

HOUSE No.

The Commonwealth of Massachusetts

In the Year Two Thousand and Fifteen

**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:

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 Sections 42 and 42A of chapter 93 of the General Laws are hereby repealed.

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

CHAPTER 93L

UNIFORM TRADE SECRETS ACT

Section 1. As used in this chapter the following words, shall unless the context clearly requires otherwise, have the following meanings:

- (1) "Improper means", includes, without limitation, theft, bribery, misrepresentation, unreasonable intrusion into private physical or electronic space, or breach or inducement of a breach of a confidential relationship or other duty to limit acquisition, disclosure or

use of information; reverse engineering from properly accessed materials or information is not improper means;

(2) "Misappropriation",

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

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

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

(B) at the time of the actor's disclosure or use, knew or had reason to know that the actor's knowledge of the trade secret was

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

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

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

(C) before a material change of the actor's position, knew or had reason to know that it was a trade secret and that the actor's knowledge of it had been acquired by accident, mistake, or through another person's act in violation of subsections 1(2)(i) or 1(2)(ii)(A) or -(B).

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

(4) "Trade secret", specified or specifiable information, whether or not fixed in tangible form or embodied in any tangible thing, including but not limited to a formula, pattern, compilation, program, device, method, technique, process, business strategy, customer list, invention, or scientific, technical, financial or customer data that

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

[ii] at the time of the alleged misappropriation was the subject of efforts that were reasonable under the circumstances, which may include reasonable notice, to protect against it being acquired, disclosed or used without the consent of the person properly asserting rights therein or such person's predecessor in interest.

Section 2. (a) Actual or threatened misappropriation may be enjoined upon principles of equity, including but not limited to consideration of prior party conduct and circumstances of potential use, upon a showing that information qualifying as a trade secret has been or is threatened to be misappropriated. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate any economic advantage that otherwise would be derived from misappropriation.

(b) In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances include, but are not limited to, a material and prejudicial

change of position prior to acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.

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

Section 3. (a) Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant is entitled to recover damages for misappropriation of information qualifying as a trade secret. Damages can 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. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by the imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

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

Section 4. The court may award reasonable attorney's fees and costs to the prevailing party if: (i) a claim of misappropriation is made or defended in bad faith, (ii) a motion to enter or to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists. In considering such an award, the court may take into account the claimant's specification of trade secrets and the proof that such alleged trade secrets were misappropriated.

Section 5. (a) In an action under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and

ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

(b) In an action under this chapter, in alleging trade secrets misappropriation a party must state with reasonable particularity the circumstances thereof, including the nature of the trade secrets and the basis for their protection. Before commencing discovery relating to an alleged trade secret, the party alleging misappropriation shall identify the trade secret with sufficient particularity under the circumstances of the case to allow the court to determine the appropriate parameters of discovery and to enable reasonably other parties to prepare their defense.

Section 6. An action for misappropriation must be brought within 3 years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this chapter, a continuing disclosure or use constitutes a single claim.

Section 7. (a) Except as provided in subsection (b), this chapter shall supersede any conflicting laws of the Commonwealth providing civil remedies for the misappropriation of a trade secret.

(b) This chapter does not affect:

(1) contractual remedies, provided that, to the extent such remedies are based on an interest in the economic advantage of information claimed to be confidential, such confidentiality shall be determined according to the definition of trade secret in subsection 1(4), where the terms and circumstances of the underlying contract shall be considered in such determination;

(2) remedies based on submissions to governmental units;

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

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

Section 8. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among States enacting it.

Section 9. This chapter shall be known and may be cited as the Uniform Trade Secrets Act.

SECTION 3. This Act takes effect on July first, two thousand and sixteen, and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the Act also does not apply to the continuing misappropriation that occurs after the effective date.