

Trade Secret Laws: Kentucky

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A Q&A guide to state law on trade secrets and confidentiality for private employers in Kentucky. This Q&A addresses the state-specific definition of trade secrets and the legal requirements relating to protecting them. Federal, local, or municipal law may impose additional or different requirements. Answers to questions can be compared across a number of jurisdictions (see Trade Secret Laws: State Q&A Tool).

Overview of State Trade Secret Law

1. List the laws (statutes and regulations) by name and code number, both criminal and civil, that your state has adopted governing trade secrets.

Kentucky has adopted the Kentucky Uniform Trade Secrets Act (KUTSA) (KRS §§ 365.880 to 365.900), which is based on the model Uniform Trade Secrets Act (UTSA).

Kentucky does not have a specific state criminal statute regarding trade secrets. However, trade secrets may be protected as property under Kentucky's theft laws, which include intangible property (KRS § 514.010(6)).

2. Has your state adopted the model Uniform Trade Secrets Act (UTSA)? If so, please:

- Identify which among the statutes listed in response to Question 1 is your state's adopted version of the UTSA.
- Describe any significant differences between your state's adopted version and the model UTSA.

Adopted Version of Model UTSA

Kentucky has adopted the model Uniform Trade Secrets Act (UTSA) (KRS §§ 365.880 to 365.900). For an overview of the UTSA, see [Practice Note, Protection of](#)

Employers' Trade Secrets and Confidential Information: Trade Secrets.

Significant Differences Between Adopted Version and Model UTSA

There are no significant differences between the Kentucky Uniform Trade Secrets Act and the UTSA.

3. List any common law protections afforded to trade secrets. If common law protections are afforded to trade secrets, are they preempted by available state statutes?

The Kentucky Uniform Trade Secrets Act (KUTSA) supersedes common law.

The KUTSA supersedes conflicting:

- Tort remedies.
- Restitutionary claims.
- Kentucky law providing civil remedies for trade secret misappropriation.

(KRS § 365.892(1).)

The KUTSA, however, does not affect:

- Contractual remedies, whether or not based on misappropriation of a trade secret.
- Civil remedies that are not based on misappropriation of a trade secret.

- Criminal remedies, whether or not based on misappropriation of a trade secret.

(KRS § 365.892(2).)

The US District Court for the Western District of Kentucky, analyzing Kentucky law, held that the KUTSA does not preempt all common law causes of action and potentially allows a cause of action for fraud or deceit if the plaintiff demonstrates an additional factual basis for fraud or deceit that has the use of trade secrets as an element (*Auto Channel, Inc. v. Speedvision Network, LLC*, 144 F. Supp. 2d 784, 789 (W.D. Ky. 2001)).

Definition of Trade Secret

4. How does your state define a trade secret under each law identified in Question 1 (statute or regulation) and Question 3 (common law)?

The Kentucky Uniform Trade Secrets Act defines a trade secret as information:

- Including:
 - a formula;
 - a pattern;
 - a compilation;
 - a program;
 - data;
 - a device;
 - a method;
 - a technique; or
 - a process.
- That derives actual or potential independent economic value because it is:
 - generally unknown; and
 - not readily ascertainable by proper means by another person who can obtain economic value from its disclosure or use.
- That is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(KRS § 365.880(4).)

5. Describe any significant cases in your state creating, modifying, or clarifying the definition of a trade secret.

The following cases are examples of situations where important information may not qualify as a trade secret in Kentucky because it was not kept confidential:

- **Commercialization of a product.** A computer printer tray was commercialized years before a manufacturer produced a printer using the design and years before the designer provided the manufacturer with information that was later claimed to be misappropriated by the manufacturer. Consequently, the alleged trade secrets were not secret at all, and the manufacturer had not misappropriated trade secrets under the Kentucky Uniform Trade Secrets Act. (*BDT Prods., Inc. v. Lexmark Int'l, Inc.*, 602 F.3d 742, 756 (6th Cir. 2010).)
- **Information that could be accessed publicly.** The customer lists of an auto parts seller did not qualify as trade secrets because the identity of the shops named in the lists could have been discovered from a search of a telephone book or other publicly available source (*ATC Distrib. Grp., Inc. v. Whatever It Takes Transmissions & Parts, Inc.*, 402 F.3d 700, 714-15 (6th Cir. 2005)).

