

HOUSE No. 27

So much of the recommendations of the Commission on Uniform State Laws (House, No. 26) as relates to making uniform the law regarding trade secrets. The Judiciary.

The Commonwealth of Massachusetts

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In the Year Two Thousand Thirteen
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An Act making uniform the law regarding trade secrets.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Sections 42 and 42A of chapter 93 of the General Laws are hereby repealed.

2 SECTION 2. The General Laws are hereby amended by inserting after chapter 93J the following
3 chapter:--

4 CHAPTER 93K

5 UNIFORM TRADE SECRETS ACT

6 Section 1. This chapter shall be known and may be cited as the Uniform Trade Secrets Act.

7 Section 2. As used in this chapter the following words, shall unless the context clearly requires
8 otherwise, have the following meanings:

9 (1) "Improper means", includes, without limitation, theft, bribery, misrepresentation, or breach or
10 inducement of a breach of a confidential relationship or other duty to limit acquisition, disclosure
11 or use of information;

12 (2) "Misappropriation",

13 (i) acquisition of a trade secret of another by a person who knows or who has reason to know that
14 the trade secret was acquired by improper means; or

15 (ii) disclosure or use of a trade secret of another without that person's express or implied consent
16 by a person who

17 (A) used improper means to acquire knowledge of the trade secret or

18 (B) at the time of his disclosure or use, knew or had reason to know that his knowledge of the
19 trade secret was

20 [I] derived from or through a person who had utilized improper means to acquire it;

21 [II] acquired under circumstances giving rise to a duty to limit its acquisition, disclosure or use;
22 or

23 [III] derived from or through a person who owed a duty to the person seeking relief to limit its
24 acquisition, disclosure or use; or

25 (C) before a material change of his or her position, knew or had reason to know that it was a
26 trade secret and that knowledge of it had been acquired by accident or mistake.

27 (3) "Person", a natural person, corporation, business trust, estate, trust, partnership, association,
28 joint venture, government, governmental subdivision or agency, or any other legal or commercial
29 entity.

30 (4) "Trade secret", specified or specifiable information, whether or not fixed in tangible form or
31 embodied in any tangible thing, including but not limited to a formula, pattern, compilation,

32 program, device, method, technique, process, business strategy, or scientific, technical, financial
33 or customer data that

34 [i] at the time of alleged misappropriation, derived economic value, actual or potential, from not
35 being generally known to, and not being readily ascertainable by proper means by, others who
36 might obtain economic value from its acquisition, disclosure or use; and

37 [ii] at all times has been the subject of efforts that are reasonable under the circumstances to give
38 notice that it should not be and to ensure that it is not acquired, disclosed or used without the
39 consent of the person asserting ownership thereof or such person's predecessor in interest.

40 Section 3. (a) Actual or threatened misappropriation may be enjoined upon equity principles,
41 including a showing that specific information qualifying as a trade secret has been or is
42 threatened to be misappropriated. No injunction shall issue with respect to a trade secret unless
43 the trade secret is specified with sufficient particularity so as to enable, reasonably under the
44 circumstances, the respondent to prepare a reasonable defense. Upon application to the court, an
45 injunction shall be terminated when the trade secret has ceased to exist, but the injunction may
46 be continued for an additional reasonable period of time in order to eliminate commercial
47 advantage that otherwise would be derived from misappropriation.

48 (b) In exceptional circumstances, an injunction may condition future use upon payment
49 of a reasonable royalty for no longer than the period of time for which use could have been
50 prohibited. Exceptional circumstances include, but are not limited to, a material and prejudicial
51 change of position prior to acquiring knowledge or reason to know of misappropriation that
52 renders a prohibitive injunction inequitable.

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

55 Section 4. (a) Except to the extent that a material and prejudicial change of position prior to
56 acquiring knowledge or reason to know of misappropriation renders a monetary recovery
57 inequitable, a complainant is entitled to recover damages for misappropriation of specific
58 information qualifying as a trade secret. Damages can include both the actual loss caused by
59 misappropriation and the unjust enrichment caused by misappropriation that is not taken into
60 account in computing actual loss. In lieu of damages measured by any other methods, the
61 damages caused by misappropriation may be measured by the imposition of liability for a
62 reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

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

65 Section 5. The court may award reasonable attorney's fees to the prevailing party if: (i) a claim
66 of misappropriation is made or defended in bad faith, (ii) a motion to enter or to terminate an
67 injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists.
68 In considering such an award, the court may take into account the claimant's specification of
69 trade secrets and the proof that such alleged trade secrets were misappropriated.

70 Section 6. (a) In an action under this chapter, a court shall preserve the secrecy of an alleged
71 trade secret by reasonable means, which may include granting protective orders in connection
72 with discovery proceedings, holding in-camera hearings, sealing the records of the action, and
73 ordering any person involved in the litigation not to disclose an alleged trade secret without prior
74 court approval.

75 (b) In an action under this chapter, averments of trade secrets and misappropriation
76 thereof shall be stated with particularity.

77 Section 7. An action for misappropriation must be brought within 3 years after the
78 misappropriation is discovered or by the exercise of reasonable diligence should have been
79 discovered. For the purposes of this section, a continuing misappropriation constitutes a single
80 claim.

81 Section 8. (a) Except as provided in subsection (b), this chapter shall supersede any conflicting
82 laws of the Commonwealth providing civil remedies for the misappropriation of a trade secret.

83 (b) This chapter does not affect:

84 (1) contractual remedies, provided that, to the extent such remedies are based on or justified by
85 confidentiality of information, such confidentiality shall be determined according to the
86 definition of trade secret in this chapter;

87 (2) remedies based on submissions to governmental units;

88 (3) other civil remedies to the extent that they are not based upon misappropriation of a trade
89 secret; or

90 (4) criminal remedies, whether or not based upon misappropriation of a trade secret.

91 Section 9. This chapter shall be applied and construed to effectuate its general purpose to make
92 uniform the law with respect to the subject of this chapter among States enacting it.

93 SECTION 3. This Act takes effect on July first, two thousand and fourteen, and does not
94 apply to misappropriation occurring prior to the effective date. With respect to a continuing

95 misappropriation that began prior to the effective date, the Act also does not apply to the
96 continuing misappropriation that occurs after the effective date.