

Offered: 3/13/87
Referred: Rules

5-0099B

Original sponsors: Faiks and Kerttula

1 IN THE SENATE BY THE JUDICIARY COMMITTEE
2 CS FOR SENATE BILL NO. 15 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - FIRST SESSION
5 A BILL
6 For an Act entitled: "An Act relating to trade secrets."
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
8 * Section 1. AS 45.50 is amended by adding new sections to read:
9 ARTICLE 8. ALASKA UNIFORM TRADE SECRETS ACT.
10 Sec. 45.50.910. INJUNCTIVE RELIEF FOR MISAPPROPRIATION OF TRADE
11 SECRETS. (a) A court may enjoin actual or threatened misappropria-
12 tion of trade secrets. Upon application to the court, an injunction
13 shall be terminated when the trade secret has ceased to exist, but the
14 injunction may be continued for an additional reasonable period of
15 time in order to eliminate commercial advantage that otherwise would
16 be derived from the misappropriation.
17 (b) If the court determines that it would be unreasonable to
18 prohibit future use of a trade secret, an injunction may condition
19 future use upon payment of a reasonable royalty for no longer than the
20 period of time the use could have been prohibited.
21 (c) In appropriate circumstances, affirmative acts to protect a
22 trade secret may be compelled by court order.
23 Sec. 45.50.915. DAMAGES. (a) In addition to or in lieu of
24 injunctive relief, a complainant may recover damages for the actual
25 loss caused by misappropriation. A complainant also may recover for
26 the unjust enrichment caused by misappropriation that is not taken
27 into account in computing damages for actual loss.
28 (b) If wilful and malicious misappropriation exists, the court
29 may award exemplary damages in an amount not exceeding twice the

1 damages awarded under (a) of this section.

2 Sec. 45.50.920. PRESERVATION OF SECRECY. In an action under
3 AS 45.50.910 - 45.50.945, a court shall preserve the secrecy of an
4 alleged trade secret by reasonable means, which may include granting
5 protective orders in connection with discovery proceedings, holding
6 in-camera hearings, sealing the records of the action, and ordering
7 any person involved in the litigation not to disclose an alleged trade
8 secret without prior court approval.

9 Sec. 45.50.925. LIMITATION OF ACTIONS. An action for misappro-
10 priation must be brought within three years after the misappropriation
11 is discovered or by the exercise of reasonable diligence should have
12 been discovered. For the purposes of this section, a continuing
13 misappropriation constitutes a single claim.

14 Sec. 45.50.930. EFFECT ON OTHER LAWS. (a) AS 45.50.910 -
15 45.50.945 displace conflicting tort, restitutionary, and other state
16 laws pertaining to civil liability for misappropriation of a trade
17 secret.

18 (b) AS 45.50.910 - 45.50.945 do not affect

19 (1) contractual or other civil liability or relief that is
20 not based upon misappropriation of a trade secret; or

21 (2) criminal liability for misappropriation of a trade
22 secret.

23 (c) AS 45.50.910 - 45.50.945 do not apply to investigations or
24 actions by the attorney general under AS 45.50.471 - 45.50.561 (unfair
25 trade practices and consumer protection) or under AS 45.50.562 -
26 45.50.596 (restraint of trade).

27 Sec. 45.50.935. UNIFORMITY OF APPLICATION AND CONSTRUCTION.
28 AS 45.50.910 - 45.50.945 shall be applied and construed to make the
29 law uniform with respect to trade secrets among states enacting

1 similar provisions.

2 Sec. 45.50.940. DEFINITIONS. In AS 45.50.910 - 45.50.945,
3 unless the context otherwise requires,

4 (1) "improper means" includes theft, bribery, misrepresen-
5 tation, breach or inducement of a breach of a duty to maintain secre-
6 cy, or espionage through electronic or other means;

7 (2) "misappropriation" means

8 (A) acquisition of a trade secret of another by a
9 person who knows or has reason to know that the trade secret was
10 acquired by improper means; or

11 (B) disclosure or use of a trade secret of another
12 without express or implied consent by a person who

13 (i) used improper means to acquire knowledge of
14 the trade secret; or

15 (ii) at the time of disclosure or use, knew or had
16 reason to know that knowledge of the trade secret was de-
17 rived from or through a person who had utilized improper
18 means to acquire it or who owed a duty to the person seeking
19 relief to maintain its secrecy or limit its use, or was
20 acquired under circumstances giving rise to a duty to main-
21 tain its secrecy or limit its use; or

22 (iii) before a material change of the person's
23 position, knew or had reason to know that it was a trade
24 secret and that knowledge of it had been acquired by acci-
25 dent or mistake.

26 (3) "trade secret" means information that

27 (A) derives independent economic value, actual or
28 potential, from not being generally known to, and not being
29 readily ascertainable by proper means by, other persons who can

1 obtain economic value from its disclosure or use, and
2 (B) is the subject of efforts that are reasonable
3 under the circumstances to maintain its secrecy.
4 Sec. 45.50.945. SHORT TITLE. AS 45.50.910 - 45.50.945 may be
5 cited as the Alaska Uniform Trade Secrets Act.