriation exists, the court may award punitive or exemplary damages in an amount not exceeding ~~twice~~ three times any award made under division (A) of this section.
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 1333.64 Attorney's fees *Same as UTSA*
Preservation of Secrecy	In an action under this [Act], 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.	§ 1333.65 Court preserving of trade secret *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 1333.66 Limitation of actions An action for misappropriation ~~must be brought~~ shall be commenced within ~~three~~ four 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.

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Ohio Ohio Rev. Code Ann. §§ 1333.61 - 1333.69 Uniform Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 1333.67 Remedies *Substantively identical to UTSA*
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	§ 1333.68 Construction of act *Same as UTSA*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	Ohio Rev. Code Ann. § 1.50 Severability of statutory provisions If any provision of a section of the Revised Code or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section or related sections which can be given effect without the invalid provision or application, and to this end the provisions are severable.
Addition or Notes Including "Time of Taking Effect" where provided in statutory text	This [Act] takes effect on _____ and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	

Beck Reed Riden

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Ohio Ohio Rev. Code. Ann. §§ 1333.61 - 1333.69 Uniform Trade Secrets Act
Additions II		
In General and Unless Otherwise Specified	• *Unless cells denote UTSA 1985 wording.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Where a statutory provision is marked as "Same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced, but still do not present substantive deviations from the UTSA, the cells are marked "Substantively identical to UTSA."* • *Yellow cells indicate that the respective provision is a substantively modified version of the UTSA, to provide some of these modifications may ultimately be insignificant, in other cases, the substantive differences require attention. Language in the yellow cells is mentioned to indicate how it varies from the 1985 UTSA, though non-substantive and minor variations may not be mentioned.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red.* • *Some states have omitted specific UTSA provisions from their version, as the provision would be redundant of existing state law. Applicable state statute or citation is in most instances provided above.* *Annotations:* •*Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is stricken through is language included within the UTSA that a state has omitted from its statute.* • *Annotations are primarily intended to denote substantive, rather than textual differences. As such, minor textual differences in phrasing, punctuation, and formatting have not been noted, in some cases, where identified, annotations are entirely substantive and indicate only where a state's provision differs in meaning from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have enacted the original 1979 UTSA, but not its later amendments. Thus a state will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections for particular.*	

Beck Reed Riden LLP
Beck Reed Riden

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Oklahoma Okla. St. Ann. tit. 78, §§ 85 - 95 Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	1985
Definition: Predicate and Improper Means	As used in this [Act], 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;	§ 86(1) *Same as UTSA*
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 86(2) *Same as UTSA*
Definition: Person	(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.	§ 86(3) *Same as UTSA*
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 86(4) *Same as UTSA*
Definitions Not In UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Oklahoma Okla. St. Ann. tit. 78, §§ 85 - 95 Uniform Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 87. Injunctions—Court orders *Same as UTSA*
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 88. Damages *Same as UTSA*
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 89. Attorney's fees *Same as UTSA*
Preservation of Secrecy	In an action under this [Act], 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.	§ 90. Means of preserving trade secrets In an action brought pursuant to the provisions of the Uniform Trade Secrets Act, 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 pursuant to the provisions of Section 3203 of Title 12 of the Oklahoma Statutes, 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.
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 91. Limitation of actions *Same as UTSA*

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Oklahoma Okla. St. Ann. tit. 78, §§ 85 - 95 Uniform Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 92. Operation and effect of act- Exemptions *Same as UTSA*
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	§ 93. Application and construction of act *Same as UTSA*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	Okla. St. Ann. tit. 75 § 11a. Construction of statutes - Severability In the construction of the statutes of this state, the following rules shall be observed: 1. For any act enacted on or after July 1, 1989, unless there is a provision in the act that the act or any portion thereof or the application of the act shall not be severable, the provisions of every act or application of the act shall be severable. If any provision or application of the act is found to be unconstitutional and void, the remaining provisions or applications of the act shall remain valid, unless the court finds: a. the valid provisions or application of the act are so essentially and inseparably connected with, and so dependent upon, the void provisions that the court cannot presume the Legislature would have enacted the remaining valid provisions without the void one; or b. the remaining valid provisions or applications of the act, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent. 2. For acts enacted prior to July 1, 1989, whether or not such acts were enacted with an express provision for severability, it is the intent of the Oklahoma Legislature that the act or any portion of the act or application of the act shall be severable unless: a. the construction of the provisions or application of the act would be inconsistent with the manifest intent of the Legislature; b. the court finds the valid provisions of the act are so essentially and inseparably connected with and so dependent upon the void provisions that the court cannot presume the Legislature would have enacted the remaining valid provisions without the void one; or c. the court finds the remaining valid provisions standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.
Additions or Notes (including "Time of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____, and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	§ 94. Exemptions The Uniform Trade Secrets Act1 shall not be construed to apply: 1. to a misappropriation occurring prior to the effective date of this act; or 2. with respect to a continuing misappropriation that began prior to the effective date of this act, to the continuing misappropriation that occurs after the effective date of this act. § 95. Repealed

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Oklahoma Okla. St. Ann. tit. 78, §§ 85 - 95 Uniform Trade Secrets Act
Addition II		
In General and Unless Otherwise Specified	• *Green cells denote UTSA 1985 section.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Where a statutory provision is ranked as "Same as UTSA" minor indent or formatting differences may exist. Where these differences are more pronounced, but still do not present substantive distinctions from the UTSA, the cells are marked "Substantively Identical to UTSA."* • *Yellow cells indicate that the respective provision is a substantively modified version of the UTSA. In practice some of these modifications may ultimately be insignificant, in other cases, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA, though non-substantive and minor variations may not be annotated.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red.* • *Some states have omitted specific UTSA provisions from their version, or the provision would be redundant of existing state law. Applicable state statutes or citation is in most instances provided above.* *Annotations:* •*Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is italicized is language included within the UTSA that a state has omitted from its statute.* • *Annotations are primarily intended to denote substantive, rather than technical, differences. As such, some small differences in phrasing, punctuation, and formatting have not been noted, in some cases, where identical, substantive and technical differences exist, where a state's provision differs in meaning from a corresponding provision in the UTSA.* • *All jurisdictions recognize the state's language as the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendment. These states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

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Beck Reed Riden LLP
155 Federal Street, Suite 1302
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617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Oregon Or. Rev. Stat. Ann. §§ 646.461 - 646.475 Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	1985
Definition: Preamble and Improper Means	As used in this [Act], 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;	§ 646.461(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; Reverse engineering and independent development alone shall not be considered improper means.
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who: (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 646.461(2) *Same as UTSA*
Definition: Person	(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.	§ 646.461(3) *Same as UTSA*
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 646.461(4) "Trade secret" means information, including a drawing, cost data, customer list, formula, pattern, compilation, program, device, method, technique or process that: (a) Derives independent economic value, actual or potential, from not being generally known to the public or to 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.
Definitions Not in UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Oregon Or. Rev. Stat. Ann. §§ 646.461 - 646.475 Uniform Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 646.463. Enjoining misappropriation, payment of royalties, affirmative acts *Substantively identical to UTSA*
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 646.465. Misappropriation; damages (1) A complainant is entitled to recover damages adequate to compensate for misappropriation, unless a material and prejudicial change of position by a defendant prior to acquiring knowledge or reason to know of the misappropriation renders a monetary recovery inequitable. (2) 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, but shall not be less than a reasonable royalty for the unauthorized disclosure or use of a trade secret. ~~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.~~ (3) Upon a finding of willful or malicious misappropriation, punitive damages may be awarded in an amount not exceeding twice any award made under subsections (1) and (2) of this section.
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 646.467. Attorney fees *Same as UTSA*
Preservation of Secrecy	In an action under this [Act], 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.	§ 646.469. Trade secret; preservation; methods *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 646.471. Commencement of action; limitation *Same as UTSA*

