

[CHAPTER 482B]
TRADE SECRETS

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Case Notes

By alleging an induced breach of a confidentiality agreement or a non-disclosure agreement, plaintiff had also alleged that defendants improperly acquired trade secret information; those claims were sufficiently related to plaintiff's allegations of trade secret misappropriation to warrant preemption under this chapter; defendants' motion to dismiss granted. 780 F. Supp. 2d 1061 (2011).

Trade secrets may be subject to equitable division pursuant to §580-47, depending upon when the right to the trade secret vested. 99 H. 101, 53 P.3d 240.

" **§482B-1 Short title.** This chapter may be cited as the Uniform Trade Secrets Act. [L 1989, c 221, pt of §1; am L 2008, c 19, §44]

" **[§482B-2] Definitions.** As used in this chapter, unless the context requires otherwise:

"Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.

"Misappropriation" means:

- (1) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or
- (2) Disclosure or use of a trade secret of another without express or implied consent by a person who:
 - (A) Used improper means to acquire knowledge of the trade secret; or
 - (B) At the time of disclosure or use, knew or had reason to know that the person's knowledge of the trade secret was:
 - (i) Derived from or through a person who had utilized improper means to acquire it;
 - (ii) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
 - (iii) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or
 - (C) Before a material change of the person's position, knew or has reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

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

"Trade secret" means information, including a formula, pattern, compilation, program device, method, technique, 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. [L 1989, c 221, pt of §1]

Case Notes

A contact list, as alleged by plaintiff, is similar to a customer list, which courts generally find to be protected as a trade secret. 780 F. Supp. 2d 1061 (2011).

Improper retention and use of confidential information to solicit proposed funding qualifies as misappropriation of a trade secret as contemplated by this chapter. 780 F. Supp. 2d 1061 (2011).

Trade secrets may be subject to equitable division pursuant to §580-47, depending upon when the right to the trade secret vested. 99 H. 101, 53 P.3d 240.

" **[§482B-3] Injunctive relief.** (a) Actual or threatened misappropriation may be enjoined. Upon application to a circuit court of the State, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

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

(c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order. [L 1989, c 221, pt of §1]

Rules of Court

Injunctions, see HRCF rule 65.

" **[\$482B-4] Damages.** (a) Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant is entitled to recover damages for misappropriation. Damages can include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

(b) If wilful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a). [L 1989, c 221, pt of §1]

" **[\$482B-5] Attorney's fees.** The court may award reasonable attorney's fees to the prevailing party if:

- (1) A claim of misappropriation is made in bad faith;
- (2) A motion to terminate an injunction is made or resisted in bad faith; or
- (3) Wilful and malicious misappropriation exists. [L 1989, c 221, pt of §1]

" **[\$482B-6] Preservation of secrecy.** In an action under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval. [L 1989, c 221, pt of §1]

" **[\$482B-7] Statute of limitations.** An action for misappropriation must be brought within three years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this

section, a continuing misappropriation constitutes a single claim. [L 1989, c 221, pt of §1]

" **[\$482B-8] Effect on other law.** (a) Except as provided in subsection (b) this chapter displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret.

(b) This chapter does not affect:

- (1) Contractual remedies, whether or not based upon misappropriation of a trade secret;
- (2) Other civil remedies that are not based upon misappropriation of a trade secret; or
- (3) Criminal remedies, whether or not based upon misappropriation of a trade secret. [L 1989, c 221, pt of §1]

" **[\$482B-9] Severability.** If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [L 1989, c 221, pt of §1]