

SB

15

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

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May, 1988

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Mary Van Nimwegen

House Labor and Commerce:

March 15, 1988

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

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

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.

G + A
APR 27 1987

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KENNETH W. LEGACKI

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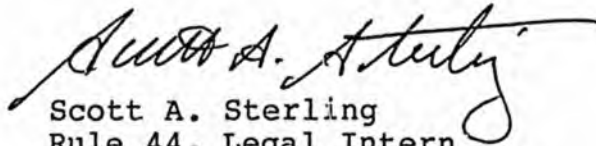
At present, there is no statutory or case law in Alaska with regard to trade secrets. That void necessarily means that in a given case the parties must craft from the common law the basic principals of appropriate relief in each and every case. Passage of the act should mitigate the necessity for litigation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



Official Business

COMMITTEE:
HOUSE LABOR & COMMERCE

DATE: March 15, 1988

SIGN-IN

Subject of meeting:

A presentation on the Alliance Bank and the proposed Hallwood Stabilization Trust.
 HJR 64 "Relating to Alaska's participation in the bottomfish fisheries in the exclusive economic zone."
 SB 15 "An Act relating to trade secrets."
 HB 482 "Appropriation loan to the Alaska Power Authority."
 HB 483 "An Act relating to loans from the Railbelt energy fund; and providing for an effective date."
 SB 322 "An Act relating to workers' compensation and providing for an effective date."

PLEASE PRINT
NAME & TITLE

REPRESENTING

ADDRESS & ZIP

PHONE

DO YOU WANT TO TESTIFY?
YES / NO

SUBJECT: BILL #

<i>City Manager Nancy Gross</i>	<i>City of Unalaska</i>	<i>PO Box 89 Unalaska 99685</i>	H W 581-1251	<i>HJR 64</i>	
			H W		
<i>TONY GUMBINER</i>	<i>CHAIRMAN OF THE BOARD THE HALLWOOD GROUP</i>	<i>767 Third Avenue NY NY 10017</i>	H W		
<i>JIM CAIRNS</i>	<i>CHAIRMAN OF THE BOARD ALLIANCE BANK</i>	<i>MINNESOTA / BENSON BLVD ANC AK</i>	H W		
<i>GARY DAILY</i>	<i>CITY OF UNALASKA</i>	<i>Box 89 Unalaska AK 99685</i>	H 581-1682 W 581-1254	<i>HJR 64</i>	<i>HJR 64</i>
<i>Barbara Shenberg</i>	<i>State Div. of Governmental Coordin.</i>	<i>PO Box AEW 99811</i>	H W		
<i>C.S. Christensen</i>	<i>Sen Finks</i>	<i>Capitol Bldg Rm 107</i>	H W 3753	<i>IF NEEDED</i>	<i>SB 15</i>
			H W		
			H W		
			H W		

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.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director

Division: Administrative Services

Ronald W. Lorensen, *✓*

Approved by Commissioner: Acting Attorney General

Agency: Department of Law

Phone: 465-3672

Date: Jan. 27, 1987

Date: Jan. 27, 1987

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

No 121
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

SENATE

CS SB 15 *jud*
2/12/87

REQUEST: _____

Bill Version:

Publish Date:

Revision Date:

Title: An Act Relating to Trade
Secrets

Agency Affected:

BRU:

Alaska Court System
Trial Courts

Sponsor: Faiks & Kertula

Requestor: Senate Labor & Commerce

Components:

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	• • • •	• • • •	• • • •	• • • •	• • • •	• • • •	• • • •
TOTAL OPERATING		0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL		• • • •	• • • •	• • • •	• • • •	• • • •	• • • •
REVENUE		• • • •	• • • •	• • • •	• • • •	• • • •	• • • •

FUNDING:		(Thousands of Dollars)					
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

POSITIONS:							
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):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management & Budget

Impacted Agency(ies)

Senate Secretary

Alaska State Legislature



PRESIDENT
907-465-3755

JAN FAIKS
POST OFFICE BOX V
JUNEAU, ALASKA 99811

Senate

January 30, 1987

MEMORANDUM

TO: Senator Tim Kelly, Chairman
Senate 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

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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

OUT OF SESSION

4060 YUKON DRIVE ANCHORAGE, ALASKA 99516

seventeen years. Upon the expiration of the patent, all the 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.

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