However, if a company makes information available to a select few and implements measures to restrict that access to certain individuals, Kentucky law may still protect the information as a trade secret. For example, in one case before the US District Court for the Eastern District of Kentucky, certain employees who signed confidentiality agreements with their employer had access to pricing and customer sales information. Because of the restrictions put in place by the employer, the court, analyzing Kentucky law, held that the employees' use of the information to target new potential customers for their new employer was a misappropriation of trade secrets. (*Fastenal Co. v. Crawford*, 609 F. Supp. 2d 650, 671-72 (E.D. Ky. 2009).)

6. What are examples of information that courts in your state:

- Have found to be trade secrets?
- Have found not to be trade secrets?
- Have found not to be trade secrets as a matter of law?

Trade Secrets

When determining whether information qualifies as a trade secret, courts look to whether the information was readily obtainable (*ATC Distrib. Grp., Inc.*, 402 F.3d at 714).

Kentucky courts have found the following to be trade secrets:

- Pricing.
- Customer sales information.

(*Fastenal Co.*, 609 F. Supp. 2d at 671.)

Not Trade Secrets

Kentucky courts will not find a trade secret where:

- **There were no efforts to keep information secret.** Ideas for an automotive cable channel were not trade secrets because there was no showing that promoters had made any effort to keep their ideas secret. The promoters had published their ideas in promotional materials they sent, unsolicited and without claims of confidentiality, to several major cable broadcasters. (*Auto Channel, Inc.*, 144 F. Supp. 2d at 795-96.)
- **The information was publicly available through other means.** Customer lists of an auto parts seller were not trade secrets where the identity of the shops named in the lists could have been discovered from a search of a telephone book or other source. (*ATC Distrib. Grp., Inc.*, 402 F.3d at 714-15.)

Not Trade Secrets as a Matter of Law

There are no known cases where Kentucky courts have held certain information to not be a trade secret as a matter of law. Whether information is a trade secret is a question of fact (*Alph C. Kaufman, Inc. v. Cornerstone Indus. Corp.*, 540 S.W.3d 803, 818 (Ky. Ct. App. 2017); *Fastenal Co.*, 609 F. Supp. 2d at 671).

7. To what extent have:

- Customer, client, or subscriber lists been given trade secret protection?
- Former employees been enjoined from using a former employer's customer information?

Customer Lists Can Be Protected as Trade Secrets

To determine what information qualifies as a trade secret, the US Court of Appeals for the Sixth Circuit, analyzing

Kentucky law, has suggested that lower courts evaluate whether the information is readily obtainable (*ATC Distrib. Grp., Inc.*, 402 F.3d at 714).

Courts do not consider customer lists to be protectable as trade secrets under the following circumstances:

- When the identity of the shops named in the lists could have been discovered from a search of a telephone book or other publicly available source (*ATC Distrib. Grp., Inc.*, 402 F.3d at 714-15).
- When the customer lists were compiled from public databases that can be acquired with relative ease and the employer did not take steps to safeguard the confidentiality of the customer lists (*Greif, Inc. v. MacDonald*, 2006 WL 3498050, at *3 (W.D. Ky. Dec. 1, 2006)).

Courts have held that customer information is worthy of trade secret protection under Kentucky law in the following situations:

- Where there was evidence of the pricing and customer sales information's economic value, competitors generally did not know about it, and there were reasonable efforts to maintain its secrecy because it was only available through internal usage reports (*Fastenal Co.*, 609 F. Supp. 2d at 671-72).
- When the list of customers consisted of wealthy investors whose business had been cultivated over a period of time, and a simple phone or internet search would not have revealed their identities (*JPMorgan Chase Bank, N.A. v. Kohler*, 2009 WL 2913897, at *1 (W.D. Ky. Sept. 8, 2009)).

