

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1403 Session of 2002

INTRODUCED BY D. WHITE, CORMAN, ERICKSON, BELL, BOSCOLA, BRIGHTBILL, ORIE, HOLL, HUGHES, LAVALLE, LEMMOND, MUSTO, O'PAKE, LOGAN, C. WILLIAMS, RHOADES, TARTAGLIONE, TOMLINSON, WAUGH, CONTI, STACK, WOZNIAK AND DENT, APRIL 29, 2002

SENATOR CORMAN, COMMUNICATIONS AND HIGH TECHNOLOGY, AS AMENDED, JUNE 27, 2002

AN ACT

1 Amending ~~Title~~ TITLES 12 (COMMERCE AND TRADE) AND 18 (Crimes and <—
2 Offenses) of the Pennsylvania Consolidated Statutes, ADDING <—
3 PROVISIONS RELATING TO TRADE SECRETS; AND further providing
4 for the offense of theft of trade secrets.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 ~~Section 1. Section 3930(a) and (e) of Title 18 of the <—
8 Pennsylvania Consolidated Statutes are amended and the section
9 is amended by adding a subsection to read:~~

10 SECTION 1. TITLE 12 OF THE PENNSYLVANIA CONSOLIDATED <—
11 STATUTES IS AMENDED BY ADDING A CHAPTER TO READ:

CHAPTER 53

TRADE SECRETS

14 SEC.

15 5301. SHORT TITLE OF CHAPTER.

16 5302. DEFINITIONS.

17 5303. INJUNCTIVE RELIEF.

- 1 5304. DAMAGES.
- 2 5305. ATTORNEY FEES.
- 3 5306. PRESERVATION OF SECRECY.
- 4 5307. STATUTE OF LIMITATIONS.
- 5 5308. EFFECT ON OTHER LAW.
- 6 § 5301. SHORT TITLE OF CHAPTER.

7 THIS CHAPTER SHALL BE KNOWN AND MAY BE CITED AS THE UNIFORM
8 TRADE SECRETS ACT.

9 § 5302. DEFINITIONS.

10 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS CHAPTER
11 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
12 CONTEXT CLEARLY INDICATES OTHERWISE:

13 "IMPROPER MEANS." INCLUDES, BUT IS NOT LIMITED TO, THEFT,
14 BRIBERY, MISREPRESENTATION, BREACH OR INDUCEMENT OF A BREACH OF
15 A DUTY TO MAINTAIN SECRECY OR ESPIONAGE THROUGH ELECTRONIC OR
16 OTHER MEANS.

17 "MISAPPROPRIATION." INCLUDES:

18 (1) ACQUISITION OF A TRADE SECRET OF ANOTHER BY A PERSON
19 WHO KNOWS OR HAS REASON TO KNOW THAT THE TRADE SECRET WAS
20 ACQUIRED BY IMPROPER MEANS; OR

21 (2) DISCLOSURE OR USE OF A TRADE SECRET OF ANOTHER
22 WITHOUT EXPRESS OR IMPLIED CONSENT BY A PERSON WHO:

23 (I) USED IMPROPER MEANS TO ACQUIRE KNOWLEDGE OF THE
24 TRADE SECRET;

25 (II) AT THE TIME OF DISCLOSURE OR USE, KNEW OR HAD
26 REASON TO KNOW THAT HIS KNOWLEDGE OF THE TRADE SECRET
27 WAS:

28 (A) DERIVED FROM OR THROUGH A PERSON WHO HAD
29 UTILIZED IMPROPER MEANS TO ACQUIRE IT;

30 (B) ACQUIRED UNDER CIRCUMSTANCES GIVING RISE TO

1 A DUTY TO MAINTAIN ITS SECRECY OR LIMIT ITS USE; OR
2 (C) DERIVED FROM OR THROUGH A PERSON WHO OWED A
3 DUTY TO THE PERSON SEEKING RELIEF TO MAINTAIN ITS
4 SECRECY OR LIMIT ITS USE; OR

5 (III) BEFORE A MATERIAL CHANGE OF HIS POSITION, KNEW
6 OR HAD REASON TO KNOW THAT IT WAS A TRADE SECRET AND THAT
7 KNOWLEDGE OF IT HAD BEEN ACQUIRED BY ACCIDENT OR MISTAKE.

8 "PERSON." A NATURAL PERSON, CORPORATION, BUSINESS TRUST,
9 ESTATE, TRUST, PARTNERSHIP, ASSOCIATION, JOINT VENTURE,
10 GOVERNMENT, GOVERNMENTAL SUBDIVISION OR AGENCY OR ANY OTHER
11 LEGAL OR COMMERCIAL ENTITY.

