

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Jason M. Lewis

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to protect trade secrets and eliminate non-compete agreements.

PETITION OF:

NAME:

Jason M. Lewis

DISTRICT/ADDRESS:

Fifth Middlesex

SENATE No.

[Pin Slip]

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act to protect trade secrets and eliminate non-compete agreements.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws are hereby amended by inserting after chapter 93K the
2 following new chapter:-

3 Chapter 93L.

4 UNIFORM TRADE SECRETS ACT

5 Section 1. This chapter shall be known and may be cited as the Uniform Trade Secrets
6 Act.

7 Section 2. As used in this chapter the following words, shall unless the context clearly
8 requires otherwise, have the following meanings:

9 "Improper means", includes, without limitation, theft, bribery, misrepresentation, or
10 breach or inducement of a breach of a confidential relationship or other duty to limit acquisition,
11 disclosure or use of information;

12 "Misappropriation", (1) acquisition of a trade secret of another by a person who knows or
13 who has reason to know that the trade secret was acquired by improper means; or

14 (2) disclosure or use of a trade secret of another without that person's express or implied
15 consent by a person who:

16 (i) used improper means to acquire knowledge of the trade secret; or

17 (ii) at the time of his disclosure or use, knew or had reason to know that his knowledge of
18 the trade secret was:

19 (A) derived from or through a person who had utilized improper means to acquire it;

20 (B) acquired under circumstances giving rise to a duty to limit its acquisition, disclosure
21 or use; or

22 (C) derived from or through a person who owed a duty to the person seeking relief to
23 limit its acquisition, disclosure or use; or

24 (iii) before a material change of his or her position, knew or had reason to know that it
25 was a trade secret and that knowledge of it had been acquired by accident or mistake.

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

29 "Trade secret", specified or specifiable information, whether or not fixed in tangible form
30 or embodied in any tangible thing, including but not limited to a formula, pattern, compilation,

31 program, device, method, technique, process, business strategy, or scientific, technical, financial
32 or customer data that:

33 (1) at the time of alleged misappropriation, derived economic value, actual or potential,
34 from not being generally known to, and not being readily ascertainable by proper means by,
35 others who might obtain economic value from its acquisition, disclosure or use; and

36 (2) has at all times been the subject of efforts that are reasonable under the circumstances
37 to give notice that it should not be and to ensure that it is not acquired, disclosed or used without
38 the consent of the person asserting ownership thereof, or such person's predecessor in interest.

39 Section 3. (a) Actual or threatened misappropriation may be enjoined upon equity
40 principles, including a showing that specific information qualifying as a trade secret has been or
41 is threatened to be misappropriated. No injunction shall issue with respect to a trade secret unless
42 the trade secret is specified with sufficient particularity so as to enable, reasonably under the
43 circumstances, the respondent to prepare a reasonable defense. Upon application to the court, an
44 injunction shall be terminated when the trade secret has ceased to exist, but the injunction may
45 be continued for an additional reasonable period of time in order to eliminate commercial
46 advantage that otherwise would be derived from misappropriation.

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

52 (c) In appropriate circumstances, affirmative acts to protect a trade secret may be
53 compelled by court order.

54 Section 4. (a) Except to the extent that a material and prejudicial change of position prior
55 to acquiring knowledge or reason to know of misappropriation renders a monetary recovery
56 inequitable, a complainant is entitled to recover damages for misappropriation of specific
57 information qualifying as a trade secret. Damages can include both the actual loss caused by
58 misappropriation and the unjust enrichment caused by misappropriation that is not taken into
59 account in computing actual loss. In lieu of damages measured by any other methods, the
60 damages caused by misappropriation may be measured by the imposition of liability for a
61 reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

62 (b) If willful and malicious misappropriation exists, the court may award exemplary
63 damages in an amount not exceeding twice any award made under subsection (a).

64 Section 5. The court may award reasonable attorney's fees to the prevailing party if: (i) a
65 claim of misappropriation is made or defended in bad faith, (ii) a motion to enter or to terminate
66 an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation
67 exists. In considering such an award, the court may take into account the claimant's specification
68 of trade secrets and the proof that such alleged trade secrets were misappropriated.

69 Section 6. (a) In an action under this chapter, a court shall preserve the secrecy of an
70 alleged trade secret by reasonable means, which may include granting protective orders in
71 connection with discovery proceedings, holding in-camera hearings, sealing the records of the
72 action, and ordering any person involved in the litigation not to disclose an alleged trade secret
73 without prior court approval.

74 (b) In an action under this chapter, averments of trade secrets and misappropriation
75 thereof shall be stated with particularity.

76 Section 7. An action for misappropriation shall be brought within 3 years after the
77 misappropriation is discovered or by the exercise of reasonable diligence should have been
78 discovered. For the purposes of this section, a continuing misappropriation constitutes a single
79 claim.

80 Section 8. (a) Except as provided in subsection (b), this chapter shall supersede any
81 conflicting laws of the commonwealth providing civil remedies for the misappropriation of a
82 trade secret.

83 (b) This chapter shall not affect:

84 (1) contractual remedies, provided that, to the extent such remedies are based on or
85 justified by confidentiality of information, such confidentiality shall be determined according to
86 the definition of trade secret in this chapter;

87 (2) remedies based on submissions to governmental units;

88 (3) other civil remedies to the extent that they are not based upon misappropriation of a
89 trade secret; or

90 (4) criminal remedies, whether or not based upon misappropriation of a trade secret.

91 Section 9. This chapter shall be applied and construed to effectuate its general purpose to
92 make uniform the law with respect to the subject of this chapter among states enacting it.

93 Section 10. This chapter shall not apply to misappropriation occurring prior to the
94 effective date. With respect to a continuing misappropriation that began prior to the effective
95 date, the chapter shall not apply to the continuing misappropriation that occurs after the effective
96 date.

97 Section 11. Any written or oral contract or agreement arising out of an employment or
98 independent contractor relationship that prohibits, impairs, restrains, restricts, or places any
99 condition on, a person's ability to seek, engage in or accept any type of employment or
100 independent contractor work, for any period of time after an employment or independent
101 contractor relationship has ended, shall be void and unenforceable with respect to that restriction.
102 This section shall not render void or unenforceable the remainder of the contract or agreement.
103 Nor shall this section affect (i) covenants not to solicit or hire employees or independent
104 contractors of the employer; (ii) covenants not to solicit or transact business with customers of
105 the employer; (iii) non-disclosure agreements; (iv) noncompetition agreements made in
106 connection with the sale of a business or substantially all of the assets of a business, when the
107 party restricted by the noncompetition agreement is an owner of at least a 10 per cent interest of
108 the business who received significant consideration for the sale; (v) noncompetition agreements
109 outside of an employment relationship; (vi) forfeiture agreements; or (vii) agreements by which
110 an employee agrees to not reapply for employment to the same employer after termination of the
111 employee.

112 For the purposes of this section, chapter 149, section 148B shall control the definition of
113 employment.

114 This section shall be construed liberally for the accomplishment of its purposes, and no
115 other provision of the General Laws shall be construed in a manner that would limit its coverage.
116 Nothing in this section shall preempt tort or contract claims, or other statutory claims, based
117 upon an employer's use, or attempted use, of an unlawful contract or agreement to interfere with
118 subsequent employment or contractor work.

119 This section shall apply to all contracts and agreements, including those executed before
120 the effective date of this chapter.