Scope of Injunction Enjoining Use of Former Employer's Customer List

There are no known Kentucky cases that highlight the scope of injunction on the use of a former employer's customer list.

Like the model Uniform Trade Secrets Act, the Kentucky Uniform Trade Secrets Act provides injunctive relief for actual or threatened misappropriation, which may either be:

- Terminated when the trade secret no longer exists.
- Enjoined for an additional reasonable period of time to eliminate any commercial advantage that would otherwise be derived from the misappropriation.

(KRS § 365.882(1).)

In exceptional circumstances, an injunction may condition future use on payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited, including when there is either:

- A material and prejudicial change of position before acquiring knowledge.
- Reason to know of misappropriation that renders a prohibitive injunction inequitable.

(KRS § 365.882(2).)

The court may also order affirmative acts to be undertaken to protect a trade secret (KRS § 365.882(3)).

Reasonable Efforts to Maintain Secrecy

8. What efforts to maintain secrecy have been deemed reasonable or sufficient for trade secret protection by:

- Courts in your state?
- Statutes or regulations in your state?

Courts

In one case before the Kentucky Supreme Court, the court found that a company kept an internal report of its operations sufficiently secret by:

- Taking care to protect the identity of the interviewees.
- Not distributing the report generally within the company, but only at a board meeting, after which the copies were recovered.

(*Ky. Farm Bureau Mut. Ins. Co. v. Hopper*, 2003 WL 22415748, at *4 (Ky. Oct. 23, 2003).)

Courts have found restricting access to customer sales information, accounts payable information, and customers' sales patterns by limiting access to usage reports to employees only to be "reasonable efforts to maintain" secrecy (*Fastenal Co.*, 609 F. Supp. 2d at 671-72).

Statutes

The Kentucky Uniform Trade Secrets Act requires "reasonable" efforts to maintain the secrecy of trade

secrets, but it does not define or further specify "reasonable" efforts (KRS § 365.880(4)(b)).

Trade Secret Misappropriation Claims

9. For any law identified in Question 1 (statutes or regulations) or Question 3 (common law), what must a plaintiff show to prove trade secret misappropriation?

The Kentucky Uniform Trade Secrets Act defines misappropriation in three different ways:

- Acquisition.
- Disclosure.
- Use.

(KRS § 365.880(2).)

Acquisition as Misuse

A trade secret can be misappropriated where the acquirer knew or had reason to know that the trade secret was acquired by improper means (see Definition of Improper Means) (KRS § 365.880(2)(a)).

Disclosure or Use of Trade Secret as Misuse

Disclosure or use of another's trade secret without express or implied consent is misappropriation where the person either:

- Used improper means to acquire knowledge of the trade secret.
- At disclosure or use, knew or had reason to know that their knowledge of the trade secret was:
 - derived from or through a person who had utilized improper means to acquire it;
 - acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
 - derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use.
- Before a material change of the person's position, knew or had reason to know that:

- it was a trade secret; and
- knowledge of it was acquired by accident or mistake.

(KRS § 365.880(2)(b).)

Definition of Improper Means

Improper means include:

- Theft.
- Bribery.
- Misrepresentation.
- Breach or inducement of a breach of a duty to maintain secrecy.
- Espionage through electronic or other means.

(KRS § 365.880(1).)

10. Can corporations, corporate officers, and employees of a competing company in possession of the trade secrets of others be held liable for misappropriation in your state? If so, under what circumstances?

Under the Kentucky Uniform Trade Secrets Act (KUTSA), persons who may be liable for trade secret misappropriation include:

- Natural persons.
- Corporations.
- Business trusts.
- Estates.
- Trusts.
- Partnerships.
- Associations.
- Joint ventures.
- Governments.
- Governmental subdivisions or agencies.
- Other legal or commercial entities.

