

North Carolina

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

North Carolina's Trade Secrets Protection Act is codified at N.C. Gen. Stat. § 66-152 through N.C. Gen. Stat. § 66-157.

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

North Carolina's Trade Secrets Protection Act provides the following:

Misappropriation of a trade secret is prima facie established by the introduction of substantial evidence that the person against whom relief is sought both:

- (1) Knows or should have known of the trade secret; and
- (2) Has had a specific opportunity to acquire it for disclosure or use or has acquired, disclosed, or used it without the express or implied consent or authority of the owner.

N.C. Gen. Stat. § 66-155.

"Misappropriation" under the Act means the "acquisition, disclosure, or use of a trade secret of another without express or implied authority or consent, unless such trade secret was arrived at by independent development, reverse engineering, or was obtained from another person with a right to disclose the trade secret." *Id.* § 66-152(1).

These elements are common to the federal Defense of Trade Secrets Act of 2016 and other states' trade secrets acts. *E.g.*, *Power Home Solar, LLC v. Sigora Solar, LLC*, 2021 WL 2530984, at *11 (N.C. Super. June 18, 2021) (analyzing claims under federal and state act in tandem and collecting cases doing the same).

3. How specific do your courts require the plaintiff to be in defining its "trade secrets?" (This could include discussing discovery case law requiring particularity.)

To adequately plead the existence of a trade secret, "a plaintiff must identify a trade secret with sufficient particularity so as to enable a defendant to delineate that which he is accused of misappropriating and a court to determine whether misappropriation has or is threatened to occur." *Krawiec v. Manly*, 370 N.C. 602, 609, 811 S.E.2d 542, 547-48 (2018).

Generically listing categories of information, without more, does not meet the standard. *E.g.*, *Krawiec*, 370 N.C. at 611, 811 S.E.2d at 549 (dance company's allegation that its "original ideas and concepts for

dance productions, marketing strategies and tactics, as well as student, client and customer lists and their contact information” was insufficient to identify trade secrets); *Washburn v. Yadkin Valley Bank & Tr. Co.*, 190 N.C. App. 315, 327, 660 S.E.2d 577, 585 (2008) (allegation that the plaintiff’s “processes and procedures” are trade secrets is insufficient); *Power Home Solar*, 2021 WL 2530984, at *13 (allegation of “proprietary practices, methods, techniques, and pricing models” insufficient).

Additional case law authority can be provided upon request.

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

Parties lose trade secret protection under the Act if they fail to take “efforts that are reasonable under the circumstances to maintain [the] secrecy” of the secrets. N.C. Gen. Stat. § 66-152(3). For example, courts have upheld a party’s efforts to protect its trade secrets when that party limited visitor access to its building(s), stored its data on secure servers and limited-access cloud-based storage systems, required employees to sign non-disclosure agreements and confidentiality agreements, and required training on confidentiality and security policies. *Syngenta Seeds, LLC v. Warner*, 2021 WL 679289, at *2 (D. Minn. Feb. 22, 2021) (applying North Carolina law); see *Power Home Solar, LLC v. Sigora Solar, LLC*, 2021 WL 2530984, at *14 (N.C. Super. June 18, 2021). Affirmatively disclosing the information obviously does not meet this standard and forfeits trade secrets protection. *Glaxo Inc. v. Novopharm Ltd.*, 931 F. Supp. 1280, 1301 (E.D.N.C. 1996), *aff’d*, 110 F.3d 1562 (Fed. Cir. 1997) (party who alleged another party had misappropriated its trade secrets lost trade secret protection by publicly filing documents which contained information alleged to be trade secrets, as opposed to filing the documents under seal).

Additional case law authority can be provided upon request.

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

No appellate court in North Carolina has applied the doctrine. The North Carolina Court of Appeals and the North Carolina Business Court (a trial level court that deals only with business cases) have suggested that the doctrine could be applicable “when an employee who knows trade secrets of his employer leaves that employer for a competitor and, because of the similarity of the employee’s work for the two companies, it is ‘inevitable’ that he will use or disclose trade secrets of the first employer.” *Analog Devices, Inc. v. Michalski*, 157 N.C. App. 462, 470, n.3 579 S.E.2d 449, 455 n.3 (2003); *accord NFH, Inc. v. Troutman*, 2019 WL 5595166, at *17 (N.C. Super. Oct. 29, 2019). The Business Court recently criticized as too conclusory a plaintiff’s allegations which followed the logic of the “inevitable disclosure” doctrine, but the Court nonetheless denied a motion to dismiss that claim and the Supreme Court of North Carolina affirmed that order. *Wells Fargo Ins. Servs. USA, Inc. v. Link*, 372 N.C. 260, 281-82, 827 S.E.2d 458, 475 (2019).

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?

A party defending against a misappropriation of trade secrets claim can rebut the plaintiff’s prima facie case of misappropriation by demonstrating, through “substantial evidence,” that they acquired the information comprising the trade secret by independent development, reverse engineering, or it was obtained from another person with a right to disclose the trade secret.” N.C. Gen. Stat. § 66-155.

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

Our Supreme Court recently held that the North Carolina Trade Secrets Protection Act does not apply extraterritorially where the misappropriation occurred outside of North Carolina. *SciGrip, Inc. v. Osa*, 373 N.C. 409, 425, 838 S.E.2d 334, 346 (2020).

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

North Carolina courts have not identified any significant difference in the way that North Carolina's Trade Secrets Protection Act and the DTSA are applied. In practice, courts analyze parallel claims under both acts in tandem. *E.g., Herrmann Int'l, Inc. v. Herrmann Int'l Eur.*, 2021 WL 861712, at *14 (W.D.N.C. Mar. 8, 2021); *Power Home Solar, LLC v. Sigora Solar, LLC*, 2021 WL 2530984, at *11 (N.C. Super. June 18, 2021).