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STATE OF ALASKA
THE LEGISLATURE

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JUNEAU, ALASKA 99811
907.465.3800

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H. JUD.	4-28-88	1:30p.m.
H. JUD.	4-27-88	1:30p.m.

HOUSE COMMITTEE REPORT

(7)

Date referred: 3/16/88

FURTHER REFERRALS:

DATE: April 28, 1988

The Judiciary Committee has considered CSSB 15(Jud)

"An Act relating to trade secrets."

RECOMMENDS:

- replace with _____ the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published 3/16/88
- zero with analysis

SIGNING DO PASS:

[Handwritten signatures]

SIGNING OTHER RECOMMENDATIONS:

[Handwritten signature]

Chairman's signature

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

February 3, 1987

The Honorable Tim Kelly
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: SB 15 (Trade Secrets)

Dear Senator Kelly:

Mark Johnson of your office asked the Department of Law to propose language which would alleviate our concerns about the application of SB 15 to the Alaska Consumer Protection Act, AS 45.50.471 et seq. and the Alaska Restraint of Trade Act, AS 45.50.462 et seq.

Our suggestion would be to add another subsection to proposed AS 45.50.930, "Effect on Other Laws," to read:

(c) AS 45.50.910 - 45.50.945 do not apply to investigations or actions by the Attorney General under the Unfair Trade Practices and Consumer Protection Act, AS 45.50.471 -- 45.50.561, or under the Restraint of Trade Act, AS 45.50.562 -- 45.50.596.

Thank you for your consideration of this proposed language.

Sincerely,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: 

Richard D. Monkman
Assistant Attorney General

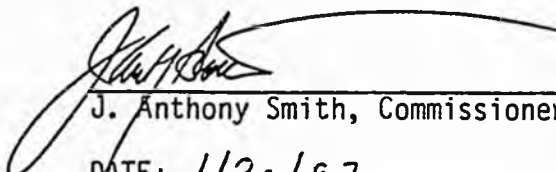
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Backup

SB 15 An Act relating to trade secrets.

The Department of Commerce and Economic Development has no position on this bill.

Although the bill amends Title 45, which generally applies to the department, Section 50 does not contain a stipulation of responsibility for the department. Sec. 45.50.910(a) stipulates that a court may provide relief. Under this circumstance, the department defers to the Department of Law.



J. Anthony Smith, Commissioner
DATE: 1/30/87

5282W13087a

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

SENATE
BILL VERSION: CSSB 15(Jud)
PUBLISH DATE: 3/13/87

REQUEST: _____

Revision Date: _____
Title: "An Act relating to trade secrets."

Agency Affected: Department of Law
BRU: Legal Services, Consumer Protection

Sponsor: Senator Faiks
Requestor: Senate Labor and Commerce

Components: Antitrust, Consumer Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS :

Please see attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: Jan. 27, 1987
 Ronald W. Lorensen,
 Approved by Commissioner: Acting Attorney General Date: Jan. 27, 1987
 Agency: Department of Law

Distribution (by preparer):

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- Senate Secretary

170/21
CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SSB15 Sub

This legislation could have an adverse impact on the Department of Law's enforcement of both the Restraint of Trade Act (AS 45.50.562) and the Consumer Protection Act (AS 45.50.471). Under both of these statutes, the attorney general routinely subpoenas information which could be classified as "trade secret" under SB15. Consequently, prospective defendants could use SB15 to block or delay our investigations.

The cost of investigations and prosecution of antitrust and consumer protection cases could go up as a result. Because it is difficult to quantify increased cost, any estimate on our part would be speculative at best. More importantly, enactment of the bill in its present form could seriously delay the state's ongoing antitrust activities. It is therefore recommended that the bill be amended by adding a clause exempting investigations and prosecutions by the attorney general.

No. 41

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version:
Publish Date:

SENATE
CS SB 15 *jud*
2/12/87

REQUEST:

Revision Date:
Title: An Act Relating to Trade
Secrets
Sponsor: Faiks & Kertula
Requestor: Senate Labor & Commerce

Agency Affected: Alaska Court System
BRU: Trial Courts

Components:

<u>EXPENDITURES/REVENUES:</u>		<u>(Thousands of Dollars)</u>					
	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92	
OPERATING							
Personal Services	
Travel	
Contractual	
Supplies	
Equipment	
Land & Structures	
Grants & Claims	
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	
CAPITAL	
REVENUE	

<u>FUNDING:</u>		<u>(Thousands of Dollars)</u>					
	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92	
General Funds	0.0	0.0	0.0	0.0	0.0	0.0	
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	

<u>POSITIONS:</u>							
Full-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Part-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS:

No fiscal impact.

