

New Jersey Adopts Uniform Trade Secrets Act

Newly enacted New Jersey Trade Secrets Act protects businesses against actual or threatened misappropriation of trade secrets, providing for injunctive relief, damages, punitive damages, and attorney's fees.

January 10, 2012

On January 9, New Jersey Governor Chris Christie signed the New Jersey Trade Secrets Act (NJTSA). The NJTSA brings New Jersey in line with 46 other states and the District of Columbia, all of which have enacted a version of the Uniform Trade Secrets Act. The NJTSA provides to New Jersey businesses a new tool that can be used in the event of actual or threatened misappropriation of trade secrets.

Prior to the enactment of this new statute, New Jersey did not have statutory protection for trade secrets. Businesses in New Jersey could only enforce their trade secrets by bringing actions based on common law, as the federal trade secret statute is limited to criminal actions. While other federal statutes often apply in cases involving trade secret theft, such as the Computer Fraud and Abuse Act, the Stored Communications Act, or the Copyright Act, these statutes all have different elements and are not targeted specifically for the protection of trade secrets.

The NJTSA defines a "trade secret" as any information, such as a formula, pattern, business data compilation, device, or process, that (1) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through 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. To state a claim under the NJTSA, a plaintiff must prove that the defendant obtained trade secrets by "improper means." The NJTSA defines "improper means" as any unauthorized access to or use of a business's trade secrets. Discovery by independent invention, reverse engineering, observation of the information in public use, and other "proper means" provides a complete defense to an NJTSA claim.

The NJTSA authorizes courts to enter injunctive relief to prevent both actual and threatened misappropriation. The NJTSA also provides for 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. In cases involving the willful and malicious misappropriation of a trade secret, the court may award punitive damages in an amount not exceeding twice that awarded for actual damages and unjust enrichment.

Finally, and very importantly, attorney's fees and costs may be awarded to a prevailing party where willful and malicious misappropriation exists, a claim of misappropriation is made in bad faith, or a motion to terminate an injunction is made or resisted in bad faith.

Morgan Lewis's New Jersey Labor and Employment Practice and the firm's Unfair Competition Taskforce routinely counsel businesses with respect to the maintenance and protection of trade secrets. In addition, our litigators routinely pursue and defend against claims of trade secret misappropriation. Should you have any questions pertaining to the NJTSA or would like to discuss trade secret protection and enforcement, please contact the any of the following Morgan Lewis attorneys:

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