

112 Section 9. This chapter shall be known and may be cited as the Uniform Trade Secrets Act.

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114 SECTION 3. Chapter 149 of the General Laws, as appearing in the 2014 Official Edition, is

115 hereby amended by inserting after section 24K the following section:-

116

117 **Section 24L. Massachusetts Noncompetition Agreement Act**

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119 (a) As used in this section, the following words shall have the following meanings:

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121 “Business entity”: any person or group of persons performing or engaging in any activity,  
122 enterprise, profession, or occupation for gain, benefit, advantage, or livelihood, whether for  
123 profit or not for profit, including but not limited to corporations, limited liability companies,  
124 limited partnerships, or limited liability partnerships.

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126 “Employee”: an individual who is considered an employee under section 148B of this chapter;  
127 provided, however, that the term “employee”, as used in this chapter, shall also include  
128 independent contractors under section 148B.

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130 “Forfeiture agreement”: an agreement that imposes adverse financial consequences on a former  
131 employee as a result of the termination of an employment relationship, regardless of whether the  
132 employee engages in competitive activities following cessation of the employment relationship.  
133 Forfeiture agreements do not include forfeiture for competition agreements.

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135 “Forfeiture for competition agreement”: an agreement that by its terms or through the manner in  
136 which it is enforced imposes adverse financial consequences on a former employee as a result of  
137 the termination of an employment relationship if the employee engages in competitive activities.

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139 “Garden leave clause”: a provision within a noncompetition agreement by which an employer  
140 agrees to pay the employee during the restricted period.

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142 “Noncompetition agreement”: an agreement between an employer and an employee, or otherwise  
143 arising out of an existing or anticipated employment relationship, under which the employee or  
144 expected employee agrees that he or she will not engage in certain specified activities  
145 competitive with his or her employer after the employment relationship has ended.

146 Noncompetition agreements include forfeiture for competition agreements, but do not include (i)  
147 covenants not to solicit or hire employees of the employer; (ii) covenants not to solicit or transact  
148 business with customers, clients, or vendors of the employer; (iii) noncompetition agreements  
149 made in connection with the sale of a business entity or substantially all of the operating assets of  
150 a business entity or partnership, or otherwise disposing of the ownership interest of a business  
151 entity or partnership (or division or subsidiary thereof), when the party restricted by the  
152 noncompetition agreement is a significant owner of, or member or partner in, the business entity  
153 who will receive significant consideration or benefit from the sale or disposal; (iv)  
154 noncompetition agreements outside of an employment relationship; (v) forfeiture agreements;  
155 (vi) nondisclosure or confidentiality agreements; (vii) invention assignment agreements; (viii)  
156 garden leave clauses; (ix) noncompetition agreements made in connection with the cessation of  
157 or separation from employment if the employee is expressly given seven business days to rescind

158 acceptance; or (x) agreements by which an employee agrees to not reapply for employment to  
159 the same employer after termination of the employee.

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161 “Restricted period”: the period of time after the date of cessation of employment during which an  
162 employee is restricted by a noncompetition agreement from engaging in activities competitive  
163 with his or her employer.

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165 (b) To be valid and enforceable, a noncompetition agreement must meet the minimum  
166 requirements of subsections (i) through (viii) hereof.

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168 (i) If the agreement is entered into in connection with the commencement of employment, it must  
169 be in writing and signed by both the employer and employee and expressly state that the  
170 employee has the right to consult with counsel prior to signing. The agreement must be provided  
171 to the employee by the earlier of a formal offer of employment or 10 business days before the  
172 commencement of the employee’s employment.

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174 (ii) If the agreement is entered into after commencement of employment but not in connection  
175 with the separation from employment, it must be supported by fair and reasonable consideration  
176 independent from the continuation of employment, and notice of the agreement must be provided  
177 at least 10 business days before the agreement is to be effective. Moreover, the agreement must  
178 be in writing and signed by both the employer and employee and expressly state that the  
179 employee has the right to consult with counsel prior to signing.

