

Department of Legislative Services

Maryland General Assembly

2001 Session

FISCAL NOTE

House Bill 81 (Chairman, Economic Matters Committee)
(Departmental – Business and Economic Development)

Economic Matters

Maryland Uniform Trade Secrets Act - Identification of Trade Secret During Litigation

This departmental bill requires a party alleging a misappropriation of a trade secret under the Maryland Uniform Trade Secrets Act, at the time the party files its first pleading or paper in the action, to identify the trade secret with “reasonable particularity.”

The bill is effective July 1, 2001.

Fiscal Summary

State Effect: The bill would not directly affect governmental finances.

Local Effect: None.

Small Business Effect: The Department of Business and Economic Development (DBED) has determined that this bill has a meaningful impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Current Law: In an action under the Maryland Uniform Trade Secrets Act, a court is required to preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders during discovery, holding in-camera hearings, sealing the case’s records, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

With specific exceptions, such as a derivative action, pleadings are governed by the Maryland Rules. Under the Maryland Rules, no technical form of pleading is required. Each averment in the pleading must be simple, concise, and direct.

Background: DBED advises that the bill seeks to deter companies from using the legal process to uncover legitimate proprietary information of another company by alleging that a trade secret was misappropriated.

To date, only California has a similar provision. In an action alleging the misappropriation of a trade secret under California's Uniform Trade Secrets Act, before beginning discovery relating to the trade secret, the party alleging misappropriation must identify the trade secret with reasonable particularity.

The Maryland Rules require that time and place of a criminal offense be specified with "reasonable particularity" in a charging document. In *State v. Mulkey*, 316 Md. 475 (1989), the Maryland Court of Appeals stated that the trial judge is ordinarily in the best position to determine reasonableness on a case-by-case basis.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Business and Economic Development,
Department of Legislative Services

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