Prepared by: Robert G. Fisher, Fiscal Officer
Division: Alaska Court System

Phone: 264-8215
Date: 1-27-87

Approved by: *Stephanie Cole*
Stephanie J. Cole, Deputy Director
Agency: Alaska Court System

Date: 1-27-87

- Distribution (by preparer):
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 - Senate Secretary

Alaska State Legislature

APR 8 1987



PRESIDENT

907-465-3755

JAN FAIKS
POST OFFICE BOX V
JUNEAU, ALASKA 99811

Senate

April 6, 1987

MEMORANDUM

TO: Representative Dave Donley, Chairman
House Labor and Commerce Committee

FROM: Senator Jan Faiks
President of the Senate *Jan Faiks*

SUBJECT: Background on Senate Bill 15
An Act relating to trade secrets

Senate Bill 15 has been referred to your committee for consideration. This bill proposes the enactment of the Uniform Trade Secrets Act in Alaska.

The purpose of the act is to provide statutory protection for persons who develop and own trade secrets in Alaska. By protecting trade secrets, the person who develops and owns them obtains a competitive advantage which is different from, but in addition to, protection allowed under the federal patent and copyright laws.

Trade secrets are identified by an element of secrecy. A trade secret is not merely the privacy in which an ordinary commercial business is carried on; rather, it is something known to only one or a few, which is kept from the general public, and not susceptible of general knowledge. The nature of a trade secret is such that so long as it remains a secret it is valuable property to its possessor, who can exploit it commercially to his own advantage.

The classic example of a trade secret is the formula for Coca-Cola. Had the company sought a patent on the formula, it would have been kept a secret from the public for a period of seventeen years. Upon the expiration of the patent, all the

OUT OF SESSION

6060 YUKON DRIVE ANCHORAGE, ALASKA 99516 907-274-6611

world would have access to the formula, thus extinguishing the monopoly that the Coca-Cola Company has had to produce its beverage. Instead, by keeping the formula as a trade secret, the company has had exclusive use of it for almost one hundred years.

A patent is best described as a contract between the inventor and the public, providing a seventeen-year monopoly for disclosure of the idea.

The protection of ideas depends on the nature of the idea. If the product itself can be used to determine the invention, then protection by patent should be used. For example, if the invention contained in a marketed product can be ascertained by taking the product apart, then patent law will provide the inventor with a monopoly of his idea for a period of seventeen years. To properly qualify for patent protection, the material must merit such monopoly.

However, if the idea can be kept a secret even if it is marketed, as in the example of Coca-Cola, then trade secret protection should be sought.

Technical innovation and its development into marketable products can take place only in surroundings that encourage the development of new ideas and protect the right of developers to grow and profit from their work. The protection provided by trade secret legislation is essential to an innovative society.

Given the unusual geographical and climatic conditions in our state, Alaskans have historically been innovative in developing unique means and methods to solve unusual and challenging construction and industry problems. As such, Alaskans should be afforded protection from misappropriation of their efforts, which are of value to the public at large.

Senate Bill 15 proposes the following:

Section 1. AS 45.50 is amended to add the Alaska Uniform Trade Secrets Act (AS 45.50.910 - 45.50.945)

AS 45.50.910 (a). A court may enjoin actual or threatened misappropriation of trade secrets. An injunction will be terminated when the trade secret has ceased to exist, or within a reasonable time thereafter to eliminate commercial advantage that would otherwise be derived from such misappropriation.

AS 45.50.910 (b). The court may issue an injunction which conditions future use of a trade secret upon payment of a reasonable royalty, should it determine that it would be unreasonable to prohibit such future use.

AS 45.50.910 (c). The court may order affirmative acts to protect a trade secret.

AS 45.50.915 (a) The complainant may recover for unjust enrichment and damages for the actual losses caused by the misappropriation.

AS 45.50.915 (b). Exemplary damages in an amount up to twice the actual damages may be awarded for willful and malicious misappropriation.

AS 45.50.920. The court shall preserve the secrecy of an alleged trade secret by reasonable means.

AS 45.50.925. An act for misappropriation must be brought within three years of discovery of the misappropriation.