(KRS § 365.880(3).)

Under Kentucky law, an individual who knowingly aids and abets a fiduciary to make a secret profit is jointly liable with that fiduciary (*Lappas v. Barker*, 375 S.W.2d 248, 252 (Ky. Ct. App. 1963)).

In at least one case, the court denied an individual employee summary judgment and deemed him to be

potentially individually liable for a violation of the KUTSA. The claims against the employee were based on an allegation that he merely received an email containing:

- A pricing list.
- A list of specific gravities for materials used by the plaintiff company.
- Cost information.

(*FBK Partners, Inc. v. Thomas*, 2010 WL 4940056, at *3-4 (E.D. Ky. Nov. 30, 2010).)

Corporations can also be held liable for misappropriation. The KUTSA states that a “person” can misappropriate a trade secret and defines “person” to include a “corporation” (KRS § 365.880(2), (3)). For example, a federal court interpreting Kentucky law entered judgment in favor of a dietary supplement company that sued a corporate customer for trade secret misappropriation under KUTSA (*Caudill Seed & Warehouse Co., Inc. v. Jarrow Formulas, Inc.*, 2020 WL 3065626, at *1 (W.D. Ky. June 9, 2020), *aff’d*, 53 F.4th 368 (6th Cir. 2022)). The elements in Question 9 are necessary to prove misappropriation of the trade secret by both individuals and legal and commercial entities.

Defenses

11. For any law identified in Question 1 (statutes and regulations) or Question 3 (common law), what defenses are available to defend against claims under the statute or common law?

Defenses to a trade secret misappropriation claim in Kentucky may include:

- The information is not a trade secret (see Question 4).
- The information was not misappropriated (see Question 9).
- The three-year statute of limitations has expired (see Question 12).
- Lack of standing to sue.
- Common law claims have been preempted (see Question 3).
- Equitable defenses, for example:
 - laches;
 - estoppel;
 - waiver; or
 - unclean hands.

Statute of Limitations

12. For any law identified in Question 1 (statutes and regulations) or Question 3 (common law), please identify the relevant statute of limitations for bringing a claim.

The Kentucky Uniform Trade Secrets Act (KUTSA) imposes a three-year statute of limitations for misappropriation of trade secrets. Specifically, the three-year period begins to run when the misappropriation either:

- Is discovered.
- Should have been discovered by the exercise of reasonable diligence.

Under the KUTSA, a continuing misappropriation is a single claim. (KRS § 365.890.)

Other Related Claims

13. What other claims, statutory or common law, can a plaintiff bring in your state against a defendant in the event of wrongful acquisition, misuse, or disclosure of a trade secret?

In Kentucky, a plaintiff can allege claims for:

- Contractual remedies, whether or not based on misappropriation of a trade secret.
- Other civil remedies not based on misappropriation of a trade secret.
- Criminal remedies, whether or not based on misappropriation of a trade secret.

(KRS § 365.892.)

As long as the claims are not preempted by KRS § 365.892, plaintiffs may bring common law claims of:

- Tortious interference with contractual relations.
- Breach of fiduciary duty.
- Unfair competition.
- Civil conspiracy.

(See *Greif, Inc.*, 2006 WL 3498050, at *1, 4.)

A federal court, analyzing Kentucky law, has held that the Kentucky Uniform Trade Secret Act does not preempt all common law causes of action and potentially allows a cause of action for fraud or deceit, if the plaintiff

demonstrates an additional factual basis for fraud or deceit that has the use of trade secrets as an element (*Auto Channel, Inc.*, 144 F. Supp. 2d at 789).

Conversion and breach of contract claims are also available (*FBK Partners, Inc.*, 2010 WL 4940056, at *3).

Remedies

14. For any law identified in Question 1 (statutes and regulations) and Question 3 (common law), please describe the potential relief available to plaintiffs.

