

1-1 By: Elkins (Senate Sponsor - Hughes) H.B. No. 1995
 1-2 (In the Senate - Received from the House May 1, 2017;
 1-3 May 2, 2017, read first time and referred to Committee on
 1-4 Administration; May 2, 2017, reported favorably by the following
 1-5 vote: Yeas 6, Nays 0; May 2, 2017, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12			X	
1-13	X			
1-14	X			

1-15 A BILL TO BE ENTITLED
 1-16 AN ACT

1-17 relating to the Texas Uniform Trade Secrets Act.
 1-18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
 1-19 SECTION 1. Section 134A.002, Civil Practice and Remedies
 1-20 Code, is amended by adding Subdivisions (1-a), (3-a), and (7) and
 1-21 amending Subdivisions (3), (4), and (6) to read as follows:
 1-22 (1-a) "Clear and convincing" means the measure or
 1-23 degree of proof that will produce in the mind of the trier of fact a
 1-24 firm belief or conviction as to the truth of the allegations sought
 1-25 to be established.
 1-26 (3) "Misappropriation" means:
 1-27 (A) acquisition of a trade secret of another by a
 1-28 person who knows or has reason to know that the trade secret was
 1-29 acquired by improper means; or
 1-30 (B) disclosure or use of a trade secret of
 1-31 another without express or implied consent by a person who:
 1-32 (i) used improper means to acquire
 1-33 knowledge of the trade secret;
 1-34 (ii) at the time of disclosure or use, knew
 1-35 or had reason to know that the person's knowledge of the trade
 1-36 secret was:
 1-37 (a) derived from or through a person
 1-38 who used [~~had utilized~~] improper means to acquire the trade secret
 1-39 [~~it~~];
 1-40 (b) acquired under circumstances
 1-41 giving rise to a duty to maintain the [~~its~~] secrecy of or limit the
 1-42 [~~its~~] use of the trade secret; or
 1-43 (c) derived from or through a person
 1-44 who owed a duty to the person seeking relief to maintain the [~~its~~]
 1-45 secrecy of or limit the [~~its~~] use of the trade secret; or
 1-46 (iii) before a material change of the
 1-47 position of the person [~~person's position~~], knew or had reason to
 1-48 know that the trade secret [~~it~~] was a trade secret and that
 1-49 knowledge of the trade secret [~~it~~] had been acquired by accident or
 1-50 mistake.
 1-51 (3-a) "Owner" means, with respect to a trade secret,
 1-52 the person or entity in whom or in which rightful, legal, or
 1-53 equitable title to, or the right to enforce rights in, the trade
 1-54 secret is reposed.
 1-55 (4) "Proper means" means discovery by independent
 1-56 development, reverse engineering unless prohibited, or any other
 1-57 means that is not improper means.
 1-58 (6) "Trade secret" means all forms and types of
 1-59 information, including business, scientific, technical, economic,
 1-60 or engineering information, and any [~~a~~] formula, design, prototype,
 1-61 pattern, plan, compilation, program device, program, code, device,

2-1 method, technique, process, procedure, financial data, or list of
2-2 actual or potential customers or suppliers, whether tangible or
2-3 intangible and whether or how stored, compiled, or memorialized
2-4 physically, electronically, graphically, photographically, or in
2-5 writing if ~~that~~:

2-6 (A) the owner of the trade secret has taken
2-7 reasonable measures under the circumstances to keep the information
2-8 secret; and

2-9 (B) the information derives independent economic
2-10 value, actual or potential, from not being generally known to, and
2-11 not being readily ascertainable through ~~by~~ proper means by,
2-12 another person ~~other persons~~ who can obtain economic value from
2-13 the ~~its~~ disclosure or use of the information ~~, and~~

2-14 [~~(B) is the subject of efforts that are~~
2-15 ~~reasonable under the circumstances to maintain its secrecy].~~

2-16 (7) "Willful and malicious misappropriation" means
2-17 intentional misappropriation resulting from the conscious
2-18 disregard of the rights of the owner of the trade secret.

