

By: Carona
(Elkins, Button, Reynolds)

S.B. No. 953

A BILL TO BE ENTITLED

AN ACT

relating to the adoption of the Uniform Trade Secrets Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 134A to read as follows:

CHAPTER 134A. TRADE SECRETS

Sec. 134A.001. SHORT TITLE. This chapter may be cited as the Texas Uniform Trade Secrets Act.

Sec. 134A.002. DEFINITIONS. In this chapter:

(1) "Claimant" means a party seeking to recover damages under this chapter, including a plaintiff, counterclaimant, cross-claimant, or third-party plaintiff. In an action in which a party seeks recovery of damages under this chapter on behalf of another person, "claimant" includes both that other person and the party seeking recovery of damages.

(2) "Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, to limit use, or to prohibit discovery of a trade secret, or espionage through electronic or other means.

(3) "Misappropriation" means:

(A) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(B) disclosure or use of a trade secret of

1 another without express or implied consent by a person who:

2 (i) used improper means to acquire
3 knowledge of the trade secret;

4 (ii) at the time of disclosure or use, knew
5 or had reason to know that the person's knowledge of the trade
6 secret was:

7 (a) derived from or through a person
8 who had utilized improper means to acquire it;

9 (b) acquired under circumstances
10 giving rise to a duty to maintain its secrecy or limit its use; or

11 (c) derived from or through a person
12 who owed a duty to the person seeking relief to maintain its secrecy
13 or limit its use; or

14 (iii) before a material change of the
15 person's position, knew or had reason to know that it was a trade
16 secret and that knowledge of it had been acquired by accident or
17 mistake.

18 (4) "Proper means" means discovery by independent
19 development, reverse engineering unless prohibited, or any other
20 means that is not improper.

21 (5) "Reverse engineering" means the process of
22 studying, analyzing, or disassembling a product or device to
23 discover its design, structure, construction, or source code
24 provided that the product or device was acquired lawfully or from a
25 person having the legal right to convey it.

26 (6) "Trade secret" means information, including a
27 formula, pattern, compilation, program, device, method, technique,

1 process, financial data, or list of actual or potential customers
2 or suppliers, that:

3 (A) derives independent economic value, actual
4 or potential, from not being generally known to, and not being
5 readily ascertainable by proper means by, other persons who can
6 obtain economic value from its disclosure or use; and

7 (B) is the subject of efforts that are reasonable
8 under the circumstances to maintain its secrecy.

9 Sec. 134A.003. INJUNCTIVE RELIEF. (a) Actual or
10 threatened misappropriation may be enjoined. On application to the
11 court, an injunction shall be terminated when the trade secret has
12 ceased to exist, but the injunction may be continued for an
13 additional reasonable period of time in order to eliminate
14 commercial advantage that otherwise would be derived from the
15 misappropriation.

16 (b) In exceptional circumstances, an injunction may
17 condition future use upon payment of a reasonable royalty for no
18 longer than the period of time for which use could have been
19 prohibited. Exceptional circumstances include a material and
20 prejudicial change of position before acquiring knowledge or reason
21 to know of misappropriation that renders a prohibitive injunction
22 inequitable.

23 (c) In appropriate circumstances, affirmative acts to
24 protect a trade secret may be compelled by court order.

25 Sec. 134A.004. DAMAGES. (a) In addition to or in lieu of
26 injunctive relief, a claimant is entitled to recover damages for
27 misappropriation. Damages can include both the actual loss caused

1 by misappropriation and the unjust enrichment caused by
2 misappropriation that is not taken into account in computing actual
3 loss. In lieu of damages measured by any other methods, the damages
4 caused by misappropriation may be measured by imposition of
5 liability for a reasonable royalty for a misappropriator's
6 unauthorized disclosure or use of a trade secret.

7 (b) If wilful and malicious misappropriation is proven by
8 clear and convincing evidence, the fact finder may award exemplary
9 damages in an amount not exceeding twice any award made under
10 Subsection (a).

11 Sec. 134A.005. ATTORNEY'S FEES. The court may award
12 reasonable attorney's fees to the prevailing party if:

- 13 (1) a claim of misappropriation is made in bad faith;
14 (2) a motion to terminate an injunction is made or
15 resisted in bad faith; or
16 (3) wilful and malicious misappropriation exists.

17 Sec. 134A.006. PRESERVATION OF SECRECY. In an action under
18 this chapter, a court shall preserve the secrecy of an alleged trade
19 secret by reasonable means. There is a presumption in favor of
20 granting protective orders to preserve the secrecy of trade
21 secrets. Protective orders may include provisions limiting access
22 to confidential information to only the attorneys and their
23 experts, holding in camera hearings, sealing the records of the
24 action, and ordering any person involved in the litigation not to
25 disclose an alleged trade secret without prior court approval.

26 Sec. 134A.007. EFFECT ON OTHER LAW. (a) Except as
27 provided by Subsection (b), this chapter displaces conflicting

1 tort, restitutionary, and other law of this state providing civil
2 remedies for misappropriation of a trade secret.

3 (b) This chapter does not affect:

4 (1) contractual remedies, whether or not based upon
5 misappropriation of a trade secret;

6 (2) other civil remedies that are not based upon
7 misappropriation of a trade secret; or

8 (3) criminal remedies, whether or not based upon
9 misappropriation of a trade secret.

10 (c) To the extent that this chapter conflicts with the Texas
11 Rules of Civil Procedure, this chapter controls. Notwithstanding
12 Section 22.004, Government Code, the supreme court may not amend or
13 adopt rules in conflict with this chapter.

14 (d) This chapter does not affect the disclosure of public
15 information by a governmental body under Chapter 552, Government
16 Code.

17 Sec. 134A.008. UNIFORMITY OF APPLICATION AND CONSTRUCTION.
18 This chapter shall be applied and construed to effectuate its
19 general purpose to make uniform the law with respect to the subject
20 of this chapter among states enacting it.

21 SECTION 2. Subdivision (2), Section 134.002, Civil Practice
22 and Remedies Code, is amended to read as follows:

23 (2) "Theft" means unlawfully appropriating property
24 or unlawfully obtaining services as described by Section 31.03,
25 31.04, [~~31.05~~] 31.06, 31.07, 31.11, 31.12, 31.13, or 31.14, Penal
26 Code.

27 SECTION 3. The change in law made by this Act applies to the

1 misappropriation of a trade secret made on or after the effective
2 date of this Act. A misappropriation of a trade secret made before
3 and a continuing misappropriation beginning before the effective
4 date of this Act are governed by the law in effect immediately
5 before the effective date of this Act, and that law is continued in
6 effect for that purpose.

7 SECTION 4. This Act takes effect September 1, 2013.