

**SENATE . . . . . No. 169**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

*Jason M. Lewis*

*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 trade secrets and eliminate non-compete agreements.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Ruth B. Balse</i>	<i>12th Middlesex</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>
<i>Daniel A. Wolf</i>	<i>Cape and Islands</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>

**SENATE . . . . . No. 169**

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By Mr. Lewis, a petition (accompanied by bill, Senate, No. 169) of Jason M. Lewis, Ruth B. Balser, William N. Brownsberger, Daniel A. Wolf and other members of the General Court for legislation to protect trade secrets and eliminate non-compete agreements. Consumer Protection and Professional Licensure.

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**The Commonwealth of Massachusetts**

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

An Act to protect trade secrets and eliminate non-compete agreements.

*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. The Massachusetts General Laws, as appearing in the 2014 Official Edition,  
2 are hereby amended by inserting after chapter 93K the following new chapter:-

3 Chapter 93L.

4 UNIFORM TRADE SECRETS ACT

5 Section 1. This chapter shall be known and may be cited as the Uniform Trade Secrets  
6 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 (1) "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 (2) "Misappropriation",

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

84 (b) This chapter shall not affect:

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

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

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

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

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

94 Section 10. This chapter shall not apply to misappropriation occurring prior to the  
95 effective date. With respect to a continuing misappropriation that began prior to the effective  
96 date, the chapter shall not apply to the continuing misappropriation that occurs after the effective  
97 date.

98 Section 11. Any written or oral contract or agreement arising out of an employment or  
99 independent contractor relationship that prohibits, impairs, restrains, restricts, or places any  
100 condition on, a person's ability to seek, engage in or accept any type of employment or  
101 independent contractor work, for any period of time after an employment or independent  
102 contractor relationship has ended, shall be void and unenforceable with respect to that restriction.  
103 This section shall not render void or unenforceable the remainder of the contract or agreement.  
104 Nor shall this section affect (i) covenants not to solicit or hire employees or independent  
105 contractors of the employer; (ii) covenants not to solicit or transact business with customers of  
106 the employer; (iii) non-disclosure agreements; (iv) noncompetition agreements made in  
107 connection with the sale of a business or substantially all of the assets of a business, when the  
108 party restricted by the noncompetition agreement is an owner of at least a 10 per cent interest of  
109 the business who received significant consideration for the sale; (v) noncompetition agreements  
110 outside of an employment relationship; (vi) forfeiture agreements; or (vii) agreements by which  
111 an employee agrees to not reapply for employment to the same employer after termination of the  
112 employee.

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

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

120           This section shall apply to all contracts and agreements, including those executed before  
121 the effective date of this chapter.