

COMPARISON OF THE COLORADO UNIFORM TRADE SECRETS ACT AND THE DEFEND TRADE SECRETS ACT

Colorado Uniform Trade Secrets Act C.R.S. §7-74-101 <i>et seq.</i>	Defend Trade Secrets Act 18 U.S.C. §1831 <i>et seq.</i> (Pub. L. 114–153 (5/11/16))
<p>Definitions</p> <p>Trade secret means the whole or any portion or phase of any scientific or technical information, 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</p> <p>(a) which is secret and of value; and</p> <p>(b) 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.</p> <p>Misappropriation means:</p> <p>(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</p>	<p>Definitions</p> <p>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, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if</p> <p>(a) the owner thereof has taken reasonable measures to keep such information secret; and</p> <p>(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.</p> <p>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.</p> <p>Misappropriation means</p> <p>(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</p>

<p>(b) disclosure or use of a trade secret of another without express or implied consent by a person who:</p> <p>(i) Used improper means to acquire knowledge of the trade secret; or</p> <p>(ii) At the time of disclosure or use, knew or had reason to know that such person's knowledge of the trade secret was:</p> <p>(A) Derived from or through a person who had utilized improper means to acquire it;</p> <p>(B) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or</p> <p>(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</p> <p>(iii) Before a material change of such person's position,</p> <p>(A) knew or had reason to know that it was a trade secret and</p> <p>(B) that knowledge of it had been acquired by accident or mistake</p> <p>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.</p>	<p>(b) disclosure or use of a trade secret of another without express or implied consent by a person who</p> <p>(i) used improper means to acquire knowledge of the trade secret;</p> <p>(ii) at the time of disclosure or use, knew or had reason to know that the knowledge of the trade secret was</p> <p>(A) derived from or through a person who had used improper means to acquire the trade secret;</p> <p>(B) acquired under circumstances giving rise to a duty to maintain the secrecy of the trade secret or limit the use of the trade secret; or</p> <p>(C) derived from or through a person who owed a duty to the person seeking relief to maintain the secrecy of the trade secret or limit the use of the trade secret; or</p> <p>(iii) before a material change of the position of the person, knew or had reason to know that</p> <p>(A) the trade secret was a trade secret; and</p> <p>(B) knowledge of the trade secret had been acquired by accident or mistake.</p> <p>Improper means</p> <p>(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</p> <p>(b) does not include reverse engineering, independent derivation, or any other lawful means of acquisition</p>
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Whistleblower Immunity

Immunity. An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that

(a) is made

(i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and

(ii) solely for the purpose of reporting or investigating a suspected violation of law; or

(b) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

Use of trade secret information in anti-retaliation lawsuit. An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual

(a) files any document containing the trade secret under seal; and

(b) does not disclose the trade secret, except pursuant to court order.

Notice.

(a) Immunity. An employer shall provide notice of the immunity set forth in this subsection in any contract or agreement with an employee that governs the use of a trade secret or other confidential information.

	<p>(b) Policy. An employer shall be considered to be in compliance with the notice requirement in subparagraph (A) if the employer provides a cross-reference to a policy document provided to the employee that sets forth the employer’s reporting policy for a suspected violation of law.</p> <p>(c) Non-compliance. If an employer does not comply with the notice requirement in subparagraph (A), the employer may not be awarded exemplary damages or attorney fees under subparagraph (C) or (D) of section 1836(b)(3) in an action against an employee to whom notice was not provided.</p> <p>(d) Applicability. This paragraph shall apply to contracts and agreements that are entered into or updated after the date of enactment of this subsection.</p> <p>(e) Employee defined. For purposes of this subsection, the term “employee” includes any individual performing work as a contractor or consultant for an employer.</p> <p>(f) Rule of construction. Except as expressly provided for under this subsection, nothing in this subsection shall be construed to authorize, or limit liability for, an act that is otherwise prohibited by law, such as the unlawful access of material by unauthorized means.</p>
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Remedies

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.

Remedies

An owner of a trade secret that is misappropriated may bring a civil action under this subsection if the trade secret is related to a product or service used in, or intended for use in, interstate or foreign commerce.

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 on such terms as the court deems reasonable, provided the order does not

(A) 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

(B) 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;

(b) seizure

Civil seizure

In general.

(a) Application. Based on an affidavit or verified complaint satisfying the requirements of this paragraph, the court may, upon ex parte application but only in extraordinary circumstances, issue an order providing for the seizure of property necessary to prevent the propagation or dissemination of the trade secret that is the subject of the action.