AS 45.50.930(a). This act displaces conflicting tort, restitutionary, and other state laws which effect civil liability for misappropriation of a trade secret.

AS 45.50.930 (b). This act does not affect contractual or other civil liability or relief that is not based upon misappropriation of a trade secret, or criminal liability which may arise from such misappropriation.

The Committee Substitute prepared by the Senate Judiciary Committee adds additional language to exempt the investigation and prosecution of antitrust and consumer protection cases by the Attorney General, as the Department of Law felt that this legislation might have an adverse effect on its enforcement in these areas.

AS 45.50.935. This act shall be applied and construed to make the laws consistent with respect to trade secret legislation enacted by other states.

AS 45.50.940. Definitions of relevant terms.

AS 45.50.945. This act shall be named the Alaska Uniform Trade Secrets Act.

I would appreciate the committee's consideration of this legislation at its earliest convenience. Should you need any additional information, please let me know.

Thank you.

FISCAL NOTE

REQUEST:

Revision Date: March 11, 1988
Title: "An Act relating to trade secrets."

Agency Affected: Department of Law
BRU: Legal Services
Consumer Protection
Components: Antitrust
Consumer Protection

Sponsor: Senate Judiciary
Requestor: House Labor & Commerce

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Date: March 11, 1988
Approved by Commissioner: Richard I. Pegues / FOR /
Grace Berg Schaible, Atty. Gen. Date: March 11, 1988
Agency: Department of Law

Distribution (by preparer) :

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CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 15 (Jud.)

The Senate Committee Substitute for SB 15 exempts investigations or actions by the attorney general, under the state's unfair trade practices and consumer protection act and the restrain of trade act, from the bills provisions, which protect against the misappropriation of trade secrets. Without this exception, parts of the bill would seriously delay the state's ongoing antitrust activities. Because of the substitute change, contained in Section 1 under AS 45.50.925 (c), there will not be a fiscal impact for the Department of Law.

KENNETH D. JENSEN
R. EVERETT HARRIS
JEFFREY H. ROTH
SCOTT H. FINLEY
TIMOTHY C. VERRETT
KENNETH W. LEGACKI

LAW OFFICES
JENSEN, HARRIS & ROTH
A PROFESSIONAL CORPORATION
1029 WEST THIRD AVENUE, SUITE 600
ANCHORAGE, ALASKA 99501

TELEPHONE
(907) 277-3533
TELECOPIER
(907) 279-0335

April 24, 1987

Representative Dave Donley
Chairman, Labor & Commerce Committee
Alaska House of Representatives
P.O. Box V
Juneau, Alaska 99811

Dear Representative Donley:

Congratulations on your assuming the Chairmanship of the House Labor & Commerce Committee. Your legal training and experience will undoubtedly prove to be of great benefit in fashioning legislation to guide the state in these troubled economic times.

In connection with the Cowper administration's efforts to create fertile soil for the planting and growth of new and fruitful private industry, I write to urge your support of Senate Bill 15, the Uniform Trade Secrets Act, which has passed the Senate unanimously and is now in your committee for consideration.

As you may know from your own law practice or experience, trade secret protection is not a substitute for patent protection under the federal patent laws. It is primarily aimed not so much as protection of a particular device or invention, but from wrongful appropriation of any information which is unique in some way and provides an economic advantage because it is not generally known.

Trade secret information can include a device or invention (whether eventually patentable or not); an improvement on a device; a process of manufacturing or a method of manufacturing; customer lists; computer software; knowledge of particular economic information (such as feasibility and marketability and/or demand for a particular products or services); engineering data; recipes; etc.

Usually trade secret disputes arise where a competitor to an individual possessing such information engages in industrial espionage of some kind or type, either through contact with a competitor's employers or by other means, or, very often, through an employee who either learns of or simply appropriates one's employers trade secret information and

Representative Dave Donley
April 24, 1987
Page 2

utilizes it for the benefit of him or herself, or seeks to market it to a competitor.

It is only fair that the possessor of trade secret information be protected, with at least a statute which defines generally the nature of a trade secret and what constitutes misappropriation. S.B. 15 is such a statute. It is only fair that individuals who might be tempted to take and utilize information of another be apprised by statute as to the standards of conduct to which they will be held by law. It is also only fair that people who receive trade secret information (even though themselves not culpable), be apprised by law of the risks of receiving and benefiting from such information under circumstances where the information has been misappropriated.

