

SUBSTITUTE FOR
HOUSE BILL NO. 5312

A bill to protect certain trade secrets; to prohibit disclosure of trade secrets; to provide for remedies; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "uniform trade secrets act".

3 Sec. 2. As used in this act:

4 (a) "Improper means" includes theft, bribery, misrepresenta-
5 tion, breach, or inducement of a breach of a duty to maintain
6 secrecy or espionage through electronic or any other means.

7 (b) "Misappropriation" means either of the following:

8 (i) Acquisition of a trade secret of another by a person who
9 knows or has reason to know that the trade secret was acquired by
10 improper means.

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1 (ii) Disclosure or use of a trade secret of another without
2 express or implied consent by a person who did 1 or more of the
3 following:

4 (A) Used improper means to acquire knowledge of the trade
5 secret.

6 (B) At the time of disclosure or use, knew or had reason to
7 know that his or her knowledge of the trade secret was derived
8 from or through a person who had utilized improper means to
9 acquire it, acquired under circumstances giving rise to a duty to
10 maintain its secrecy or limit its use, or derived from or through
11 a person who owed a duty to the person to maintain its secrecy or
12 limit its use.

13 (C) Before a material change of his or her position, knew or
14 had reason to know that it was a trade secret and that knowledge
15 of it had been acquired by accident or mistake.

16 (c) "Person" means an individual, corporation, partnership,
17 association, governmental entity, or any other legal entity.

18 (d) "Trade secret" means information, including a formula,
19 pattern, compilation, program, device, method, technique, or pro-
20 cess, that is both of the following:

21 (i) Derives independent economic value, actual or potential,
22 from not being generally known to, and not being readily ascer-
23 tainable by proper means by, other persons who can obtain eco-
24 nomic value from its disclosure or use.

25 (ii) Is the subject of efforts that are reasonable under the
26 circumstances to maintain its secrecy.

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1 Sec. 3. (1) Actual or threatened misappropriation may be
2 enjoined. Upon application to the court of competent
3 jurisdiction, an injunction shall be terminated when the trade
4 secret has ceased to exist, but the injunction may be continued
5 for an additional reasonable period of time in order to eliminate
6 commercial advantage that otherwise would be derived from the
7 misappropriation.

8 (2) If a court determines that it would be unreasonable to
9 prohibit future use of a trade secret, an injunction may condi-
10 tion future use upon payment of a reasonable royalty for no
11 longer than the period of time the use could have been
12 prohibited.

13 (3) In appropriate circumstances, affirmative acts to pro-
14 tect a trade secret may be compelled by court order.

15 Sec. 4. Except to the extent that a material and prejudic-
16 ial change of position prior to acquiring knowledge or reason to
17 know of misappropriation renders a monetary recovery inequitable,
18 a complainant is entitled to recover damages for
19 misappropriation. Damages can include both the actual loss
20 caused by misappropriation and the unjust enrichment caused by
21 misappropriation that is not taken into account in computing
22 actual loss. In lieu of damages measured by any other methods,
23 the damages caused by misappropriation may be measured by imposi-
24 tion of liability for a reasonable royalty for a
25 misappropriator's unauthorized disclosure or use of a trade
26 secret.

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1 Sec. 5. If a claim of misappropriation is made in bad
2 faith, a motion to terminate an injunction is made or resisted in
3 bad faith, or willful and malicious misappropriation exists, the
4 court may award reasonable attorney's fees to the prevailing
5 party.

6 Sec. 6. In an action under this act, a court shall preserve
7 the secrecy of an alleged trade secret by reasonable means, which
8 may include granting protective orders in connection with discov-
9 ery proceedings, holding in camera hearings, sealing the records
10 of the action, and ordering any person involved in the litigation
11 not to disclose an alleged trade secret without prior court
12 approval.

13 Sec. 7. An action for misappropriation must be brought
14 within 3 years after the misappropriation is discovered or by the
15 exercise of reasonable diligence should have been discovered.
16 For the purposes of this section, a continuing misappropriation
17 constitutes a single claim.

18 Sec. 8. (1) Except as provided in subsection (2), this act
19 displaces conflicting tort, restitutionary, and other law of this
20 state providing civil remedies for misappropriation of a trade
21 secret.

22 (2) This act does not affect any of the following:

23 (a) Contractual remedies, whether or not based upon misap-
24 propriation of a trade secret.

25 (b) Other civil remedies that are not based upon misappro-
26 priation of a trade secret.

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1 (c) Criminal remedies, whether or not based upon
2 misappropriation of a trade secret.

3 Sec. 9. This act shall be applied and construed to effectu-
4 ate its general purpose to make uniform the law with respect to
5 the subject of this act among states enacting it.

6 Sec. 10. This act takes effect October 1, 1998 and does not
7 apply to misappropriation occurring before the effective date.
8 With respect to a continuing misappropriation that began before
9 the effective date, this act does not apply to the continuing
10 misappropriation that occurs after the effective date.

11 Enacting section 1. 1968 PA 329, MCL 752.771 to 752.773, is
12 repealed.