

[First Reprint]

**SENATE, No. 2456**

---

**STATE OF NEW JERSEY**  
**214th LEGISLATURE**

---

INTRODUCED DECEMBER 6, 2010

**Sponsored by:**

**Senator NICHOLAS P. SCUTARI**

**District 22 (Middlesex, Somerset and Union)**

**Senator GERALD CARDINALE**

**District 39 (Bergen)**

**SYNOPSIS**

"New Jersey Trade Secrets Act."

**CURRENT VERSION OF TEXT**

As reported by the Senate Commerce Committee on September 19, 2011,  
with amendments.



**(Sponsorship Updated As Of: 9/20/2011)**

1 AN ACT concerning the misappropriation of trade secrets and  
2 supplementing Title 56 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. This act shall be known and may be cited as the "New Jersey  
8 Trade Secrets Act."

9

10 2. As used in this act:

11 "Improper means" means the theft, bribery, misrepresentation,  
12 breach or inducement of a breach of an express or implied duty to  
13 maintain the secrecy of, or to limit the use or disclosure of, a trade  
14 secret, or espionage through electronic or other means, access that  
15 is unauthorized or exceeds the scope of authorization, or other  
16 means that violate a person's rights under the laws of this State;

17 "Misappropriation" means:

18 (1) Acquisition of a trade secret of another by a person who  
19 knows or has reason to know that the trade secret was acquired by  
20 improper means; or

21 (2) Disclosure or use of a trade secret of another without express  
22 or implied consent of the trade secret owner by a person who:

23 (a) used improper means to acquire knowledge of the trade  
24 secret; or

25 (b) at the time of disclosure or use, knew or had reason to know  
26 that the knowledge of the trade secret was derived or acquired  
27 through improper means; or

28 (c) before a material change of position, knew or had reason to  
29 know that it was a trade secret and that knowledge of it had been  
30 acquired through improper means.

31 "Person" means a natural person, corporation, business trust,  
32 estate, trust, partnership, association, joint venture, government,  
33 governmental subdivision or agency, or any other legal or  
34 commercial entity.

35 "Proper means" means discovery by independent invention,  
36 discovery by reverse engineering, discovery under a license from  
37 the owner of the trade secret, observation of the information in  
38 public use or on public display, obtaining the trade secret from  
39 published literature, or discovery or observation by any other means  
40 that is not improper.

41 "Reverse engineering" means the process of starting with the  
42 known product and working backward to find the method by which  
43 it was developed so long as the acquisition of the known product  
44 was lawful or from sources having the legal right to convey it, such  
45 as the purchase of the item on the open market.

**EXPLANATION** – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate SCM committee amendments adopted September 19, 2011.

1 "Trade secret" means information, held by one or more people,  
2 without regard to form, including a formula, pattern, business data  
3 compilation, program, device, method, technique, design, diagram,  
4 drawing, invention, plan, procedure, prototype or process, that:

5 (1) Derives independent economic value, actual or potential,  
6 from not being generally known to, and not being readily  
7 ascertainable by proper means by, other persons who can obtain  
8 economic value from its disclosure or use; and

9 (2) Is the subject of efforts that are reasonable under the  
10 circumstances to maintain its secrecy.

11

12 3. a. Actual or threatened misappropriation may be enjoined.  
13 Upon application to the court, an injunction shall be terminated  
14 when the trade secret has ceased to exist, but the injunction may be  
15 continued for an additional reasonable period of time in order to  
16 eliminate commercial advantage that otherwise would be derived  
17 from the misappropriation.

18 b. In exceptional circumstances, an injunction may condition  
19 future use upon payment of a reasonable royalty for no longer than  
20 the period of time for which use could have been prohibited.  
21 Exceptional circumstances include, but are not limited to, a material  
22 and prejudicial change of position prior to acquiring knowledge or  
23 reason to know of misappropriation that renders a prohibitive  
24 injunction inequitable.

25 c. In appropriate circumstances, affirmative acts to protect a  
26 trade secret may be compelled by court order.

27

28 4. a. Except to the extent that circumstances, including a  
29 material and prejudicial change of position prior to acquiring  
30 knowledge or reason to know of misappropriation renders a  
31 monetary recovery inequitable, a complainant is entitled to recover  
32 damages for misappropriation. Damages can include both the  
33 actual loss caused by misappropriation and the unjust enrichment  
34 caused by misappropriation that is not taken into account in  
35 computing actual loss. In lieu of damages measured by any other  
36 methods, the damages caused by misappropriation may be measured  
37 by imposition of liability for a reasonable royalty for a  
38 misappropriator's unauthorized disclosure or use of a trade secret.

39 b. If willful and malicious misappropriation exists, the court  
40 may award punitive damages in an amount not exceeding twice any  
41 award made under subsection a. of this section.

42

43 5. A person who misappropriates a trade secret shall not use as a  
44 defense to the misappropriation that proper means to acquire the  
45 trade secret existed at the time of the misappropriation.

1       6. The court may award to the prevailing party reasonable  
2 attorney's fees and costs, including a reasonable sum to cover the  
3 service of expert witnesses, if:

- 4       a. willful and malicious misappropriation exists;  
5       b. a claim of misappropriation is made in bad faith; or  
6       c. a motion to terminate an injunction is made or resisted in  
7 bad faith.

8       For purposes of this section, "bad faith" is that which is  
9 undertaken or continued solely to harass or maliciously injure  
10 another, or to delay or prolong the resolution of the litigation, or  
11 that which is without any reasonable basis in fact or law and not  
12 capable of support by a good faith argument for an extension,  
13 modification or reversal of existing law.

14  
15       7. In an action under this act, a court shall preserve the secrecy  
16 of an alleged trade secret by reasonable means <sup>1</sup>[. There shall be a  
17 presumption in favor of granting protective orders in connection  
18 with discovery proceedings pursuant to section 4:10-3(g) of the  
19 Rules of Court as adopted by the Supreme Court of New Jersey,  
20 which may include provisions limiting access to confidential  
21 information to only the attorneys for the parties and their experts,  
22 holding in-camera hearings, sealing the records of the action, and  
23 ordering any person involved in the litigation not to disclose an  
24 alleged trade secret without prior court approval] consistent with  
25 the Rules of Court as adopted by the Supreme Court of New  
26 Jersey<sup>1</sup>.

27  
28       8. An action for misappropriation shall be brought within three  
29 years after the misappropriation is discovered or by the exercise of  
30 reasonable diligence should have been discovered. For the purposes  
31 of this section, a continuing misappropriation constitutes a single  
32 claim.

33  
34       9. a. The rights, remedies and prohibitions provided under this  
35 act are in addition to and cumulative of any other right, remedy or  
36 prohibition provided under the common law or statutory law of this  
37 State and nothing contained herein shall be construed to deny,  
38 abrogate or impair any common law or statutory right, remedy or  
39 prohibition except as expressly provided in subsection b. of this  
40 section.

41       b. This act shall supersede conflicting tort, restitutionary, and  
42 other law of this State providing civil remedies for misappropriation  
43 of a trade secret.

44       c. In any action for misappropriation of a trade secret brought  
45 against a public entity or public employee, the provisions of the  
46 "New Jersey Tort Claims Act" (N.J.S.59:1-1 et seq.) shall supersede  
47 any conflicting provisions of this act.

1       10. This act shall take effect immediately, and does not apply to  
2 misappropriation occurring prior to the effective date. With respect  
3 to a continuing misappropriation that began prior to the effective  
4 date, the act also does not apply to the continuing misappropriation  
5 that occurs after the effective date.