

DISTRICT OF COLUMBIA
OFFICIAL CODE

TITLE 36.
TRADE PRACTICES.

CHAPTER 4.
TRADE SECRETS.

2001 Edition

DISTRICT OF COLUMBIA OFFICIAL CODE

CHAPTER 4. TRADE SECRETS.

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CHAPTER 4. TRADE SECRETS.

Refs & Annos

Jurisdiction	Laws	Effective Date	Statutory Citation
Alabama	1987, No. 87-669	8-12-1987	Code 1975, §§ 8-27-1 to 8-27-6.
Alaska	1988, c. 103	9-2-1988	AS 45.50.910 to 45.50.945.
Arizona	1990, c. 37	4-11-1990[FN*]	A.R.S. §§ 44-401 to 44-407.
Arkansas	Acts 1981, No. 439	3-12-1981[FN*]	A.C.A. §§ 4-75-601 to 4-75-607.
California	1984, c. 1724	1-1-1985	West's Ann.Cal.Civ.Code §§ 3426 to 3426.11.
Colorado	1986, c. 63	7-1-1986	West's C.R.S.A. §§ 7-74-101 to 7-74-110.
Connecticut	1983, No. 344	6-23-1983[FN*]	C.G.S.A. §§ 35-50 to 35-58.
Delaware	1982 [63 Del.Laws], c. 218	4-15-1982	6 Del.C. §§ 2001 to 2009.
District of Columbia	1989, D.C.Law 7-216	3-16-1989[FN*]	D.C. Official Code, 2001 Ed. §§ 36-401 to 36-410.
Florida	1988, c. 88-254	10-1-1988	West's F.S.A. §§ 688.001 to 688.009.
Georgia	1990, p. 1560	7-1-1990	GCA §§ 10-1-760 to 10-1-767.
Hawaii	1989, Act 221	7-1-1989	HRS §§ 482B-1 to 482B-9.
Idaho	1981, c. 240		I.C. §§ 48-801 to 48-807.
Illinois	1987, P.A. 85-366	1-1-1988	S.H.A. 765 ILCS 1065/1 to 1065/9.
Indiana	1982, No. 1257	2-25-1982[FN*]	West's A.I.C. 24-2-3-1 to 24-2-3-8.
Iowa	1990, S.F. 2395	4-27-1990[FN*]	I.C.A. §§ 550.1 to 550.8.
Kansas	1981, c. 214	7-1-1981	K.S.A. 60-3320 to 60-3330.
Kentucky	1990, c. 300	4-6-1990[FN*]	KRS 365.880 to 365.900.
Louisiana	1981, No. 462	7-19-1981[FN*]	LSA-R.S. 51:1431 to 51:1439.
Maine	1987, c. 143	5-22-1987	10 M.R.S.A. §§ 1541 to 1548.
Maryland	1989, c. 598	7-1-1989	Code, Commercial Law, §§ 11-1201 to 11-1209.
Michigan	1998, P.A. 448	10-1-1998	M.C.L.A. §§ 445.1901 to 445.1910.
Minnesota	1980, c. 594	1-1-1981	M.S.A. §§ 325C.01 to 325C.08.
Mississippi	1990, c. 442	7-1-1990	Code 1972, §§ 75-26-1 to 75-26-19.
Missouri	1995, S.B. Nos. 80 & 88	8-28-1995	V.A.M.S. §§ 417.450 to 417.467.
Montana	1985, c. 104		MCA 30-14-401 to 30-14-409.
Nebraska	L.1988, LB 337A	7-9-1988	R.R.S.1943, §§ 87-501 to 87-507.
Nevada	1987, c. 15	3-5-1987	N.R.S. 600A.010 to 600A.100.
New Hampshire	1989, 220:1	1-1-1990	RSA 350-B:1 to 350-B:9.
New Jersey	2012, c. 161	1-5-2012	N.J.S.A. 56:15-1 to 56:15-9.
New Mexico	1989, c. 156	4-3-1989[FN*]	NMSA 1978, §§ 57-3A-1 to 57-3A-7.
North Dakota	1983, c. 508	7-1-1983	NDCC 47-25.1-01 to 47-25.1-08.
Ohio	1994, H.B. 320	7-20-1994	R.C. §§ 1333.61 to 1333.69.
Oklahoma	1986, c. 85	1-1-1986	78 Okl.St.Ann. §§ 85 to 94.
Oregon	1987, c. 537	1-1-1988	ORS 646.461 to 646.475.
Pennsylvania	2004, c. 14	2-19-2004[FN*]	12 Pa.C.S.A. §§ 5301 to 5308.

