

/\* BBS LEGAL GUIDE COMMENTARY: The text of the 1985 Amended Uniform Trade Secrets Act follows, with comments. Please bear in mind that this is the UNIFORM TEXT, and that each state has made changes to the uniform text. This text is quite important for employer/employee relations since it defines protection of trade secrets in the absence of contract terms and provides the sole source of criminal penalties for unlawful breach of trade secrets. \*/

## SECTION 1

As used in this [Act], unless the context requires otherwise:

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

/\* The list of "improper means" is not all-inclusive. \*/

(2) "Misappropriation" means:

(i) 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

(ii) disclosure or use of a trade secret of another without express or implied consent by a person who

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

(B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was

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

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

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

(C) before a material change of his [or her] position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

(3) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, government subdivision or agency, or any other legal or commercial entity.

/\* Note that the government is supposed to keep trade secrets secret. However, don't take this too seriously since in many

states you won't be able to sue to enforce your supposed right. There are many hazards when dealing with the government as a customer for software or computer services, including "freedom of information" acts that may make a contract supposedly keeping your code secret a nullity and useless. \*/

(4)"Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique or process, that:

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

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

/\* Trade secrets under this definition include confidential information not based on inventions or engineering such as customer or prospect lists, or other customer information. \*/

## SECTION 2. INJUNCTIVE RELIEF

(a) 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.

(b) 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 include, but are not limited to, a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.

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

## 3. DAMAGES

(a) Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant is entitled to recover damages for misappropriation. Damages can include both the actual loss caused by misappropriation and the unjust enrichment caused by 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.

(b) if willful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).

#### 4. ATTORNEY'S FEES

If (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.

#### 5. PRESERVATION OF SECRECY

In an action under this [act], a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

#### 6. STATUTE OF LIMITATIONS.

An action for misappropriation must be brought within three years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this section, a continuing misappropriation constitutes a single claim.

#### 7. EFFECT ON OTHER LAW.

(a) Except as provided in subsection (b), this [act] displaces conflicting tort, restitutionary, and other law of this state providing civil remedies for misappropriation of a trade secret.

(b) this act does not affect:

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

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

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

#### 8. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

#### 9. SHORT TITLE.

This act may be cited as the Uniform Trade Secrets Act.

## 10. SEVERABILITY.

If any provisions of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given without the invalid provision or application, and to this end the provisions of this act are severable.

## 11. TIME OF TAKING EFFECT.

This act takes effect on \_\_\_\_\_, and does not apply to misappropriation occurring prior to the effective date. With respect to continuing misappropriation that began prior to the effective date, the act also does not apply to the continuing misappropriation that occurs after the effective date.

## 12. REPEAL.

The following acts and parts of acts are repealed

- (1)
- (2)
- (3)

## LIST OF STATES ADOPTING:

ALABAMA  
ALASKA  
ARIZONA  
ARKANSAS  
CALIFORNIA  
COLORADO  
CONNECTICUT  
DELAWARE  
DISTRICT OF COLUMBIA  
FLORIDA  
HAWAII  
IDAHO  
ILLINOIS  
INDIANA  
IOWA  
KANSAS  
KENTUCKY  
LOUISIANA  
MAINE  
MARYLAND  
MINNESOTA  
MISSISSIPPI  
MONTANA

NEBRASKA  
NEVADA  
NEW HAMPSHIRE  
NEW MEXICO  
NORTH DAKOTA  
OKLAHOMA  
OREGON  
RHODE ISLAND  
SOUTH DAKOTA  
UTAH  
VIRGINIA  
WASHINGTON  
WEST VIRGINIA  
WISCONSIN