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**Council for Trade-Related Aspects
of Intellectual Property Rights**

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**MAIN DEDICATED INTELLECTUAL PROPERTY LAWS AND REGULATIONS
NOTIFIED UNDER ARTICLE 63.2 OF THE AGREEMENT**

United States

The present document reproduces¹ the summary of State and Federal laws and regulations governing trade secret protection in the United States, as notified by the United States under Article 63.2 of the Agreement (see document IP/N/1/USA/1).

**Conseil des aspects des droits de propriété
intellectuelle qui touchent au commerce**

**PRINCIPALES LOIS ET REGLEMENTATIONS CONSACREES A LA
PROPRIETE INTELLECTUELLE NOTIFIES AU TITRE
DE L'ARTICLE 63:2 DE L'ACCORD**

Etats-Unis

Le présent document contient un résumé des lois et réglementations fédérales et des lois et réglementations des Etats régissant la protection des secrets commerciaux¹, notifiées par les Etats-Unis au titre de l'article 63:2 de l'Accord (voir le document IP/N/1/USA/1).

**Consejo de los Aspectos de los Derechos de Propiedad
Intellectual relacionados con el Comercio**

**PRINCIPALES LEYES Y REGLAMENTOS DEDICADOS A LA
PROPIEDAD INTELECTUAL NOTIFICADOS EN VIRTUD
DEL PÁRRAFO 2 DEL ARTÍCULO 63 DEL ACUERDO**

Estados Unidos

En el presente documento se reproduce¹ el resumen de las leyes y reglamentos estatales y federales que rigen en los Estados Unidos en materia de protección de los secretos comerciales, notificado por los Estados Unidos en virtud de lo dispuesto en el párrafo 2 del artículo 63 del Acuerdo (véase el documento IP/N/1/USA/1).

¹English only/anglais seulement/inglés solamente.

Protection of Undisclosed Information, Laws and Regulations

Protection of Undisclosed Information

Protection of undisclosed information, commonly referred to in the United States as trade secret protection, is governed by State, rather than Federal, laws and regulations. Every State, plus the District of Colombia, provides or recognizes rights that permit entities to protect undisclosed information at least to the level specified in Article 39 of the Agreement on Trade-Related Aspects of Intellectual Property Rights. The legal basis of trade secret rights within the States and the District of Colombia is either a statutory codification, a common law recognition of certain rights, or a combination of the two. While the rights provided by individual states differ as to form, such rights are usually based on one of two general models, namely, § 757 of the Restatement of Torts (1939) or the Uniform Trade Secrets Act (1985). The relevant texts of these two models are provided below.

*Protection of Undisclosed Information, Laws and Regulations***Table of State Laws Governing Protection of Undisclosed Information**

<i>State</i>	<i>State Authority for Trade Secret Protection</i>
Alabama	Ala. Code 1975, §§ 8-27-1 to 8-27-6 (1993)
Alaska	Alaska Stat. §§ 45.50.910 to 45.50.945 (1994)
Arizona	Ariz. Rev. Stat. Ann. §§ 44-401 to 44-407 (1994)
Arkansas	Ark. Code Ann. §§ 4-75-601 to 4-75-607 (Michie 1993)
California	Cal.Civ.Code §§ 3426 to 3426.10. (West 1995)
Colorado	Col. Rev. Stat. §§. 7-74-101 to 7-74-110 (1986)
Connecticut	Conn. Gen. Stat. §§ 35-50 to 35-58 (1987)
Delaware	6 Del. Cod. Ann. §§ 2001 to 2009 (1993)
District of Colombia	D.C. Code 1981, §§ 48-501 to 48-510 (1995)
Florida	Fla. Stat. ch. §§ 688.001 to 688.009 (1994)
Georgia	Ga. Code Ann. §§ 10-1-760 et seq.
Hawaii	Hawaii Rev. Stat. §§ 482B-1 to 482B-9 (1992)
Idaho	Idaho Code §§ 48-801 to 48-807 (1994)
Illinois	Ill. Rev. Stat. ch. §§1065/1 to 1065/9 (1993)
Indiana	Ind. Code. §§ 24-2-3-1 to 1257 24-2-3-8 (1994)
Iowa	Iowa Code §§ 550.1 to 550.8 (1994)
Kansas	Kan. Stat. Ann. §§ 60-3320 to 60-3330 (1994)
Kentucky	Ky. Rev. Stat. Ann. §§ 365.880 to 365.900 (Michie/Bobbs-Merrill 1994)
Louisiana	La. Rev. Stat. Ann. §§ 51.1431 to 51:1439 (West 1987 and Supp. 1995).
Maine	Me. Rev. Stat. Ann. tit.10 §§ 1541 to 1548 (West 1994).
Maryland	Md. Code Ann. Com. Law II §§ 11-1201 to 11-1209 (1990)
Massachusetts	Mass. Gen. Laws ch. 93 §§ 42-42A (1993)
Michigan	Provided through common law.
Minnesota	Minn. Stat. §§ 75-26-1 to 75-26-19 (1992)
Mississippi	Miss. Code. Ann. §§ 325C.01 to 325C.08 (1993)
Missouri	Provided through common law.
Montana	Mont. Code §§ 30-12-401 to 30-14-409 (1993)
Nebraska	Neb. Rev. Stat. §§ 87-501 et seq.
Nevada	Nev. Rev. Stat. §§ 600A.010 to 600A.100 (1991)
New Hampshire	N.H. Rev. Stat. Ann. §§ 350-B.1 to 350-B.9 (1994)
New Jersey	Provided through common law.
New Mexico	N.M. Stat. Ann. §§ 57-3A-1 to 57-3A-7 (Michie 1994)
New York	Provided through common law.