12 "TRADE SECRET." INFORMATION, INCLUDING A FORMULA, DRAWING,
13 PATTERN, COMPILATION, PROGRAM, DEVICE, METHOD, TECHNIQUE OR
14 PROCESS THAT:

15 (1) DERIVES INDEPENDENT ECONOMIC VALUE, ACTUAL OR
16 POTENTIAL, FROM NOT BEING GENERALLY KNOWN TO, AND NOT BEING
17 READILY ASCERTAINABLE BY PROPER MEANS BY, OTHER PERSONS WHO
18 CAN OBTAIN ECONOMIC VALUE FROM ITS DISCLOSURE OR USE.

19 (2) IS THE SUBJECT OF EFFORTS THAT ARE REASONABLE UNDER
20 THE CIRCUMSTANCES TO MAINTAIN ITS SECRECY.

21 "WILLFUL AND MALICIOUS." SUCH INTENTIONAL ACTS OR GROSS
22 NEGLECT OF DUTY AS TO EVINCE A RECKLESS INDIFFERENCE OF THE
23 RIGHTS OF OTHERS ON THE PART OF THE WRONGDOER, AND AN ENTIRE
24 WANT OF CARE SO AS TO RAISE THE PRESUMPTION THAT THE PERSON AT
25 FAULT IS CONSCIOUS OF THE CONSEQUENCES OF HIS CARELESSNESS.

26 § 5303. INJUNCTIVE RELIEF.

27 (A) INJUNCTIONS.--ACTUAL OR THREATENED MISAPPROPRIATION MAY
28 BE ENJOINED. UPON APPLICATION TO THE COURT, AN INJUNCTION SHALL
29 BE TERMINATED WHEN THE TRADE SECRET HAS CEASED TO EXIST, BUT THE
30 INJUNCTION MAY BE CONTINUED FOR AN ADDITIONAL REASONABLE PERIOD

1 OF TIME IN ORDER TO ELIMINATE COMMERCIAL ADVANTAGE THAT
2 OTHERWISE WOULD BE DERIVED FROM THE MISAPPROPRIATION.

3 (B) EXCEPTIONAL CIRCUMSTANCES.--IN EXCEPTIONAL
4 CIRCUMSTANCES, AN INJUNCTION MAY CONDITION FUTURE USE UPON
5 PAYMENT OF A REASONABLE ROYALTY FOR NO LONGER THAN THE PERIOD OF
6 TIME FOR WHICH USE COULD HAVE BEEN PROHIBITED. EXCEPTIONAL
7 CIRCUMSTANCES INCLUDE, BUT ARE NOT LIMITED TO, A MATERIAL AND
8 PREJUDICIAL CHANGE OF POSITION PRIOR TO ACQUIRING KNOWLEDGE OR
9 REASON TO KNOW OF MISAPPROPRIATION THAT RENDERS A PROHIBITIVE
10 INJUNCTION INEQUITABLE.

11 (C) AFFIRMATIVE ACTS COMPELLED BY COURT ORDER.--IN
12 APPROPRIATE CIRCUMSTANCES, AFFIRMATIVE ACTS TO PROTECT A TRADE
13 SECRET MAY BE COMPELLED BY COURT ORDER.

14 § 5304. DAMAGES.

15 (A) MONETARY DAMAGES.--EXCEPT TO THE EXTENT THAT A MATERIAL
16 AND PREJUDICIAL CHANGE OF POSITION PRIOR TO ACQUIRING KNOWLEDGE
17 OR REASON TO KNOW OF MISAPPROPRIATION RENDERS A MONETARY
18 RECOVERY INEQUITABLE, A COMPLAINANT IS ENTITLED TO RECOVER
19 DAMAGES FOR MISAPPROPRIATION. DAMAGES CAN INCLUDE BOTH THE
20 ACTUAL LOSS CAUSED BY MISAPPROPRIATION AND THE UNJUST ENRICHMENT
21 CAUSED BY MISAPPROPRIATION THAT IS NOT TAKEN INTO ACCOUNT IN
22 COMPUTING ACTUAL LOSS. IN LIEU OF DAMAGES MEASURED BY ANY OTHER
23 METHODS, THE DAMAGES CAUSED BY MISAPPROPRIATION MAY BE MEASURED
24 BY IMPOSITION OF LIABILITY FOR A REASONABLE ROYALTY FOR A
25 MISAPPROPRIATOR'S UNAUTHORIZED DISCLOSURE OR USE OF A TRADE
26 SECRET.

27 (B) EXEMPLARY DAMAGES.--IF WILLFUL AND MALICIOUS
28 MISAPPROPRIATION EXISTS, THE COURT MAY AWARD EXEMPLARY DAMAGES
29 IN AN AMOUNT NOT EXCEEDING TWICE ANY AWARD MADE UNDER SUBSECTION
30 (A).

