

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 499

H.P. 378 House of Representatives, February 23, 1987
Reference to the Committee on Business Legislation
suggested and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative MANNING of Portland.

Cosponsored by Representatives GURNEY of Portland, FOSS
of Yarmouth and Senator BRANNIGAN of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

1 AN ACT to Establish the Uniform Trade Secrets
2 Act.
3

4 Be it enacted by the People of the State of Maine as
5 follows:

6 10 MRSA c. 302 is enacted to read:

7 CHAPTER 302

8 UNIFORM TRADE SECRETS ACT

9 §1541. Short title

10 This Act shall be known and may be cited as the
11 "Uniform Trade Secrets Act."

12 §1542. Definitions

1 As used in this Act, unless the context otherwise
2 indicates, the following terms have the following
3 meanings.

4 1. Improper means. "Improper means" means
5 theft, bribery, misrepresentation, breach or induce-
6 ment of a breach of duty to maintain secrecy or
7 espionage through electronic or other means.

8 2. Misappropriation. "Misappropriation" means:

9 A. Acquisition of a trade secret of another by a
10 person who knows or has reason to know that the
11 trade secret was acquired by improper means; or

12 B. Disclosure or use of a trade secret of anothe-
13 r without express or implied consent by a person
14 who:

15 (1) Used improper means to acquire knowl-
16 edge of the trade secret;

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

20 (i) Derived from or through a person
21 who had utilized improper means to ac-
22 quire it;

23 (ii) Acquired under circumstances giv-
24 ing rise to a duty to maintain its se-
25 crecy or limit its use; or

26 (iii) Derived from or through a person
27 who owed a duty to the person seeking
28 relief to maintain its secrecy or limit
29 its use; or

30 (3) Before a material change of his posi-
31 tion, knew or had reason to know that it was
32 a trade secret and that knowledge of it had
33 been acquired by accident or mistake.

34 3. Person. "Person" means a natural person,
35 corporation, business trust, estate, trust, partner-
36 ship, association, joint venture, government, govern-

1 mental subdivision or agency or any other legal or
2 commercial entity.

3 4. Trade secret. "Trade secret" means information,
4 including, but not limited to, a formula, pat-
5 tern, compilation, program, device, method, technique
6 or process, that:

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

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

14 §1543. Injunctive relief

15 1. Misappropriation restrained or enjoined. Ac-
16 tual or threatened misappropriation may be restrained
17 or enjoined. Upon application to the court, an in-
18 junction shall be terminated when the trade secret
19 has ceased to exist, but the injunction may be con-
20 tinued for an additional reasonable period of time in
21 order to eliminate commercial advantage that other-
22 wise would be derived from the misappropriation.

23 2. Exceptional circumstances. In exceptional
24 circumstances, an injunction may condition future use
25 upon payment of a reasonable royalty for no longer
26 than the period of time for which use could have been
27 prohibited.

28 A. Exceptional circumstances include, but are
29 not limited to, a material and prejudicial change
30 of position prior to acquiring knowledge or rea-
31 son to know of misappropriation that renders a
32 prohibitive injunction inequitable.

33 3. Protection of trade secret compelled. In ap-
34 propriate circumstances, affirmative acts to protect
35 a trade secret may be compelled by court order.

36 4. Application. This section applies to all
37 forms of injunctive relief, including temporary re-
38 straining orders, preliminary injunctions and perma-
39 nent injunctions.

1 §1544. Damages

2 Except to the extent that a material and prejudi-
3 cial change of position prior to acquiring knowledge
4 or reason to know of misappropriation renders a mone-
5 tary recovery inequitable, a complainant is entitled
6 to recover damages for misappropriation.

7 1. Measurement of damages. Damages may include
8 both the actual loss caused by misappropriation and
9 the unjust enrichment caused by misappropriation that
10 is not taken into account in computing actual loss.
11 In lieu of damages measured by any other methods, the
12 damages caused by misappropriation may be measured by
13 imposition of liability for a reasonable royalty for
14 a misappropriator's unauthorized disclosure or use of
15 a trade secret.

16 2. Willful, malicious misappropriation. If
17 willful and malicious misappropriation exists, the
18 court may award exemplary damages in an amount not to
19 exceed twice any award made under subsection 1.

20 §1545. Attorneys fees

21 If a claim of misappropriation is made in bad
22 faith, a motion to terminate an injunction is made or
23 resisted in bad faith or willful and malicious misap-
24 propriation exists, the court may award reasonable
25 attorneys fees to the prevailing party.

26 §1546. Preservation of secrecy

27 In an action under this Act, a court shall pre-
28 serve the secrecy of an alleged trade secret by rea-
29 sonable means, which may include granting protective
30 orders in connection with discovery proceedings,
31 holding in camera hearings, sealing the records of
32 the action and ordering any person involved in the
33 litigation not to disclose an alleged trade secret
34 without prior court approval.

35 §1547. Statute of limitations

36 An action for misappropriation must be brought
37 within 4 years after the misappropriation is discov-
38 ered or, by the exercise of reasonable diligence,

1 should have been discovered. For the purposes of
2 this section, a continuing misappropriation consti-
3 tutes a single claim.

4 §1548. Effect on other laws

5 1. No effect. Except as provided in this sec-
6 tion, this Act displaces conflicting tort,
7 restitutionary and other laws of this State providing
8 civil remedies for misappropriation of a trade se-
9 cret. This Act does not affect:

10 A. Contractual remedies, whether or not based
11 upon misappropriation of a trade secret;

12 B. Other civil remedies that are not based upon
13 misappropriation of a trade secret; or

14 C. Criminal remedies, whether or not based upon
15 misappropriation of a trade secret.

16 STATEMENT OF FACT

17 This bill is based upon the Uniform Trade Secrets
18 Act. Adoption of this bill would provide a statuto-
19 ry framework defining and protecting trade secrets,
20 including the following:

21 1. Governing definitions for the Act;

22 2. Injunctive relief upon actual or threatened
23 misappropriation of a trade secret. The Act defines
24 misappropriation as the improper acquisition or dis-
25 closure of a trade secret;

26 3. Damages, including actual loss and unjust en-
27 richment caused by the misappropriation. It also
28 provides that if willful and malicious misappropria-
29 tion exists, exemplary damages may be awarded in an
30 amount not exceeding twice the compensatory damages;

31 4. Attorneys fees to the prevailing party in
32 cases involving a bad faith claim of misappropria-
33 tion, making or resisting in bad faith a motion to

1 terminate an injunction or willful and malicious mis-
2 appropriation;

3 5. That the court shall take appropriate mea-
4 sures to preserve the secrecy of an alleged trade se-
5 cret during any court proceeding;

6 6. A 4-year statute of limitations commencing on
7 the date the misappropriation is discovered or rea-
8 sonably should have been discovered;

9 7. A section which explains the effect of this
10 Act on other law;

11 8. Uniformity of application and construction;
12 and

13 9. That this Act shall be known and may be cited
14 as the "Uniform Trade Secrets Act."

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