

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 THE 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 THE HOUSE

March 9, 1985	Received from Senate. Sent to enrolling. Reported correctly enrolled.
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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."

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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 (1) "Improper means" includes theft, bribery,
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
21 was acquired by improper means; or

22 (b) disclosure or use of a trade secret of another
23 without express or implied consent by a person who:

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

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 duty
6 to maintain its secrecy or limit its use; or

7 (C) derived from or through a person who owed a duty
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



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
6 when the trade secret has ceased to exist, but the
7 injunction may be continued for an additional reasonable
8 period of time in order to eliminate commercial advantage
9 that otherwise would be derived from the misappropriation.

10 (2) If the court determines that it would be
11 unreasonable to prohibit future use, an injunction may
12 condition future use upon payment of a reasonable royalty
13 for no longer than the period of time the use could have
14 been prohibited.

15 (3) In appropriate circumstances, affirmative acts to
16 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.

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

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.

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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
12 not to disclose an alleged trade secret without prior court
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

1 that is not based upon misappropriation of a trade secret;
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3 (b) criminal liability for misappropriation of a trade
4 secret.

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

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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
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14 invalid applications.

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APPROVED BY COMM. ON BUSINESS AND LABOR

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 15 misrepresentation, breach or inducement of a breach of a
 16 duty to maintain secrecy, or espionage through electronic or
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 19 (a) acquisition of a trade secret of another by a
 20 person who knows or has reason to know that the trade secret
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 25 trade secret;

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 2 reason to know that his knowledge of the trade secret was:
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 18 ~~(a)~~ means information OR COMPUTER SOFTWARE, including
 19 a formula, pattern, compilation, program, device, method,
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 22 potential, from not being generally known to, and not being
 23 readily ascertainable by proper means by, other persons who
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4 or threatened misappropriation may be enjoined. Upon
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6 when the trade secret has ceased to exist, but the
7 injunction may be continued for an additional reasonable
8 period of time in order to eliminate commercial advantage
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10 (2) If the court determines that it would be
11 unreasonable to prohibit future use, an injunction may
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13 for no longer than the period of time the use could have
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22 damages for actual loss.

23 (2) If willful and malicious misappropriation exists,
24 the court may award exemplary damages ~~in--an--amount--not~~
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2 misappropriation is made in bad faith, a motion to terminate
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