# HOUSE BILL NO. 43

# INTRODUCED BY HARPER

IN THE HOUSE

January 7, 1985	Introduced and referred to Committee on Business and Labor.
January 15, 1985	Committee recommend bill do pass as amended. Report adopted.
January 16, 1985	Bill printed and placed on members' desks.
January 18, 1985	Second reading, do pass.
January 19, 1985	Considered correctly engrossed.
January 21, 1985	Third reading, passed. Transmitted to Senate.
IN TH	E SENATE
January 22, 1985	Introduced and referred to Committee on Business and Industry.
March 5, 1985	Committee recommend bill be concurred in. Report adopted.
March 6, 1985	Second reading, concurred in.
March 8, 1985	Third reading, concurred in. Ayes, 48; Noes, 0.
	Returned to House.
IN TH	E HOUSE
March 9, 1985	Received from Senate.
	Sent to enrolling.
	Reported correctly enrolled.

LC 0246/01

ı	HOUSE BILL NO. 43
2	INTRODUCED BY HARPER
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3 4	A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE UNIFORM
5	TRADE SECRETS ACT; DEFINING "TRADE SECRET"; AND PROVIDING
6	CIVIL REMEDIES FOR MISAPPROPRIATION OF TRADE SECRETS."
7	
8	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
9	Section 1. Short title. [This act] may be cited as the
10	Uniform Trade Secrets Act.
11	Section 2. Definitions. As used in [this act], unless
12	the context requires otherwise the following definitions
13	apply:
14	<pre>(1) "Improper means" includes theft, bribery,</pre>
15	misrepresentation, breach or inducement of a breach of a
16	duty to maintain secrecy, or espionage through electronic or
17	other means;
18	(2) "Misappropriation" means:
19	(a) acquisition of a trade secret of another by a
20	person who knows or has reason to know that the trade secret
20	was acquired by improper means; or
	(b) disclosure or use of a trade secret of another
22	without express or implied consent by a person who:
23	(i) used improper means to acquire knowledge of the
24	
25	trade secret;
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1	(ii) at the time of disclosure or use, knew or had			
2	reason to know that his knowledge of the trade secret was:			
3	(A) derived from or through a person who had utilized			
4	improper means to acquire it;			
5	(B) acquired under circumstances giving rise to a outy			
6	to maintain its secrecy or limit its use; or			
7	(C) derived from or through a person who owed (a $\lim_{N \to \infty}  u  < y$			
8	to the person seeking relief to maintain its secrecy or			
9	limit its use; or			
10	(iii) before a material change of his position, knew or			
11	had reason to know that it was a trade secret and that			
12	knowledge of it had been acquired by accident or mistake.			
13	(3) "Person" means a natural person, corporation,			
14	business trust, estate, trust, partnership, association,			
15	joint venture, government, governmental subdivision or			
16	agency, or any other legal or commercial entity.			
17	(4) "Trade secret":			
18	(a) means information, including a formula, pattern,			
19	compilation, program, device, method, technique, or process,			
20	that:			
21	(i) derives independent economic value, actual or			
22	potential, from not being generally known to, and not being			
23	readily ascertainable by proper means by, other persons who			
24	can obtain economic value from its disclosure or use; and			
25	(ii) is the subject of efforts that are reasonable			
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1 under the circumstances to maintain its secrecy; and

2

(b) includes computer software.

3 Section 3. Injunctive relief -- royalty. (1) Actual 4 or threatened misappropriation may be enjoined. Upon 5 application to the court, an injunction must be terminated when the trade secret has ceased to exist, but the 6 injunction may be continued for an additional reasonable 7 8 period of time in order to eliminate commercial advantage 9 that otherwise would be derived from the misappropriation. (2) If the court determines that it would be 10 unreasonable to prohibit future use, an injunction may 11 condition future use upon payment of a reasonable royalty 12 for no longer than the period of time the use could have 13 14 been prohibited.

15 (3) In appropriate circumstances, affirmative acts to16 protect a trade secret may be compelled by court order.

17 Section 4. Damages. (1) In addition to or in lieu of 18 injunctive relief, a complainant may recover damages for the 19 actual loss caused by misappropriation. A complainant also 20 may recover for the unjust enrichment caused by 21 misappropriation that is not taken into account in computing 22 damages for actual loss.

(2) If willful and malicious misappropriation exists,
the court may award exemplary damages in an amount not
exceeding twice any award made under subsection (1).

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1 Section 5. Costs and attorney fees. If a claim of 2 misappropriation is made in bad faith, a motion to terminate 3 an injunction is made or resisted in bad faith, or willful 4 and malicious misappropriation exists, the court may award 5 reasonable costs and attorney fees to the prevailing party. 6 Section 6. Preservation of secret. In an action under 7 (this act), a court shall preserve the secrecy of an alleged 8 trade secret by reasonable means, which may include granting 9 protective orders in connection with discovery proceedings, 10 holding in-camera hearings, sealing the records of the 11 action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court 12 13 approval.

