

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

House Bill 133 (Chairman, Economic Matters Committee)
(Departmental – Business and Economic Development)
Economic Matters

**Maryland Uniform Trade Secrets Act - Identification of a 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, 2002.

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 as discussed below.

Analysis

Current Law: Under the Maryland Uniform Trade Secrets Act, a “trade secret” is 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 or readily ascertainable 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. The Act provides injunctive relief for an actual or threatened misappropriation of a trade secret.

In an action under the 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. The pleading must contain only the statements of fact necessary to show entitlement to relief or ground of defense.

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. Under California's Code of Civil Procedure, in an action alleging the misappropriation of a trade secret under the California 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 do not specifically address pleadings in an action brought under the Maryland Uniform Trade Secrets Act. The 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.

Small Business Effect: In addition to the reasons cited by the department, the bill may also deter companies, including small businesses that are victims of trade secret theft from bringing legitimate actions for misappropriation for fear that information about their trade secrets would be revealed in pleading documents.

Additional Information

Prior Introductions: An identical bill, HB 81, was introduced in the 2001 session and received an unfavorable report from the House Economic Matters Committee.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Attorney General (Consumer Protection Division), Department of Business and Economic Development, Department of Legislative Services

Fiscal Note History: First Reader - January 22, 2002
ncs/jr

Analysis by: Ryan Wilson

Direct Inquiries to:
John Rixey, Coordinating Analyst
(410) 946-5510
(301) 970-5510