

New Jersey Passes Trade Secret Statute

Insights

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The New Jersey Legislature recently passed its version of the Uniform Trade Secrets Act and has sent the bill to the Governor. Here are some of the highlights from the New Jersey Trade Secrets Act:

- Injunctive relief may be sought and obtained for actual or threatened misappropriation of a trade secret.
- Damages may be awarded for both actual loss and for unjust enrichment
- Punitive damages, no greater than twice that awarded for actual damages, may be awarded in cases involving willful and malicious misappropriation

- Attorney's fees may be awarded in cases involving willful and malicious misappropriation
- A "Trade secret" is defined to mean information, without regard to form, including a formula, pattern, business data compilation, program, device, method, technique, design, diagram, drawing, invention, plan, procedure, prototype 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; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.
- "Reverse engineering" is defined to mean the process of starting with the known product and working backward to find the method by which it was developed so long as the acquisition of the known product was lawful or from sources having the legal right to convey it, such as the purchase of the item on the open market
- The Act contains a statute of limitations: An action for misappropriation shall be brought within three years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered.
- A person who misappropriates a trade secret cannot defend the case by arguing that proper means to acquire the trade secret existed at the time of the misappropriation.
- Courts "shall" preserve the secrecy of an alleged trade secret by reasonable means consistent with the Rules of Court, which essentially means that courts may issue protective orders to protect trade secrets during discovery.

Interestingly, the statute does not include a provision found in many other states that says: "This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among the states enacting it." Perhaps New Jersey is signaling that it differs with respect to trade secret enforcement. Exactly how it differs, if at all, remains to be seen.

In passing this statute, New Jersey joins 46 other states and the District of Columbia, which have passed a version of the Uniform Trade Secrets Act. The Act shall take effect immediately upon signing by the Governor, but it only applies to misappropriation occurring after the effective date.

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