

Blog Post

New Florida Corporate Espionage Act: Additional Protection for Trade Secrets?

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Florida has given employers a new weapon in their trade secret protection arsenal: the Combatting Corporate Espionage in Florida Act. With the Biden Administration's goal of curtailing non-competes and the Supreme Court's narrow reading of a federal computer hacking law, employers are looking for additional ways to protect their sensitive business information. While seemingly targeted at foreign interference, the Corporate Espionage Act may provide additional domestic employer trade secret protections. The act was unanimously passed by the Florida Legislature in June and takes effect October 1, 2021.

In a news release by Florida Governor Ron DeSantis' Office, the Act was endorsed as a protection against "foreign influence and [to] combat corporate espionage, keeping Florida's intellectual property safe within the state's boundaries." Governor Ron DeSantis stated "China is a hostile foreign power, and every Governor has the responsibility to protect their education system, and every other entity within their purview, from the espionage and commercial theft undertaken by the Chinese Communist Party." Governor DeSantis further stated that "numerous countries are working to infiltrate our state and nation."

Interestingly, the Corporate Espionage Act not only provides for severe penalties when a foreign

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government is involved, but it also creates penalties when a “person” engages in theft or trafficking of trade secrets. The Act defines “person” broadly as a “natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.”

Highlights of the Act

The Corporate Espionage Act, among other things:

- Creates new criminal offenses in Florida for anyone who traffics or attempts to traffic trade secrets.
- Increases offense penalties. Anyone who willfully and without authorization steals or attempts to steal a trade secret for their own benefit will now face a third-degree felony with up to five years in prison. Individuals attempting to sell stolen trade secrets will face a second-degree felony, punishable by up to 15 years in prison.
- Severely increases penalties if an individual or entity violates this law on behalf of a foreign government. The felony is reclassified one degree higher and the offense severity ranking is also increased.

Notably, the Corporate Espionage Act also specifically expands the previous definition of “trade secret” in the existing Florida criminal statute regarding theft of trade secrets to include scientific, technical or commercial information “*whether tangible or intangible, and regardless of whether or how it is stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing.*” This change comes in a time where much of employer data is electronically maintained in the cloud, or via other electronic means.

The passage of the Florida Corporate Espionage Act follows closely on the heels of a recent U.S. Supreme Court decision which derailed the ability of

employers to sue employees under the Computer Fraud and Abuse Act (CFAA) for wrongfully taking the employer's sensitive business data. The CFAA imposes both civil and criminal liability on anyone who "intentionally accesses a computer without authorization or exceeds authorized access." In a recent decision we blogged about [here](#), the Supreme Court interpreted the "exceeds authorized access" language as only applying to users who access a computer, or areas of a computer system, they have not been authorized to access. The Court rejected the argument that an employee violated the Act by using his/her authorized access for unauthorized purposes. The decision removed the CFAA as a potential tool for employers to protect their trade secrets from disloyal employees.

In a more recent setback to trade secret protections, President Biden's July 9 Executive Order "encourage[d]" the Chair of the Federal Trade Commission to use rule-making to "curtail the unfair use of non-compete clauses and other agreements that may unfairly limit worker mobility." As we have [previously noted](#) a few states already ban non-competes, and a dozen others restrict their use with low wage workers. While most states currently allow restrictive covenants to protect trade secrets and customer relationships, outright bans on working for a competitor are generally not favored.

How a new federal rule limiting the use of non-competes would impact the current patchwork of state laws governing non-competes is unclear. But if such a federal rule ever passes, state laws like Florida's new Corporate Espionage Act may offer additional options to employers seeking to protect their valuable trade secrets. Not only does the Florida Corporate Espionage Act impose tougher criminal penalties for theft and trafficking of trade secrets, it also creates a civil cause of action on behalf of the "person who owns a trade secret that was unlawfully obtained or used." The Florida Corporate Espionage Act provides for an action "to enjoin the continued improper use of such trade

secret, and a court may require affirmative actions to protect the trade secret.” When equitable remedies are inadequate, the court may also require the payment of a “reasonable royalty” for the continued use of the trade secret.

For help with protecting your trade secrets or other workplace issues, contact your Akerman lawyer.

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