

HOUSE No. 329

The Commonwealth of Massachusetts

PRESENTED BY:

Daniel E. Bosley

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:

Daniel E. Bosley
John A. Hart, Jr.

DISTRICT/ADDRESS:

1st Berkshire

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 3937 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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 Sections 42 and 42A of chapter 93 of the General Laws are hereby repealed.

2 SECTION 2. The General Laws are hereby amended by inserting after chapter 93I the following
3 chapter:--

4 CHAPTER 93J. UNIFORM TRADE SECRETS ACT

5 Section 1. This Act shall be known and may be cited as the Uniform Trade Secrets Act.

6 Section 2. As used in this chapter the following words, shall unless the context clearly requires
7 otherwise, have the following meanings:

8 “Improper means”, includes, without limitation, theft, bribery, misrepresentation, or breach or inducement
9 of a breach of a confidential relationship or other duty to limit acquisition, disclosure or use of
10 information.

11 “Misappropriation”, (i) acquisition of a trade secret of another by a person who knows or who has reason
12 to know that the trade secret was acquired by improper means; or (ii) disclosure or use of a trade secret of
13 another without that person's express or implied consent by a person who (A) used improper means to
14 acquire knowledge of the trade secret, or (B) at the time of his disclosure or use, knew or had reason to
15 know that his knowledge of the trade secret was: (i) derived from or through a person who had utilized
16 improper means to acquire it; (ii) acquired under circumstances giving rise to a duty to limit its
17 acquisition, disclosure or use; or (iii) derived from or through a person who owed a duty to the person

18 seeking relief to limit its acquisition, disclosure or use; or (C) before a material change of his or her
19 position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired
20 by accident or mistake.

21 “Person”, a natural person, corporation, business trust, estate, trust, partnership, association, joint venture,
22 government, governmental subdivision or agency, or any other legal or commercial entity.

23 “Trade secret”, specified or specifiable information, whether or not fixed in tangible form or embodied in
24 any tangible thing, including but not limited to a formula, pattern, compilation, program, device, method,
25 technique, process, business strategy, or scientific, technical, financial or customer data that at the time of
26 alleged misappropriation, derived economic value, actual or potential, from not being generally known to,
27 and not being readily ascertainable by proper means by others who might obtain economic value from its
28 acquisition, disclosure or use; and has at all times been the subject of efforts that are reasonable under the
29 circumstances to give notice that it should not be and to ensure that it is not acquired, disclosed or used
30 without the consent of the person asserting ownership thereof, or such person's predecessor in interest.

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

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

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

45 Section 4. (a) Except to the extent that a material and prejudicial change of position prior to
46 acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a
47 complainant is entitled to recover damages for misappropriation of specific information qualifying as a
48 trade secret. Damages may include both the actual loss caused by misappropriation and the unjust
49 enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of
50 damages measured by any other methods, the damages caused by misappropriation may be measured by

51 the imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use
52 of a trade secret.

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

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

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

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

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

69 Section 8. (a) Except as provided in subsection (b), the provisions of this chapter shall supersede
70 any conflicting laws of the commonwealth providing civil remedies for actual or threatened
71 misappropriation of a trade secret.

72 (b) This chapter does not affect:

73 (1) contractual remedies, provided that, to the extent such remedies are based on confidentiality
74 of information, such confidentiality shall be determined according to the definition of trade secret;

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

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

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

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

81 SECTION 3. This Act shall take effect upon passage, and does not apply to misappropriation occurring
82 prior to the effective date. With respect to a continuing misappropriation that began prior to the effective
83 date, the Act also does not apply to the continuing misappropriation that occurs after the effective date.