

**HOUSE . . . . . No. 1195**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Garrett J. Bradley***

*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 adoption of the accompanying bill:

An Act to protect intellectual property and trade secrets to promote economic development and job creation.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Garrett J. Bradley</i>	<i>3rd Plymouth</i>	<i>1/15/2015</i>

**HOUSE . . . . . No. 1195**

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By Mr. Bradley of Hingham, a petition (accompanied by bill, House, No. 1195) of Garrett J. Bradley for legislation to protect intellectual property and trade secrets to promote economic development and job creation. The Judiciary.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 1225 OF 2013-2014.]

**The Commonwealth of Massachusetts**

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**In the One Hundred and Eighty-Ninth General Court  
(2015-2016)**  
\_\_\_\_\_

An Act to protect intellectual property and trade secrets to promote economic development and job creation.

*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2 repealed.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 act shall be known and may be cited as the Uniform Trade Secrets Act.

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

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

13 (2) "Misappropriation",

14 (i) acquisition of a trade secret of another by a person who knows or who has reason to  
15 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 or implied  
17 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 knowledge of  
20 the trade secret was

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

85           (b) This act does not affect:

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

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

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

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

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

95 SECTION 3. This Act does not apply to misappropriation occurring prior to the effective  
96 date. With respect to a continuing misappropriation that began prior to the effective date, the Act  
97 also does not apply to the continuing misappropriation that occurs after the effective date.

98 SECTION 4. Section 19 of Chapter 149 of the General Laws of Massachusetts is hereby  
99 amended by inserting at the end the following new paragraphs:

100 Any written or oral contract or agreement arising out of an employment relationship that  
101 prohibits, impairs, restrains, restricts, or places any condition on, a person's ability to seek,  
102 engage in or accept any type of employment or independent contractor work, for any period of  
103 time after an employment relationship has ended, shall be void and unenforceable with respect to  
104 that restriction. This section shall not render void or unenforceable the remainder of the contract  
105 or agreement.

106 For the purposes of this section, chapter 149, section 148B shall control the definition of  
107 employment.

108 This section shall be construed liberally for the accomplishment of its purposes, and no  
109 other provision of the General Laws shall be construed in a manner that would limit its coverage.  
110 Nothing in this section shall preempt tort or contract claims, or other statutory claims, based  
111 upon an employer's use, or attempted use of an unlawful contract or agreement to interfere with  
112 subsequent employment or contractor work.

113            This section shall apply to all contracts and agreements, including those executed before  
114 the effective date of this act.