

## PROTECTION OF INTELLECTUAL PROPERTY RIGHTS UNDER STATE CONSUMER PROTECTION LAWS

July 14, 2016

*Report card on the effectiveness of laws in 50 states in protecting manufacturers' intellectual property (IP) and the jobs that depend on trade secrets and other IP*

U.S. manufacturers face a growing threat from competitors who steal intellectual property (IP) such as trade secrets, copyrighted material, and pirated software, to gain an unfair business edge. IP theft costs the U.S. more than \$300 billion each year and millions of jobs<sup>1</sup>. State consumer protection laws provide a broad framework for enforcement against companies – including companies based overseas – that use misappropriated or stolen IP to seek an unfair competitive advantage. We evaluated each state statute based on eleven criteria to determine which states have the strongest and which have the weakest laws.

Here is how they stacked up:

### STATE REPORT CARD

<i>By Name</i>		<i>By Grade</i>		<i>By Name</i>		<i>By Grade</i>	
State	Grade	State	Grade	State	Grade	State	Grade
Alabama	C-	Montana	A-	Louisiana	A	South Carolina	C
Alaska	D	Nebraska	D	New Jersey	A	Utah	C
Arizona	D	Nevada	D	Vermont	A	Wisconsin	C
Arkansas	B-	New Hampshire	B	Connecticut	A-	Alabama	C-
California	C	New Jersey	A	Massachusetts	A-	Georgia	C-
Colorado	D-	New Mexico	B	Montana	A-	Hawaii	C-
Connecticut	A-	New York	C-	District of Columbia	B	New York	C-
Delaware	D	North Carolina	B-	Idaho	B	Texas	C-
District of Columbia	B	North Dakota	C	Missouri	B	Alaska	D
Florida	C	Ohio	C	New Hampshire	B	Arizona	D
Georgia	C-	Oklahoma	B	New Mexico	B	Delaware	D
Hawaii	C-	Oregon	C	Oklahoma	B	Maryland	D
Idaho	B	Pennsylvania	C	Rhode Island	B	Minnesota	D
Illinois	B-	Rhode Island	B	Tennessee	B	Mississippi	D
Indiana	F	South Carolina	C	Arkansas	B-	Nebraska	D
Iowa	F	South Dakota	F	Illinois	B-	Nevada	D
Kansas	F	Tennessee	B	Kentucky	B-	Colorado	D-
Kentucky	B-	Texas	C-	North Carolina	B-	Michigan	D-
Louisiana	A	Utah	C	Washington	B-	Indiana	F
Maine	C	Vermont	A	California	C	Iowa	F
Maryland	D	Virginia	F	Florida	C	Kansas	F
Massachusetts	A-	Washington	B-	Maine	C	South Dakota	F
Michigan	D-	West Virginia	F	North Dakota	C	Virginia	F
Minnesota	D	Wisconsin	C	Ohio	C	West Virginia	F
Mississippi	D	Wyoming	F	Oregon	C	Wyoming	F
Missouri	B			Pennsylvania	C		

<sup>1</sup> The Report of the Commission on the Theft of American Intellectual Property (May 2013), [http://www.ipcommission.org/report/IP\\_Commission\\_Report\\_052213.pdf](http://www.ipcommission.org/report/IP_Commission_Report_052213.pdf)

## SCORING CRITERIA

State statutes prohibiting unfair or deceptive acts or practices (UDAP) were scored based on the following criteria:

1. Is the statute intended to protect businesses operating in the state, in addition to protecting individual consumers?
2. Does the statute provide a sufficiently broad framework to allow its enforcement against companies that use misappropriated or stolen IP?
3. Does the statute afford state agencies the authority to adopt substantive rules prohibiting unfair and deceptive acts?
4. Is the civil penalty substantial enough (\$10,000 or more) to effectively deter unlawful acts?
5. Can the state agency seek restitution without proving intent or knowledge?
6. Has the Attorney General used the state's statute to take action to level the competitive playing field and protect companies operating in their states against IP theft?
7. Does the statute allow losses to be recovered by the complaining business whose IP was stolen?
8. Does the statute allow attorney fees to be recovered by a prevailing party?
9. Does the statute allow for a complainant's suit without proof of reliance?
10. Does the statute allow for a complainant's suit without proof of public impact?
11. Does the statute allow for a complainant's suit without pre-suit notice?