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Oregon Or. Rev. Stat. Ann. §§ 646.461 - 646.475 Uniform Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 646.473. Conflicting tort, restitution, or remedies by other law; exclusions; limited immunity. (1) Except as provided in subsection (2) of this section, ORS 646.461 to 646.475 supersede conflicting tort, restitution or other law of Oregon providing civil remedies for misappropriation of a trade secret. (2) ORS 646.461 to 646.475 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; (c) Criminal remedies, whether or not based upon misappropriation of a trade secret; or (d) Any defense, immunity or limitation of liability afforded public bodies, their officers, employees or agents under ORS 30.260 to 30.300. (3) Notwithstanding any other provision in ORS 646.461 to 646.475, public bodies and their officers, employees and agents are immune from any claim or action for misappropriation of a trade secret that is based on the disclosure or release of information in obedience to or in good faith reliance on any order of disclosure issued pursuant to ORS 192.410 to 192.490 or on the advice of an attorney authorized to advise the public body, its officers, employees or agents.
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	§ 646.475(1). Application and construction; short title; invalidity *Same as UTSA*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	§ 646.475(3). Application and construction; short title; invalidity *Same as UTSA*
Additions or Notes (including "Time of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____, and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Oregon Or. Rev. Stat. Ann. §§ 646.461 - 646.475 Uniform Trade Secrets Act
Additions		
In General and Unless Otherwise Specified	• *Green cells denote UTSA 1985 version.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Where a statutory provision is marked as "Same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced, but still do not present substantive distinctions from the UTSA, the cells are marked "Substantively identical to UTSA."* • *Yellow cells indicate that the respective provision is a substantively modified version of the UTSA, in practice some of these modifications may ultimately be insignificant. In other cases, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA. Though non-substantive and minor variations may not be annotated.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red.* • *Some states have omitted specific UTSA provisions from their version, as the provision would be redundant of existing state law. Applicable state statute or citation is listed in relevant provided above.* *Annotations:* •*Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is struck-through is language included within the UTSA that a state has modified from its statute.* • *Annotations are primarily intended to denote substantive, rather than textual, differences. As such, minor small differences in phrasing punctuation, and formatting have not been noted, in some cases, where identified, annotations will merely substantive and indicate whether a state's provision differs in meaning from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendment. These states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Pennsylvania 12 Pa. Stat. and Cons. Stat. Ann. §§ 5301 - 5308 Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	1985
Definition: Preamble and Improper Means	As used in this [Act], 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.	§ 5302. Definitions The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise: "Improper means." Includes, but is not limited to, theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy or espionage through electronic or other means.
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 5302. "Misappropriation" *Same as UTSA*
Definition: Person	(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.	§ 5302. "Person" *Same as UTSA*
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 5302. "Trade secret" Information, including a formula, drawing, pattern, compilation including a customer list, program, device, method, technique or process that: (1) 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. (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.
Definition: Not in UTSA		§ 5302. "Willful and malicious." Such intentional acts or gross neglect of duty as to evince a reckless indifference of the rights of others on the part of the wrongdoer, and an entire want of care so as to raise the presumption that the person at fault is conscious of the consequences of his carelessness.

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Pennsylvania 12 Pa. Stat. and Cons. Stat. Ann. §§ 5301 - 5308 Uniform Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 5303. Injunctive relief *Same as UTSA*
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 5304. Damages *Same as UTSA*
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 5305. Attorney fees A court may award reasonable attorney fees, expenses and costs to the prevailing party: (1) if 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.
Preservation of Secrecy	In an action under this [Act], 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.	§ 5306. Preservation of secrecy *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 5307. Statute of limitations An action under this chapter for misappropriation must be brought within three years after the misappropriation was 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.~~

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Pennsylvania 12 Pa. Stat. and Cons. Stat. Ann. §§ 5301 - 5308 Uniform Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 5308. Effect on other law *Same as UTSA*
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	*Alone*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not effect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	1 Pa. Stat. and Cons. Stat. Ann. § 1925. Constitutional construction of statutes. The provisions of every statute shall be severable. If any provision of any statute or the application thereof to any person or circumstance is held invalid, the remainder of the statute, and the application of such provision to other persons or circumstances, shall not be affected thereby, unless the court finds that the valid provisions of the statute are so essentially and inseparably connected with, and so depend upon, the void provision or application, that it cannot be presumed the General Assembly would have enacted the remaining valid provisions without the void one, or unless the court finds that the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.
Additions or Notes (including "Time of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____, and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	

B R L P
Beck Reed Riden

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Pennsylvania 12 Pa. Stat. and Cons. Stat. Ann. §§ 5301 - 5308 Uniform Trade Secrets Act
Additions If		
In General and Unless Otherwise Specified	• *Green cells denote UTSA 1985 version.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Where a statutory provision is marked as "Same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced, but still do not present substantive deviations from the UTSA, the cells are marked "Substantively Identical to UTSA."* • *Yellow cells indicate that the respective provision is substantively modified version of the UTSA. In practice some of these modifications may ultimately be insignificant. In other cases, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA. Though non-substantive textual variations may not be annotated.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red.* • *Some states have omitted specific UTSA provisions from their version, so the provision would be redundant of existing state law. Applicable state statute or citation is in most instances provided above.* *Annotations:* •*Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is struck-through is language included within the UTSA that a state has omitted from its statute.* • *Annotations are primarily intended to denote substantive, rather than textual differences. As such, some small differences in phrasing, punctuation, and formatting have not been noted. In some cases, where identified, annotations will entirely substantive, not indicate calculation, or state's provision differs in meaning from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. These states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Rhode Island 1956 R.I. Gen. Laws Ann. §§ 6-41-1 - 6-41-11 Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	1985
Definition: Presumptive and Improper Means	As used in this [Act], 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;	§ 6-41-1(1) *Same as UTSA*
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 6-41-1(2) *Same as UTSA*
Definition: Person	(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.	§ 6-41-1(3) *Same as UTSA*
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 6-41-1(4) *Same as UTSA*
Definitions Not in UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts Compared to the UTSA

Fed/State	Uniform Trade Secrets Act	Rhode Island 1956 R.I. Gen. Laws Ann. §§ 6-41-1 - 6-41-11 Uniform Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 6-41-2. Injunctive relief *Same as UTSA*
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 6-41-3. Damages *Same as UTSA*
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 6-41-4. Attorney's fees *Same as UTSA*
Preservation of Secrecy	In an action under this [Act], 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.	§ 6-41-5. Preservation of secrecy *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 6-41-6. Statute of limitations *Same as UTSA*

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fact/State	Uniform Trade Secrets Act	Rhode Island 1956 R.I. Gen. Laws Ann. §§ 6-41-1 - 6-41-11 Uniform Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 6-41-7. Effect on other law *Same as UTSA*
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	§ 6-41-8. Uniformity of application and construction *Same as UTSA*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	§ 6-41-10. Severability *Same as UTSA*
Additions or Notes (including "Time of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____ and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	§ 6-41-11. Time of taking effect This chapter takes effect on July 1, 1986, and does not apply to misappropriation occurring prior to July 1, 1986. With respect to a continuing misappropriation that began prior to July 1, 1986, the chapter also does not apply to the continuing misappropriation that occurs after July 1, 1986.

BRR Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Rhode Island 1986 R.I. Gen. Laws Ann. §§ 6-41-1 - 6-41-11 Uniform Trade Secrets Act
Additions ↓		
In General and Unless Otherwise Specified	• *Green cells denote UTSA 1985 version.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Where a statutory provision is marked as "Same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced, but still do not present substantive distinctions from the UTSA, the cells are marked "Substantively Identical to UTSA."* • *Yellow cells indicate that the respective provision is a substantively modified version of the UTSA. In practice some of these modifications may ultimately be insignificant. In other cases, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA. Though non-substantive and minor stylistic changes may not be annotated.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been found that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red.* • *Some states have omitted specific UTSA provisions from their version, as the provision would be redundant of existing state law. Applicable state statute or citation is in most instances provided above.* *Annotations:* *•Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is stricken through is language included within the UTSA that a state has omitted from its statute.* • *Annotations are primarily intended to denote substantive, rather than textual, differences. As such, some small differences in phrasing, punctuation, and formatting have not been noted. In some cases, where identified annotations are actually substantive and indicate only where a state's provision differs in meaning from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but are in later amendments. These states will have significant differences in their "injunctive relief," "damages," and "Effect on Other Law" sections (in particular).*	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	South Carolina S.C. Code Ann. §§ 39-8-10 - 39-8-130 South Carolina Trade Secrets Act
UTSA Version Adopted	1985 version	1985
Definition: Preamble and Improper Means	As used in this [Act], 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.	§ 39-8-20(1) "Improper means" include theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy; duties imposed by the common law, statute, contract, license, protective order, or other court or administrative order; or espionage through electronic or other means.
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 39-8-20(2) *Same as UTSA but for the following:* *Additional provision added as first in list:* (a) acquisition of a trade secret of another by a person by improper means; *Additional words added into second clause in subsection starting with "at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was":* (c)(ii)(B) acquired by mistake or under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
Definition: Person	(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.	§ 39-8-20(4) *Substantively identical to UTSA*
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 39-8-20(5) "Trade secret" means: (a) information including, but not limited to, a formula, pattern, compilation, program, device, method, technique, product, system, or process, design, prototype, procedure, or code that: (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other person who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. (b) A trade secret may consist of a simple fact, item, or procedure, or a series or sequence of items or procedures which, although individually could be perceived as relatively minor or simple, collectively can make a substantial difference in the efficiency of a process or the production of a product, or may be the basis of a marketing or commercial strategy. The collective effect of the items and procedures must be considered in any analysis of whether a trade secret exists and not the general knowledge of each individual item or procedure.
Definition: Not in UTSA		§ 39-80-20(3) "Owner" means the person or entity in whom or in which rightful legal or equitable title to the trade secret is reposed.

