

SENATE BILL NO. 375—SENATOR SCHNEIDER

MARCH 11, 1999

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes to provisions governing trade secrets. (BDR 52-900)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

AN ACT relating to trade secrets; prohibiting certain acts related to trade secrets; authorizing a court to award exemplary damages in certain circumstances; clarifying certain means that a court may use to preserve the secrecy of an alleged trade secret; providing a penalty; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** Chapter 600A of NRS is hereby amended by adding thereto
2 a new section to read as follows:
3 ***A person who, with intent to injure an owner of a trade secret or with***
4 ***reason to believe that his actions will injure an owner of a trade secret,***
5 ***without limitation:***
6 ***1. Steals, misappropriates, takes or conceals a trade secret or obtains***
7 ***a trade secret through fraud, artifice or deception;***
8 ***2. Wrongfully copies, duplicates, sketches, draws, photographs,***
9 ***alters, destroys, photocopies, replicates, transmits, delivers, sends, mails,***
10 ***communicates or conveys a trade secret;***
11 ***3. Receives, buys or possesses a trade secret with knowledge or***
12 ***reason to know that the trade secret was obtained as described in***
13 ***subsection 1 or 2;***
14 ***4. Attempts to commit an offense described in subsection 1, 2 or 3;***
15 ***5. Solicits another person to commit an offense described in***
16 ***subsection 1, 2 or 3; or***
17 ***6. Conspires to commit an offense described in subsection 1, 2 or 3,***
18 ***and one of the conspirators performs an act to further the conspiracy,***

1 *is guilty of a category C felony and shall be punished by imprisonment in*
2 *the state prison for a minimum term of not less than 1 year and a*
3 *maximum term of not more than 10 years and may be further punished*
4 *by a fine of not more than \$10,000.*

5 **Sec. 2.** NRS 600A.030 is hereby amended to read as follows:

6 600A.030 As used in this chapter, unless the context otherwise
7 requires:

8 1. "Improper means" includes ~~theft, bribery, misrepresentation,~~
9 ~~breach~~, *without limitation:*

10 (a) *Theft;*

11 (b) *Bribery;*

12 (c) *Misrepresentation;*

13 (d) *Willful breach* or *willful* inducement of a breach of a duty to
14 maintain secrecy ~~and espionage~~;

15 (e) *Willful breach or willful inducement of a breach of a duty imposed*
16 *by common law, statute, contract, license, protective order or other court*
17 *or administrative order; and*

18 (f) *Espionage* through electronic or other means.

19 2. "Misappropriation" means:

20 (a) *Acquisition of the trade secret of another by a person by improper*
21 *means;*

22 (b) Acquisition of a trade secret of another by a person who knows or
23 has reason to know that the trade secret was acquired by improper means;

24 ~~(b)~~ or

25 (c) Disclosure or use of a trade secret of another without express or
26 implied consent by a person who:

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

28 (2) At the time of disclosure or use, knew or had reason to know that
29 his knowledge of the trade secret was:

30 (I) Derived from or through a person who had used improper
31 means to acquire it;

32 (II) Acquired under circumstances giving rise to a duty to maintain
33 its secrecy or limit its use; or

34 (III) Derived from or through a person who owed a duty to the
35 person seeking relief to maintain its secrecy or limit its use; or

36 (3) Before a material change of his position, knew or had reason to
37 know that it was a trade secret and that knowledge of it had been acquired
38 by accident or mistake.

39 3. *"Owner" means the person who holds legal or equitable title to a*
40 *trade secret.*

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

1 ~~[4.]~~ 5. “Trade secret” means information, including , *without*
2 *limitation*, a formula, pattern, compilation, program, device, method,
3 technique ~~for process,~~ , *product, system, process, design, prototype,*
4 *procedure, computer programming instruction or code* that:

5 (a) Derives independent economic value, ~~present~~ *actual* or potential,
6 from not being generally known to, and not being readily ascertainable by
7 proper means by ~~the public or any~~ other persons who can obtain
8 *commercial or* economic value from its disclosure or use; and

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

11 **Sec. 3.** NRS 600A.040 is hereby amended to read as follows:

12 600A.040 1. Actual or threatened misappropriation may be enjoined.
13 Upon application to the court, an injunction must be terminated when the
14 trade secret has ceased to exist, but the injunction may be continued for an
15 additional reasonable period of time ~~in order~~ to eliminate commercial *or*
16 *other* advantage that otherwise would be derived from the
17 misappropriation.

18 2. In exceptional circumstances, an injunction may condition future use
19 upon payment of a reasonable royalty for no longer than the period of time
20 for which use could have been prohibited. Exceptional circumstances
21 include a material and prejudicial change of position before acquiring
22 knowledge or reason to know of misappropriation that renders a prohibitive
23 injunction inequitable.

24 3. In appropriate circumstances, the court may order affirmative acts to
25 protect a trade secret.

26 **Sec. 4.** NRS 600A.050 is hereby amended to read as follows:

27 600A.050 1. Except to the extent that a material and prejudicial
28 change of position before acquiring knowledge or reason to know of
29 misappropriation renders a monetary recovery inequitable, a complainant is
30 entitled to recover damages for misappropriation. Damages include both
31 loss caused by misappropriation and unjust enrichment caused by
32 misappropriation that is not taken into account in computing the loss. In
33 lieu of damages measured by any other methods, damages caused by
34 misappropriation may be measured by imposition of liability for a
35 reasonable royalty for a misappropriator’s unauthorized disclosure or use of
36 a trade secret.

37 2. If willful ~~and malicious misappropriation~~ , *wanton or reckless*
38 *misappropriation or disregard of the rights of the owner of the trade*
39 *secret* exists, the court may award exemplary damages in an amount not
40 exceeding twice the award made under subsection 1.

1 **Sec. 5.** NRS 600A.070 is hereby amended to read as follows:
2 600A.070 In ~~[an action under this chapter,]~~ **any civil or criminal**
3 **action**, the court shall preserve the secrecy of an alleged trade secret by
4 reasonable means, which may include ~~[granting]~~, **without limitation:**
5 **1. Granting** protective orders in connection with discovery
6 proceedings ~~[, holding]~~ ;
7 **2. Holding** hearings in camera ~~[, sealing]~~ ;
8 **3. Sealing** the records of the action ~~[, and ordering]~~ ;
9 **4. Determining the need for any information related to the trade**
10 **secret before allowing discovery;**
11 **5. Allowing the owner of the trade secret to obtain a signed**
12 **agreement of confidentiality from any party who obtains knowledge of**
13 **the trade secret;**
14 **6. Ordering a person who obtains knowledge of the trade secret to**
15 **return to the owner of the trade secret any writing which reflects or**
16 **contains the trade secret; and**
17 **7. Ordering** any person involved in the litigation not to disclose an
18 alleged trade secret without previous court approval.
19 **Sec. 6.** NRS 600A.090 is hereby amended to read as follows:
20 600A.090 1. Except as **otherwise** provided in subsection 2, this
21 chapter displaces conflicting tort, restitutionary, and other law of this state
22 providing civil remedies for misappropriation of a trade secret.
23 2. This chapter does not affect:
24 (a) Contractual remedies, whether or not based upon misappropriation
25 of a trade secret;
26 (b) Other civil remedies that are not based upon misappropriation of a
27 trade secret; or
28 (c) ~~[Criminal]~~ **Except as otherwise provided in section 1 of this act,**
29 **criminal** sanctions, whether or not based upon misappropriation of a trade
30 secret.
31 **Sec. 7.** NRS 600A.020 is hereby repealed.

TEXT OF REPEALED SECTION

600A.020 Uniform 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.