1 § 5305. ATTORNEY FEES.

2 A COURT MAY AWARD REASONABLE ATTORNEY FEES, EXPENSES AND
3 COSTS TO THE PREVAILING PARTY IF:

4 (1) A CLAIM OF MISAPPROPRIATION IS MADE IN BAD FAITH;

5 (2) A MOTION TO TERMINATE AN INJUNCTION IS MADE OR
6 RESISTED IN BAD FAITH; OR

7 (3) WILLFUL AND MALICIOUS MISAPPROPRIATION EXISTS.

8 § 5306. PRESERVATION OF SECRECY.

9 IN ANY ACTION UNDER THIS CHAPTER, A COURT SHALL PRESERVE THE
10 SECRECY OF AN ALLEGED TRADE SECRET BY REASONABLE MEANS WHICH MAY
11 INCLUDE, BUT ARE NOT LIMITED TO, GRANTING PROTECTIVE ORDERS IN
12 CONNECTION WITH DISCOVERY PROCEEDINGS, HOLDING IN CAMERA
13 HEARINGS, SEALING THE RECORDS OF THE ACTION AND ORDERING ANY
14 PERSON INVOLVED IN THE LITIGATION NOT TO DISCLOSE AN ALLEGED
15 TRADE SECRET WITHOUT PRIOR COURT APPROVAL.

16 § 5307. STATUTE OF LIMITATIONS.

17 AN ACTION UNDER THIS CHAPTER FOR MISAPPROPRIATION MUST BE
18 BROUGHT WITHIN THREE YEARS AFTER THE MISAPPROPRIATION WAS
19 DISCOVERED OR BY THE EXERCISE OF REASONABLE DILIGENCE SHOULD
20 HAVE BEEN DISCOVERED.

21 § 5308. EFFECT ON OTHER LAW.

22 (A) GENERAL RULE.--EXCEPT AS PROVIDED IN SUBSECTION (B),
23 THIS CHAPTER DISPLACES CONFLICTING TORT, RESTITUTION OR OTHER
24 LAW OF THIS STATE PROVIDING CIVIL REMEDIES FOR MISAPPROPRIATION
25 OF A TRADE SECRET.

26 (B) EXCEPTIONS.--THIS CHAPTER DOES NOT AFFECT:

27 (1) CONTRACTUAL REMEDIES, WHETHER OR NOT BASED UPON
28 MISAPPROPRIATION OF A TRADE SECRET;

29 (2) OTHER CIVIL REMEDIES THAT ARE NOT BASED UPON
30 MISAPPROPRIATION OF A TRADE SECRET; OR

1 (3) CRIMINAL REMEDIES, WHETHER OR NOT BASED UPON
2 MISAPPROPRIATION OF A TRADE SECRET.

3 SECTION 2. SECTION 3930 OF TITLE 18 IS AMENDED TO READ:

4 § 3930. Theft of trade secrets OR PERSONAL OR CONFIDENTIAL <—
5 INFORMATION.

6 (a) Felony of the second degree.--A person is guilty of a
7 felony of the second degree if he:

8 (1) by force or violence or by putting him in fear takes
9 from the person of another any article representing a trade
10 secret OR PERSONAL OR CONFIDENTIAL INFORMATION; [or] <—

11 (2) willfully and maliciously enters any building or
12 other structure with intent to obtain unlawful possession of,
13 or access to, an article representing a trade secret[.] OR <—
14 PERSONAL OR CONFIDENTIAL INFORMATION; or

15 (3) willfully and maliciously accesses any computer,
16 computer network or computer system, whether in person or
17 electronically, with the intent to obtain unlawful possession
18 of, or access to, an article representing a trade secret OR <—
19 PERSONAL OR CONFIDENTIAL INFORMATION.

20 * * * <—

21 (B) FELONY OF THE THIRD DEGREE.--A PERSON IS GUILTY OF A <—
22 FELONY OF THE THIRD DEGREE IF HE, WITH INTENT TO WRONGFULLY
23 DEPRIVE OF, OR WITHHOLD FROM THE OWNER, THE CONTROL OF A TRADE
24 SECRET OR PERSONAL OR CONFIDENTIAL INFORMATION, OR WITH INTENT
25 TO WRONGFULLY APPROPRIATE A TRADE SECRET OR PERSONAL OR
26 CONFIDENTIAL INFORMATION FOR HIS USE, OR FOR THE USE OF ANOTHER:

