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### **Texas Uniform Trade Secrets Act**

Whether it is a proprietary chemical formula, computer program, process, financial data or pricing information, or even customer lists, a company's trade secret and confidential information constitute important assets. However, many companies fail to take the necessary steps to protect their information, thereby losing the protections afforded under Texas law and losing the ability to claim trade secret or confidential status over their valuable information.

In 2013, the Texas Legislature adopted the Texas Uniform Trade Secrets Act. Prior to the adoption of the Act, the courts had created a burdensome multi-part test to determine whether a company's information could be classified as trade secret or confidential and thus subject to protection. The Texas Uniform Trade Secrets Act replaced this multi-part court-created test and adopted the following definition:

"Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, process, financial data, or list of actual or potential customers or suppliers, that:

- (A) 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
- (B) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Focusing on subsection (B), the legislature made clear that only information that a company affirmatively tries to protect and keep secret may be afforded protection under the Texas Uniform Trade Secrets Act. The question then becomes: what is the company actually doing to protect its trade secret and confidential information? For example:

- Does the company have confidentiality and non-competition agreements with its employees?
- Does the company have a handbook which identifies information that must be protected and outlines how the employee should protect the information?
- Does the company have passwords on its computers?
- Does the company have locks on its file cabinets?
- Does the company have a cell-phone policy?
- How many company personnel know the information?
- Does the company have non-disclosure agreements with its customers/suppliers?

There are many more questions that a company should ask, and while every situation is unique, there are common protections that a company can implement to satisfy the "reasonable efforts" standard under the Texas Uniform Trade Secrets Act and maintain the secrecy of its trade secret and confidential information. Doing nothing, however, puts the information at greater risk of loss.

The information is being provided by Graigory Fancher, a lawyer at Bourland, Wall & Wenzel, P.C.

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