

## CLIENT ALERT

### Texas Adopts Version of Uniform Trade Secrets Act

May 28, 2013

Early this month, Texas' Governor signed into law the Texas Uniform Trade Secrets Act. The Act adopts a version of the Uniform Trade Secrets Act (UTSA) and is expected to provide more uniformity, certainty, and predictability in litigation pertaining to trade secret misappropriation in this important commercial hub.

Texas was one of the few states left not to have adopted some version of the UTSA, but now leaves New York and Massachusetts alone. New Jersey ended its hold out recently as well.

While the Act is modeled on the UTSA, it incorporates two significant departures. First, the Act expressly includes financial information and customer/supplier lists in the definition of what constitutes a "trade secret." Second, it endorses the inevitable disclosure doctrine.

The Act makes other significant changes that commentators predict will help businesses protect their research and development efforts, restrict the disclosure of trade secrets in public court records, and recover attorneys' fees in certain instances. To begin, the Act provides a clearer definition of what constitutes a trade secret, making it easier for businesses to identify this information and take reasonable steps to protect it.

Regarding research and development protections, the Act allows businesses to reverse-engineer a competitor's product without being liable for trade secret misappropriation; eliminates a common law requirement that a trade secret remain in continuous use to receive protection; and protects "negative know-how."

During trade secret litigation, the Act provides a presumption in favor of protective orders to preserve the secrecy of trade secrets. Such protective orders may include provisions limiting the disclosure of information to a party's attorneys and expert, requiring the sealing of court records containing trade secret information, and holding *in camera* hearings when such information is discussed.

In addition, the Act also provides a plaintiff with an award of attorneys' fees where it can prove its trade secrets were stolen willfully or maliciously. Conversely, a defendant may recover fees where it proves a suit was brought in bad faith. Exemplary damages are available when willful or malicious misappropriation is shown by clear and convincing evidence.

Three Texas attorneys were directly behind the initiative. They believed that if Texas adopted a version of the UTSA, it would make litigating trade secrets cases in Texas courts simpler, especially for out of state corporations that are not familiar with Texas law. With the assistance of the Texas Business Law Foundation, the three helped lead a working group of attorneys that drafted the original bill.

The Texas Uniform Trade Secret Act takes effect on September 1, 2013.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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