180

181 (iii) The agreement must be no broader than necessary to protect one or more of the following  
182 legitimate business interests of the employer: (A) the employer's trade secrets, as that term is  
183 defined in section 1 of chapter 93L; (B) the employer's confidential information that otherwise  
184 would not qualify as a trade secret; or (C) the employer's goodwill. A noncompetition  
185 agreement may be presumed necessary where the legitimate business interest cannot be  
186 adequately protected through an alternative restrictive covenant, including but not limited to a  
187 non-solicitation agreement or a non-disclosure or confidentiality agreement.

188

189 (iv) In no event may the stated restricted period exceed 12 months from the date of cessation of  
190 employment, unless the employee has breached his or her fiduciary duty to the employer or the  
191 employee has unlawfully taken, physically or electronically, property belonging to the employer,  
192 in which case the duration may not exceed 2 years from the date of cessation of employment.

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194 (v) The agreement must be reasonable in geographic reach in relation to the interests protected.  
195 A geographic reach that is limited to only the geographic areas in which the employee, during  
196 any time within the last 2 years of employment, provided services or had a material presence or  
197 influence is presumptively reasonable.

198

199 (vi) The agreement must be reasonable in the scope of proscribed activities in relation to the  
200 interests protected. A restriction on activities that protects a legitimate business interest and is  
201 limited to only the specific types of services provided by the employee at any time during the last  
202 2 years of employment is presumptively reasonable.

203

204 (vii) The noncompetition agreement shall be supported by a garden leave clause. To constitute a  
205 garden leave clause within the meaning of this section, the agreement must (i) provide for the  
206 payment, consistent with the requirements for the payment of wages under section 148 of chapter  
207 149 of the general laws, on a pro-rata basis during the entirety of the restricted period, of at least  
208 50 percent of the employee's highest annualized base salary paid by the employer within the 2  
209 years preceding the employee's termination; and (ii) except in the event of a breach by the  
210 employee, not permit an employer to unilaterally discontinue or otherwise fail or refuse to make  
211 the payments; provided, however, if the restricted period has been increased beyond 12 months  
212 as a result of the employee's breach of a fiduciary duty to the employer or the employee has  
213 unlawfully taken, physically or electronically, property belonging to the employer, the employer  
214 shall not be required to provide payments to the employee during the extension of the restricted  
215 period.

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217 (viii) The agreement must be consonant with public policy.

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219 (c) A noncompetition agreement shall not be enforceable against the following types of workers:

220 (i) an employee who is classified as nonexempt under the Fair Labor Standards Act, 29 U.S.C.  
221 201-219; (ii) undergraduate or graduate students that partake in an internship or otherwise enter a  
222 short-term employment relationship with an employer, whether paid or unpaid, while enrolled in  
223 a full-time or part-time undergraduate or graduate educational institution; (iii) employees that  
224 have been terminated without cause or laid off; or (iv) employees age 18 or younger. This  
225 section does not render void or unenforceable the remainder of the contract or agreement  
226 containing the unenforceable noncompetition agreement, nor does it preclude the imposition of a

227 noncompetition restriction by a court, whether through preliminary or permanent injunctive relief  
228 or otherwise, as a remedy for a breach of another agreement or a statutory or common law duty.

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230 (d) No court may, in its discretion, reform or otherwise revise a noncompetition agreement so as  
231 to render it valid and enforceable to the extent necessary to protect the applicable legitimate  
232 business interests.

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234 (e) No choice of law provision that would have the effect of avoiding the requirements of this  
235 section will be enforceable if the employee is, and has been for at least 30 days immediately  
236 preceding his or her cessation of employment, a resident of or employed in Massachusetts at the  
237 time of his or her termination of employment.

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239 (f) All civil actions relating to employee noncompetition agreements or subject to this section  
240 shall be brought in the county where the employee resides or in Suffolk County. The superior  
241 court or the business litigation session of the superior court in Suffolk County shall have  
242 exclusive jurisdiction of all civil actions relating to employee noncompetition agreements or  
243 subject to this section.

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245 SECTION 4. Section 3 may be referred to as the Massachusetts Noncompetition Agreement Act  
246 and shall apply to employee noncompetition agreements entered into on or after July 1, 2016.

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248 SECTION 5. Section 2 of this Act shall take effect on July 1, 2016, and shall not apply to  
249 misappropriation occurring prior to the effective date. With respect to a continuing

250 misappropriation that began prior to the effective date, the Act also does not apply to the  
251 continuing misappropriation that occurs after the effective date.  
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