

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 970

H.P. 719 House of Representatives, March 26, 1987
Reference to the Committee on Business Legislation
suggested and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative MARSANO of Belfast.

Cosponsored by Senator BRANNIGAN of Cumberland and
Representative DIAMOND of Bangor.

STATE OF MAINE

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

1 AN ACT Relating to 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. 206-A is enacted to read:

7 CHAPTER 206-A

8 UNIFORM TRADE SECRETS ACT

9 WITH 1985 AMENDMENTS

10 §1235. Short title

11 This Act may be cited as the "Uniform Trade Se-
12 crets Act."

1 §1236. Definitions

2 As used in this chapter, unless the context indi-
3 cates otherwise, the following terms have the follow-
4 ing meanings.

5 1. Improper means. "Improper means" includes
6 theft, bribery, misrepresentation, breach or induc-
7 ement of a breach of a duty to maintain secrecy or
8 espionage through electronic or other means.

9 2. Misappropriation. "Misappropriation" means:

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

13 B. Disclosure or use of a trade secret of another
14 without express or implied consent by a person
15 who:

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

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

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

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

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

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

1 3. Person. "Person" means a natural person,
2 corporation, business trust, estate, trust, partner-
3 ship, association, joint venture, government, govern-
4 mental subdivision or agency or any other legal or
5 commercial entity.

6 4. Trade secret. "Trade secret" means informa-
7 tion, including a formula, pattern, compilation, pro-
8 gram, device, method, technique or process, that:

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

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

16 §1237. Injunctive relief

17 1. Injunction. Actual or threatened misappro-
18 priation may be enjoined. Upon application to the
19 court, an injunction shall be terminated when the
20 trade secret has ceased to exist, but the injunction
21 may be continued for an additional reasonable period
22 of time in order to eliminate commercial advantage
23 that otherwise would be derived from the misappropri-
24 ation.

25 2. Exceptional circumstances. In exceptional
26 circumstances, an injunction may condition future use
27 upon payment of a reasonable royalty for no longer
28 than the period of time for which use could have been
29 prohibited. Exceptional circumstances include, but
30 are not limited to, a material and prejudicial change
31 of position prior to acquiring knowledge or reason to
32 know of a misappropriation that renders a prohibitive
33 injunction inequitable.

34 3. Court protection. In appropriate circum-
35 stances, affirmative acts to protect a trade secret
36 may be compelled by court order.

37 §1238. Damages

1 1. Monetary recovery. Except to the extent that
2 a material and prejudicial change of position prior
3 to acquiring knowledge or reason to know of a misap-
4 propriation renders a monetary recovery inequitable,
5 a complainant is entitled to recover damages for the
6 misappropriation. Damages may include both the actu-
7 al loss caused by the misappropriation and the unjust
8 enrichment caused by the misappropriation and the un-
9 just enrichment caused by misappropriation that is
10 not taken into account in computing actual loss. In
11 lieu of damages measured by any other methods, the
12 damages caused by a misappropriation may be measured
13 by imposition of liability for a reasonable royalty
14 for a misappropriator's unauthorized disclosure or
15 use of a trade secret.

16 2. Exemplary damages. If willful and malicious
17 misappropriation exists, the court may award exempla-
18 ry damages in an amount not exceeding twice any award
19 made under subsection 1.

20 §1239. Attorneys fees

21 If a claim of a 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 §1240. 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 §1241. Statute of limitations

36 An action for a misappropriation must be brought
37 within 3 years after the misappropriation is discov-
38 ered or by the exercise of reasonable diligence
39 should have been discovered. For the purposes of
40 this section, a continuing misappropriation consti-
41 tutes a single claim.

1 Notwithstanding the commercial importance of
2 state trade secret law to interstate business, this
3 law has not developed satisfactorily. In the first
4 place, its development is uneven. Although there
5 typically are a substantial number of reported deci-
6 sions in states that are commercial centers, this is
7 not the case in less populous and more agricultural
8 jurisdictions. Secondly, even in states in which
9 there has been significant litigation, there is undue
10 uncertainty concerning the parameters of trade secret
11 protection, and the appropriate remedies for misap-
12 propriation of a trade secret.

13 The Uniform Trade Secrets Act codifies the basic
14 principles of common law trade secret protection,
15 preserving its essential distinctions from patent
16 law. Under both the Act and common law principles,
17 for example, more than one person may be entitled to
18 trade secret protection with respect to the same in-
19 formation, and analysis involving the "reverse engi-
20 neering" of a lawfully obtained product in order to
21 discover a trade secret is permissible. Compare the
22 Uniform Trade Secrets Act, the Maine Revised Stat-
23 utes, Title 10, section 1236, subsection 2, (misap-
24 propriation means acquisition of a trade secret by
25 means that should be known to be improper and unau-
26 thorized disclosure or use of information that one
27 should know is the trade secret of another) with Mil-
28 ler v. Ownes-Illinois, Inc., 187 USPQ 47, 48
29 (D.Md.1975) (alternative holding) (prior, independent
30 discovery a complete defense to liability for misap-
31 propriation) and Wesley-Jessen, Inc., v. Reynolds,
32 182 USPQ 135, 144-45, (N.D.Ill.1974) (alternative
33 holding) (unrestricted sale and lease of camera that
34 could be reversed engineered in several days to re-
35 veal alleged trade secrets preclude relief for misap-
36 propriation).

37 For liability to exist under this Act, a Title
38 10, section 1236, subsection 4, trade secret must ex-
39 ist and either a person's acquisition of the trade
40 secret, disclosure of the trade secret to others or
41 use of the trade secret must be improper under Title
42 10, section 1236, subsection 2. The mere copying of
43 an unpatented item is not actionable.

1 Like traditional trade secret law, the Uniform
2 Trade Secrets Act contains general concepts. The
3 contribution of this Act is substitution of unitary
4 definitions of trade secret and trade secret misap-
5 propriation, and a single statute of limitations for
6 the various property, quasi-contractual and violation
7 of fiduciary relationship theories of noncontractual
8 liability utilized at common law. The Act also codi-
9 fies the results of the better reasoned cases con-
10 cerning the remedies for trade secret misappropria-
11 tion.

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