

## NEW JERSEY PASSES TRADE SECRET STATUTE

Insights

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Following the lead of 46 other states and the District of Columbia, New Jersey has passed a trade secret statute modeled after the Uniform Trade Secrets Act. The statute provides owners of trade secrets with a civil claim for trade secret misappropriation, and several important remedies. It also specifies certain defenses that may not be asserted by trade secret defendants and sets forth procedures to be followed by courts in trade secret litigation.

Here are highlights of the remedies for violations of the new act:

- injunctive relief for actual or threatened misappropriation of a trade secret;
- damages for both actual loss and for unjust enrichment;
- punitive damages, no greater than twice that awarded for actual damages, in cases involving willful and malicious misappropriation; and
- attorneys' fees in cases involving willful and malicious misappropriation

### Some Specifics

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" means 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 must be brought within three years after the misappropriation is discovered, or with reasonable diligence should have been discovered. And any 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.

Finally, courts are required to 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, in its view, it differs from other states with respect to trade secret enforcement. Exactly how it differs, if at all, remains to be seen.

### **The Effect**

The passage of the New Jersey Trade Secrets Act will make it easier for trade secret plaintiffs to bring claims, but potential plaintiffs should be mindful that the statute does not bestow a trade secret upon them. Rather, the statute simply indicates that information *may* qualify for trade secret protection, provided certain conditions are met.

For more information, consult your Fisher Phillips attorney or visit the firm's [Non-Compete and Trade Secrets Blog](#).

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