

PENNSYLVANIA CHAPTER 53 - TRADE SECRETS

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Enactment. Chapter 53 was added February 19, 2004, P.L.143, No.14, effective in 60 days.

Special Provisions in Appendix. See sections 3 and 4 of Act 14 of 2004 in the appendix to this title for special provisions relating to construction and application of law and misappropriations occurring prior to Act 14.

§ 5301. Short title of chapter.

This chapter shall be known and may be cited as the Uniform Trade Secrets Act.

§ 5302. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Improper means." Includes, but is not limited to, theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy or espionage through electronic or other means.

"Misappropriation." Includes:

- (1) 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
- (2) 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 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:
 - (A) derived from or through a person who had utilized improper means to acquire it;
 - (B) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
 - (C) 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 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.

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

"Trade secret." Information, including a formula, drawing, pattern, compilation including a customer list, program, device, method, technique or process that:

(1) 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.

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

"Willful and malicious." Such intentional acts or gross neglect of duty as to evince a reckless indifference of the rights of others on the part of the wrongdoer, and an entire want of care so as to raise the presumption that the person at fault is conscious of the consequences of his carelessness.

§ 5303. Injunctive relief.

(a) Injunctions.--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 order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(b) Exceptional circumstances.--In exceptional circumstances, 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) Affirmative acts compelled by court order.--In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

§ 5304. Damages.

(a) Monetary damages.--Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant 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. 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) Exemplary damages.--If willful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).

§ 5305. Attorney fees.

A court may award reasonable attorney fees, expenses and costs to the prevailing party:

- (1) if a claim of misappropriation is made in bad faith;
- (2) a motion to terminate an injunction is made or resisted in bad faith; or
- (3) willful and malicious misappropriation exists.

§ 5306. Preservation of secrecy.

In any action under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means which may include, but are not limited to, 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.

§ 5307. Statute of limitations.

An action under this chapter for misappropriation must be brought within three years after the misappropriation was discovered or by the exercise of reasonable diligence should have been discovered.

§ 5308. Effect on other law.

(a) General rule.--Except as provided in subsection (b), this chapter displaces conflicting tort, restitutionary and other law of this Commonwealth providing civil remedies for misappropriation of a trade secret.

(b) Exceptions.--This chapter does not affect:

- (1) contractual remedies, whether or not based upon misappropriation of a trade secret;
- (2) other civil remedies that are not based upon misappropriation of a trade secret; or
- (3) criminal remedies, whether or not based upon misappropriation of a trade secret.