

ACT ON THE PROTECTION OF TRADE SECRETS

(Act 1990:409, of May 31, 1990).

Introductory Provisions

Article 1. For the purposes of this Act, a "trade secret" means such information concerning the business or industrial relations of a person conducting business or industrial activities which that person wants to keep secret and the divulgence of which would be likely to cause a damage to him from the point of view of competition.

The term "information" comprises both information documented in some form, including drawings, models and other similar technical prototypes, and the knowledge of individual persons about specific circumstances even where it has not been documented in some form.

Article 2. The Act applies only to unwarranted infringements of trade secrets.

As an unwarranted infringement is not to be considered the fact that someone acquires, exploits or divulges what is a trade secret of a person conducting business or industrial activities in order to make available to the public or before a public authority divulge something that may be an offence for which imprisonment may be adjudicated, or which may be considered to be another serious incongruity in the business or industrial activity of a person conducting such activities.

As an unwarranted infringement is not considered the fact that someone exploits or divulges a trade secret about which he or someone before him acquired knowledge in good faith.

Penalties

Article 3. Anyone who wilfully and without authorization accesses a trade secret shall be sentenced for trade espionage to fines or imprisonment for not more than two years or, where the offence is grave, to imprisonment for not more than six years. In the evaluation of whether the offence is grave, particular attention shall be given to whether the act has been of a particularly dangerous kind, concerned a considerable monetary value or resulted in a particularly serious damage.

A penalty as mentioned in the first paragraph shall not be adjudicated where a more serious penalty would follow under the Penal Code.

Attempts and planning of trade espionage shall be punishable according to Chapter 23 of the Penal Code.

Article 4. Anyone who obtains a trade secret knowing that the person who makes available the secret, or anyone before him, has accessed it through an act of trade espionage shall be punished for unauthorized tampering with a trade secret to fines or imprisonment for not more than two years, or, where the offence is grave, to imprisonment for not more than four years.

A penalty as mentioned in the first paragraph shall not be adjudicated where a more serious penalty would follow under the Penal Code.

Damages.

Article 5. Anyone who commits an offence under [Article 3](#) or [4](#) shall pay a compensation for the damage caused through the offence or through the fact that the trade secret is, without authorization, exploited or revealed.

Article 6. Anyone who wilfully or through negligence exploits or reveals a trade secret in a person's business or industrial activity of which he has been informed in confidence in connection with a business transaction with that person shall compensate the damage caused through his action.

Article 7. Anyone who wilfully or through negligence exploits or reveals the trade secret of his employer of which he has been informed in the course of his employment under such circumstances that he understood, or ought to have understood, that he was not allowed to reveal it, shall compensate the damage caused by his action.

Where the action took place after the termination of the employment, the first paragraph shall apply only where there are extraordinary reasons for it.

Article 8. Anyone who wilfully or through negligence exploits or reveals a trade secret which, according to what he understands or ought to understand, has been the subject of an action under this Act shall compensate the damage caused through his action. The same applies in where a person otherwise wilfully or through negligence exploits or reveals a trade secret, which, according to what he understands or should understand, has been revealed contrary to the provisions in the Secrecy Act (1980:100).

Liability under Chapter 20, Article 3, of the Penal Code shall not be adjudicated anyone on the basis of a violation under the first paragraph.

Article 9. In the determination of the compensation under [Articles 5](#) to [8](#), for a violation of the trade secret of a person conducting business or industrial activities consideration shall also be given to his interest that the secret not be exploited or revealed without authorization and to other circumstances of other than purely economic importance.

Article 10. An action for compensation for damages under this Act may concern only damages caused during the last five years before the action was brought. The right to compensation is lost for damages which occurred before that date.

Prohibitions under Penalty of a Fine.

Article 11. Anyone who has violated a trade secret under this Act may be prohibited by a Court, under penalty of a fine, to exploit or reveal the trade secret. Such a prohibition under penalty of a fine may, however, be ordered only where an exploitation or a revelation would be a violation of the provisions of [Article 2](#).

An action under the first paragraph may be brought by the person who has been the subject of the unlawful violation. Such an action

may be brought also in connection with a criminal action for an offence under [Article 3](#) or [4](#).

An action for the adjudication of a fine shall be brought to the Court which in the first instance has determined the issue of the prohibition under penalty of a fine. The action shall be brought by the person who has applied for the prohibition. In connection with such an action, an action may also be brought for a new prohibition under penalty of a fine.

A person who has violated a prohibition under penalty of a fine may not be adjudicated to criminal liability for the act covered by the prohibition.

Article 12. A prohibition under penalty of a fine may be invalidated following an action by the person who has been the subject of the prohibition, where the purpose of the prohibition has lost its importance.

Article 13. Where the person who has applied for prohibition under penalty of a fine under [Article 11](#) shows a probable case that a trade secret has been violated under this Act and it can reasonably be assumed that the defendant, through the continuation of his violation diminishes the value of the trade secret, the Court may order a prohibition under penalty of a fine for the time until the case has been finally adjudicated or otherwise is decided. The provisions of Chapter 15, Articles 5 to 8, of the Code on Judicial Procedure apply in this situation.

As regards appeals against decisions under the first paragraph and concerning the proceedings in higher Courts, the provisions in Chapter 15 of the Code on Judicial Procedure on appeals against decisions apply.

Surrender Against Compensation, Etc.

Article 14. Where a person has violated a trade secret under this Act, the Court may order that documents or objects which he has in his possession and which contains the secret shall be surrendered to the person who has been the subject of the unlawful violation. The Court may order that the surrender shall take place against the payment of a compensation.

Where a document or an object containing a trade secret can not without prejudice be surrendered under the first paragraph, the Court may order that the document or the object shall be destroyed or altered or that another action shall be taken so as to prevent misuse.

Orders under the first or second paragraph shall not be issued where an exploitation or a divulgation would not be unwarranted under [Article 2](#) or where a surrender or other action likely prevent misuse shall be ordered under Chapter 36 of the Penal Code.

Actions under the first or second paragraph shall be brought by the person who has been the subject of the unlawful violation. Such an action may be brought also in connection with a criminal action referred to in [Articles 3](#) or [4](#).

1. This Act enters into force on July 1, 1990.

2. This Act repeals the Act (1931:152) Containing Certain Provisions Against Unfair Competition. The provisions on compensation for damages under that Act continue, however, to apply as regards acts undertaken before the entry into force.