27 (1) UNLAWFULLY OBTAINS POSSESSION OF, OR ACCESS TO, AN
28 ARTICLE REPRESENTING A TRADE SECRET OR PERSONAL OR
29 CONFIDENTIAL INFORMATION; OR

30 (2) HAVING LAWFULLY OBTAINED POSSESSION OF AN ARTICLE

1 REPRESENTING A TRADE SECRET OR PERSONAL OR CONFIDENTIAL
2 INFORMATION, OR ACCESS THERETO, CONVERTS SUCH ARTICLE OR
3 INFORMATION TO HIS OWN USE OR THAT OF ANOTHER PERSON, WHILE
4 HAVING POSSESSION THEREOF OR ACCESS THERETO MAKES, OR CAUSES
5 TO BE MADE, A COPY OF SUCH ARTICLE, OR EXHIBITS SUCH ARTICLE
6 OR INFORMATION TO ANOTHER.

7 (C) FURTHER DISPOSITION IRRELEVANT.--THE CRIME OR CRIMES
8 DEFINED IN SUBSECTIONS (A) AND (B) OF THIS SECTION SHALL BE
9 DEEMED COMPLETE WITHOUT REGARD TO THE FURTHER DISPOSITION,
10 RETURN, OR INTENT TO RETURN, OF THE ARTICLE REPRESENTING A TRADE
11 SECRET OR PERSONAL OR CONFIDENTIAL INFORMATION.

12 (D) DEFENSE.--IT SHALL BE A COMPLETE DEFENSE TO ANY
13 PROSECUTION UNDER SUBSECTION (B) OF THIS SECTION FOR THE
14 DEFENDANT TO SHOW THAT INFORMATION COMPRISING THE TRADE SECRET
15 OR PERSONAL OR CONFIDENTIAL INFORMATION WAS RIGHTFULLY KNOWN OR
16 AVAILABLE TO HIM FROM A SOURCE OTHER THAN THE OWNER OF THE TRADE
17 SECRET OR PERSONAL OR CONFIDENTIAL INFORMATION.

18 (e) Definitions.--As used in this section the following
19 words and phrases shall have the meanings given to them in this
20 subsection:

21 "Article." Any object, material, device or substance or copy
22 thereof, including any writing, record, recording, drawing,
23 description, sample, specimen, prototype, model, photograph,
24 microorganism, blueprint or map.

25 "Computer." An electronic, magnetic, optical, hydraulic,
26 organic or other high-speed data processing device or system
27 which performs logic, arithmetic or memory functions and
28 includes all input, output, processing, storage, software or
29 communication facilities which are connected or related to the
30 device in a system or network.

1 "Computer network." The interconnection of two or more
2 computers through the usage of satellite, microwave, line or
3 other communication medium.

4 "Computer system." A set of related, connected or
5 unconnected computer equipment, devices and software.

6 "Copy." Any facsimile, replica, photograph or reproduction
7 of, an article, or any note, drawing, sketch, or description
8 made of, or from an article.

9 "Representing." Describing, depicting, containing,
10 constituting, reflecting or recording.

11 "Trade secret." The whole or any portion or phase of any
12 scientific or technical information, design, process, procedure,
13 formula or improvement which is of value and has been
14 specifically identified by the owner as of a confidential
15 character, and which has not been published or otherwise become
16 a matter of general public knowledge. There shall be a
17 rebuttable presumption that scientific or technical information
18 has not been published or otherwise become a matter of general
19 public knowledge when the owner thereof takes measures to
20 prevent it from becoming available to persons other than those
21 selected by him to have access thereto for limited purposes.

22 (f) Construction.--Nothing in this section shall be
23 construed to interfere with or prohibit terms or conditions in a
24 contract or license related to a computer, a computer network or
25 computer software.

26 SECTION 3. IN APPLYING AND CONSTRUING 12 PA.C.S. CH. 53, ←
27 COMMENTS OR REPORTS OF THE TYPE REFERRED TO IN 1 PA.C.S. § 1939
28 SHALL CONTROL IN THE EVENT OF A CONFLICT BETWEEN SUCH COMMENTS
29 OR REPORTS AND THE POLICY OF UNIFORMITY PROVIDED UNDER 1 PA.C.S.
30 § 1927.

1 SECTION 4. THIS ACT SHALL NOT APPLY TO MISAPPROPRIATION
2 OCCURRING PRIOR TO THE EFFECTIVE DATE OF THIS ACT, INCLUDING A
3 CONTINUING MISAPPROPRIATION THAT BEGAN PRIOR TO THE EFFECTIVE
4 DATE OF THIS ACT AND WHICH CONTINUES TO OCCUR AFTER THE
5 EFFECTIVE DATE OF THIS ACT.

6 Section ~~2~~ 5. This act shall take effect in 60 days.

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