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	South Carolina S.C. Code Ann. §§ 39-8-10 - 39-8-130 South Carolina Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 39-8-50. Injunctions against actual or threatened misappropriations. (A) 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. Such reasonable period of time shall take into account the average rate of business growth that would have been gained from nonmisappropriated use of the misappropriated trade secret. (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, but are not limited to, 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.
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 39-8-40. Recovery of actual damages; exemplary damages. (A) ~~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 is entitled to recover actual damages for misappropriation of trade secrets. A material and prejudicial change of position before acquiring knowledge or reason to know of misappropriation may render full monetary recovery inequitable and may form the basis for reducing monetary recovery. (B) Damages ~~can~~ may include both the actual loss caused by misappropriation ~~and~~ or 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. (C) ~~If willful and malicious misappropriation exists,~~ Upon a finding of willful, wanton, or reckless disregard of the plaintiff's rights, the court may award separate exemplary damages in an amount not exceeding twice any award made under subsection (A).
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 39-8-80. Bad faith; award of attorney's fees. *Same as UTSA*
Preservation of Secrecy	In an action under this [Act], 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.	§ 39-8-60. Preservation of secrecy during discovery proceedings of civil actions; substantial need defined. *Contains the full UTSA provision and substantial additions dictating treatment of trade secrets. See § 39-8-60(B-J) (in "Additions II" cell below).*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 39-8-70. Time limit for bringing action. *Same as UTSA*

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	South Carolina S.C. Code Ann. §§ 39-8-10 - 39-8-130 South Carolina Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 39-8-110. Chapter's effect on conflicting tort, restitutionary and other laws; effect on other remedies. (A) Except as provided in subsections (B) and (C), 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 or protection of a trade secret; ~~(2) other civil remedies that are not based upon misappropriation of a trade secret; or~~ the provisions of the South Carolina Tort Claims Act. ~~(3) criminal remedies, whether or not based upon misappropriation of a trade secret.~~ (C) Any and all other civil remedies that are not based upon misappropriation of a trade secret or upon protection against misappropriation of a trade secret are governed by the rules of procedure, rules of evidence, regulations, and the common law applicable to the administrative law tribunal or court where the action is filed.
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	*None*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	§ 39-8-120. Severability. *Same as UTSA*
Addition or Notes (including "Time of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____, and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	§§ 39-8-1 - 39-8-9 & 39-8-11 Repealed § 39-8-30. Trade secrets; employees' obligation to refrain from disclosing; civil actions and remedies. (A) A trade secret endures and is protectable and enforceable until it is disclosed or discovered by proper means. (B) Every employee who is informed of or should reasonably have known from the circumstances of the existence of any employer's trade secret has a duty to refrain from using or disclosing the trade secret without the employer's permission independently of and in addition to any written contract of employment, secrecy agreement, noncompete agreement, nondisclosure agreement, or other agreement between the employer and the employee. (C) A person aggrieved by a misappropriation, wrongful disclosure, or wrongful use of his trade secrets may bring a civil action to recover damages incurred as a result of the wrongful acts and to enjoin its appropriation, disclosure, use, or wrongful acts pertaining to the trade secrets. (D) A contractual duty not to disclose or divulge a trade secret, to maintain the secrecy of a trade secret, or to limit the use of a trade secret must not be considered void or unenforceable or against public policy for lack of a durational or geographical limitation. (E) This chapter applies to any and all civil remedies which are based upon misappropriation of a trade secret or upon protection of a trade secret except as provided in Section 39-8-110(B) and (C). § 39-8-90 & § 39-8-100. Criminal provisions omitted from chart § 39-8-130. Retroactive application of chapter. This chapter does not apply to a misappropriation occurring before July 1, 1997, or a continuing misappropriation that began before July 1, 1997.

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Cat/State	Uniform Trade Secrets Act	South Carolina S.C. Code Ann. §§ 39-8-10 - 39-8-130 South Carolina Trade Secrets Act
Additional		§ 39-8-60(B-J). Preservation of secrecy during discovery proceedings of civil actions; substantial need defined. (B) In any civil action where discovery is sought of information designated by its holder as a trade secret, before ordering discovery a court shall first determine whether there is a substantial need by the party seeking discovery for the information. "Substantial need" as used in this section means: (1) the allegations in the initial pleading setting forth the factual predicate for or against liability have been plead with particularity; (2) the information sought is directly relevant to the allegations plead with particularity in the initial pleading; (3) the information is such that the proponent of the discovery will be substantially prejudiced if not permitted access to the information; and (4) a good faith basis exists for the belief that testimony based on or evidence deriving from the trade secret information will be admissible at trial. (C) Direct access to computer databases containing trade secret information, so-called "real time" discovery, shall not be ordered by the court unless the court finds that the proponent of the discovery cannot obtain this information by any other means and provided that the information sought is not subject to any privilege. (D) Upon motion of the holder of the trade secret information, a court may condition the production of trade secret information on the posting of an appropriate bond. (E) Information produced pursuant to this section must be governed by an appropriate written protective order of the court. (F) Information produced pursuant to this section may only be disclosed to persons identified in the written protective order of the court and may be used or disclosed only in the action in which it is produced. Litigation-sharing orders pertaining to trade secret information must not be entered by the court. (G) A person receiving trade secret information pursuant to this section is subject to the jurisdiction of the courts of this State. (H) When information produced pursuant to this section is discussed or otherwise disclosed at a trial or hearing, the owner of the produced trade secret information is allowed to obtain individually signed confidentiality agreements from all parties that are present in the courtroom or are party to any proceedings where trade secret information is discussed, presented, or otherwise made known to any party not already under a confidentiality agreement with the trade secret owner. (I) All trade secret information and any copies, duplicates, or other writings which reflect or contain the trade secret information, or excerpts therefrom, must be returned to the holder of the trade secrets at the conclusion of the litigation. (J) This section applies to any civil action brought within or without this State where discovery is sought of trade secret information present in this State.
In General and Unless Otherwise Specified	*• Green cells denote UTSA 1985 version.* *• White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Where a statutory provision is marked as "same as UTSA" minor transit or formatting differences may exist. Where these differences are more pronounced, but still do not present substantive distinctions from the UTSA, the cells are marked "Substantively Identical to UTSA."* *• Yellow cells indicate that the respective provision is substantively modified version of the UTSA. In particular some of these modifications may ultimately be insignificant. In other cases, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA. Though non-substantive and minor variations may not be annotated.* *• Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red.* *• Some states have omitted specific UTSA provisions from their version, or the provision would be redundant of existing state law. Applicable state statute or citation is in most instances provided above.* *Annotations:* *•Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is struck-through is language included within the UTSA that a state has omitted from its statute.* *• Annotations are primarily intended to denote substantive, rather than textual, differences. As such, some small differences in phrasing, punctuation, and formatting have not been noted, in some cases, where identified, annotations are entirely substantive and indicate only where a state's provision differs in meaning from a corresponding provision in the UTSA.* *• All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. These states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts
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Fed/State	Uniform Trade Secrets Act	South Dakota S.D. Codified Laws §§ 37-29-1 - 37-29-11 Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	1985
Definition: Preamble and Improper Means	As used in this [Act], 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;	§ 37-29-1. Definitions ~~As used in this [Act], unless the context requires otherwise~~ Terms used in this chapter mean: (1) "Improper," includes theft, bribery, misrepresentation, breach, or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means;
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his (or her) 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.	§ 37-29-1(2) *Same as UTSA*
Definition: Person	(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.	§ 37-29-1(3) "Person," a natural person, corporation, business trust, estate, trust, limited liability company, partnership, association, joint venture, government, governmental subdivision, or agency, or any other legal or commercial entity;
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 37-29-1(4) *Same as UTSA*
Definitions Not in UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	South Dakota S.D. Codified Laws §§ 37-29-1 - 37-29-11 Uniform Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 37-29-2. Injunctive relief *Same as UTSA*
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 37-29-3. Damages *Same as UTSA*
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 37-29-4. Attorney's fees *Same as UTSA*
Preservation of Secrecy	In an action under this [Act], 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.	§ 37-29-5. Preservation of Secrecy *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 37-29-6. Statute of limitations *Same as UTSA*

