**ANNOTATIONS AND COMMENTS**

**Private Right of Action**. *See* 18 U.S.C. § 1836(b)(1).

 **Owner**. The Defend Trade Secrets Act of 2016 defines “owner” as “the person or entity in whom or in which rightful legal or equitable title to, or license in, the trade secret is reposed.” 18 U.S.C. § 1839(4). The court will need to give an appropriate instruction if the plaintiff claims a right to the trade secret other than through legal title.

**Definition of Trade Secret**. Section 4 of the Defend Trade Secrets Act states that “trade secret ha[s] the meaning[] given . . . in section 1839 of title 18, United States Code,” which defines trade secret as follows:

all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if--

**(A)** the owner thereof has taken reasonable measures to keep such information secret; and

**(B)** the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information;

18 U.S.C. § 1839(3). The legislative history to the Defend Trade Secrets Act provides that the “definition of a trade secret [is not] meaningfully different from the scope of that definition as understood by courts in states that have adopted the [Uniform Trade Secrets Act].” S. Rep. No. 114-220, at 10 (2016). The legislative history also notes that a trade secret consists of three parts: “(1) information that is non-public; (2) the reasonable measure taken to protect that information; and (3) the fact that the information derives independent economic value from not being publicly known.” H.R. Rep. No. 114-529, at 2 (2016).

**Interstate Commerce**. *See* 18 U.S.C. § 1836(b)(1). The legislative history notes that the “jurisdictional nexus to interstate or foreign commerce is identical to the existing language required for Federal jurisdiction over the criminal theft of a trade secret under § 1832(a).” S. Rep. No. 114-220, at 5 (2016).

**Misappropriation**. *See* 18 U.S.C. § 1839(5).

**Improper Means**. *See* 18 U.S.C. § 1839(6).

**Consent**. *See* 18 U.S.C. § 1839(5).