

Virginia Uniform Trade Secrets Act

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Va. Code Ann. §§ 59.1-336 through 59.1-343

§ 59.1-336. Short title and definitions

As used in this chapter, which may be cited as the Uniform Trade Secrets Act, unless the context requires otherwise:

"Improper means" includes theft, bribery, misrepresentation, use of a computer or computer network without authority, breach of a duty or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.

"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 or 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;
 - (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
 - (4) Acquired by accident or mistake.

"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.

"Trade secret" means information, including but not limited to, 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.

§ 59.1-337. 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 court order.

§ 59.1-338. Damages

A. Except where the user of a misappropriated trade secret has made a material and prejudicial change in his position prior to having either knowledge or reason to know of the misappropriation and the court determines that a monetary recovery would be inequitable, a 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. If a complainant is unable to prove a greater amount of damages by other methods of measurement, the damages caused by misappropriation can be measured exclusively 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 punitive damages in an amount not exceeding twice any award made under subsection A of this section, or \$ 350,000 whichever amount is less.

§ 59.1-338.1. Attorneys' fees

If the court determines that (i) a claim of misappropriation is made in bad faith, or (ii) willful and malicious misappropriation exists, the court may award reasonable attorneys' fees to the prevailing party.

§ 59.1-339. 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:

1. Granting protective orders in connection with discovery proceedings;
2. Holding in-camera hearings;
3. Sealing the records of the action; and
4. Ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

§ 59.1-340. Statute of limitations

An action for misappropriation shall be brought within three 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.

§ 59.1-341. Effect on other law

A. Except as provided in subsection B of this section, this chapter displaces conflicting tort, restitutionary, and other law of this Commonwealth 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; or
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.

§ 59.1-343. Time of taking effect

This chapter shall become effective on July 1, 1986, and shall not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the chapter also shall not apply to misappropriation that occurs after the effective date.