The leading authority on trade secret law in this country is Roger M. Milgrim, author of Milgrim on Trade Secrets, published by Matthew Bender & Co. We have contacted Mr. Milgrim, a member of the New York Bar, about the possible enactment of a uniform trade secrets act in Alaska and he has commented that there are three principal reasons why the act should be passed in Alaska.

First, Mr. Milgrim believes that passage of the act would be helpful in attracting industry, particularly high-tech industry, which is acutely conscious of the value of and the need for protection of trade secret information. Second, Mr. Milgrim suggests that by enactment of the act, the state would have not merely the benefit of the act itself, but the case law which exists from other jurisdictions directly interpreting the terms of the act. Finally, Mr. Milgrim comments that enactment of the act would put Alaska in the vanguard of progressive states which are recognizing the needs for trade secret legislation in light of modern emerging industrial needs.

There are also several general salutary benefits to be gained from passage of the Uniform Trade Secrets Act. First, legislative definition of the standards of business and personal conduct which are the subject of the act will avoid having those definitions made by the Supreme Court of Alaska on a case by case basis. Secondly, the objectives of the Uniform Trade Secrets Act are totally consistent with the announced policies of the Cowper administration to plant, nurture and tend imaginative, inventive private enterprise in Alaska. Finally, the Uniform Trade Secrets Act will not cost the state treasury one dime. In fact, because it will define the parties' rights in this field, it may very well discourage litigation.

Representative Dave Donley
April 24, 1987
Page 3

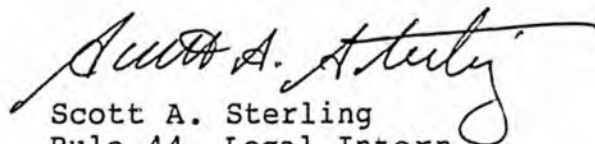
At present, there is no statutory or case law in Alaska with regard to trade secrets. That void necessarily means that in a given case the parties must craft from the common law the basic principals of appropriate relief in each and every case. Passage of the act should mitigate the necessity for litigation and in the event of litigation reduce the costs of deciding what law is applicable.

Should you or any other member of the committee desire further information on the nature and history of the Uniform Trade Secrets Act, please do not hesitate to call or write with your questions and concerns.

Thank you for your consideration.

Very truly yours,

JENSEN, HARRIS & ROTH


Scott A. Sterling
Rule 44, Legal Intern

SAS:bmg

STATE OF ALASKA
THE LEGISLATURE

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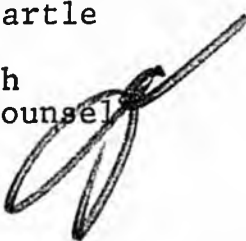
MEMORANDUM

April 25, 1988

SUBJECT: CSSB 15, relating to trade secrets

TO: Representative John Sund, Chair
House Judiciary Committee
ATTN: John Hartle

FROM: Jack Chenoweth
Legislative Counsel



The Senate-adopted committee substitute closely follows the model Uniform Trade Secrets Act approved by the National Commissioners on Uniform State Laws in August, 1979. Modifications are made to conform the model uniform act to the style of Alaska drafting. There are these changes from the model act that are noteworthy:

- (1) In proposed AS 45.50.910, the original bill and the committee substitute recast the language relating to injunctive relief, without making a substantive change.
- (2) The original bill and the committee substitute omit a definition, for purposes of this Act, of the word "person," relying instead on the general definition of the term set out in AS 01.10.060. There is no substantive distinction in the definition of the term under that state statute versus the language suggested in the model uniform act.
- (3) The committee substitute inserts, at p. 2, lines 23 - 26, language specifically disclaiming a limitation by this Act on the authority of the attorney general to investigate or commence actions under either of the two acts specifically cited in that subsection.
- (4) The original bill and the committee substitute omit a suggested section in the model uniform act covering attorney's fees. The text of the omitted section reads as follows:

Representative John Sund
Page 2
April 25, 1988

If (i) a claim for misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.

Apparently, drafting practice has been to omit these special kinds of attorney fee references in deference to the authority of the courts to award fees.

(5) The original bill and the committee substitute omit a suggested section in the model uniform act covering the time of taking effect of the act, and limiting it to misappropriations of trade secrets occurring on and after the bill's effective date. A specific provision is almost certainly not warranted under Alaska law. See AS 01.10.070 and 01.-10.090.

JFC:gc
WKG3:034