

# 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

\_\_\_\_\_  
In the Year Two Thousand Thirteen  
\_\_\_\_\_

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  
2 repealed.

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

5           CHAPTER 93K

6           UNIFORM TRADE SECRETS ACT

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

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

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

14           (2) "Misappropriation",

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

86 (b) This chapter does not affect:

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

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

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

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

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

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