

GEORGIA TRADE SECRETS ACT

(§§ 10-1-760 to 10-1-767)

§ 10-1-760. Short title

This article shall be known as the "Georgia Trade Secrets Act of 1990."

§ 10-1-761. Definitions

As used in this article, the term:

(1) "Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a confidential relationship or other duty to maintain secrecy or limit use, or espionage through electronic or other means. Reverse engineering of a trade secret not acquired by misappropriation or independent development shall not be considered improper means.

(2) "Misappropriation" means:

- (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; or
- (B) Disclosure or use of a trade secret of another without express or implied consent by a person who:
 - (i) Used improper means to acquire knowledge of a trade secret;
 - (ii) At the time of disclosure or use, knew or had reason to know that knowledge of the trade secret was:
 - (I) Derived from or through a person who had utilized improper means to acquire it;
 - (II) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
 - (III) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or
 - (iii) Before a material change of 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 for profit or not for profit legal or commercial entity.

(4) "Trade secret" means information, without regard to form, including, but not limited to, technical or nontechnical data, a formula, a pattern, a compilation, a program, a



device, a method, a technique, a drawing, a process, financial data, financial plans, product plans, or a list of actual or potential customers or suppliers which is not commonly known by or available to the public and which information:

- (A) Derives 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; and
- (B) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

§ 10-1-762. Injunctive relief

(a) Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in appropriate circumstances for reasons including, but not limited to, an elimination of commercial advantage that otherwise would be derived from the misappropriation or where the trade secret ceases to exist due to the fault of the enjoined party or others by improper means.

(b) In exceptional circumstances, if the court determines that it would be unreasonable to prohibit future use, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances include, but are not limited to, a material and prejudicial change of position prior to 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.

(d) In no event shall a contract be required in order to maintain an action or to obtain injunctive relief for misappropriation of a trade secret.

§ 10-1-763. Recovery of damages

(a) In addition to or in lieu of the relief provided by Code Section 10-1-762, a person is entitled to recover damages for misappropriation. Damages can 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. If neither damages nor unjust enrichment caused by the misappropriation are proved by a preponderance of the evidence, the court may award damages caused by misappropriation measured in terms of a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret for no longer than the period of time for which use could have been prohibited.



(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) of this Code section.

(c) In no event shall a contract be required in order to maintain an action or to recover damages for misappropriation of a trade secret.

§ 10-1-764. Award of attorneys' fees

If a claim of misappropriation is made in bad faith, a motion to terminate an injunction is made or resisted in bad faith, or willful and malicious misappropriation exists, the court may award reasonable attorneys' fees to the prevailing party.

§ 10-1-765. Protection of trade secret during action

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

§ 10-1-766. Limitation of action

An action for misappropriation must be brought within five years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this Code section, a continuing misappropriation by any person constitutes a single claim against that person, but this Code section shall be applied separately to the claim against each person who receives a trade secret from another person who misappropriated that trade secret.

§ 10-1-767. Applicability of article

(a) Except as provided in subsection (b) of this Code section, this article shall supersede conflicting tort, restitutionary, and other laws of this state providing civil remedies for misappropriation of a trade secret.

(b) This article shall not affect:

- (1) Contractual duties or remedies, whether or not based upon misappropriation of a trade secret; provided, however, that a contractual duty to maintain a trade



secret or limit use of a trade secret shall not be deemed void or unenforceable solely for lack of a durational or geographical limitation on the duty;

- (2) Other civil remedies that are not based upon misappropriation of a trade secret; or
- (3) The definition of a trade secret contained in Code Section 16-8-13, pertaining to criminal offenses involving theft of a trade secret or criminal remedies, whether or not based upon misappropriation of a trade secret.