(b) Requirements for issuing order. The court may not grant an application unless the court finds that it clearly appears from specific facts that

(i) an order issued pursuant to [Rule 65 of the Federal Rules of Civil Procedure](#) or another form of equitable relief would be inadequate to achieve the purpose of this paragraph because the party to which the order would be issued would evade, avoid, or otherwise not comply with such an order;

(ii) an immediate and irreparable injury will occur if such seizure is not ordered;

(iii) the harm to the applicant of denying the application outweighs the harm to the legitimate interests of the person against whom seizure would be ordered of granting the application and substantially outweighs the harm to any third parties who may be harmed by such seizure;

(iv) the applicant is likely to succeed in showing that

(A) the information is a trade secret; and

	<p>(B) the person against whom seizure would be ordered</p> <p>(I) misappropriated the trade secret of the applicant by improper means; or</p> <p>(II) conspired to use improper means to misappropriate the trade secret of the applicant;</p> <p>(v) the person against whom seizure would be ordered has actual possession of</p> <p>(A) the trade secret; and</p> <p>(B) any property to be seized;</p> <p>(vi) the application describes with reasonable particularity the matter to be seized and, to the extent reasonable under the circumstances, identifies the location where the matter is to be seized;</p> <p>(vii) the person against whom seizure would be ordered, or persons acting in concert with such person, would destroy, move, hide, or otherwise make such matter inaccessible to the court, if the applicant were to proceed on notice to such person; and</p> <p>(viii) the applicant has not publicized the requested seizure.</p> <p>Elements of order. If an order is issued, it shall</p> <p>(a) set forth findings of fact and conclusions of law required for the order;</p> <p>(b) provide for the narrowest seizure of property necessary to achieve the purpose of this paragraph and direct that the seizure be</p>
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	<p>conducted in a manner that minimizes any interruption of the business operations of third parties and, to the extent possible, does not interrupt the legitimate business operations of the person accused of misappropriating the trade secret;</p> <p>(c)(i) be accompanied by an order protecting the seized property from disclosure by prohibiting access by the applicant or the person against whom the order is directed, and prohibiting any copies, in whole or in part, of the seized property, to prevent undue damage to the party against whom the order has issued or others, until such parties have an opportunity to be heard in court; and</p> <p>(ii) provide that if access is granted by the court to the applicant or the person against whom the order is directed, the access shall be consistent with this section;</p> <p>(iii) provide guidance to the law enforcement officials executing the seizure that clearly delineates the scope of the authority of the officials, including</p> <p>(A) the hours during which the seizure may be executed; and</p> <p>(B) whether force may be used to access locked areas;</p> <p>(iv) set a date for a hearing at the earliest possible time, and not later than 7 days after the order has issued, unless the party against whom the order is directed and others harmed by the order consent to another date for the hearing, except that a party against whom the order has issued or any person harmed by the order may move the court at any time to dissolve or modify the order after giving notice to the applicant who obtained the order; and</p> <p>(v) require the person obtaining the order to provide the security determined adequate by the court for the payment of the damages</p>
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	<p>that any person may be entitled to recover as a result of a wrongful or excessive seizure or wrongful or excessive attempted seizure under this paragraph.</p> <p>Protection from publicity. The court shall take appropriate action to protect the person against whom an order under this paragraph is directed from publicity, by or at the behest of the person obtaining the order, about such order and any seizure under such order.</p> <p>Materials in custody of court.</p> <p>(a) In general. Any materials seized under this paragraph shall be taken into the custody of the court. The court shall secure the seized material from physical and electronic access during the seizure and while in the custody of the court.</p> <p>(b) Storage medium. If the seized material includes a storage medium, or if the seized material is stored on a storage medium, the court shall prohibit the medium from being connected to a network or the Internet without the consent of both parties, until the hearing on the seizure.</p> <p>(c) Protection of confidentiality. The court shall take appropriate measures to protect the confidentiality of seized materials that are unrelated to the trade secret information ordered seized pursuant to this paragraph unless the person against whom the order is entered consents to disclosure of the material.</p> <p>(d) Appointment of special master. The court may appoint a special master to locate and isolate all misappropriated trade secret information and to facilitate the return of unrelated property and data to the person from whom the property was seized. The special</p>
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	<p>master appointed by the court shall agree to be bound by a non-disclosure agreement approved by the court.</p> <p>Service of order. The court shall order that service of a copy of the order under this paragraph, and the submissions of the applicant to obtain the order, shall be made by a Federal law enforcement officer who, upon making service, shall carry out the seizure under the order. The court may allow State or local law enforcement officials to participate, but may not permit the applicant or any agent of the applicant to participate in the seizure. At the request of law enforcement officials, the court may allow a technical expert who is unaffiliated with the applicant and who is bound by a court-approved non-disclosure agreement to participate in the seizure if the court determines that the participation of the expert will aid the efficient execution of and minimize the burden of the seizure.</p> <p>Seizure hearing.</p> <p>(a) Date. A court that issues a seizure order shall hold a hearing on the date set by the court in accordance with this section.</p> <p>(b) Burden of proof. At a hearing held under this subparagraph, the party who obtained the order shall have the burden to prove the facts supporting the findings of fact and conclusions of law necessary to support the order. If the party fails to meet that burden, the seizure order shall be dissolved or modified appropriately.</p> <p>(c) Dissolution or modification of order. A party against whom the order has been issued or any person harmed by the order may move the court at any time to dissolve or modify the order after giving notice to the party who obtained the order.</p>
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	<p>(d) Discovery time limits. The court may make such orders modifying the time limits for discovery under the Federal Rules of Civil Procedure as may be necessary to prevent the frustration of the purposes of a hearing under this subparagraph.</p> <p>Action for damage caused by wrongful seizure. A person who suffers damage by reason of a wrongful or excessive seizure under this paragraph has a cause of action against the applicant for the order under which such seizure was made, and shall be entitled to the same relief as is provided under section 34(d)(11) of the Trademark Act of 1946 (15 U.S.C. 1116(d)(11)). The security posted with the court shall not limit the recovery of third parties for damages.</p> <p>Motion for encryption. A party or a person who claims to have an interest in the subject matter seized may make a motion at any time, which may be heard ex parte, to encrypt any material seized or to be seized under this paragraph that is stored on a storage medium. The motion shall include, when possible, the desired encryption method.</p>
<p>Damages</p> <p>(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 may include</p> <p>(i) the actual loss caused by misappropriation and</p> <p>(ii) the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss.</p>	<p>Damages</p> <p>(a) A complainant is entitled to recover the following:</p> <p>(i) damages for actual loss caused by the misappropriation of the trade secret; and</p> <p>(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</p> <p>(iii) in lieu of damages measured by any other methods, the damages caused by the misappropriation measured by imposition</p>

