

House BILL NO. 454

2 INTRODUCED BY

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND UPDATING THE UNIFORM TRADE SECRETS
5 ACT; REVISING INJUNCTIVE RELIEF IN EXCEPTIONAL CIRCUMSTANCES; REVISING THE
6 CIRCUMSTANCES FOR THE RECOVERY OF DAMAGES; CLARIFYING THE IMPACT ON OTHER LAW;
7 AMENDING SECTIONS 30-14-403, 30-14-404, AND 30-14-408, MCA; AND PROVIDING AN
8 APPLICABILITY PROVISION."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 **Section 1.** Section 30-14-403, MCA, is amended to read:

13 "**30-14-403. Injunctive relief -- royalty.** (1) Actual or threatened misappropriation may be enjoined.
14 Upon application to the court, an injunction must be terminated when the trade secret has ceased to exist,
15 but the injunction may be continued for an additional reasonable period of time in order to eliminate
16 commercial advantage that otherwise would be derived from the misappropriation.

17 (2) If the court determines that it would be unreasonable to prohibit future use In exceptional
18 circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer
19 than the period of time the for which use could have been prohibited. Exceptional circumstances include
20 but are not limited to a material and prejudicial change of position prior to acquiring knowledge or reason
21 to know of misappropriation that renders a prohibitive injunction inequitable.

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

25 **Section 2.** Section 30-14-404, MCA, is amended to read:

"30-14-404. Damages. (1) ~~In addition to or in lieu of injunctive relief 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 may is entitled to recover damages for the actual loss caused by misappropriation. A complainant also may recover for Damages may include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that~~

1 is not taken into account in computing damages for actual loss. In lieu of damages measured by any other
2 methods, the damages caused by misappropriation may be measured by imposition of liability for a
3 reasonable royalty for a misappropriator's unauthorized use of a trade secret.

4 (2) If willful and malicious misappropriation exists, the court may award exemplary damages."

5

6 **Section 3.** Section 30-14-408, MCA, is amended to read:

7 "30-14-408. Effect on other law. (1) This Except as provided in subsection (2), this part displaces
8 conflicting tort, restitutionary, and other law of this state pertaining to providing civil liability remedies for
9 misappropriation of a trade secret.

10 (2) This part does not affect:

11 (a) contractual ~~or other civil liability or relief that is~~ remedies, whether or not based upon
12 misappropriation of a trade secret; or

13 (b) ~~criminal liability for other civil remedies that are not based upon~~ misappropriation of a trade
14 secret; or

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

16

17 **NEW SECTION. Section 4. Applicability.** With respect to a continuing misappropriation that began
18 prior to [the effective date of this act], [this act] does not apply to the continuing misappropriation that
19 occurs after [the effective date of this act].

20 -END-

1

House BILL NO. 4542 INTRODUCED BY J. Hansen

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND UPDATING THE UNIFORM TRADE SECRETS
5 ACT; REVISING INJUNCTIVE RELIEF IN EXCEPTIONAL CIRCUMSTANCES; REVISING THE
6 CIRCUMSTANCES FOR THE RECOVERY OF DAMAGES; CLARIFYING THE IMPACT ON OTHER LAW;
7 AMENDING SECTIONS 30-14-403, 30-14-404, AND 30-14-408, MCA; AND PROVIDING AN
8 APPLICABILITY PROVISION."

9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11

12 **Section 1.** Section 30-14-403, MCA, is amended to read:

13 **"30-14-403. Injunctive relief -- royalty.** (1) Actual or threatened misappropriation may be enjoined.
14 Upon application to the court, an injunction must be terminated when the trade secret has ceased to exist,
15 but the injunction may be continued for an additional reasonable period of time in order to eliminate
16 commercial advantage that otherwise would be derived from the misappropriation.

17 (2) ~~If the court determines that it would be unreasonable to prohibit future use in exceptional~~
18 ~~circumstances~~, an injunction may condition future use upon payment of a reasonable royalty for no longer
19 than the period of time ~~the for which~~ use could have been prohibited. Exceptional circumstances include
20 but are not limited to a material and prejudicial change of position prior to acquiring knowledge or reason
21 to know of misappropriation that renders a prohibitive injunction inequitable.

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

24

25 **Section 2.** Section 30-14-404, MCA, is amended to read:

26 **"30-14-404. Damages.** (1) ~~In addition to or in lieu of injunctive relief Except to the extent that a~~
27 ~~material and prejudicial change of position prior to acquiring knowledge or reason to know of~~
28 ~~misappropriation renders a monetary recovery inequitable, a complainant may is entitled to recover damages~~
29 ~~for the actual loss caused by misappropriation. A complainant also may recover for Damages may include~~
30 ~~both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that~~

1 is not taken into account in computing ~~damages for~~ actual loss. In lieu of damages measured by any other
2 methods, the damages caused by misappropriation may be measured by imposition of liability for a
3 reasonable royalty for a misappropriator's unauthorized use of a trade secret.

4 (2) If willful and malicious misappropriation exists, the court may award exemplary damages."

5

6 **Section 3.** Section 30-14-408, MCA, is amended to read:

7 "**30-14-408. Effect on other law.** (1) This Except as provided in subsection (2), this part displaces
8 conflicting tort, restitutionary, and other law of this state pertaining to providing civil liability remedies for
9 misappropriation of a trade secret.