14 Section 7. Statute of limitations. An action for 15 misappropriation must be brought within 3 years after the 16 misappropriation is discovered or by the exercise of 17 reasonable diligence should have been discovered. For the 18 purposes of this section, a continuing misappropriation 19 constitutes a single claim.

20 Section 8. Effect on other law. (1) [This act] 21 displaces conflicting tort, restitutionary, and other law of 22 this state pertaining to civil liability for 23 misappropriation of a trade secret.

24 (2) [This act] does not affect:

25

(a) contractual or other civil liability or relief

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1 that is not based upon misappropriation of a trade secret; 2 or

3 (b) criminal liability for misappropriation of a trade4 secret.

Section 9. Uniformity of application and construction.
[This act] shall be applied and construed to effectuate its
general purpose to make the law uniform with respect to the
subject of [this act] among states enacting it.

9 Section 10. Severability. If a part of this act is 10 invalid, all valid parts that are severable from the invalid 11 part remain in effect. If a part of this act is invalid in 12 one or more of its applications, the part remains in effect 13 in all valid applications that are severable from the 14 invalid applications.

-End-

APPROVED BY COMM. ON BUSINESS AND LABOR

HOUSE BILL NO. 43 1 (ii) at the time of disclosure or use, knew or had 1 2 INTRODUCED BY HARPER 2 reason to know that his knowledge of the trade secret was: 3 3 (A) derived from or through a person who had utilized A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE UNIFORM 4 improper means to acquire it; 5 TRADE SECRETS ACT; DEFINING "TRADE SECRET"; AND PROVIDING (B) acquired under circumstances giving rise to a duty 5 CIVIL REMEDIES FOR MISAPPROPRIATION OF TRADE SECRETS." 6 to maintain its secrecy or limit its use; or 6 7 (C) derived from or through a person who owed a duty 7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 8 8 to the person seeking relief to maintain its secrecy or Section 1. Short title. [This act] may be cited as the 9 9 limit its use: or (iii) before a material change of his position, knew or 10 Uniform Trade Secrets Act. 10 11 Section 2. Definitions. As used in [this act], unless had reason to know that it was a trade secret and that 11 the context requires otherwise the following definitions 12 12 knowledge of it had been acquired by accident or mistake. 13 (3) "Person" means a natural person, corporation, apply: 13 14 (1) "Improper means" includes theft, bribery, 14 business trust, estate, trust, partnership, association, 15 misrepresentation, breach or inducement of a breach of a joint venture, government, governmental subdivision or 15 agency, or any other legal or commercial entity. 16 duty to maintain secrecy, or espionage through electronic or 16 17 other means: (4) "Trade secret": 17 18 (2) "Misappropriation" means: tat means information OR COMPUTER SOFTWARE, including 18 19 (a) acquisition of a trade secret of another by a a formula, pattern, compilation, program, device, method, 19 20 person who knows or has reason to know that the trade secret 20 technique, or process, that: 21 was acquired by improper means; or tit(A) derives independent economic value, actual or 21 (b) disclosure or use of a trade secret of another 22 potential, from not being generally known to, and not being 22 23 without express or implied consent by a person who: 23 readily ascertainable by proper means by, other persons who 24 can obtain economic value from its disclosure or use; and (i) used improper means to acquire knowledge of the 24 (ii) (B) is the subject of efforts that are reasonable 25 trade secret; 25



-2- HB 43 SECOND READING

1 under the circumstances to maintain its secrecy;-and

2

## (b)--includes-computer-software.

Section 3. Injunctive relief -- royalty. (1) Actual 3 threatened misappropriation may be enjoined. Upon 4 or application to the court, an injunction must be terminated 5 6 when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable 7 8 period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation. 9 (2) If the court determines that it would be 10 unreasonable to prohibit future use, an injunction may 11 condition future use upon payment of a reasonable royalty 12 13 for no longer than the period of time the use could have been prohibited. 14

15 (3) In appropriate circumstances, affirmative acts to16 protect a trade secret may be compelled by court order.

17 Section 4. Damages. (1) In addition to or in lieu of 18 injunctive relief, a complainant may recover damages for the 19 actual loss caused by misappropriation. A complainant also 20 may recover for the unjust enrichment caused by 21 misappropriation that is not taken into account in computing 22 damages for actual loss.

(2) If willful and malicious misappropriation exists,
 the court may award exemplary damages in--an--amount--not
 exceeding-twice-any-award-made-under-subsection-(1).

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1 Section 5. Costs and attorney fees. If a claim of 2 misappropriation is made in bad faith, a motion to terminate 3 an injunction is made or resisted in bad faith, or willful 4 and malicious misappropriation exists, the court may award 5 reasonable costs and attorney fees to the prevailing party. 6 Section 6. Preservation of secret. In an action under 7 [this act], a court shall preserve the secrecy of an alleged 8 trade secret by reasonable means, which may include granting 9 protective orders in connection with discovery proceedings, 0 holding in-camera hearings, sealing the records of the 11 action, and ordering any person involved in the litigation 12 not to disclose an alleged trade secret without prior court 13 approval.

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Montana Legislative Council

## HB 0043/02

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THIRD READING

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REFERENCE BILL

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