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	South Dakota S.D. Codified Laws §§ 37-29-1 - 37-29-11 Uniform Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 37-29-7. Effect on other law *Same as UTSA*
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	§ 37-29-8. Uniformity of application and construction *Same as UTSA*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not effect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	*State ex rel. Mills v. Winder*, 42 N.W.2d 891, 897 (1950). *Court has a duty to sever statute when possible and consistent with legislative intent.*
Additions or Notes (including "Time of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____ and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	§ 37-29-10. Reserved § 37-29-11. Time of taking effect This chapter takes effect on July 1, 1988, and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, this chapter also does not apply to the continuing misappropriation that occurs after the effective date.

B|R|R LLP
Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts Compared to the UTSA

Fed/State	Uniform Trade Secrets Act	South Dakota S.D. Codified Laws §§ 37-29-1 - 37-29-11 Uniform Trade Secrets Act
Addition II		
In General and Unless Otherwise Specified	• *Green cells denote UTSA 1985 version.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Where a statutory provision is marked as "Same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced, but still do not prevent substantive distinctions from the UTSA, the cell is marked "Substantively Identical to UTSA."* • *Yellow cells indicate that the respective provision is a substantively modified version of the UTSA. In certain some of these modifications may ultimately be insignificant. In other cases, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA. Though some substantive and minor variations may not be annotated.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional differentiation are also marked red.* • *Some states have omitted specific UTSA provisions from their version, as the provision would be redundant of existing state law. Applicable state statute or citation is in most instances provided above.* *Annotations:* •*Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is strikethrough is language included within the UTSA that a state has omitted from its statute.* • *Annotations are primarily intended to denote substantive, rather than stylistic differences. As such, some small differences in phrasing, punctuation, and formatting have not been noted. In some cases, where identified, immaterial but readily substantive and stylistic differences in a state's provision differ in wording from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. These states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Tennessee Tenn. Code. Ann. §§ 47-25-1701 - 47-25-1709 Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	1985
Definition: Preamble and Improper Means	As used in this [Act], 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.	§ 47-25-1702(1) *Same as UTSA*
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 47-25-1702(2) *Same as UTSA*
Definition: Person	(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.	§ 47-25-1702(3) *Same as UTSA*
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 47-25-1702(4) "Trade secret" means information, without regard to form, including, but not limited to, technical, nontechnical or financial data, a formula, pattern, compilation, program, device, method, technique, or process, or plan 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.
Definitions Not in UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts
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Fed/State	Uniform Trade Secrets Act	Tennessee Tenn. Code. Ann. §§ 47-25-1701 - 47-25-1709 Uniform Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 47-25-1703. Injunctions; conditional future use (a) 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 appropriate circumstances for reasons including, but not limited to, an elimination of the commercial advantage that otherwise would be derived from the misappropriation, deterrence of willful and malicious misappropriation, or where the trade secret ceases to exist due to the fault of the enjoined party or others by improper means. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to provide a trade secret may be compelled by court order.
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 47-25-1704. Damages for misappropriation *Substantively identical*
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 47-25-1705. Attorney's fees *Same as UTSA*
Preservation of Secrecy	In an action under this [Act], 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.	§ 47-25-1706. Preserving secrecy of alleged trade secrets *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 47-25-1707. 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 by any person constitutes a single claim against that person, but this section shall be applied separately to any claim against each other person who receives a trade secret from another person who misappropriated that trade secret.

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts
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Fed/State	Uniform Trade Secrets Act	Tennessee Tenn. Code. Ann. §§ 47-25-1701 - 47-25-1709 Uniform Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 47-25-1708. Conflicting remedies (a) Except as provided in subsection (b), this part displaces conflicting tort, restitutionary, and other law of this state providing civil remedies for misappropriation of a trade secret. (b) This part does not affect: (1) Contractual remedies, whether or not based upon misappropriation of a trade secret; provided, that a contractual duty to maintain secrecy or limit use of a trade secret shall not be deemed to be void or unenforceable solely for lack of durational or geographical limitation on the duty; (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) In no event shall a written contract be required to maintain an action or recover damages for misappropriation of a trade secret proven under this part.
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	§ 47-25-1709. Application and construction *Same as UTSA*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law, and the cell is marked red.*	Tenn. Code. Ann. § 1-3-110. Severability It is hereby declared that the sections, clauses, sentences and parts of the Tennessee Code are severable, are not matters of mutual essential inducement, and any of them shall be excisided if the code would otherwise be unconstitutional or ineffective. If any one (1) or more sections, clauses, sentences or parts shall for any reason be questioned in any court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision or provisions so held unconstitutional or invalid, and the inapplicability or invalidity of any section, clause, sentence or part in any one (1) or more instances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.
Additional Notes (including "Time of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____, and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	

BRR Beck Reed Riden

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts Compared to the UTSA

Fed/State	Uniform Trade Secrets Act	Tennessee Tenn. Code. Ann. §§ 47-25-1701 - 47-25-1709 Uniform Trade Secrets Act
Addition II		
In General and Unless Otherwise Specified	• Green cells denote UTSA 1985 versions. • White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material/substantive difference. Where a statutory provision is marked as "Same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced, but still do not present substantive distinctions from the UTSA, the cells are marked "Substantively identical to UTSA." • Yellow cells indicate that the respective provision is a substantively modified version of the UTSA. In positive sense of these modifications may ultimately be insignificant. In other cases, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA. Though non-substantive and minor variations may not be annotated. • Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red. • Some states have omitted specific UTSA provisions from their version, so the provision would be redundant of existing state law. Applicable state statute or citation is in most instances provided above. *Annotations:* •Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is struck-through is language included within the UTSA that a state has omitted from its statute. • Annotations are primarily intended to denote substantive, rather than textual, differences. As such, minor cosmetic differences in phrasing, punctuation, and formatting have not been noted. In some cases, where identified, annotations are primarily substantive and indicate only where a state's provision differs in meaning from a corresponding provision in the UTSA. • All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. These states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Texas Tex. Civ. Prac. & Rem Code Ann. §§ 134A.001 - 134A.008 Texas Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	1985
Definition: Preamble and Improper Means	As used in this [Act], 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;	§ 134A.002. Definitions ~~As used in this [Act], unless the context requires otherwise~~ In this chapter: (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;
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 134A.002(3) *Substantively identical to UTSA*
Definition: Person	(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.	Tex. Gov. Code Ann. §311.005(2) "Person" ~~means~~ includes ~~a natural person,~~ corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal ~~or commercial~~ entity.
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 134A.002(6). "Trade secret" means all forms and types of information, including business, scientific, technical, economic, or engineering information, and any ~~a~~ formula, design, prototype, pattern, plan, compilation, program, device, program, code, device, method, technique, ~~a~~ 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 ~~that~~: (A) the owner of the trade secret has taken ~~is the subject of efforts that are~~ reasonable measures under the circumstances to keep the information secret ~~maintain its secrecy~~; 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 ~~other~~ persons who can obtain economic value from ~~its~~ the disclosure or use of the information.
Definitions Not in UTSA		§ 134A.002. Definitions (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. (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. (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. (7) "Willful and malicious misappropriation" means intentional misappropriation resulting from the conscious disregard of the rights of the owner of the trade secret. ** Proper means are substantially addressed by UTSA comments.*

