



ALERT  
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## Massachusetts Act Dramatically Changes the Business Landscape

***Massachusetts just passed an economic development bill that will significantly impact Massachusetts businesses. The three most important changes relate to noncompetes, trade secrets, and patent infringement claims.***

### Changes to Noncompetes

The law imposes new requirements on noncompetes:

- Noncompete agreements must be in writing;
- Offerees must receive the noncompete by the earlier of any formal offer or 10 days before employment starts;
- New noncompetes for existing employees require actual consideration;
- Hourly employees, minors, and employees terminated without cause cannot be held to a noncompete;
- No noncompete can extend beyond a year; and
- Employers enforcing noncompetes must pay "garden leave" (half the employee's salary) or negotiate other compensation.

### New Trade Secrets Law

The new Massachusetts trade secrets law extends the definition of trade secrets to "specified or specifiable" matter that includes business strategies, customer lists, inventions, and various kinds of data.

Trade secrets must also provide an "economic *advantage*," as compared to other states that require economic *value*. And the law now requires more extensive reasonable efforts "to protect the acquisition, disclosure or use of such information without the consent of the person properly asserting rights therein ... including, but not limited to, reasonable notice."

### Bad Faith Assertions of Patent Infringement

Finally, Massachusetts now has a new cause of action, "chapter 93L," to protect against bad faith assertions of patent infringement. Chapter 93L applies to demand letters to a company or its customers, threats of litigation, or assertions that a company infringed a patent or must obtain a license.

A plaintiff may obtain equitable relief, actual damages, costs and fees, and \$50,000 in exemplary damages or treble damages, whichever is greater. A chapter 93L defendant may also recover costs and fees if the action was not well founded in fact or warranted by law.

Together, these three provisions may greatly impact the way companies do business in Massachusetts. Employment agreements in particular may require substantial attention in order to preserve noncompete protections.



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