

New Mexico Uniform Trade Secrets Act

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CURRENT THROUGH THE SECOND SPECIAL SESSION OF THE FORTY-NINTH LEGISLATURE AND THROUGH THE RESULTS OF THE NOVEMBER 2, 2010 GENERAL ELECTION

CHAPTER 57. TRADE PRACTICES AND REGULATIONS
ARTICLE 3A. UNIFORM TRADE SECRETS

N.M. Stat. Ann. § 57-3A-1 through A-7 (2011)

§ 57-3A-1. **Short title**

Sections 1 through 7 [57-3A-1 to 57-3A-7 NMSA 1978] of this act may be cited as the "Uniform Trade Secrets Act".

§ 57-3A-2. **Definitions**

As used in the Uniform Trade Secrets Act [57-3A-1 NMSA 1978]:

A. "improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy or espionage through electronic or other means;

B. "misappropriation" means:

(1) 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

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

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

(b) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: 1) derived from or through a person who had utilized improper means to acquire it; 2) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or 3) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

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

C. "person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency or any other legal or commercial entity; and

D. "trade secret" means information, including a formula, pattern, compilation, program, device, method, technique or process, that:

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

(2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

§ 57-3A-3. **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 an additional reasonable period of time in order 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 misappropriation that renders a prohibitive injunction inequitable.

C. In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by a court order.

§ 57-3A-4. Damages

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

B. If willful and malicious misappropriation exists, the court may award exemplary damages in an amount not to exceed twice any award made under Subsection A of this section.

§ 57-3A-5. Attorneys' fees

A. The court of proper jurisdiction may award reasonable attorneys' 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.

§ 57-3A-6. Preservation of secrecy

In an action under the Uniform Trade Secrets Act [57-3A-1 NMSA 1978], 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, 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.

§ 57-3A-7. Statute of limitations

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