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Texas Tex. Civ. Prac. & Rem Code Ann. §§ 134A.001 - 134A.008 Texas Uniform Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 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 ~~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. (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.
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 134A.004. Damages (a) ~~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~~ 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 ~~exists, the court~~ 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).
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 134A.005. Attorney's Fees *Same as UTSA*
Preservation of Secrecy	In an action under this [Act], 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.	§ 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. ~~which may include granting protective orders in connection with discovery proceedings~~. 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 an other 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 in a fiduciary relationship with the owner; (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.
Statute of Limitations	An action for misappropriation must be brought within 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.	Tex. Civ. Prac. Code Ann. § 16.010. Misappropriation of Trade Secrets *Substantively identical to UTSA*

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Texas Tex. Civ. Prac. & Rem Code Ann. §§ 134A.001 - 134A.008 Texas Uniform Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 134A.007. Effect on Other Law *Same as UTSA*
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	§ 134A.008. Uniformity of Application and Construction *Same as UTSA*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the evening law and the cell is marked red.*	Tex. Gov. Code Ann. § 311.032. Severability of Statutes (a) If any statute contains a provision for severability, that provision prevails in interpreting that statute. (b) If any statute contains a provision for nonseverability, that provision prevails in interpreting that statute. (c) In a statute that does not contain a provision for severability or nonseverability, if any provision of the statute or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the statute that can be given effect without the invalid provision or application, and to this end the provisions of the statute are severable.
Additions or Notes (including "Time of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____, and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	**2017 TUTSA amendments become effective on September 1, 2017*

B R R
Beck Reed Riden

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Texas Tex. Civ. Prac. & Rem Code Ann. §§ 134A.001 - 134A.008 Texas Uniform Trade Secrets Act
Additions II		
In General and Unless Otherwise Specified	• *Green cells denote UTSA 1985 version.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Where a statutory provision is marked as "Same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced, but still do not present substantive deviations from the UTSA, the cells are marked "Substantively Identical to UTSA."* • *Yellow cells indicate that the respective provision is a substantively modified version of the UTSA. In certain cases of these modifications may ultimately be insignificant, in other cases, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA. Though non-substantive and minor variations may not be annotated.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked and where no state law provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red.* • *Some states have omitted specific UTSA provisions from their version, or the provision would be redundant of existing state law. Applicable state statute or citation is in most instances provided above.* *Annotations:* •*Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is struck-through is language included within the UTSA that a state has omitted from its statutes.* • *Annotations are primarily intended to denote substantive, rather than textual, differences. As such, some small differences in phrasing, punctuation, and formatting have not been noted, in some cases, where identified, annotations are entirely substantive and indicate only where a state's provision differs in meaning from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. There states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Utah Utah Code Ann. §§ 13-24-1 - 13-24-9 Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	1985
Definition: Franchise and Improper Means	As used in this [Act], 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;	§ 13-24-2(1) *Same as UTSA*
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 13-24-2(2) *Same as UTSA*
Definition: Person	(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.	§ 13-24-2(3) *Same as UTSA*
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 13-24-2(4) *Same as UTSA*
Definitions Not in UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Utah Utah Code Ann. §§ 13-24-1 - 13-24-9 Uniform Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 13-24-3. Injunctive relief *Same as UTSA*
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 13-24-4. Damages *Same as UTSA*
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 13-24-5. Attorneys' fees *Same as UTSA*
Preservation of Secrecy	In an action under this [Act], 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.	§ 13-24-6. Preservation of secrecy *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 13-24-7. Statute of limitations *Same as UTSA*

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts
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Fed/State	Uniform Trade Secrets Act	Utah Utah Code Ann. §§ 13-24-1 - 13-24-9 Uniform Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 13-24-8. Effect on other law *Same as UTSA*
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	§ 13-24-9. Uniformity of application and construction *Same as UTSA*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	*State v. Lopez*, 980 P.2d 191, 196 (1999). Statute should be severed when possible and consistent with legislative intent.
Additions or Notes (including "Time of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____ and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	

BRIP LLP
Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Utah Utah Code Ann. §§ 13-24-1 - 13-24-9 Uniform Trade Secrets Act
Additions &		
In General and Unless Otherwise Specified	• *Unannotated denote UTSA 1985 version.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Minor statutory provisions is marked as "Same as UTSA" unless textual or formatting differences may exist. Where these differences are more pronounced, but still do not present substantive deviations from the UTSA, the cells are marked "Substantively Identical to UTSA."* • *Yellow cells indicate that the respective provision is a substantively different version of the UTSA. In provisions some of these modifications may ultimately be insignificant. In other cases, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA, though non-substantive and minor variations may not be annotated.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red.* • *Some states have omitted specific UTSA provisions from their version, as the provision would be redundant of existing state law. Applicable state statute or citation is in most instances provided above.* *Annotations:* •*Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is struck-through is language included within the UTSA that a state has omitted from its statute.* • *Annotations are primarily intended to denote substantive, rather than textual differences. As such, some minor differences in phrasing, punctuation, and formatting have not been noted, in some cases, where identified, annotations will certainly substantive and indicate only when a state's provision differs in meaning from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. There states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts Compared to the UTSA

Fed/State	Uniform Trade Secrets Act	Vermont Vt. Stat. Ann. tit. 9, §§ 4601 - 4609
UTSA Version Adopted	1985 version	1985
Definition: Preamble and "Improper" Means	As used in this [Act], 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.	§ 4601. Definitions *Substantively identical but for:* ~~As used in this [Act], unless the context requires otherwise~~ As used in this chapter:
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 4601(2) *Same as UTSA*
Definition: Person	(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.	Vt. Stat. Ann. tit. 1 § 128 "Person" shall include any natural person, corporation, ~~business trust, estate, trust,~~ municipality, the State of Vermont or any department, agency, or subdivision of the State, and any partnership, unincorporated association, ~~joint venture, government, governmental subdivision or agency,~~ or other legal ~~or commercial~~ entity.
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 4601(3) *Same as UTSA*
Definitions Not in UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts
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Fed/State	Uniform Trade Secrets Act	Vermont Vt. Stat. Ann. tit. 9, §§ 4601 - 4609
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 4602. Injunctive relief *Same as UTSA*
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 4603. Damages (a)(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 is entitled to recover damages for misappropriation. (2) 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. (3) 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~~ malicious misappropriation exists, the court may award punitive damages ~~in an amount not exceeding twice any award made under subsection (a)~~.
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 4605(4) A court shall award a substantially prevailing party his or her costs and fees, including reasonable attorney's fees, in an action brought pursuant to this chapter. ~~If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.~~
Preservation of Secrecy	In an action under this [Act], 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.	§ 4605. Preservation of secrecy *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	Vt. Stat. Ann. tit 12 § 523. Trade secrets An action for misappropriation of trade secrets under 9 V.S.A. chapter 143 shall be commenced within ~~three~~ six years after the cause of action accrues, and not after. The cause of action shall be deemed to accrue as of the date the misappropriation was discovered or reasonably should have been discovered. ~~For the purposes of this section, a continuing misappropriation constitutes a single claim.~~

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Vermont Vt. Stat. Ann. tit. 9, §§ 4601 - 4609
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 4607. Effect on other law *Same as UTSA*
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	§ 4608. Uniformity of application and construction *Same as UTSA*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	Vt. Stat. Ann. tit. 1, § 215. Severability of provisions The provisions of any act are severable. If any provision of an act is invalid, or if any application thereof to any person or circumstance is invalid, the invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application.
Additions or Notes (including "Time of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____, and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	§§ 4604 & 4606. Reserved § 4609. Time of taking effect This chapter shall take effect on July 1, 1996, and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the chapter also does not apply to the continuing misappropriation that occurs after the effective date.

Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Vermont Vt. Stat. Ann. tit. 9, §§ 4601 - 4609
Additions &		
In General and Unless Otherwise Specified	• *Green cells denote UTSA 2016 version.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material/substantive difference. Where a statutory provision is marked as "Same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced, but still do not present substantive distinctions from the UTSA, the cells are marked "Substantively Identical to UTSA."* • *Yellow cells indicate that the respective provision is a substantively modified version of the UTSA. In certain some of these modifications may ultimately be insignificant. In other cases, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA. Though non-substantive and minor variations may not be annotated.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state has provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red.* • *Some states have omitted specific UTSA provisions from their version, or the provision would be redundant of existing state law. Applicable state statute or citation is in most instances provided above.* *Annotations:* •*Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is stricken through is language included within the UTSA that a state has omitted from its statute.* • *Annotations are primarily intended to denote substantive, rather than textual differences. As such, some small differences in phrasing, punctuation, and formatting have not been noted, in some cases, where identified, annotations are labeled substantive and indicate whether a state's provision differs in meaning from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. These states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts Compared to the UTSA

Fed/State	Uniform Trade Secrets Act	Virginia Va. Code Ann. §§ 59.1-336 - 59.1-343 Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	1985
Definition: Preamble and Improper Means	As used in this [Act], 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;	§ 59.1-336. "Improper means" includes theft, bribery, misrepresentation, use of a computer or computer network without authority, breach of a duty or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (i) derived from or through a person who had utilized improper means to acquire it; (ii) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (iii) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 59.1-336. "Misappropriation" means: 1. 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 2. Disclosure or use of a trade secret of another without express or implied consent by a person who a. Used improper means to acquire knowledge of the trade secret; or b. At the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (1) Derived from or through a person who had utilized improper means to acquire it; (2) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; (3) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or c. ~~(4) before a material change of his [or her] 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.
Definition: Person	(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.	§ 59.1-336. "Person" *Same as UTSA*
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 59.1-336. "Trade secret" *Same as UTSA*
Definitions Not In UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Virginia Va. Code Ann. §§ 59.1-336 - 59.1-343 Uniform Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 59.1-337. Injunctive relief *Same as UTSA*
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 59.1-338. Damages A. ~~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,~~ Except where the user of a misappropriated trade secret has made a material and prejudicial change in his position prior to having either knowledge or reason to know of the misappropriation and the court determines that a monetary recovery would be inequitable, a complainant 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.~~ If a complainant is unable to prove a greater amount of damages by other methods of measurement, the damages caused by misappropriation can be measured exclusively 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 exists, the court may award punitive damages in an amount not exceeding twice any award made under subsection A of this section, or $350,000 whichever amount is less.
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 59.1-338.1. Attorneys' fees If the court determines that (i) a claim of misappropriation is made in bad faith, or ~~(ii) a motion to terminate an injunction is made or resisted in bad faith, or~~ (ii) willful and malicious misappropriation exists, the court may award reasonable attorneys' fees to the prevailing party.
Preservation of Secrecy	In an action under this [Act], 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.	§ 59.1-339. Preservation of secrecy *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 59.1-340. Statute of limitations *Same as UTSA*

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Virginia Va. Code Ann. §§ 59.1-336 - 59.1-343 Uniform Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 59.1-341. Effect on other law *Same as UTSA*
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	*None*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	Va. Code Ann. § 1-243. Severability The provisions of acts of the General Assembly or the application thereof to any person or circumstances that are held invalid shall not affect the validity of other acts, provisions, or applications that can be given effect without the invalid provisions or applications. The provisions of all acts, except for the title of the act, are severable unless (i) the act specifically provides that its provisions are not severable, or (ii) it is apparent that two or more acts or provisions must operate in accord with one another.
Additions or Notes (including "Time of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____, and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	§ 59.1-342. Repealed § 59.1-343. Time of taking effect This chapter shall become effective on July 1, 1986, and shall not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the chapter also shall not apply to misappropriation that occurs after the effective date.

B|R|R Beck Reed Riden

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts
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Fed/State	Uniform Trade Secrets Act	Virginia Va. Code Ann. §§ 59.1-336 - 59.1-343 Uniform Trade Secrets Act
Additions &		
In General and Unless Otherwise Specified	• *Green cells denote UTSA 1985 version.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Where a statutory provision is marked as "Same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced, but still do not present substantive distinctions from the UTSA, the cells are marked "Substantively identical to UTSA."* • *Yellow cells indicate that the respective provision is a substantively modified version of the UTSA. In practice some of these modifications may ultimately be insignificant. In other cases, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA. Though non-substantive and minor variations may not be annotated.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red.* • *Some states have omitted specific UTSA provisions from their version, or the provision would be redundant of existing state law. Applicable state statutes or citation is in most instances provided above.* *Annotations:* •*Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is stricken through is language included within the UTSA that a state has omitted from its statute.* • *Annotations are primarily intended to denote substantive, rather than textual differences. As such, some small differences in phrasing, punctuation, and formatting have not been noted. In some cases, where identified, annotations are entirely substantive and indicate only where a state's provision differs in meaning from a corresponding provision in the UTSA.* • *All versions compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. These states will have significant differences in their "injunctive relief," "damages," and "Effect on Other Law" sections (in particular).*	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Washington Wash. Rev. Code Ann. §§ 19.108.010 - 19.108.940 Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	1979
Definition: Preamble and Improper Means	As used in this [Act], 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.	§ 19.108.010. Definitions *Substantively identical but for:* Unless the context clearly requires otherwise, the definitions set forth in this section apply throughout this chapter.
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 19.108.010(2) *Same as UTSA*
Definition: Person	(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.	§ 19.108.010(3) *Same as UTSA*
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 19.108.010(4) *Same as UTSA*
Definitions Not in UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts Compared to the UTSA

Fed/State	Uniform Trade Secrets Act	Washington Wash. Rev. Code Ann. §§ 19.108.010 - 19.108.940 Uniform Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 9.108.020. Remedies for misappropriation--Injunction, royalty (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~~ If the court determines that it would be unreasonable to prohibit future use, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time the use could have been prohibited. ~~Exceptional circumstances include, but are not 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.
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 19.108.030. Remedies for misappropriation--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,~~ In addition to or in lieu of injunctive relief, a complainant ~~is entitled to~~ may recover damages for ~~misappropriation. Damages can include both~~ the actual loss caused by misappropriation, ~~and~~ A complainant also may recover for the unjust enrichment caused by misappropriation that is not taken into account in computing damages for 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 the damages awarded under subsection (1).
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 19.108.040. Award of attorney's fees *Same as UTSA*
Preservation of Secrecy	In an action under this [Act], 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.	§ 19.108.050. Court orders to preserve secrecy of alleged trade secrets *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 19.108.060. Actions for misappropriation--Time limitation *Same as UTSA*

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Washington Wash. Rev. Code Ann. §§ 19.108.010 – 19.108.940 Uniform Trade Secrets Act
Effect w Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 19.108.900. Effect of chapter on other law. (1) This chapter displaces conflicting tort, restitutionary, and other law of this state pertaining to civil liability for misappropriation of a trade secret. (2) This chapter does not affect: (a) ~~contractual remedies, whether or~~ Contractual or other civil liability or relief that is not based upon misappropriation of a trade secret; or ~~(b) other civil remedies that are not based upon misappropriation of a trade secret; or~~ (b) Criminal ~~remedies whether or not based upon~~ liability for misappropriation of a trade secret.
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	§ 19.108.910. Construction of uniform act *Same as UTSA*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	§ 19.108.940. Severability – 1981 c 286 If any provision of this act or its application to any person or circumstances is held invalid, ~~the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable~~ the remainder of the act or the application of the provision to other persons or circumstances is not affected.
Additions or Notes Including "Time of Taking Effect" where provided in statutory text	This [Act] takes effect on _____, and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	19.108.930. Effective date–Application–1981 c 286 This chapter takes effect on January 1, 1982, and does not apply to misappropriation occurring prior to the effective date.