## STRENGTHS AND WEAKNESSES BY STATE

Strengths and Weaknesses (Alabama - Kansas)	AL	AK	AZ	AR	CA	CO	CT	DE	DC	FL	GA	HI	ID	IL	IN	IA	KS
<b>Scope</b>																	
Definition of "consumer" extends to businesses	●	○	●	●	●	●	●	●	●	●	●	○	●	●	○	●	○
<b>Prohibition of unfairness, deception</b>																	
Broad deception prohibition*	●	●	●	●	○	●	●	●	●	●	●	●	●	●	○	○	●
Broad unfairness prohibition*	●	●	○	●	●	○	●	○	●	●	●	●	●	●	●	○	●
Rulemaking authority*	○	●	○	○	○	○	●	○	●	●	●	●	●	●	○	●	○
<b>State enforcement</b>																	
Civil penalty amount*	○	●	●	●	○	○	○	●	○	●	○	●	○	●	○	●	●
Deception sufficient without proof of intent or knowledge*	●	●	●	○	●	○	●	●	●	●	●	●	●	●	○	●	○
AG has taken action	○	○	○	●	●	○	○	○	○	○	○	○	○	○	○	○	○
<b>Remedies for complainants</b>																	
Compensatory damages*	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	○	●
Multiple or punitive damages*	●	●	○	○	●	●	●	○	●	○	●	●	●	○	●	○	○
Attorney fees*	●	○	○	●	●	●	○	○	○	○	●	●	○	○	○	○	●
Allows complainant suit without proof of reliance*	○	●	○	○	○	●	●	●	●	○	○	○	○	●	○	○	●
Allows complainant suit without proof of public impact*	●	●	●	●	○	○	●	●	●	○	○	●	●	●	○	○	●
Allows complainant suit without pre-suit notice*	○	●	●	●	○	●	●	●	●	○	○	●	●	●	○	○	●
<b>Grade</b>	<b>C-</b>	<b>D</b>	<b>D</b>	<b>B-</b>	<b>C</b>	<b>D-</b>	<b>A-</b>	<b>D</b>	<b>B</b>	<b>C</b>	<b>C-</b>	<b>C-</b>	<b>B</b>	<b>B-</b>	<b>F</b>	<b>F</b>	<b>F</b>

\* Metric presented in ["Consumer Protection in the States"](#) published in February 2009 by Carolyn L. Carter, [National Consumer Law Center \(NCLC\)](#). Use granted by permission of the National Consumer Law Center, May 2016. About NCLC: Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. Source: <https://www.nclc.org/about-us/about-us.html>

## STRENGTHS AND WEAKNESSES BY STATE

Strengths and Weaknesses (Kentucky - North Carolina)	KY	LA	ME	MD	MA	MI	MN	MS	MO	MT	NE	NV	NH	NJ	NM	NY	NC
<b>Scope</b>																	
Definition of "consumer" extends to businesses	●	●	●	○	●	○	●	●	●	●	●	●	●	●	●	●	●
<b>Prohibition of unfairness, deception</b>																	
Broad deception prohibition*	●	●	●	●	●	●	●	⦿	●	●	●	●	●	●	●	●	●
Broad unfairness prohibition*	●	●	●	●	●	●	○	⦿	●	●	●	○	●	●	●	⦿	●
Rulemaking authority*	○	●	●	●	●	○	○	●	●	●	○	●	○	●	●	○	○
<b>State enforcement</b>																	
Civil penalty amount*	○	⦿	●	○	⦿	●	●	●	○	●	○	⦿	●	●	⦿	⦿	⦿
Deception sufficient without proof of intent or knowledge*	●	●	●	●	●	●	●	●	●	●	●	○	●	●	⦿	●	●
AG has taken action	●	●	○	●	●	○	○	○	○	○	○	○	○	○	○	○	○
<b>Remedies for complainants</b>																	
Compensatory damages*	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
Multiple or punitive damages*	●	●	○	○	●	○	○	○	●	●	○	○	●	●	●	⦿	●
Attorney fees*	⦿	●	●	●	●	●	●	○	⦿	●	●	●	●	●	●	●	●
Allows complainant suit without proof of reliance*	⦿	⦿	⦿	⦿	●	●	⦿	⦿	●	⦿	⦿	⦿	⦿	●	●	●	⦿
Allows complainant suit without proof of public impact*	●	●	●	●	●	●	○	●	●	●	○	●	●	●	●	○	●
Allows complainant suit without pre-suit notice*	●	●	○	●	○	●	●	○	●	●	●	●	●	●	●	●	●
<b>Grade</b>	<b>B-</b>	<b>A</b>	<b>C</b>	<b>D</b>	<b>A-</b>	<b>D-</b>	<b>D</b>	<b>D</b>	<b>B</b>	<b>A-</b>	<b>D</b>	<b>D</b>	<b>B</b>	<b>A</b>	<b>B</b>	<b>C-</b>	<b>B-</b>