2-19 SECTION 2. Section 134A.003, Civil Practice and Remedies
2-20 Code, is amended by amending Subsection (a) and adding Subsection
2-21 (a-1) to read as follows:

2-22 (a) Actual or threatened misappropriation may be enjoined
2-23 if the order does not prohibit a person from using general
2-24 knowledge, skill, and experience that person acquired during
2-25 employment.

2-26 (a-1) On application to the court, an injunction shall be
2-27 terminated when the trade secret has ceased to exist, but the
2-28 injunction may be continued for an additional reasonable period of
2-29 time in order to eliminate commercial advantage that otherwise
2-30 would be derived from the misappropriation.

2-31 SECTION 3. Section 134A.004(b), Civil Practice and Remedies
2-32 Code, is amended to read as follows:

2-33 (b) If willful ~~wilful~~ and malicious misappropriation is
2-34 proven by clear and convincing evidence, the fact finder may award
2-35 exemplary damages in an amount not exceeding twice any award made
2-36 under Subsection (a).

2-37 SECTION 4. Section 134A.005, Civil Practice and Remedies
2-38 Code, is amended to read as follows:

2-39 Sec. 134A.005. ATTORNEY'S FEES. The court may award
2-40 reasonable attorney's fees to the prevailing party if:

2-41 (1) a claim of misappropriation is made in bad faith;

2-42 (2) a motion to terminate an injunction is made or
2-43 resisted in bad faith; or

2-44 (3) willful ~~wilful~~ and malicious misappropriation
2-45 exists.

2-46 SECTION 5. Section 134A.006, Civil Practice and Remedies
2-47 Code, is amended to read as follows:

2-48 Sec. 134A.006. PRESERVATION OF SECRECY. (a) In an action
2-49 under this chapter, a court shall preserve the secrecy of an alleged
2-50 trade secret by reasonable means. There is a presumption in favor
2-51 of granting protective orders to preserve the secrecy of trade
2-52 secrets. Protective orders may include provisions limiting access
2-53 to confidential information to only the attorneys and their
2-54 experts, holding in camera hearings, sealing the records of the
2-55 action, and ordering any person involved in the litigation not to
2-56 disclose an alleged trade secret without prior court approval.

2-57 (b) In an action under this chapter, a presumption exists
2-58 that a party is allowed to participate and assist counsel in the
2-59 presentation of the party's case. At any stage of the action, the
2-60 court may exclude a party and the party's representative or limit a
2-61 party's access to the alleged trade secret of another party if other
2-62 countervailing interests overcome the presumption. In making this
2-63 determination, the court must conduct a balancing test that
2-64 considers:

2-65 (1) the value of an owner's alleged trade secret;

2-66 (2) the degree of competitive harm an owner would
2-67 suffer from the dissemination of the owner's alleged trade secret
2-68 to the other party;

2-69 (3) whether the owner is alleging that the other party

- 3-1 is already in possession of the alleged trade secret;
- 3-2 (4) whether a party's representative acts as a
- 3-3 competitive decision maker;
- 3-4 (5) the degree to which a party's defense would be
- 3-5 impaired by limiting that party's access to the alleged trade
- 3-6 secret;
- 3-7 (6) whether a party or a party's representative
- 3-8 possesses specialized expertise that would not be available to a
- 3-9 party's outside expert; and
- 3-10 (7) the stage of the action.

3-11 SECTION 6. Chapter 134A, Civil Practice and Remedies Code,
3-12 as amended by this Act, applies only to an action that commences on
3-13 or after the effective date of this Act. An action that commences
3-14 before the effective date of this Act is governed by the law
3-15 applicable to the action immediately before the effective date of
3-16 this Act, and that law is continued in effect for that purpose.

3-17 SECTION 7. This Act takes effect September 1, 2017.

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