

## PROTECTION OF INTELLECTUAL PROPERTY RIGHTS UNDER STATE TRADE SECRET LAWS

*Report card on the effectiveness of laws in 50 states in protecting manufacturers' trade secrets and the jobs that depend on them.*

Trade secrets are more important than ever to manufacturers both small and large. Companies rely on trade secrets to innovate, compete, and succeed. However, increasing amounts of trade secret theft by competitors, nation states, malicious insiders, and cyber criminals are undermining fair competition and reducing return on investments. Estimates of the annual cost of trade secret misappropriation for U.S. companies are as high as \$480 billion.

With the enactment of the Defend Trade Secrets Act on May 11, 2016, trade secret owners have access to the federal courts in addition to state courts for the first time. However, state laws prohibiting the theft or unlawful disclosure of trade secrets will continue to be an important tool that manufacturers can use to enforce their rights. We have evaluated each state's statutes using 11 criteria to determine which states have the strongest laws and which have the weakest. Here is how the states stacked up:

**By Name**

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

**By Grade**

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

## CRITERIA

1. Did the state adopt some version of the Uniform Trade Secrets Act (UTSA)?
2. Has the state enacted all UTSA provisions?
3. Does the state’s definition of “trade secret” include additional types of commercially sensitive information (e.g., designs) that are protectable as a trade secret, beyond the bare minimum identified in the UTSA? Doing so increases clarity for trade secret owners, and reduced the need for courts to evaluate such information on a case-by-case basis to determine whether it is protected by a state’s trade secrets law.
4. How long is the statute of limitations for bringing claims of trade secret theft?
5. Is trade secret misappropriation prosecutable as a criminal offense?
6. Does the statute allow for an award of damages measured by a reasonable royalty?
7. Does the statute include a provision allowing for the recovery of punitive damages in the event of willful and malicious misappropriation?
8. Does the statute allow attorney fees to be recovered by a prevailing party?
9. Does the statute empower a court to issue an injunction or other order preventing the unlawful release or use of a trade secret?
10. Does the statute empower a court to order the seizure of property as necessary to prevent unlawful disclosure or use of a trade secret? The ability to obtain an *ex parte* seizure order is a remedy afforded to trade secret owners under federal civil law upon application to the court and in extraordinary circumstances.<sup>1</sup>
11. Does the statute empower courts to compel affirmative acts to protect a trade secret?

## STRENGTHS & WEAKNESSES

Strengths and weaknesses	AL	AK	AZ	AR	CA	CO	CT	DE	DC	FL	GA	HI	ID	IL	IN	IA	KS	KY
<b>Scope</b>																		
<i>Adopted UTSA</i>	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
<i>Enacted all UTSA provisions</i>	○	●	○	●	●	●	●	●	●	●	○	○	○	○	●	○	●	●
<i>Definition of "trade secret"</i>	●	○	○	○	○	●	●	○	○	○	●	○	●	●	○	○	○	○
<b>State Enforcement</b>																		
<i>Statute of limitations</i>	○	◐	◐	◐	◐	◐	◐	◐	◐	◐	●	◐	◐	●	◐	◐	◐	◐
<i>Criminal offense</i>	●	○	○	○	●	○	○	○	○	○	○	○	○	○	○	○	○	○
<b>Remedies for victims</b>																		
<i>Reasonable royalty</i>	●	○	●	○	◐	●	○	●	●	●	◐	●	●	◐	◐	●	●	●
<i>Punitive damages</i>	◐	◐	◐	○	◐	◐	◐	◐	◐	◐	◐	◐	◐	◐	◐	◐	◐	◐
<i>Attorney fees</i>	◐	○	◐	◐	●	◐	◐	◐	◐	◐	◐	◐	○	◐	◐	◐	◐	◐
<i>Injunctive relief</i>	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
<i>Seizure provision</i>	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○
<i>Affirmative acts compellable</i>	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	○	●
<b>Grade</b>	C	F	C-	F	B	C+	D+	C+	C+	C+	C+	C-	D+	C+	C-	C-	D+	C+

<sup>1</sup> Defend Trade Secrets Act of 2016, S. 1890, 114th Cong. §§ 2(b)(2)(A)(i) (2016).

