

SB

15

Alaska State Legislature

PRESIDENT
907-465-3755

JAN FAIKS
POST OFFICE BOX V
JUNEAU, ALASKA 99811

Senate

March 4, 1987

MAR 9 1987

MEMORANDUM

Bett

TO: Senator Jay Kerttula, Chairman
Senate Judiciary Committee

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

SUBJECT: Committee Hearings on Senate Bill 15

I would appreciate your scheduling hearings before your committee on Senate Bill 15, an Act relating to trade secrets.

This bill has already been passed out of the Labor and Commerce Committee, with an amendment which exempts investigations or actions by the Attorney General under the Unfair Trade Practices and Consumer Protection Act.

Enclosed is a memo which gives background information on this bill. Should you or the committee members need additional information, please let me know.

Your consideration of my request will be appreciated.

OUT OF SESSION

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

Alaska State Legislature

PRESIDENT

907-465-3755

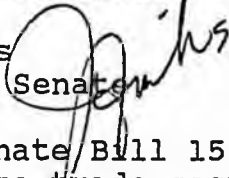
J. N. FAIKS
POST OFFICE BOX V
JUNEAU, ALASKA 99811

Senate

March 4, 1987

MEMORANDUM

TO: Senator Jay Kerttula, Chairman
Senate Judiciary 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

OUT OF SESSION

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



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 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.

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.

Note: The attached amendment prepared by the Senate Labor and Commerce Committee adds a new subsection to Section 45.50.930 (b) (2) which will 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.

SENATE AMENDMENT

BY: Labor & Commerce Committee

TO: _____ SENATE BILL NO. SB 15

TO: _____ HOUSE BILL NO. _____

On page 2, line 22, following "secret."; add a new subsection 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.

(TURN IN ORIGINAL AMENDMENT TO SENATE SECRETARY'S OFFICE.
THE AMENDMENT WILL BE NUMBERED, COPIED AND DISTRIBUTED.)

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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:

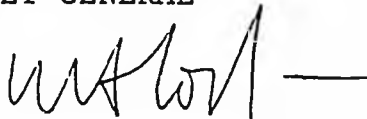
(c) AS 45.50.910 - 45.50.945 do not apply to investigations or actions by the Attorney General under the Unfair Trade Practices and Consumer Protection Act, AS 45.50.471 -- 45.50.561, or under the Restraint of Trade Act, AS 45.50.562 -- 45.50.596.

Thank you for your consideration of this proposed language.

Sincerely,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By:


Richard D. Monkman
Assistant Attorney General

RDM:nb

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: SB15

Publish Date: _____

Revision Date: _____

Title: "An Act relating to trade secrets."

Agency Affected: Department of Law

BRU: Legal Services, Consumer Protection

Sponsor: Senator Faiks

Components: Antitrust, Consumer Protection

Requestor: Senate Labor and Commerce

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 : (Attach a separate page if necessary)

Please see attached analysis.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director

Phone: 465-3672

Division: Administrative Services of Senate Staff

Date: Jan. 27, 1987

Ronald W. Lorensen, V

Approved by Commissioner: Acting Attorney General

Date: Jan. 27, 1987

Agency: Department of Law

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB15

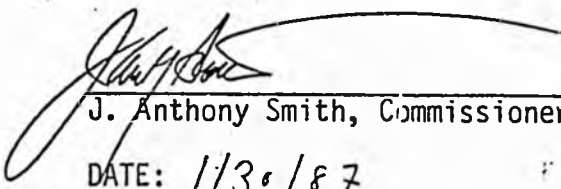
This legislation could have an adverse impact on the Department of Law's enforcement of both the Restraint of Trade Act (AS 45.50.562) and the Consumer Protection Act (AS 45.50.471). Under both of these statutes, the attorney general routinely subpoenas information which could be classified as "trade 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.

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

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

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 certain

OUT OF SESSION

700 YUKON DRIVE ANCHORAGE, ALASKA 99510 907-261-1111

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.

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.

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.

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.

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 45.50.477 (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 Ser. 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 disclosure was the result of an independ-
25 ent 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.
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29