Protection of Undisclosed Information, Laws and Regulations

North Carolina	N.C. Gen. Stat. §§ 66-152 to 66-157 (1994)
North Dakota	N.D. Cent. Code §§ 47-25.1-01 to 47-25.1-08 (1993)
Ohio	Ohio Rev. Code Ann. §§ 1333.61 to 1333.69 (1994)
Oklahoma	Okla. Stat. tit. 78 §§ 85 to 94 (1991)
Oregon	Or. Rev. Stat. §§ 646.461 to 646.475 (1993)
Pennsylvania	Provided through common law.
Rhode Island	R.I. Gen. Laws §§ 6-41-1 to 6-41-11 (1992)
South Carolina	S.C. Code Ann. §§ 39-8-1 to 39-8-11 (1993);
South Dakota	S.D. Codified Laws 37-29-1 to 37-29-11 (1994)
Tennessee	Provided through common law.
Texas	Provided through common law; see also, Tex. Penal Code Ann , § 167.31.05
Utah	Utah Code Ann. §§ 13-24-1 to 13-24-9 (1992)
Vermont	Provided through common law.
Virginia	Va. Code Ann. §§ 59.1-336 to 59.1-343 (Michie 1986)
Washington	Wash. Rev. Code §§ 19.108.010 to 19.108.940 (1993)
West Virginia	W.Va. Code §§ 47-22-1 to 47-22-10 (1992)
Wisconsin	Wis. Stat. Ann. §§ 134.90 (West 1989).
Wyoming	Provided through common law.

Protection of Undisclosed Information, Laws and Regulations

Restatement of Torts

Division Nine

Interference with Business Relations

Part 1. By Trade Practices

Chapter 36

Miscellaneous Trade Practices

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Section

757. Liability for disclosure or use of another trade secret—General principle

§ 757 Liability for Disclosure or Use of Another's Trade Secret—General Principle

One who discloses or uses another's trade secret without a privilege to do so, is liable to the other if

- (a) he discovered the secret by improper means, or
- (b) his disclosure or use constitutes a breach of confidence reposed in him by the other in disclosing the secret to him, or
- (c) he learned the secret from a third person with notice of the facts that it was a secret and that the third person discovered it by improper means or that the third person's disclosure of it was otherwise a breach of his duty to the other, or
- (d) he learned the secret with notice of the facts that it was a secret and that its disclosure was made to him by mistake.

*Protection of Undisclosed Information, Laws and Regulations***UNIFORM TRADE SECRETS ACT (1985)****§ 1. Definitions.**

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,
- (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
- (3) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.
- (4) "Trade secret" means information, including a formula, pattern, compilation, program, 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

§ 2. 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.

Protection of Undisclosed Information, Laws and Regulations

§ 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 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. 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.

§ 5. 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. 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. 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. 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.

§ 9. Short Title.

This [Act] may be cited as the Uniform Trade Secrets Act.

§ 10. 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.

§ 11. Time of taking effect.

This [act] takes effect on -----, and does not apply to misappropriation occurring prior to the

Protection of Undisclosed Information, Laws and Regulations

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.

§ 12. Repeal.

The following Acts and parts of Acts are repealed:

- (1)
- (2)
- (3)