Under the Kentucky Uniform Trade Practices Act, potential relief may include:

- **Monetary damages.** Except to the extent that a material and prejudicial change of position before acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant is entitled to recover damages for misappropriation. Monetary damages may 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.(KRS § 365.884(1).)
- **A reasonable royalty.** Instead 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 (KRS § 365.884(1)).
- **Exemplary damages.** If willful and malicious misappropriation exists, the court may award damages in an amount up to twice any award of monetary damages made under KRS § 365.884(1) (KRS § 365.884(2)).
- **Injunctive relief.** The court may also enjoin actual or threatened misappropriation of trade secrets (KRS § 365.882(1)).

Contractual Protections

15. What factors do courts in your state consider when assessing the enforceability of a nondisclosure or confidentiality agreement?

Kentucky courts find nondisclosure and confidentiality agreements to be as enforceable as any other contract. Nondisclosure and confidentiality agreements require sufficient consideration. Continued, good faith "at-will" employment is sufficient consideration (*Higdon Food Serv., Inc. v. Walker*, 641 S.W.2d 750, 752 (Ky. 1982)).

Kentucky courts are permitted to blue pencil overly broad agreements (*Hammons v. Big Sandy Claims Serv.*, 567 S.W.2d 313, 315 (Ky. Ct. App. 1978)).

For more information on Kentucky non-compete laws, see [State Q&A, Non-Compete Laws: Kentucky](#).

Miscellaneous

16. What common law duties are recognized in your state that prohibit employees from disclosing employer information even absent an independent contractual obligation?

Kentucky imposes a limited duty of loyalty and fiduciary duty on employees. Even when non-compete and non-solicitation clauses of an employee's employment agreement are held unenforceable, the misappropriation of trade secret and fiduciary duty claims may remain viable. In one case before the US District Court for the Western District of Kentucky, the court, analyzing Kentucky law, dismissed non-competition and non-solicitation claims, but it allowed statutory trade secret and common law "fiduciary duty" claims to go forward. (*Manhattan Assocs., Inc. v. Rider*, 2002 WL 1774056, at *2 (W.D. Ky. Aug. 1, 2002).)

17. Does your state recognize the doctrine of inevitable disclosure?

The US District Court for the Western District of Kentucky declined to consider the doctrine of inevitable disclosure because it "has not been approved by any Kentucky court

or the Sixth Circuit" (*Invesco Institutional (N.A.), Inc. v. Johnson*, 500 F. Supp. 2d 701, 709-10 (W.D. Ky. 2007)).

18. What, if anything, have courts held regarding trade secret misappropriation claims involving memorizing trade secrets rather than the taking of tangible representations of information?

The first Kentucky court to rule on whether trade secrets committed to memory are misappropriation under Kentucky law held that a memorized customer list was not a protectable trade secret (*Progress Laundry Co. v. Hamilton*, 270 S.W. 834, 835-36 (Ky. Ct. App. 1925)). Cases decided after *Progress Laundry Co.* have been consistent with its holding.

19. Do any of the laws identified in Question 1 (statutes and regulations) or Question 3 (common law) preempt other causes of action a plaintiff could assert related to trade secret misappropriation (for example, conversion, breach of fiduciary duty, unfair competition, or tortious interference)?

The Kentucky Uniform Trade Secrets Act (KUTSA) preempts conflicting:

- Tort claims.
- Restitutionary claims.
- Other Kentucky laws providing civil remedies for misappropriation of a trade secret.

(KRS § 365.892(1).)

For more information about preemption under the KUTSA and Kentucky common law, see Question 3.

However, the KUTSA does not affect certain remedies, including:

- Contractual remedies, regardless of whether they are based on misappropriation of a trade secret.
- Criminal remedies, regardless of whether they are based on misappropriation of a trade secret.
- Other civil remedies that are not based on misappropriation of a trade secret.

(KRS § 365.892(2).)

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