

# ARIZONA UNIFORM TRADE SECRETS ACT

## §§ 44-401 TO 44-407

### § 44-401 - DEFINITIONS

1. "Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy or espionage through electronic or other means.

2. "Misappropriation" means either:

(a) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means.

(b) Disclosure or use of a trade secret of another without express or implied consent by a person who either:

(i) Used improper means to acquire knowledge of the trade secret.

(ii) At the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was derived from or through a person who had utilized improper means to acquire it, was acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use or was derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use.

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

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

4. "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique or process, that both:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.



## **§ 44-402 – INJUNCTIVE RELIEF**

- A. Actual or threatened misappropriation may be enjoined. On application to the court, the court shall terminate an injunction if the trade secret has ceased to exist, but the court may continue the injunction for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.
- B. In exceptional circumstances an injunction may condition future use on payment of a reasonable royalty for no longer than the period of time for which the use could have been prohibited. Exceptional circumstances include, but are not limited to, a material and prejudicial change of position before acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.
- C. In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

## **§ 44-403 - DAMAGES**

- A. Except to the extent that a material and prejudicial change of position before acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant is entitled to recover damages for misappropriation. Damages may include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.
- B. If willful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection A.

## **§ 44-404 – ATTORNEY FEES**

The court may award reasonable attorney fees to the prevailing party for any of the following:

1. A claim of misappropriation made in bad faith.
2. A motion to terminate an injunction made or resisted in bad faith.
3. Willful and malicious misappropriation.



#### **§ 44-405 – PRESERVATION OF SECRECY; DEFINITION**

- A. In an action under this chapter or section 13-1802 or 13-2316.02 a court shall preserve the secrecy of an alleged trade secret by reasonable means.
- B. For the purposes of this section, "reasonable means" includes granting protective orders in connection with discovery proceedings, holding in camera hearings, sealing the records of the action or ordering a person involved in the litigation not to disclose an alleged trade secret without prior court approval.

#### **§ 44-406 – STATUTE OF LIMITATIONS**

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

#### **§ 44-407 – EFFECT ON OTHER LAWS**

- A. Except as provided in subsection B, this chapter displaces conflicting tort, restitutionary and other laws of this state providing civil remedies for misappropriation of a trade secret.
- B. This chapter does not affect:
  - 1. Contractual remedies, whether or not based on misappropriation of a trade secret.
  - 2. Other civil remedies that are not based on misappropriation of a trade secret.
  - 3. Criminal remedies, whether or not based on misappropriation of a trade secret.

