

**HOUSE . . . . . No. 329**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Nine**  
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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  
2 repealed.

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

5 CHAPTER 93J. UNIFORM TRADE SECRETS ACT

6 Section 1. This Act 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  
8 requires otherwise, have the following meanings:

9 “Improper means”, includes, without limitation, theft, bribery, misrepresentation, or  
10 breach or inducement of a breach of a confidential relationship or other duty to limit acquisition,  
11 disclosure or use of information.

12           “Misappropriation”, (i) acquisition of a trade secret of another by a person who knows or  
13 who has reason to know that the trade secret was acquired by improper means; or (ii) disclosure  
14 or use of a trade secret of another without that person's express or implied consent by a person  
15 who (A) used improper means to acquire knowledge of the trade secret, or (B) at the time of his  
16 disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (i)  
17 derived from or through a person who had utilized improper means to acquire it; (ii) acquired  
18 under circumstances giving rise to a duty to limit its acquisition, disclosure or use; or (iii)  
19 derived from or through a person who owed a duty to the person seeking relief to limit its  
20 acquisition, disclosure or use; or (C) before a material change of his or her position, knew or had  
21 reason to know that it was a trade secret and that knowledge of it had been acquired by accident  
22 or mistake.

23           “Person”, a natural person, corporation, business trust, estate, trust, partnership,  
24 association, joint venture, government, governmental subdivision or agency, or any other legal or  
25 commercial entity.

26           “Trade secret”, specified or specifiable information, whether or not fixed in tangible form  
27 or embodied in any tangible thing, including but not limited to a formula, pattern, compilation,  
28 program, device, method, technique, process, business strategy, or scientific, technical, financial  
29 or customer data that at the time of alleged misappropriation, derived economic value, actual or  
30 potential, from not being generally known to, and not being readily ascertainable by proper  
31 means by others who might obtain economic value from its acquisition, disclosure or use; and  
32 has at all times been the subject of efforts that are reasonable under the circumstances to give  
33 notice that it should not be and to ensure that it is not acquired, disclosed or used without the  
34 consent of the person asserting ownership thereof, or such person's predecessor in interest.

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

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

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

50           Section 4. (a) Except to the extent that a material and prejudicial change of position prior  
51 to acquiring knowledge or reason to know of misappropriation renders a monetary recovery  
52 inequitable, a complainant is entitled to recover damages for misappropriation of specific  
53 information qualifying as a trade secret. Damages may include both the actual loss caused by  
54 misappropriation and the unjust enrichment caused by misappropriation that is not taken into  
55 account in computing actual loss. In lieu of damages measured by any other methods, the

56 damages caused by misappropriation may be measured by the imposition of liability for a  
57 reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

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

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

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

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

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

76 Section 8. (a) Except as provided in subsection (b), the provisions of this chapter shall  
77 supersede any conflicting laws of the commonwealth providing civil remedies for actual or  
78 threatened misappropriation of a trade secret.

79 (b) This chapter does not affect:

80 (1) contractual remedies, provided that, to the extent such remedies are based on  
81 confidentiality of information, such confidentiality shall be determined according to the  
82 definition of trade secret;

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

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

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

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

89 SECTION 3. This Act shall take effect upon passage, and does not apply to  
90 misappropriation occurring prior to the effective date. With respect to a continuing  
91 misappropriation that began prior to the effective date, the Act also does not apply to the  
92 continuing misappropriation that occurs after the effective date.