By:  Vasut H.B. No. 5299

A BILL TO BE ENTITLED

AN ACT

relating to the sealing of certain documents alleged to contain trade secrets in cases under the Texas Uniform Trade Secrets Act.

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

SECTION 1.  Section 134A.006, Civil Practice and Remedies Code, is amended by amending Subsection (a) and adding Subsections (a-1), (a-2), (a-3), (a-4), (a-5), (a-6), (a-7), (a-8), and (a-9) to read as follows:

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

(a-1)  This section controls over any rule adopted by the supreme court pursuant to Section 22.010, Government Code.

(a-2)  In an action under this chapter, any party seeking to file a document the party knows another party, or third party, alleges contains the other party's, or a third party's, trade secrets shall file the document under seal pursuant to the procedure set forth in Subsection (a-2)(2).

(a-3)  In an action under this chapter, a party seeking to seal a document alleged to contain a trade secret shall comply with this subsection.

(1)  A party seeking to seal a document containing its own alleged trade secret shall:

(A)  file with the trial court and the supreme court a notice of sealing and an affidavit generally describing the type of information contained in the document, providing contact information for subsequent notice of any motion to unseal the document, and setting forth the factual basis for the party's contention that the information constitutes a trade secret;

(B)  serve a copy of the notice, affidavit, and document to be sealed on all other parties to the case; and,

(C)  deliver a copy of the document to be sealed to the trial court in a sealed envelope labeled to identify the notice of sealing to which the document corresponds.

(2)  A party filing a document it knows another party, or third party, alleges to contain its trade secrets shall:

(A)  file with the trial court and the supreme court a notice of sealing and a statement generally describing the type of information contained in the document and identifying the person or entity who contends the document contains its trade secret;

(B)  serve a copy of the notice, affidavit, and document to be sealed on all other parties to the case, together with any third party who contends the document contains its trade secrets, as applicable; and,

(C)  deliver a copy of the document to be sealed to the trial court in a sealed envelope labeled to identify the notice of sealing to which the document corresponds.

(3)  Within fourteen (14) days of receiving notice under Subsection (a-3)(2), the party or third party who contends a document contains its trade secret must file with the trial court and supreme court in the same numbered-cause an affidavit generally describing the type of information contained in the document, providing contact information for subsequent notice of any motion to unseal the document, and setting forth the factual basis for the party's or third party's contention that the information constitutes a trade secret. If no such affidavit is timely filed, the document shall be deemed filed publicly until such time as an affidavit is filed.

(a-4)  A document shall be deemed temporarily filed under seal for fourteen (14) days once the trial court receives the notice, statement, and sealed document pursuant to Subsection (a-3)(2).

(a-5)  A document shall be deemed permanently filed under seal once the trial court receives the notice, affidavit, and sealed document pursuant to either:

(1)  Subsection (a-3)(1); or

(2)  Subsections (a-3)(2) and (a-3)(3).

(a-6)  Any person may intervene as a matter of right at any time before or after judgment in a case under this chapter to seal or unseal court records. If a person contends its trade secrets were filed of public record, it may seal such records by complying with Subsection (a-3)(1) as if the person was a party to the action.

(a-7)  The trial court retains continuing jurisdiction to seal or unseal a document filed in a case under this chapter.

(a-8)  Any person may move to unseal any document filed under seal pursuant to this section. Such motion, and notice of hearing, shall be served on the parties to the case in which the document was filed, and the party or third-party who submitted any affidavit under Subsection (a-3)(3) or Subsection (a-6), by certified mail, return receipt requested at least fourteen (14) days prior to any hearing on the motion in the trial court. The trial court shall grant the motion and unseal the document in whole, or in part, if the party, third party, or person contending the document contains trade secrets fails to demonstrate by a preponderance of the evidence that the document, or a part thereof, contains a trade secret. If the trial court determines that only a part of a document should be unsealed, the trial court shall redact all information which contains a trade secret before providing the document to the movant.

(a-9)  An order granting or denying a motion to unseal a record under Subsection (a-6) shall be deemed to be severed from the case and a final judgment which may be appealed by any party or intervenor who participated in the hearing preceding issuance of such order.

SECTION 2.  This Act applies to the sealing of any court record after the effective date of this Act. Any document filed under seal prior to the date of this Act shall be governed by the law in effect at the time of sealing.

SECTION 3.  This Act takes effect September 1, 2023.