FOR MORE INFORMATION

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Nebraska

1. What is the statutory authority for trade secret protection in your state?

The statutory authority for trade secret protection in Nebraska is the Nebraska Trade Secrets Act (NTSA). NEB. REV. STAT. §§ 87-501 to -507 (1988). The statute of limitations for a claim under the NTSA is four years. NEB. REV. STAT. § 87-506.

2. What are the elements of a trade secret claim in your state, and are any unique?

The elements of a claim under the NTSA are: (1) the existence of a trade secret or secret manufacturing process; (2) the value and importance of the trade secret to the company in the conduct of its business; (3) the company's right by reason of discovery or ownership to the use and enjoyment of the secret; and (4) the communication of the secret to the individual while (s)he was employed in a position of trust and confidence and under circumstances making it inequitable and unjust for the individual to disclose it to others or to use it to the company's prejudice. *Selection Research, Inc. v. Murman*, 230 Neb. 786, 796, 433 N.W.2d 526, 532 (1989).

Oftentimes the elements are recited in a way centered around an employer-employee relationship, however, the Nebraska Supreme Court has noted such a relationship "is not a required element for misappropriation" under the NTSA. *Richdale Dev. Co. v. McNeil Co.*, 244 Neb. 694, 703, 508 N.W.2d 853, 859 (1993).

Also, while not unique to NTSA claims, Nebraska courts construe the statutory definition of "trade secret" much more narrowly than the Uniform Trade Secrets Act and therefore the analysis of that element is often different than in other trade-secret cases. *See First Express Servs. Grp. v. Easter*, 286 Neb. 912, 925, 840 N.W.2d 465, 474 (2013).

3. How specific do your courts require the plaintiff to be in defining its "trade secrets?"

The NTSA defines "trade secret" to mean information that "(a) [d]erives independent economic value, actual or potential, from not being known to, and not being ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) [i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy," and provides a non-exhaustive list of examples that include things like a "drawing, formula, pattern, compilation, program, device, method, technique, code, or process." NEB. REV. STAT. § 87-502(4). The Supreme Court has recognized this definition "differs significantly" from the Uniform Trade Secrets Act, in that Nebraska's definition is more narrow. *First Express Servs. Grp. v. Easter*, 286 Neb. 912, 925, 840 N.W.2d 465, 474 (2013).

To prove certain information is a trade secret, the plaintiff must provide with particularity the steps the plaintiff has taken to keep the information secret and the economic value that the information has to the plaintiff. *ACI Worldwide Corp. v. Baldwin Hackett & Meeks, Inc.*, 296 Neb. 818, 826-27, 858 & n.25, 896 N.W.2d 156, 167-68, 184 & n.25 (2017) (recognizing the propriety of requiring particularity before allowing discovery into materials claimed to constitute trade secrets). Courts have demanded particularity in the context of evidencing a trade secret's purported economic value and unavailability to the public as well. *See, e.g.*, *Databaseusa.Com, LLC v. Van Gilder*, 2022 WL 2251665, 2022 U.S. Dist. LEXIS 112530 (May 24, 2022) (holding the plaintiff failed to identify any "particular document" with sufficient particularity that meets the statutory definition).

4. What is required in your state for a plaintiff to show it has taken reasonable measures to protect its trade secrets?

There are no specific requirements in Nebraska. Courts determine on a case-by-case basis whether a plaintiff has shown it has taken reasonable measures to protect its trade secrets. *See, e.g.*, *Magistro v. J. Lou, Inc.*, 270 Neb. 438, 443, 703 N.W.2d 887, 890 (2005) (deeming sufficient measures that included placing the necessary ingredients for secret recipes into sealed packets); *Thrivent Fin. Lutherans v. Hutchinson*, 906 F. Supp. 2d 897, 906-07 (D. Neb. 2012) (involving company policies and confidentiality agreements).

5. Does your state apply the inevitable disclosure doctrine? If so, how is it applied?

It is unclear. Nebraska courts have not discussed the doctrine as of the date of this publication.

6. How have courts in your state addressed the defense that an alleged trade secret is "reasonably ascertainable?" What needs to be shown to prevail on that theory?

In Nebraska, if an alleged trade secret is ascertainable at all by any means that are not improper, the would-be secret is peremptorily excluded from coverage under the Trade Secrets Act. *See First Express Serv. Grp., Inc. v. Easter*, 286 Neb. 912, 925, 840 N.W.2d 465, 474 (2013). To prevail on the defense that an alleged trade secret is reasonably ascertainable, one must show that the knowledge or information can be readily gained by observation or other proper means. *Richdale Dev. Co. v. McNeil Co., Inc.*, 244 Neb. 694, 704, 508 N.W.2d 853, 860. If a trade secret's information can be ascertained from public sources or by proper means, then it is not a trade secret. *See First Express*, 286 Neb. at 24, 840 N.W.2d at 474 (determining that because the customers' contact information was ascertainable from public sources, and because other information on the list was ascertainable by proper means, the customer list was not a trade secret).

7. What are the most recent "hot button" issues addressed by courts in your state regarding trade secret claims?

A recent issue addressed by Nebraska courts is whether customer lists are trade secrets, and specifically the types of information contained in customer lists that would qualify them to be trade secrets. *Compare Home Pride Foods, Inc. v. Johnson*, 262 Neb. 701, 709, 634 N.W.2d 774, 782 (2001) (deeming the customer lists at issue to be trade secrets), *with First Express Serv.*

Grp., Inc. v. Easter, 286 Neb. 912, 924, 840 N.W.2d 465, 474 (2013) (distinguishing from *Home Pride* and declaring the customer lists at issue to not be trade secrets).

8. How does your state's Trade Secret law differ from the DTSA, as the latter is applied in your Circuit?

The most significant difference between the NTSA and DTSA relates to the definition of "trade secret," as the Nebraska Supreme Court has noted the definitions "differ[] significantly." *First Express Serv. Grp., Inc. v. Easter*, 286 Neb. 912, 924, 840 N.W.2d 465, 474 (2013). The NTSA "greatly narrows" the definition by omitting the federal statute's qualifying language like "generally" and "readily." *Id.*; *compare* NEB. REV. STAT. § 87-502(4), *with* 18 U.S.C. § 1839(3). The statute of limitations are different as well, as the NTSA affords plaintiffs four years, *see* NEB. REV. STAT. § 506, while the DTSA requires suit within three years, *see* 18 U.S.C. § 1836(d). Another noteworthy difference is that the DTSA allows a party to seek exemplary damages and attorney fees, *see* 18 U.S.C. § 1836(b)(3), while the NTSA does not.