

HOUSE BILL NO. HB0095

Trade secrets.

Sponsored by: Representative(s) Simpson and Senator(s) Nicholas

A BILL

for

1 AN ACT relating to trade secrets; adopting the uniform
2 trade secrets act; providing for injunctive relief, damages
3 and attorneys fees for misappropriation of trade secrets;
4 providing definitions; providing a statute of limitations;
5 and providing for an effective date.

6

7 Be It Enacted by the Legislature of the State of Wyoming:

8

9 Section 1. W.S. 40-24-101 through 40-24-110 are
10 created to read:

11

12

CHAPTER 24

13

UNIFORM TRADE SECRETS ACT

14

15 40-24-101. Definitions.

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1 (a) As used in this act, unless the context requires
2 otherwise:

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4 (i) "Improper means" includes theft, bribery,
5 misrepresentation, breach or inducement of a breach of duty
6 to maintain secrecy or espionage through electronic or
7 other means;

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9 (ii) "Misappropriation" means:

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11 (A) Acquisition of a trade secret of
12 another by a person who knows or has reason to know that
13 the trade secret was acquired by improper means; or

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15 (B) Disclosure or use of a trade secret of
16 another without express or implied consent by a person who:

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18 (I) Used improper means to acquire
19 knowledge of the trade secret;

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21 (II) Before a material change of his
22 position, knew or had reason to know that it was a trade
23 secret and that knowledge of it had been acquired by
24 accident or mistake; or

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

(1) Derived from or through a
person who has utilized improper means to acquire it;

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

(3) Derived from or through a
person who owed a duty to the person seeking relief to
maintain its secrecy or limit its use.

(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;

1 (iv) "Trade secret" means information, including
2 a formula, pattern, compilation, program device, method,
3 technique or process that:

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5 (A) Derives independent economic value,
6 actual or potential, from not being generally known to and
7 not being readily ascertainable by proper means by other
8 persons who can obtain economic value from its disclosure
9 or use; and

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

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14 (v) "This act" means W.S. 40-24-101 through
15 40-24-110.

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17 **40-24-102. Injunctive relief.**

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19 (a) Actual or threatened misappropriation may be
20 enjoined. Upon application to the court an injunction
21 shall be terminated when the trade secret has ceased to
22 exist, but the injunction may be continued for an
23 additional reasonable period of time in order to eliminate

1 commercial advantage that otherwise would be derived from
2 the misappropriation.

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4 (b) In exceptional circumstances, an injunction may
5 condition future use upon payment of a reasonable royalty
6 for no longer than the period of time for which use could
7 have been prohibited. Exceptional circumstances include,
8 but are not limited to, a material and prejudicial change
9 of position prior to acquiring knowledge or reason to know
10 of misappropriation that renders a prohibitive injunction
11 inequitable.

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13 (c) In appropriate circumstances, affirmative acts to
14 protect a trade secret may be compelled by court order.

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16 **40-24-103. Damages.**

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18 (a) Except to the extent that a material and
19 prejudicial change of position prior to acquiring knowledge
20 or reason to know of misappropriation renders a monetary
21 recovery inequitable, a complainant is entitled to recover
22 damages for misappropriation. Damages can include both the
23 actual loss caused by misappropriation and the unjust
24 enrichment caused by misappropriation that is not taken

1 into account in computing actual loss. In lieu of damages
2 measured by any other methods, the damages caused by
3 misappropriation may be measured by imposition of liability
4 for a reasonable royalty for a misappropriator's
5 unauthorized disclosure or use of a trade secret.

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7 (b) If willful and malicious misappropriation exists,
8 the court may award exemplary damages in the amount not
9 exceeding twice any award made under subsection (a) of this
10 section.

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12 **40-24-104. Attorney's fees.**

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14 (a) A court may award reasonable attorney's fees to
15 the prevailing party if:

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17 (i) A claim of misappropriation is made in bad
18 faith;

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20 (ii) A motion to terminate an injunction is made
21 or resisted in bad faith; or

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23 (iii) Willful and malicious misappropriation
24 exists.

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40-24-105. Preservation of secrecy.

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4 In any action under this act, a court shall preserve the
5 secrecy of an alleged trade secret by reasonable means,
6 which may include granting protective orders in connection
7 with discovery proceedings, holding in-camera hearings,
8 sealing the records of the action and ordering any person
9 involved in the litigation not to disclose an alleged trade
10 secret without prior court approval.

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40-24-106. Statute of limitations.

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14 An action for misappropriation must be brought within three
15 (3) years after the misappropriation is discovered or by
16 the exercise of reasonable diligence should have been
17 discovered. For the purposes of this section, a continuing
18 misappropriation constitutes a single claim.

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40-24-107. Effect on other law.

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22 (a) Except as provided in subsection (b) of this
23 section, this act displaces conflicting tort,

1 restitutionary and other law of this state providing civil
2 remedies for misappropriation of a trade secret.

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4 (b) This act does not affect:

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

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

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

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15 **40-24-108. Uniformity of application and**
16 **construction.**

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18 This act shall be applied and construed to effectuate its
19 general purpose to make uniform the law with respect to the
20 subject of this act among states enacting it.

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22 **40-24-109. Short title.**

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24 This act may be cited as the Uniform Trade Secrets Act.

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2 **40-24-110. Time of taking effect.**

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4 This act does not apply to misappropriation occurring prior
5 to July 1, 2006. With respect to a continuing
6 misappropriation that began prior to July 1, 2006, the act
7 does not apply to the continuing misappropriation that
8 occurs after July 1, 2006.

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10 **Section 2.** This act is effective July 1, 2006.

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(END)