Strengths and Weaknesses (North Dakota - Wyoming)	ND	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY
<b>Scope</b>																	
Definition of "consumer" extends to businesses	●	○	●	●	●	●	●	●	●	●	●	●	○	●	○	○	○
<b>Prohibition of unfairness, deception</b>																	
Broad deception prohibition*	●	●	●	○	⦿	●	●	⦿	●	⦿	●	●	●	●	●	●	●
Broad unfairness prohibition*	○	●	●	●	⦿	●	●	○	●	●	●	●	○	●	●	●	●
Rulemaking authority*	●	●	○	●	●	●	○	○	○	○	●	●	○	○	●	●	○
<b>State enforcement</b>																	
Civil penalty amount*	⦿	●	●	●	○	○	⦿	○	○	●	○	●	○	○	⦿	●	●
Deception sufficient without proof of intent or knowledge*	○	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	○
AG has taken action	○	○	●	○	○	○	○	○	●	○	○	○	○	●	○	○	○
<b>Remedies for complainants</b>																	
Compensatory damages*	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
Multiple or punitive damages*	●	●	○	●	●	●	●	○	●	●	○	●	●	●	○	●	○
Attorney fees*	●	●	●	○	●	●	●	○	●	●	●	●	●	●	●	●	○
Allows complainant suit without proof of reliance*	⦿	●	⦿	⦿	○	⦿	⦿	●	○	⦿	●	○	○	●	⦿	●	○
Allows complainant suit without proof of public impact*	●	●	●	●	●	●	○	●	●	●	●	●	●	○	●	●	●
Allows complainant suit without pre-suit notice*	●	●	●	●	●	●	●	●	○	○	●	●	●	●	○	●	○
<b>Grade</b>	<b>C</b>	<b>C</b>	<b>B</b>	<b>C</b>	<b>C</b>	<b>B</b>	<b>C</b>	<b>F</b>	<b>B</b>	<b>C-</b>	<b>C</b>	<b>A</b>	<b>F</b>	<b>B-</b>	<b>F</b>	<b>C</b>	<b>F</b>

Key: ○ = weak / no    ⦿ = mixed or undecided / somewhat    ● = strong / yes

## SCORING SYSTEM

### Possible Points

<i>Scope</i>	<i>Possible Points</i>
Definition of "consumer" extends to businesses	0, 3
<b><i>Prohibition of unfairness, deception</i></b>	
Broad deception prohibition*	0, 0.5, 1
Broad unfairness prohibition*	0, 0.5, 1
Rulemaking authority*	0, 0.5, 1
<b><i>State enforcement</i></b>	
Civil penalty amount*	0, 0.5, 1
Deception sufficient without proof of intent or knowledge*	0, 0.5, 1
AG has taken action	0, 1
<b><i>Remedies for complainants</i></b>	
Compensatory damages*	0, 1
Multiple or punitive damages*	0, 0.5, 1
Attorney fees*	0, 0.5, 1
Allows complainant suit without proof of reliance*	0, 0.5, 1
Allows complainant suit without proof of public impact*	0, 1
Allows complainant suit without pre-suit notice*	0, 1

### Key

- = received no point(s)
- ◐ = received half of possible point(s)
- = received all possible point(s)

### Calculating Grade

Total Possible Points = 15  
 Points received / total points \* 100 = numerical grade  
 Numerical Grade = Letter Grade

### Numerical Grade Cutoffs

F / 0  
 D- / 60  
 D / 63.33  
 D+ / 66.67  
 C- / 70  
 C / 73.33  
 C+ / 76.67  
 B- / 80  
 B / 83.33  
 B+ / 86.67  
 A- / 90  
 A / 93.33  
 A+ / 96.67

