

LEGISLATIVE BILL 337A

Approved by the Governor March 28, 1988

Introduced by Pappas, 42; Johanns, 27; Wesely, 26

AN ACT relating to trade secrets; to adopt the Trade Secrets Act.

Be it enacted by the people of the State of Nebraska,

Section 1. This act shall be known and may be cited as the Trade Secrets Act.

Sec. 2. As used in the Trade Secrets Act, unless the context otherwise requires:

(1) Improper means shall mean theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means;

(2) Misappropriation shall mean:

(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 the disclosure or use, knew or had reason to know that his or her knowledge of the trade secret was:

(A) Derived from or through a person who had utilized improper means to acquire it;

(B) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(C) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(iii) Before a material change of his or her position, knew or had reason to know that the information was a trade secret and that knowledge of it had been acquired by accident or mistake;

(3) Person shall mean a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity; and

(4) Trade secret shall mean information, including, but not limited to, a drawing, formula,

pattern, compilation, program, device, method, technique, code, or process that:

(a) Derives independent economic value, actual or potential, from not being known to, and not being ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Sec. 3. (1) Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(2) In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances shall include, but are not limited to, a material and prejudicial change of position prior to acquiring knowledge or having reason to know of the misappropriation that renders a prohibitive injunction inequitable.

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

Sec. 4. Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or having reason to know of the misappropriation renders a monetary recovery inequitable, a complainant shall be entitled to recover damages for misappropriation. Damages may include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

Sec. 5. In an action under the Trade Secrets Act, the court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include, but not be limited to, granting protective orders in connection with discovery proceedings and ordering nondisclosure of the alleged trade secret by the parties' attorneys, witnesses, or experts. The

disclosure or publication of a trade secret in a court proceeding or as a result thereof shall not constitute an abandonment of the secret.

Sec. 6. An action for misappropriation shall be brought within four years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For purposes of this section, a continuing misappropriation shall constitute a single claim.

Sec. 7. The Trade Secrets Act shall not apply to any misappropriation occurring prior to the effective date of this act. With respect to a continuing misappropriation that began prior to the effective date of this act, such act also shall not apply to the continuing misappropriation that occurs after such date.