10 (2) This part does not affect:

11 (a) ~~contractual or other civil liability or relief that is~~ remedies, whether or not based upon
12 misappropriation of a trade secret; ~~or~~

13 (b) ~~criminal liability for other civil remedies that are not based upon~~ misappropriation of a trade
14 secret; or

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

16

17 **NEW SECTION. Section 4. Applicability.** With respect to a continuing misappropriation that began
18 prior to [the effective date of this act], [this act] does not apply to the continuing misappropriation that
19 occurs after [the effective date of this act].

20

-END-

House BILL NO. 454

INTRODUCED BY

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND UPDATING THE UNIFORM TRADE SECRETS
5 ACT; REVISING INJUNCTIVE RELIEF IN EXCEPTIONAL CIRCUMSTANCES; REVISING THE
6 CIRCUMSTANCES FOR THE RECOVERY OF DAMAGES; CLARIFYING THE IMPACT ON OTHER LAW;
7 AMENDING SECTIONS 30-14-403, 30-14-404, AND 30-14-408, MCA; AND PROVIDING AN
8 APPLICABILITY PROVISION."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-14-403, MCA, is amended to read:

13 **"30-14-403. Injunctive relief -- royalty.** (1) Actual or threatened misappropriation may be enjoined.
14 Upon application to the court, an injunction must be terminated when the trade secret has ceased to exist,
15 but the injunction may be continued for an additional reasonable period of time in order to eliminate
16 commercial advantage that otherwise would be derived from the misappropriation.

17 (2) If the court determines that it would be unreasonable to prohibit future use in exceptional
18 circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer
19 than the period of time the for which use could have been prohibited. Exceptional circumstances include
20 but are not limited to a material and prejudicial change of position prior to acquiring knowledge or reason
21 to know of misappropriation that renders a prohibitive injunction inequitable.

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

"30-14-404. Damages. (1) In addition to or in lieu of injunctive relief 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 may is entitled to recover damages for the actual loss caused by misappropriation. A complainant also may recover for Damages may include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that



1 is not taken into account in computing ~~damages for~~ actual loss. In lieu of damages measured by any other
2 methods, the damages caused by misappropriation may be measured by imposition of liability for a
3 reasonable royalty for a misappropriator's unauthorized use of a trade secret.

4 (2) If willful and malicious misappropriation exists, the court may award exemplary damages."

5

6 **Section 3.** Section 30-14-408, MCA, is amended to read:

7 **"30-14-408. Effect on other law.** (1) ~~This Except as provided in subsection (2), this part displaces~~
8 ~~conflicting tort, restitutionary, and other law of this state pertaining to providing civil liability remedies for~~
9 ~~misappropriation of a trade secret.~~

10 (2) This part does not affect:

11 (a) ~~contractual or other civil liability or relief that is~~ remedies, whether or not based upon
12 misappropriation of a trade secret; or

13 (b) ~~criminal liability for other civil remedies that are not based upon~~ misappropriation of a trade
14 secret; or

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

16
17 **NEW SECTION. Section 4. Applicability.** With respect to a continuing misappropriation that began
18 prior to [the effective date of this act], [this act] does not apply to the continuing misappropriation that
19 occurs after [the effective date of this act].

20 -END-

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11
12 **Section 1.** Section 30-14-403, MCA, is amended to read:
13 **"30-14-403. Injunctive relief -- royalty.** (1) Actual or threatened misappropriation may be enjoined.
14 Upon application to the court, an injunction must be terminated when the trade secret has ceased to exist,
15 but the injunction may be continued for an additional reasonable period of time in order to eliminate
16 commercial advantage that otherwise would be derived from the misappropriation.

17 (2) If the court determines that it would be unreasonable to prohibit future use In exceptional
18 circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer
19 than the period of time the for which use could have been prohibited. Exceptional circumstances include
20 but are not limited to a material and prejudicial change of position prior to acquiring knowledge or reason
21 to know of misappropriation that renders a prohibitive injunction inequitable.

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

25 **Section 2.** Section 30-14-404, MCA, is amended to read:

"30-14-404. Damages. (1) ~~In addition to or in lieu of injunctive relief 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 may is entitled to recover damages for the actual loss caused by misappropriation. A complainant also may recover for Damages may include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that~~

1 is not taken into account in computing damages for actual loss. In lieu of damages measured by any other
2 methods, the damages caused by misappropriation may be measured by imposition of liability for a
3 reasonable royalty for a misappropriator's unauthorized use of a trade secret.

4 (2) If willful and malicious misappropriation exists, the court may award exemplary damages."

5

6 **Section 3.** Section 30-14-408, MCA, is amended to read:

7 "30-14-408. **Effect on other law.** (1) This Except as provided in subsection (2), this part displaces
8 conflicting tort, restitutionary, and other law of this state pertaining to providing civil liability remedies for
9 misappropriation of a trade secret.

10 (2) This part does not affect:

11 (a) contractual ~~or other civil liability or relief that is~~ remedies, whether or not based upon
12 misappropriation of a trade secret; or

13 (b) ~~criminal liability for other civil remedies that are not based upon~~ misappropriation of a trade
14 secret; or

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

16

17 **NEW SECTION. Section 4. Applicability.** With respect to a continuing misappropriation that began
18 prior to [the effective date of this act], [this act] does not apply to the continuing misappropriation that
19 occurs after [the effective date of this act].

20

-END-