

# SENATE COMMERCE COMMITTEE

## STATEMENT TO

### **ASSEMBLY, No. 921**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: SEPTEMBER 19, 2011

The Senate Commerce Committee reports favorably and with committee amendments Assembly Bill No. 921.

This bill, as amended, creates the "New Jersey Trade Secrets Act," and is based on the "Uniform Trade Secrets Act" prepared by the National Conference of Commissioners on Uniform State Laws. The "Uniform Trade Secrets Act" has been adopted in 46 states and the District of Columbia. Many of those states have adopted the "Uniform Trade Secrets Act" with varying degrees of modification. The New Jersey Law Revision Commission has reviewed and modified the "Uniform Trade Secrets Act" to reflect this State's common law trade secret jurisprudence.

The amended bill sets forth the remedies that are available to the holder of a trade secret which has been misappropriated, which the bill defines as acquired by improper means or improperly disclosed. Those remedies include:

1. Damages for both the actual loss suffered by the plaintiff and for any unjust enrichment of the defendant caused by the misappropriation. Damages may also include the imposition of a reasonable royalty for unauthorized disclosure or use.

2. Injunctive relief for actual or threatened misappropriation of a trade secret. Under certain exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty.

3. In cases involving the willful and malicious misappropriation of a trade secret, punitive damages, if awarded by the court, in an amount not exceeding twice that awarded for actual damages and unjust enrichment.

4. The award of attorney's fees by the court if: (i) willful and malicious misappropriation exists; (ii) a claim of misappropriation is made in bad faith; or (iii) a motion to terminate an injunction is made or resisted in bad faith.

The amended bill also contains language indicating that if a public entity or employee is the defendant in any action brought for the misappropriation of a trade secret, the provisions of the "New Jersey Tort Claims Act" would supersede any conflicting provision of the bill.

Committee Amendments

The committee amended the bill to remove the presumption, in actions brought under the act, in favor of granting protective orders in connection with discovery proceedings pursuant to section 4:10-3(g) of the Rules of Court. The amendment clarifies that the court shall preserve the secrecy of an alleged trade secret by reasonable means consistent with the Rules of Court.