B R | R
Beck Reed Riden

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Washington Wash. Rev. Code Ann. §§ 19.108.010 - 19.108.940 Uniform Trade Secrets Act
Addition/s		
In General and Unless Otherwise Specified	• *Green cells denote UTSA 1985 version.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Where a statutory provision is marked as "Same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced but still do not present substantive distinctions from the UTSA, the cells are marked "substantively identical to UTSA."* • *Yellow cells indicate that the respective provision is a substantively modified version of the UTSA, so portion some of these modifications may ultimately be insignificant. In other cases, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA. Though non-substantive and minor variations may not be annotated.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been identified that corresponds to particular UTSA section. Cells reserved for additional information are also marked red.* • *Some states have omitted specific UTSA provisions from their version, so the provision would be a combination of existing state law. Applicable state statute or citation is in most instances provided above.* Annotations: •*Underlined text is language that has been deleted in a state's statute, but does not exist in the UTSA. Text that is struck-through is language included within the UTSA that a state has omitted from its statute.* • *Annotations are primarily intended to denote substantive, rather than textual, differences. As such, some non-differences in phrasing, punctuation, and formatting have not been noted. In some cases, where identified, annotations are omitted substantive, and indicate only where a state's provision differs in meaning from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. Due to states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts
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Fed/State	Uniform Trade Secrets Act	West Virginia W. Va. Code Ann. §§ 47-22-1 - 47-22-10 Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	1985
Definition: Preamble and Improper Means	As used in this [Act], 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;	§ 47-22-1(a) *Same as UTSA*
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 47-22-1(b) *Same as UTSA*
Definition: Person	(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.	§ 47-22-1(c) *Same as UTSA*
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 47-22-1(c) *Substantively identical to UTSA*
Definitions that is UTSA		

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	West Virginia W. Va. Code Ann. §§ 47-22-1 - 47-22-10 Uniform Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 47-22-2. Injunctive relief *Same as UTSA*
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 47-22-3. Damages (a) 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 is entitled to recover damages for misappropriation. Damages can may include both the actual loss caused by the misappropriation and the unjust enrichment caused by the 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 occurs, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 47-22-4. Attorney's fees *Same as UTSA*
Preservation of Secrecy	In an action under this [Act], 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.	§ 47-22-5. Preservation of secrecy *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 47-22-6. Statute of limitations *Same as UTSA*

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	West Virginia W. Va. Code Ann. §§ 47-22-1 - 47-22-10 Uniform Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 47-22-7. Effect on other law *Same as UTSA*
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	§ 47-22-8. Uniformity of application and construction *Same as UTSA*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	W. Va. Code Ann. § 2-2-10. Rules for construction of statutes The following rules shall be observed in the construction of statutes, unless a different intent on the part of the Legislature be apparent from the context: (cc) Unless there is a provision in a section, article or chapter of this code specifying that the provisions thereof shall not be severable, the provisions of every section, article or chapter of this code, whether enacted before or subsequent to the effective date of this subdivision, shall be severable so that if any provision of any such section, article or chapter is held to be unconstitutional or void, the remaining provisions of such section, article or chapter shall remain valid, unless the court finds the valid provisions are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that the court cannot presume the Legislature would have enacted the remaining valid provisions without the unconstitutional or void one, or unless the court finds the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent: Provided, That if any such section, article or chapter of this code has its own severability clause, then such severability clause shall govern and control with respect to such section, article or chapter in lieu of the provisions of this subdivision. The provisions of this subdivision shall be fully applicable to all future amendments or additions to this code, with like effect as if the provisions of this subdivision were set forth in extenso in every such amendment or addition and were reenacted as a part thereof, unless such amendment or addition contains its own severability clause;
Additions or Notes (including "Time of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____, and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	§ 47-22-10. Time of taking effect This article takes effect on the first day of July, one thousand nine hundred eighty-six, and does not apply to misappropriations occurring prior to the effective date or to misappropriations which began prior to the effective date and continue past the effective date.

Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Trade Secrets Acts Compared to the UTSA

Fed/State	Uniform Trade Secrets Act	West Virginia W. Va. Code Ann. §§ 47-22-1 - 47-22-10 Uniform Trade Secrets Act
Additions II		
In General and Unless Otherwise Specified	• *Green cells denote UTSA 1985 wording.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material/substantive difference. Where a statutory provision is marked as "Same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced, but still do not present substantive deviations from the UTSA, the cells are marked "Substantively Identical to UTSA."* • *Yellow cells indicate that the respective provision is a substantively unaffected version of the UTSA, to which some of these modifications may ultimately be insignificant. In other cases, the substantive differences require attention. Language in the yellow cells is omitted to indicate how it varies from the 1985 UTSA. Slight non-substantive and minor variations may not be noted.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red.* • *Some states have omitted specific UTSA provisions from their version, or the provision would be redundant of existing state law. Applicable state statute or citation is in most instances provided above.* *Annotations:* •*Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is struck-through is language included within the UTSA that a state has omitted from its statute.* • *Annotations are primarily intended to denote substantive, rather than textual differences. As such, some small differences in phrasing, punctuation, and formatting have not been noted. In some cases, where identified, annotations are entirely substantive and indicate only where a state's provision differs in meaning from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. There states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Wisconsin Wis. Stat. Ann. § 134.90 Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	1985
Definition: Preamble and Improper Means	As used in this [Act], 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.	§ 134.90(1) Definitions In this section, ~~unless context requires otherwise~~: (a) "Improper means" includes espionage, theft, bribery, misrepresentation and breach or inducement of a breach of duty to maintain secrecy ~~or espionage through electronic or other means.~~
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his (or her) 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.	§ 134.90(2) Misappropriation *Codified as actionable conduct rather than a definition* ~~"Misappropriation" means:~~ No person, including the state, may misappropriate or threaten to misappropriate a trade secret by doing any of the following: (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~~ Acquiring the trade secret of another by means which the person knows or has reason to know constitute improper means. (b) ~~Disclosure or use of a trade secret of another without express or implied consent by a person who~~ Disclosing or using without express or implied consent a trade secret of another if the person did any of the following: 1. Used improper means to acquire knowledge of the trade secret. 2. At the time of disclosure or use, knew or had reason to know that he or she obtained knowledge of the trade secret through any of the following means: a. ~~Derived~~ Deriving it from or through a person who utilized improper means to acquire it. b. ~~Acquired~~ Acquiring it under circumstances giving rise to a duty to maintain its secrecy or limit its use. c. ~~Derived~~ Deriving it from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use. d. ~~Before a material change of his (or her) position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired~~ Acquiring it by accident or mistake.
Definition: Person	(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.	Wis. Stat. Ann. § 990.01(26) "Person" ~~means a natural person, corporation, business trust, estate, trust,~~ includes all partnerships, associations ~~joint venture, government, governmental subdivision or agency, or any other legal or commercial entity~~ and bodies politic or corporate.
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 134.90(1)(c) *Same as UTSA*
Definition: Not in UTSA		§ 134.90(1)(b) (b) "Readily ascertainable" information does not include information accessible through a license agreement or by an employee under a confidentiality agreement with his or her employer.

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Wisconsin Wis. Stat. Ann. § 134.90 Uniform Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 134.90(3) Injunctive relief (a) ~~Actual or threatened misappropriation may be enjoined.~~ 1. A court may grant an injunction against a person who violates sub. (2). Chapter 813 governs any temporary or interlocutory injunction or ex parte restraining order in an action under this section, except that no court may issue such an injunction or restraining order unless the complainant makes an application which includes a description of each alleged trade secret in sufficient detail to inform the party to be enjoined or restrained of the nature of the complaint against that party or, if the court so orders, includes written disclosure of the trade secret. The complainant shall serve this application upon the party to be enjoined or restrained at the time the motion for the injunction is made or the restraining order is served, whichever is earlier. 2. Except as provided in subd. 3., upon application to the court, the court shall terminate an injunction when a trade secret ceases to exist, ~~but, the injunction may be continued~~. 3. The court may continue an injunction for a reasonable period of time to eliminate commercial advantage which the person who violated sub. (2) otherwise would ~~be derived from the misappropriation~~ derive from the violation. (b) In exceptional circumstances, an injunction granted under par. (a) may condition future use of a trade secret by the person who violated sub. (2) upon payment of a reasonable royalty by that person to the owner of the trade secret for no longer than the period of time for which ~~use could be prohibited~~ the court may enjoin or restrain the use of the trade secret under par. (a). Exceptional circumstances include, ~~but are not limited to,~~ a material and prejudicial change of position, prior to acquiring knowledge or reason to know of ~~misappropriation~~ a violation of sub. (2), that renders an injunction inequitable.
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 134.90(4) Damages. *Substantively identical to UTSA but for:* (a) Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of a violation of sub. (2) renders a monetary recovery inequitable, a court may award damages to the complainant for a violation of sub. (2). A court may award damages in addition to, or in lieu of, injunctive relief under sub. (3). Damages may include both the actual loss caused by the violation and unjust enrichment caused by the violation that is not taken into account in computing actual loss. Damages may be measured exclusively by the imposition of liability for a reasonable royalty for a violation of sub. (2) if the complainant cannot by any other method of measurement prove an amount of damages which exceeds the reasonable royalty. (b) If a violation of sub. (2) is willful and malicious, the court may award punitive damages in an amount not exceeding twice any award under par. (a).
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 134.90(4)(c) *Substantively identical to UTSA*
Preservation of Secrecy	In an action under this [Act], 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.	§ 134.90(5) Preservation of secrecy *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	Wis. Stat. Ann. § 893.51(2). Action for wrongful taking of personal property *Same as UTSA*