Rhode Island	1986, c. 439	7-1-1986	Gen.Laws 1956, §§ 6-41-1 to 6-41-11.
South Carolina	1997, Act 38	5-21-1997	Code 1976, §§ 39-8-10 to 39-8-130.
South Dakota	SL 1988, c. 354	7-1-1988	SDCL 37-29-1 to 37-29-11.
Tennessee	2000, c. 647	7-1-2000	T.C.A. §§ 47-25-1701 to 47-25-1709.
Utah	1989, c. 60	5-1-1989	U.C.A.1953, 13-24-1 to 13-24-9.
Vermont	1996, No. 90	7-1-1996	9 V.S.A. §§ 4601 to 4609, 12 V.S.A. § 523.
Virgin Islands	2005, No. 6730	3-5-2005[FN*]	11 V.I.C. §§ 1001 to 1010.
Virginia	1986, c. 210	7-1-1986	Code 1950, §§ 59.1-336 to 59.1-343.
Washington	1981, c. 286	1-1-1982	West's RCWA 19.108.010 to 19.108.940.
West Virginia	1986, c. 168	7-1-1986	Code, 47-22-1 to 47-22-10.
Wisconsin	1985, Act 236	4-24-1986	W.S.A. 134.90.
Wyoming	2006, c. 63	7-1-2006	Wyo.Stat.Ann. §§ 40-24-101 to 40-24-110.

[FN*] Date of approval.

§ 36-401. DEFINITIONS.

For the purposes of this chapter, the term:

- (1) "Improper means" means 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:
 - (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
 - (B) Disclosure or use of a trade secret of another without express or implied consent by a person who:
 - (i) Used improper means to acquire knowledge of the trade secret; or
 - (ii) At the time of disclosure or use, knew or had reason to know that 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;
 - (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
 - (iii) Before a material change in his or her position, knew or had reason to know that the information was a trade secret and knowledge of the trade secret had been acquired by accident or mistake.
- (3) "Person" means a natural person, corporation, 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:
 - (A) Derives actual or potential independent economic value, from not being generally known to, and not being readily ascertainable by, proper means by another who can obtain economic value from its disclosure or use; and
 - (B) Is the subject of reasonable efforts to maintain its secrecy.

(Mar. 16, 1989, D.C. Law 7-216, § 2, 36 DCR 519.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 48-501.

Legislative History of Laws

Law 7-216, the "Uniform Trade Secrets Act of 1988," was introduced in Council and assigned Bill No. 7-426, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-291 and transmitted to both Houses of Congress for its review.

Uniform Law

This section is based upon § 1 of the Uniform Trade Secrets Act. See 14 Uniform Laws Annotated, Master Edition, or ULA Database on WESTLAW.

§ 36-402. 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 a reasonable period of time 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 a misappropriation that renders a prohibitive injunction inequitable.

(c) In appropriate circumstances, an affirmative act to protect a trade secret may be compelled by court order.

(Mar. 16, 1989, D.C. Law 7-216, § 3, 36 DCR 519.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 48-502.

Legislative History of Laws

For legislative history of D.C. Law 7-216, see Historical and Statutory Notes following § 36-401.

Uniform Law

This section is based upon § 2 of the Uniform Trade Secrets Act. See 14 Uniform Laws Annotated, Master Edition, or ULA Database on WESTLAW.

§ 36-403. DAMAGES.

(a) A complainant is entitled to recover damages for misappropriation, unless a material and prejudicial change of position prior to acquiring knowledge or reason to know of the misappropriation renders a monetary recovery inequitable. Damages may include both the actual loss caused by the misappropriation and the unjust enrichment caused by the misappropriation that is not taken into account in computing actual loss. Instead of damages measured by other methods, the damages caused by misappropriation may be measured by the imposition of liability for a reasonable royalty for the unauthorized disclosure or use of a trade secret by a misappropriator.

(b) If willful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice the award made under subsection (a) of this section.

(Mar. 16, 1989, D.C. Law 7-216, § 4, 36 DCR 519.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 48-503.

Legislative History of Laws

For legislative history of D.C. Law 7-216, see Historical and Statutory Notes following § 36-401.

Uniform Law

This section is based upon § 3 of the Uniform Trade Secrets Act. See 14 Uniform Laws Annotated, Master Edition, or ULA Database on WESTLAW.