### LIST OF STATE STATUTES

<b>State</b>	<b>UDAP Statute</b>
Alabama	Ala. Code §§ 8-19-1 through 8-19-15
Alaska	Alaska Stat. §§ 45.50.471 through 45.50.561
Arizona	Ariz. Rev. Stat. Ann. §§ 44-1521 through 44-1534
Arkansas	Ark. Code Ann. §§ 4-88-101-4-88-207
California	Cal. Bus. & Prof. Code §§ 17200 through 17594
Colorado	Colo. Rev. Stat. §§ 6-1-101 through 6-1-115
Connecticut	Conn. Gen. Stat. §§ 42-110a through 42-110q
Delaware	Del. Code Ann. Tit. 6, §§ 2511 through 2527, 2580 through 2584
District of Columbia	D.C. Code §§ 28-3901 through 28-3913
Florida	Fla. Stat. §§ 501.201 through 501.213
Georgia	Ga. Code Ann. §§ 10-1-390 through 10-1-407
Hawaii	Haw. Rev. Stat. §§ 480-1 through 480-24
Idaho	Idaho Code Ann. §§ 48-601 through 48-619
Illinois	815 Ill. Comp. Stat. 505/1 through 505/12
Indiana	Ind. Code §§ 24-5-0.5-1 through 24-5-0.5-12
Iowa	Iowa Code §§ 714.16 through 714.16A
Kansas	Kan. Stat. Ann. §§ 50-623 through 50-640 and 50-675a through 50-679a
Kentucky	Ky. Rev. Stat. Ann. §§ 367.110 through 367.990
Louisiana	La. Rev. Stat. Ann. §§ 51:1401 through 51:1420
Maine	Me. Rev. Stat. Ann. tit. 5, §§ 205A through 214
Maryland	Md. Code Ann., Com. Law §§ 13-101 through 13-501
Massachusetts	Mass. Gen. Laws Ann. ch. 93A, §§ 1 through 11
Michigan	Mich. Comp. Laws §§ 445.901 through 445.922
Minnesota	Minn. Stat. § 325F.67 through 325F.70
Mississippi	Miss. Code Ann. §§ 75-24-1 through 75-24-27
Missouri	Mo. Rev. Stat. §§ 407.010 through 407.307
Montana	Mont. Code Ann. §§ 30-14-101 through 30-14-142
Nebraska	Neb. Rev. Stat. §§ 59-1601 through 59-1623

### LIST OF STATE STATUTES

<b>State</b>	<b>UDAP Statute</b>
Nevada	Nev. Rev. Stat. §§ 598.0903 through 598.0999
New Hampshire	N.H. Rev. Stat. Ann. §§ 358-A:1 through 358-A:13
New Jersey	N.J. Stat. Ann. §§ 56:8-1 through 56:8-91
New Mexico	N.M. Stat. §§ 57-12-1 through 57-12-22
New York	N.Y. Gen. Bus. Law §§ 349 and 350
North Carolina	N.C. Gen. Stat. §§ 75-1.1 through 75-35
North Dakota	N.D. Cent. Code §§ 51-15-01 through 51-15-11
Ohio	Ohio Rev. Code Ann. §§ 1345.01 through 1345.13
Oklahoma	Okla. Stat. tit. 15, §§ 751 through 763
Oregon	Or. Rev. Stat. §§ 646.605 through 646.656
Pennsylvania	73 Pa. Stat. Ann. §§ 201-1 through 201-9.3
Rhode Island	R.I. Gen. Laws §§ 6-13.1-1 through 6-13.1-27
South Carolina	S.C. Code Ann. §§ 39-5-10 through 39-5-160
South Dakota	S.D. Codified Laws §§ 37-24-1 through 37-24-35
Tennessee	Tenn. Code Ann. §§ 47-18-101 through 47-18-125
Texas	Tex. Bus. & Com. Code Ann. §§ 17.41 through 17.63
Utah	Utah Code Ann. §§ 13-11-1 through 13-11-23
Vermont	Vt. Stat. Ann. tit. 9, §§ 2451 through 2480g
Virginia	Va. Code Ann. §§ 59.1-196 through 59.1-207
Washington	Wash. Rev. Code §§ 19.86.010 through 19.86.920
West Virginia	W. Va. Code §§ 46A-6-101 through 46A-6-110
Wisconsin	Wis. Stat. §§ 100.20 through 100.264
Wyoming	Wyo. Stat. Ann. §§ 40-12-101 through 40-12-114