

District of Columbia Trade Secrets Act

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Last Modified: 2011-07-31

D.C. Code §§ 36-401 through 36-410 (2011)

§ 36-401. Definitions.

For the purposes of this chapter, the term:

(1) "Improper means" means theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.

(2) "Misappropriation" means:

(A) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(B) Disclosure or use of a trade secret of another without express or implied consent by a person who:

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

(ii) At the time of disclosure or use, knew or had reason to know that the trade secret was:

(I) Derived from or through a person who had utilized improper means to acquire it;

(II) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use;

(III) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(iii) Before a material change in his or her position, knew or had reason to know that the information was a trade secret and knowledge of the trade secret had been acquired by accident or mistake.

(3) "Person" means a natural person, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(A) Derives actual or potential independent economic value, from not being generally known to, and not being readily ascertainable by, proper means by another who can obtain economic value from its disclosure or use; and

(B) Is the subject of reasonable efforts to maintain its secrecy.

§ 36-402. Injunctive relief.

(a) Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for a reasonable period of time to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(b) In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances include, but are not limited to, a material and

prejudicial change of position prior to acquiring knowledge or reason to know of a misappropriation that renders a prohibitive injunction inequitable.

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

§ 36-403. Damages.

(a) A complainant is entitled to recover damages for misappropriation, unless a material and prejudicial change of position prior to acquiring knowledge or reason to know of the misappropriation renders a monetary recovery inequitable. Damages may include both the actual loss caused by the misappropriation and the unjust enrichment caused by the misappropriation that is not taken into account in computing actual loss. Instead of damages measured by other methods, the damages caused by misappropriation may be measured by the imposition of liability for a reasonable royalty for the unauthorized disclosure or use of a trade secret by a misappropriator.

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

§ 36-404. Attorney's fees.

The court may award reasonable attorney's fees to the prevailing party if:

- (1) A claim of misappropriation is made in bad faith;
- (2) A motion to terminate an injunction is made or resisted in bad faith; or
- (3) Willful and malicious misappropriation exists.

§ 36-405. Preservation of secrecy.

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

§ 36-406. Statute of limitations.

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

§ 36-407. Effect on other law.

(a) Except as provided in subsection (b) of this section, this chapter supersedes conflicting tort, restitution and other law of the District of Columbia providing civil remedies for misappropriation of a trade secret.

(b) This chapter does not affect:

- (1) Contractual remedies, whether or not based upon misappropriation of a trade secret;
- (2) Other civil remedies that are not based upon misappropriation of a trade secret; or
- (3) Criminal remedies, whether or not based upon misappropriation of a trade secret.

§ 36-408. Uniformity of application and construction.

This chapter shall be applied and construed to make uniform the law with respect to trade secrets among the District of Columbia and those states enacting it.

§ 36-409. Applicability.

This chapter does not apply to misappropriation occurring prior to March 16, 1989. With respect to a continuing misappropriation that began prior to March 16, 1989, the chapter does not apply to the continuing misappropriation that occurs after March 16, 1989.

§ 36-410. Disclosure of information to enforce the Occupational Safety and Health Act of 1988 and Pesticide Operations Act of 1978.

(a) Nothing in this chapter shall prevent the disclosure of accurate and specific information to the Mayor, other District officers or their representatives, private or public sector employees, or the Occupational Safety and Health Commission if necessary to enforce § 32-1101 et seq.

(b) Nothing in this chapter shall prevent the disclosure of information to the Mayor or other District officers or employees if necessary to enforce Change to: Pesticide Operations Act of 1978.

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