

HOUSE No. 02846

The Commonwealth of Massachusetts

PRESENTED BY:

Eugene L. O'Flaherty

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 passage of the accompanying bill:

An Act making uniform the law regarding trade secrets.

PETITION OF:

NAME:

Eugene L. O'Flaherty

DISTRICT/ADDRESS:

2nd Suffolk

HOUSE No. 02846

By Mr. O'Flaherty of Chelsea, a petition (accompanied by bill, House, No. 2846) of O'Flaherty relative to making uniform the law regarding trade secrets Joint Committee on the Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ HOUSE
□ , NO. 1586 OF 2009-2010.]

The Commonwealth of Massachusetts

—————
In the Year Two Thousand Eleven
—————

An Act making uniform the law regarding trade secrets.

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2 repealed.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 93G the
4 following chapter:--

5 CHAPTER 93H

6 UNIFORM TRADE SECRETS ACT

7 Section 1. This act shall be known and may be cited as the UNIFORM TRADE
8 SECRETS ACT.

9 Section 2. As used in this chapter, unless the context requires otherwise:

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" means:

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
17 implied 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
20 of 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,
23 disclosure 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" means a natural person, corporation, business trust, estate, trust,
29 partnership, association, joint venture, government, governmental subdivision or agency, or any
30 other legal or commercial entity.

31 (4) "Trade secret" means specified or specifiable information, whether or not fixed in
32 tangible 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
39 circumstances to give notice that it should not be and to ensure that it is not acquired, disclosed
40 or used without the consent of the person asserting ownership thereof, or such person's
41 predecessor in interest.

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

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

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

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

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

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

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

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

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

83 Section 8. (a) Except as provided in subsection (b), this Act displaces conflicting tort,
84 restitutionary, and other law of this State providing civil remedies for the misappropriation of a
85 trade secret.

86 (b) This act does not affect:

87 (1) contractual remedies, whether or not based upon misappropriation of a trade secret;

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

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

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

93 SECTION 3. This Act takes effect on July first, two thousand and seven, and does not
94 apply to misappropriation occurring prior to the effective date. With respect to a continuing
95 misappropriation that began prior to the effective date, the Act also does not apply to the
96 continuing misappropriation that occurs after the effective date.