

LEGISLATIVE UPDATE

New Jersey Trade Secrets Act (N.J.S.A. 56:15-1 *et seq*)

Earlier this year, New Jersey adopted the New Jersey Trade Secrets Act. The adoption of this legislation brings New Jersey in line with 46 other States which have codified trade secrets laws.

That is not to say that the developed common law in this realm is no longer applicable. Indeed the new legislation expands the ability of a business to protect its trade secrets, and the remedies provided in the law, are expressly in addition to, and cumulative with, the rights, remedies, protections and prohibitions under the existing body of case law.

This expansion of rights with regard to protecting trade secrets is certainly valuable to business. Moreover, by adopting the Act, the legislature has provided clear standards and requirements as to what can be protected, and how, as well as the penalties for violating those rights. Previously, the Courts applied general common-law principals in these cases and ascertaining one's rights required a nuanced analysis of the particular facts and circumstances at issue. The result was uncertainty and inconsistency with respect to Trade Secret matters.

Under the new law, a "trade secret" is any *information, without regard to form that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by others who can obtain economic value from its disclosure or use.*

Certainly each business is in the best position to know what of its information derives some or all of its value from secrecy, common examples of trade secrets include: models, methods, formulas, customer lists, pricing data, vendor lists, business plans and strategies.

Another key aspect of the Act is that the holder of a Trade Secret that has been misappropriated no longer needs to wait for harm to occur before filing suit to enjoin the use of the misappropriated Trade Secret. Even in the absence of a non-compete, the Trade Secret holder may be able to prevent an ex-employee from working for a competitor under the Act. Finally, the damages available to a party whose Trade Secret was misappropriated may be entitled to royalties, double damages and attorney fees. However it should be noted that the Court may also award attorney fees against a party that brings a Trade Secret claim in bad faith.

In order to enjoy the protections of the Act, reasonable efforts must be made to maintain the information's secrecy. The Courts in New Jersey have not yet had opportunity to consider and interpret these provisions. Therefore, holders of Trade Secrets would be wise to err on the side of caution when it comes to protecting their valuable confidential information. Examples of good practice includes password protecting computer files, exercising caution when emailing files with confidential information, clearly marking documents as "Confidential and Proprietary" and adopting policies prohibiting employee use of trade secrets for any reason other than the employer's purposes.

Brian Mills is a partner with the law firm Maselli Warren and maintains offices in New Jersey and Pennsylvania.