<p>(iii) 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.</p> <p>(b) 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 the award made under subsection (a) of this section.</p>	<p>of liability for a reasonable royalty for the misappropriator's unauthorized disclosure or use of the trade secret;</p> <p>(b) 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 (a).</p>
<p>Attorneys' Fees</p> <p>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 fees to the prevailing party.</p>	<p>Attorneys' Fees</p> <p>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.</p>
<p>Confidentiality</p> <p>In an action under this article, 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.</p>	<p>Confidentiality</p> <p>(a) In any prosecution or other proceeding under this chapter, the court shall enter such orders and take such other action as may be 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. An interlocutory appeal by the United States shall lie from a decision or order of a district court authorizing or directing the disclosure of any trade secret.</p> <p>(b) 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</p>

	<p>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. The provision of information relating to a trade secret to the United States or the court in connection with a prosecution under this chapter shall not constitute a waiver of trade secret protection, and the disclosure of information relating to a trade secret in connection with a prosecution under this chapter shall not constitute a waiver of trade secret protection unless the trade secret owner expressly consents to such waiver.</p>
	<p>Jurisdiction The district courts of the United States shall have original jurisdiction of civil actions brought under this section.</p>
	<p>Conduct outside the United States This chapter also applies to conduct occurring outside the United States if</p> <p>(a) the offender is a natural person who is a citizen or permanent resident alien of the United States, or an organization organized under the laws of the United States or a State or political subdivision thereof; or</p> <p>(b) an act in furtherance of the offense was committed in the United States.</p>
<p>Statute of limitations An action for misappropriation of a trade secret shall be brought within three 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.</p>	<p>Statute of limitations A civil action may not be commenced later than 3 years after the date on which the misappropriation with respect to which the action would relate is discovered or by the exercise of reasonable diligence should have been discovered. For purposes of this subsection, a continuing misappropriation constitutes a single claim of misappropriation.</p>

	<p>Effect on other laws</p> <p>Except as provided in section 1833(b), the DTSA 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).</p>
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