2/7/89-1479s

SENATE BILL AMENDED BY THE SENATE

*1989 SESSION*

0610B
89-0701
09

SENATE BILL NO. 125

INTRODUCED BY: Sen. McLane of Dist. 15

REFERRED TO: Judiciary

AN ACT adopting the uniform trade secrets act.

---

ANALYSIS

This bill provides for the adoption of the uniform trade secrets act as New Hampshire law. The uniform trade secrets act provides for the civil remedies of injunctive relief and damages for misappropriation of trade secrets. It allows the court to award attorney's fees under certain circumstances and to grant protective orders to preserve secrecy.

This bill displaces any conflicting tort or restitutionary law providing civil remedies for misappropriation of a trade secret. This bill does not affect contractual remedies or criminal remedies for misappropriation of trade secrets.

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

EXPLANATION: Matter added appears in ***bold italics***.
Matter removed appears in [brackets].
Matter which is repealed and reenacted or all new appears in regular type.

SENATE BILL AMENDED BY THE SENATE

0610B
89-0701
09

SB 125

STATE OF NEW HAMPSHIRE

In the year of Our Lord one thousand nine hundred and eighty-nine

AN ACT

adopting the uniform trade secrets act.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Chapter; Misappropriation of Trade Secrets. Amend RSA by inserting after chapter 350-A the following new chapter:

CHAPTER 350-B

UNIFORM TRADE SECRETS ACT

350-B:1 Definitions. As used in this chapter, unless the context requires otherwise:

SENATE BILL AMENDED BY THE SENATE

I. "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.

II. "Misappropriation" means:

(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:

(1) Used improper means to acquire knowledge of the trade secret; or

(2) At the time of disclosure or use, knew or had reason to know

that his knowledge of the trade secret was derived from or through a person who had utilized improper means to acquire it; or acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(3) Before a material change of his 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.

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

IV. "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(a) 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

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

SENATE BILL AMENDED BY THE SENATE

350-B:2 Injunctive Relief.

I. 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.

II. 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.

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

SENATE BILL AMENDED BY THE SENATE

350-B:3 Damages.

I. 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 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.

II. If willful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice any award made under paragraph I.

350-B:4 Attorneys' Fees. The court may award reasonable attorneys' fees to the prevailing party when:

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

SENATE BILL AMENDED BY THE SENATE

III. Willful and malicious misappropriation exists.

350-B:5 Preservation of Secrecy. In an action under this chapter, a court shall perserve 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.

350-B:6 Statute of Limitations. An action for misappropriation shall be brought within 3 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.

350-B:7 Effect on Other Law.

I. Except as provided in paragraph II, this chapter displaces conflicting tort, restitutionary, and other law of this state providing civil remedies for misappropriation of a trade secret.

SENATE BILL AMENDED BY THE SENATE

II. This chapter shall not affect:

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

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

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

350-B:8 Uniformity of Application and Construction. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

350-B:9 Short Title. This chapter may be cited as the Uniform Trade Secrets Act.

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

SENATE BILL AMENDED BY THE SENATE

3 Applicability. This act shall apply to misappropriations of trade secrets occurring on or after January 1, 1990. This act shall not apply to misappropriations or continuing misappropriations of trade secrets occurring or beginning prior to January 1, 1990.

4 Effective Date. This act shall take effect January 1, 1990.