

By: Hughes

S.B. No. 1945

A BILL TO BE ENTITLED

AN ACT

relating to the Texas Uniform Trade Secrets Act.

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

SECTION 1. Section 134A.002, Civil Practice and Remedies Code, is amended by adding Subdivisions (1-a), (3-a), and (7) and amending Subdivisions (3), (4), and (6) to read as follows:

(1-a) "Clear and convincing" means the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.

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

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

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

(a) derived from or through a person who used [~~had utilized~~] improper means to acquire the trade secret [~~it~~];

1 (b) acquired under circumstances
2 giving rise to a duty to maintain the [its] secrecy of or limit the
3 [its] use of the trade secret; or

4 (c) derived from or through a person
5 who owed a duty to the person seeking relief to maintain the [its]
6 secrecy of or limit the [its] use of the trade secret; or

7 (iii) before a material change of the
8 position of the person [person's position], knew or had reason to
9 know that the trade secret [it] was a trade secret and that
10 knowledge of the trade secret [it] had been acquired by accident or
11 mistake.

12 (3-a) "Owner" means, with respect to a trade secret,
13 the person or entity in whom or in which rightful, legal, or
14 equitable title to, or the right to enforce rights in, the trade
15 secret is reposed.

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

19 (6) "Trade secret" means all forms and types of
20 information, including business, scientific, technical, economic,
21 or engineering information, and any [a] formula, design, prototype,
22 pattern, plan, compilation, program device, program, code, device,
23 method, technique, process, procedure, financial data, or list of
24 actual or potential customers or suppliers, whether tangible or
25 intangible and whether or how stored, compiled, or memorialized
26 physically, electronically, graphically, photographically, or in
27 writing if [that]:

1 (A) the owner of the trade secret has taken
2 reasonable measures under the circumstances to keep the information
3 secret; and

4 (B) the information derives independent economic
5 value, actual or potential, from not being generally known to, and
6 not being readily ascertainable through ~~[by]~~ proper means by,
7 another person ~~[other persons]~~ who can obtain economic value from
8 the ~~[its]~~ disclosure or use of the information ~~;~~ and

9 ~~[(B) is the subject of efforts that are~~
10 ~~reasonable under the circumstances to maintain its secrecy].~~

11 (7) "Willful and malicious misappropriation" means
12 intentional misappropriation resulting from the conscious
13 disregard of the rights of the owner of the trade secret.

14 SECTION 2. Section 134A.003, Civil Practice and Remedies
15 Code, is amended by amending Subsection (a) and adding Subsection
16 (a-1) to read as follows:

17 (a) Actual or threatened misappropriation may be enjoined
18 if the order does not prohibit a person from using general
19 knowledge, skill, and experience that person acquired during
20 employment.

21 (a-1) On application to the court, an injunction shall be
22 terminated when the trade secret has ceased to exist, but the
23 injunction may be continued for an additional reasonable period of
24 time in order to eliminate commercial advantage that otherwise
25 would be derived from the misappropriation.

26 SECTION 3. Section 134A.004(b), Civil Practice and Remedies
27 Code, is amended to read as follows:

1 (b) If willful [~~wilful~~] and malicious misappropriation is
2 proven by clear and convincing evidence, the fact finder may award
3 exemplary damages in an amount not exceeding twice any award made
4 under Subsection (a).

5 SECTION 4. Section 134A.005, Civil Practice and Remedies
6 Code, is amended to read as follows:

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

9 (1) a claim of misappropriation is made in bad faith;

10 (2) a motion to terminate an injunction is made or
11 resisted in bad faith; or

12 (3) willful [~~wilful~~] and malicious misappropriation
13 exists.

14 SECTION 5. Section 134A.006, Civil Practice and Remedies
15 Code, is amended to read as follows:

16 Sec. 134A.006. PRESERVATION OF SECRECY. (a) In an action
17 under this chapter, a court shall preserve the secrecy of an alleged
18 trade secret by reasonable means. Notwithstanding any other law,
19 including Rule 76a, Texas Rules of Civil Procedure, the court may
20 seal court records. There is a presumption in favor of granting
21 protective orders to preserve the secrecy of trade secrets.
22 Protective orders may include provisions limiting access to
23 confidential information to only the attorneys and their experts,
24 holding in camera hearings, sealing the records of the action, and
25 ordering any person involved in the litigation not to disclose an
26 alleged trade secret without prior court approval.

27 (b) In an action under this chapter, a presumption exists

1 that a party is allowed to participate and assist counsel in the
2 presentation of the party's case. At any stage of the action, the
3 court may exclude a party and the party's representative or limit a
4 party's access to the alleged trade secret of another party if other
5 countervailing interests overcome the presumption. In making this
6 determination, the court must conduct a balancing test that
7 considers:

8 (1) the value of an owner's alleged trade secret;

9 (2) the degree of competitive harm an owner would
10 suffer from the dissemination of the owner's alleged trade secret
11 to the other party;

12 (3) whether the owner is alleging that the other party
13 is already in possession of the alleged trade secret;

14 (4) whether a party's representative acts as a
15 competitive decision maker;

16 (5) the degree to which a party's defense would be
17 impaired by limiting that party's access to the alleged trade
18 secret;

19 (6) whether a party or a party's representative
20 possesses specialized expertise that would not be available to a
21 party's outside expert; and

22 (7) the stage of the action.

23 SECTION 6. Chapter 134A, Civil Practice and Remedies Code,
24 as amended by this Act, applies only to an action that commences on
25 or after the effective date of this Act. An action that commences
26 before the effective date of this Act is governed by the law
27 applicable to the action immediately before the effective date of

1 this Act, and that law is continued in effect for that purpose.

2 SECTION 7. This Act takes effect September 1, 2017.