§ 36-404. ATTORNEY'S FEES.

The court may award reasonable attorney's fees to the prevailing party if:

- (1) A claim of misappropriation is made in bad faith;
- (2) A motion to terminate an injunction is made or resisted in bad faith; or
- (3) Willful and malicious misappropriation exists.

(Mar. 16, 1989, D.C. Law 7-216, § 5, 36 DCR 519.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 48-504.

Legislative History of Laws

For legislative history of D.C. Law 7-216, see Historical and Statutory Notes following § 36-401.

Uniform Law

This section is based upon § 4 of the Uniform Trade Secrets Act. See 14 Uniform Laws Annotated, Master Edition, or ULA Database on WESTLAW.

§ 36-405. PRESERVATION OF SECRECY.

In an action under this chapter, 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, or 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.

(Mar. 16, 1989, D.C. Law 7-216, § 6, 36 DCR 519.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 48-505.

Legislative History of Laws

For legislative history of D.C. Law 7-216, see Historical and Statutory Notes following § 36-401.

Uniform Law

This section is based upon § 5 of the Uniform Trade Secrets Act. See 14 Uniform Laws Annotated, Master Edition, or ULA Database on WESTLAW.

§ 36-406. 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.

(Mar. 16, 1989, D.C. Law 7-216, § 7, 36 DCR 519.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 48-506.

Legislative History of Laws

For legislative history of D.C. Law 7-216, see Historical and Statutory Notes following § 36-401.

Uniform Law

This section is based upon § 6 of the Uniform Trade Secrets Act. See 14 Uniform Laws Annotated, Master Edition, or ULA Database on WESTLAW.

§ 36-407. EFFECT ON OTHER LAW.

(a) Except as provided in subsection (b) of this section, this chapter supersedes conflicting tort, restitution and other law of the District of Columbia providing civil remedies for misappropriation of a trade secret.

(b) This chapter 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.

(Mar. 16, 1989, D.C. Law 7-216, § 8, 36 DCR 519.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 48-507.

Legislative History of Laws

For legislative history of D.C. Law 7-216, see Historical and Statutory Notes following § 36-401.

Uniform Law

This section is based upon § 7 of the Uniform Trade Secrets Act. See 14 Uniform Laws Annotated, Master Edition, or ULA Database on WESTLAW.

§ 36-408. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

This chapter shall be applied and construed to make uniform the law with respect to trade secrets among the District of Columbia and those states enacting it.

(Mar. 16, 1989, D.C. Law 7-216, § 9, 36 DCR 519.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 48-508.

Legislative History of Laws

For legislative history of D.C. Law 7-216, see Historical and Statutory Notes following § 36-401.

Uniform Law

This section is based upon § 8 of the Uniform Trade Secrets Act. See 14 Uniform Laws Annotated, Master Edition, or ULA Database on WESTLAW.

§ 36-409. APPLICABILITY.

This chapter does not apply to misappropriation occurring prior to March 16, 1989. With respect to a continuing misappropriation that began prior to March 16, 1989, the chapter does not apply to the continuing misappropriation that occurs after March 16, 1989.

(Mar. 16, 1989, D.C. Law 7-216, § 10, 36 DCR 519.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 48-509.

Legislative History of Laws

For legislative history of D.C. Law 7-216, see Historical and Statutory Notes following § 36-401.

Uniform Law

This section is based upon § 11 of the Uniform Trade Secrets Act. See 14 Uniform Laws Annotated, Master Edition, or ULA Database on WESTLAW.

§ 36-410. DISCLOSURE OF INFORMATION TO ENFORCE THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1988 AND PESTICIDE OPERATIONS ACT OF 1978.

(a) Nothing in this chapter shall prevent the disclosure of accurate and specific information to the Mayor, other District officers or their representatives, private or public sector employees, or the Occupational Safety and Health Commission if necessary to enforce § 32-1101 et seq.

(b) Nothing in this chapter shall prevent the disclosure of information to the Mayor or other District officers or employees if necessary to enforce the Pesticide Operations Act of 1978.

(Mar. 16, 1989, D.C. Law 7-216, § 11, 36 DCR 519.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 48-510.

Legislative History of Laws

For legislative history of D.C. Law 7-216, see Historical and Statutory Notes following § 36-401.

References in Text

The "Pesticide Operations Act of 1978," referred to in subsection (b), is D.C. Law 2-70, which is not codified.