Strengths and weaknesses	LA	ME	MD	MA	MI	MN	MS	MO	MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH
<b>Scope</b>																		
Adopted UTSA	●	●	●	○	●	●	●	●	●	●	●	●	●	●	○	●	●	●
Enacted all UTSA provisions	●	○	●	○	●	○	●	●	●	○	○	●	○	○	○	○	○	●
Definition of "trade secret"	○	○	○	○	○	○	○	●	●	●	●	○	●	○	○	○	○	●
<b>State Enforcement</b>																		
Statute of limitations	◐	●	◐	◐	◐	◐	◐	●	◐	●	◐	◐	◐	◐	◐	◐	◐	●
Criminal offense	○	○	○	●	○	○	○	○	○	○	●	○	○	○	○	○	○	○
<b>Remedies for victims</b>																		
Reasonable royalty	○	●	●	●	●	●	●	●	●	●	●	●	●	●	○	●	●	●
Punitive damages	○	◐	◐	◐	○	◐	●	●	●	○	◐	◐	◐	◐	○	●	◐	◐
Attorney fees	◐	◐	◐	◐	◐	◐	◐	○	●	○	◐	◐	●	◐	○	◐	◐	◐
Injunctive relief	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
Seizure provision	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○
Affirmative acts compellable	●	●	●	○	●	●	●	●	●	●	●	●	●	●	○	●	●	●
<b>Grade</b>	F	C+	C+	D-	D+	C-	B-	B-	A-	D	B	C+	B-	C-	F	C+	C-	B+

Strengths and weaknesses	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY	UTSA	DTSA
<b>Scope</b>																	
Adopted UTSA	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	-	-
Enacted all UTSA provisions	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	-	-
Definition of "trade secret"	○	●	●	○	●	○	●	●	○	○	○	○	○	○	○	-	-
<b>State Enforcement</b>																	
Statute of limitations	◐	◐	◐	◐	◐	◐	◐	◐	◐	●	◐	◐	◐	◐	●	◐	◐
Criminal offense	○	○	○	○	●	○	○	●	○	○	○	●	○	○	○	○	○
<b>Remedies for victims</b>																	
Reasonable royalty	●	●	●	●	●	●	●	●	●	●	◐	●	●	◐	●	●	●
Punitive damages	◐	◐	◐	◐	◐	◐	◐	◐	◐	●	◐	◐	◐	◐	◐	◐	◐
Attorney fees	◐	◐	●	◐	◐	◐	◐	◐	◐	●	◐	◐	◐	◐	◐	◐	◐
Injunctive relief	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
Seizure provision	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	●
Affirmative acts compellable	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
<b>Grade</b>	C+	B-	B	C+	A-	C+	B-	A-	C+	A-	C-	B	C+	C-	B-		

## KEY & SCORING

Criteria	Range/ Element	Symbol	Addition of points
<b>Scope</b>			
Did the state adopt some version of the Uniform Trade Secrets Act?	Yes	●	6
	No	○	0
Has the state enacted all UTSA provisions?	Yes	●	2
	No	○	0
Does the state's definition of "trade secret" include additional types of commercially sensitive information (e.g., designs) that are protectable as a trade secret	Yes	●	2
	No	○	0
<b>Enforcement</b>			
How long is the statute of limitations (years)?	< 3	○	0
	3	◐	4
	> 3	●	6
Is trade secret misappropriation prosecutable as a criminal offense?	Yes	●	2
	No	○	0
<b>Remedies</b>			
Does the statute allow for an award of damages measured by reasonable royalty?	Yes, if no other damages are provable	◐	4
	Yes, in lieu of other damages	●	6
	No	○	0
Does the statute include a provision allowing for the recovery of punitive damages in the event of willful and malicious misappropriation?	Yes, up to amount of actual damages	◑	3
	Yes, up to 2X amount of actual damages	◐	4
	Yes, up to 3X amount of actual damages	◑	5
	Yes, unlimited amount	●	6
	No	○	0
Does the statute allow attorney fees to be recovered by a prevailing party?	Yes, attorney fees	◐	4
	Yes, attorney fees and other reasonable costs	●	6
	No	○	0
Does the statute empower a court to issue an injunction or order?	Yes	●	4
	No	○	0
Does the statute allow a court to order seizure of property as necessary to prevent disclosure of a trade secret?	Yes	●	0
	No	○	0
Does the statute empower a court to compel affirmative acts to protect a trade secret?	Yes	●	4
	No	○	0
<b>Total Points</b>			<b>44</b>

Calculating grade: points received / total points \* 100 = numerical grade

Numerical cutoff	96.67	93.33	90.00	86.67	83.33	80.00	76.67	73.33	70.00	66.67	63.33	60.00	0.00
Letter grade	A+	A	A-	B+	B	B-	C+	C	C-	D+	D	D-	F