HOUSE DOCKET, NO. 3007 FILED ON: 1/21/2011

HOUSE . . . . . No. 2846

The Commonwealth of Massachusetts

PRESENTED BY:

Eugene L. O'Flaherty

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act making uniform the law regarding trade secrets.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Eugene L. O'Flaherty	*2nd Suffolk*

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HOUSE . . . . . No. 2846

By Mr. O'Flaherty of Chelsea, a petition (accompanied by bill, House, No. 2846) of Eugene L. O'Flaherty relative to making uniform the law regarding trade secrets. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
HOUSE
, NO. *1586* OF 2009-2010.]

The Commonwealth of Massachusetts

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 Sections 42 and 42A of chapter 93 of the General Laws are hereby repealed.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 93G the following chapter:--

CHAPTER 93H

UNIFORM TRADE SECRETS ACT

Section 1. This act shall be known and may be cited as the UNIFORM TRADE SECRETS ACT.

Section 2. As used in this chapter, unless the context requires otherwise:

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

(2) "Misappropriation" means:

(i) 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

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

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

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

21 (I) derived from or through a person who had utilized improper means to
22 acquire it;

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

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

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

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

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

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

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

43 Section 3. (a) Actual or threatened misappropriation may be enjoined upon
44 equity principles, including a showing that specific information qualifying as a trade secret has
45 been or is threatened to be misappropriated. No injunction shall issue with respect to a trade
46 secret unless the trade secret is specified with sufficient particularity so as to enable, reasonably
47 under the circumstances, the respondent to prepare a reasonable defense. Upon application to the
48 court, an injunction shall be terminated when the trade secret has ceased to exist, but the

49 injunction may be continued for an additional reasonable period of time in order to eliminate
50 commercial advantage that otherwise would be derived from misappropriation.

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

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

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

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

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

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

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

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

84 Section 8. (a) Except as provided in subsection (b), this Act displaces
85 conflicting tort, restitutionary, and other law of this State providing civil remedies for the
86 misappropriation of a trade secret.

87 (b) This act does not affect:

88 (1) contractual remedies, whether or not based upon misappropriation of a trade
89 secret;

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

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

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

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