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Wisconsin Wis. Stat. Ann. § 134.90 Uniform Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 134.90(6) Effect on other laws *Substantively identical to UTSA*
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	§ 134.90(7) Uniformity of application and construction. ~~The [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.~~ This section shall be applied and construed to make uniform the law relating to misappropriation of trade secrets among states enacting substantially identical laws.
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	Wis. Stat. Ann. § 990.001. Construction of laws; rules for (11) Severability. The provisions of the statutes are severable. The provisions of any session law are severable. If any provision of the statutes or of a session law is invalid, or if the application of either to any person or circumstance is invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application.
Additions or Notes (including "Time of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____, and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	

Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Wisconsin Wis. Stat. Ann. § 134.90 Uniform Trade Secrets Act
Addition II		
In General and Unless Otherwise Specified	• *Green cells denote UTSA 1985 version.* • *White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Where a statutory provision is marked as "same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced, but still do not present substantive deviations from the UTSA, the cells are marked "Substantively identical to UTSA."* • *Yellow cells indicate that the respective provision is a substantively modified version of the UTSA, to which some of these modifications may ultimately be insignificant. In other cases, the substantive differences require attention. Language in the yellow cells is maintained to indicate how it varies from the 1985 UTSA, though non-substantive and minor variations may not be annotated.* • *Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are marked red where no state law provision has been identified that corresponds to a particular UTSA section. Cells reserved for additional information are also marked red.* • *Some states have omitted specific UTSA provisions from their version, or the provision would be redundant of existing state law. Applicable state statute or citation is as most intensely provided above.* *Annotations:* •*Underlined text is language that has been included in a state's statute, but does not exist in the UTSA. Text that is crossed through is language included within the UTSA that a state has omitted from its statute.* • *Annotations are primarily intended to denote substantive, rather than textual, differences. As such, some small differences in phrasing, punctuation, and formatting have not been noted. In some cases, where identified, annotations are either substantive and indicate only when a state's provision differs in meaning from a corresponding provision in the UTSA.* • *All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not its later amendments. There states will have significant differences in their "Injunctive Relief," "Damages," and "Effect on Other Law" sections (in particular).*	

Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Wyoming Wyo. Stat. Ann. 1977 §§ 40-24-101 - 40-24-110 Uniform Trade Secrets Act
UTSA Version Adopted	1985 version	1985
Definition: Proximate and Improper Means	As used in this [Act], 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;	§ 40-24-101(a)(i) *Same as UTSA*
Definition: Misappropriation	(2) "Misappropriation" means: (i) 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 (ii) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (C) before a material change of his [or her] 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.	§ 40-24-101(b)(ii) *Same as UTSA*
Definition: Person	(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.	§ 40-24-101(a)(iii) *Same as UTSA*
Definition: Trade Secret	(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.	§ 40-24-101(a)(iv) *Same as UTSA*
Definitions Not in UTSA		§ 40-24-101(a)(v) "This act" means W.S. 40-24-101 through 40-24-110.

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Wyoming Wyo. Stat. Ann. 1977 §§ 40-24-101 - 40-24-110 Uniform Trade Secrets Act
Injunctive Relief	(a) 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. (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, but are not 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. (c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.	§ 40-24-102. Injunctive relief *Same as UTSA*
Damages	(a) 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 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 exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).	§ 40-24-103. Damages *Same as UTSA*
Attorney's Fees	If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.	§ 40-24-104. Attorney's fees *Same as UTSA*
Preservation of Secrecy	In an action under this [Act], 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.	§ 40-24-105. Preservation of secrecy *Same as UTSA*
Statute of Limitations	An action for misappropriation must be brought within 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.	§ 40-24-106. Statute of limitations An action for misappropriation must be brought within ~~three (3)~~ four (4) 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.

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Wyoming Wyo. Stat. Ann. 1977 §§ 40-24-101 - 40-24-110 Uniform Trade Secrets Act
Effect on Other Law	(a) Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret. (b) This [Act] 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.	§ 40-24-107. Effect on other law *Same as UTSA*
Uniformity of Application and Construction	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.	§ 40-24-108. Uniformity of application and construction *Same as UTSA*
Severability	If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable. *In lieu of adopting this provision, a majority of states have existing general severability statutes. For these states the statute is provided without annotation and the cell is marked yellow.* *For those states that allow general severability through case law, citation is provided to a case that summarizes the existing law and the cell is marked red.*	Wyo. Stat. Ann. § 8-1-109. Rules of construction for statutes (viii) If any provision of any act enacted by the Wyoming legislature or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of any such act are severable.
Additions or Notes (including "Time of Taking Effect" where provided in statutory text)	This [Act] takes effect on _____ and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the [Act] also does not apply to the continuing misappropriation that occurs after the effective date.	§ 40-24-110. Time of taking effect This act does not apply to misappropriation occurring prior to July 1, 2006. With respect to a continuing misappropriation that began prior to July 1, 2006, the act does not apply to the continuing misappropriation that occurs after July 1, 2006.

B|R|R
Beck Reed Riden

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com

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Fed/State	Uniform Trade Secrets Act	Wyoming Wyo. Stat. Ann. 1977 §§ 40-24-301 - 40-24-330 Uniform Trade Secrets Act
Additions ¶		
In General and Unless Otherwise Specified	• Generally denote UTSA 1985 version. • White cells indicate that the respective provision is equivalent to the amended 1985 UTSA. While the exact wording and formatting may differ, there is no material substantive difference. Where minimal or no provision is marked as "same as UTSA" minor textual or formatting differences may exist. Where these differences are more pronounced, but still do not present substantive distinction from the UTSA, the cell is marked "Substantively the same as UTSA." • Yellow cells indicate that the respective provision is a substantively modified version of the UTSA. In question some of these modifications may arguably be insignificant. In other cases, the substantive differences require attention. Language in the yellow cells is annotated to indicate how it varies from the 1985 UTSA, though non-substantive and minor variations may not be annotated. • Red cells indicate that the respective provision does not exist or otherwise is significantly different from the UTSA. These provisions are generally not annotated. Cells are omitted red where no state law provision has been identified that corresponds to a particular UTSA section. Cells screened for additional information are also omitted red. • Some states have omitted specific UTSA provisions from their version, or the provision would be redundant of existing state law. Applicable state statute or citation is in most instances provided below. Annotations: • Annotations in bold indicate language that has been included in a state's statute, but does not exist in the UTSA. Text that is stricken through is language included within the UTSA that a state has omitted from its statute. • Annotations are primarily labeled as to state substantive, rather than textual, differences. As such, some small differences in phrasing, punctuation, and/or formatting have not been noted. In some cases, where identified, annotations are entirely substantive and indicate only where a state's provision differs in meaning from a corresponding provision in the UTSA. • All annotations compare the state's language to the amended 1985 UTSA. However, a number of states have adopted the original 1979 UTSA, but not the later amendments. These states will have significant differences in their "Definition of Trade," "Damages," and "Effect on Other Law" sections (in particular).	

Beck Reed Riden LLP

Russell Beck
Beck Reed Riden LLP
155 Federal Street, Suite 1302
Boston, MA 02110
617-500-8670
rbeck@beckreed.com