

## Chapter 37

H.B. No. 1995

### AN ACT

relating to the Texas Uniform Trade Secrets Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 134A.002, Civil Practice and Remedies Code, is amended by adding Subdivisions (1-a), (3-a), and (7) and amending Subdivisions (3), (4), and (6) to read as follows:

(1-a) "Clear and convincing" means the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.

(3) "Misappropriation" means:

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

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

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

(ii) at the time of disclosure or use, knew or had reason to know that the person's knowledge of the trade secret was:

(a) derived from or through a person who used [~~had utilized~~] improper means to acquire the trade secret [~~it~~];

1 (b) acquired under circumstances  
2 giving rise to a duty to maintain the [its] secrecy of or limit the  
3 [its] use of the trade secret; or

4 (c) derived from or through a person  
5 who owed a duty to the person seeking relief to maintain the [its]  
6 secrecy of or limit the [its] use of the trade secret; or

7 (iii) before a material change of the  
8 position of the person [person's position], knew or had reason to  
9 know that the trade secret [it] was a trade secret and that  
10 knowledge of the trade secret [it] had been acquired by accident or  
11 mistake.

12 (3-a) "Owner" means, with respect to a trade secret,  
13 the person or entity in whom or in which rightful, legal, or  
14 equitable title to, or the right to enforce rights in, the trade  
15 secret is reposed.

16 (4) "Proper means" means discovery by independent  
17 development, reverse engineering unless prohibited, or any other  
18 means that is not improper means.

19 (6) "Trade secret" means all forms and types of  
20 information, including business, scientific, technical, economic,  
21 or engineering information, and any [a] formula, design, prototype,  
22 pattern, plan, compilation, program device, program, code, device,  
23 method, technique, process, procedure, financial data, or list of  
24 actual or potential customers or suppliers, whether tangible or  
25 intangible and whether or how stored, compiled, or memorialized  
26 physically, electronically, graphically, photographically, or in  
27 writing if [that]:

1           (A) the owner of the trade secret has taken  
2 reasonable measures under the circumstances to keep the information  
3 secret; and

4           (B) the information derives independent economic  
5 value, actual or potential, from not being generally known to, and  
6 not being readily ascertainable through [~~by~~] proper means by,  
7 another person [~~other persons~~] who can obtain economic value from  
8 the [~~its~~] disclosure or use of the information [~~, and~~

9           [~~(B) is the subject of efforts that are~~  
10 ~~reasonable under the circumstances to maintain its secrecy~~].

11           (7) "Willful and malicious misappropriation" means  
12 intentional misappropriation resulting from the conscious  
13 disregard of the rights of the owner of the trade secret.

14           SECTION 2. Section 134A.003, Civil Practice and Remedies  
15 Code, is amended by amending Subsection (a) and adding Subsection  
16 (a-1) to read as follows:

17           (a) Actual or threatened misappropriation may be enjoined  
18 if the order does not prohibit a person from using general  
19 knowledge, skill, and experience that person acquired during  
20 employment.

21           (a-1) On application to the court, an injunction shall be  
22 terminated when the trade secret has ceased to exist, but the  
23 injunction may be continued for an additional reasonable period of  
24 time in order to eliminate commercial advantage that otherwise  
25 would be derived from the misappropriation.

26           SECTION 3. Section 134A.004(b), Civil Practice and Remedies  
27 Code, is amended to read as follows:

1 (b) If willful [~~wilful~~] and malicious misappropriation is  
2 proven by clear and convincing evidence, the fact finder may award  
3 exemplary damages in an amount not exceeding twice any award made  
4 under Subsection (a).

5 SECTION 4. Section 134A.005, Civil Practice and Remedies  
6 Code, is amended to read as follows:

7 Sec. 134A.005. ATTORNEY'S FEES. The court may award  
8 reasonable attorney's fees to the prevailing party if:

- 9 (1) a claim of misappropriation is made in bad faith;  
10 (2) a motion to terminate an injunction is made or  
11 resisted in bad faith; or  
12 (3) willful [~~wilful~~] and malicious misappropriation  
13 exists.

14 SECTION 5. Section 134A.006, Civil Practice and Remedies  
15 Code, is amended to read as follows:

16 Sec. 134A.006. PRESERVATION OF SECRECY. (a) In an action  
17 under this chapter, a court shall preserve the secrecy of an alleged  
18 trade secret by reasonable means. There is a presumption in favor  
19 of granting protective orders to preserve the secrecy of trade  
20 secrets. Protective orders may include provisions limiting access  
21 to confidential information to only the attorneys and their  
22 experts, holding in camera hearings, sealing the records of the  
23 action, and ordering any person involved in the litigation not to  
24 disclose an alleged trade secret without prior court approval.

25 (b) In an action under this chapter, a presumption exists  
26 that a party is allowed to participate and assist counsel in the  
27 presentation of the party's case. At any stage of the action, the

1 court may exclude a party and the party's representative or limit a  
2 party's access to the alleged trade secret of another party if other  
3 countervailing interests overcome the presumption. In making this  
4 determination, the court must conduct a balancing test that  
5 considers:

6 (1) the value of an owner's alleged trade secret;

7 (2) the degree of competitive harm an owner would  
8 suffer from the dissemination of the owner's alleged trade secret  
9 to the other party;

10 (3) whether the owner is alleging that the other party  
11 is already in possession of the alleged trade secret;

12 (4) whether a party's representative acts as a  
13 competitive decision maker;

14 (5) the degree to which a party's defense would be  
15 impaired by limiting that party's access to the alleged trade  
16 secret;

17 (6) whether a party or a party's representative  
18 possesses specialized expertise that would not be available to a  
19 party's outside expert; and

20 (7) the stage of the action.

21 SECTION 6. Chapter 134A, Civil Practice and Remedies Code,  
22 as amended by this Act, applies only to an action that commences on  
23 or after the effective date of this Act. An action that commences  
24 before the effective date of this Act is governed by the law  
25 applicable to the action immediately before the effective date of  
26 this Act, and that law is continued in effect for that purpose.

27 SECTION 7. This Act takes effect September 1, 2017.

Don Patuck  
President of the Senate

Joe Straus  
Speaker of the House

I certify that H.B. No. 1995 was passed by the House on April 27, 2017, by the following vote: Yeas 144, Nays 0, 3 present, not voting.

Robert Haney  
Chief Clerk of the House

I certify that H.B. No. 1995 was passed by the Senate on May 8, 2017, by the following vote: Yeas 31, Nays 0.

Patsy Spaw  
Secretary of the Senate

APPROVED: 5-18-2017

Date

Greg Abbott  
Governor

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
5:20 PM O'CLOCK

MAY 19 2017  
[Signature]  
Secretary of State

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**May 2, 2017**

**TO:** Honorable Lois W. Kolkhorst, Chair, Senate Committee on Administration

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB1995** by Elkins (Relating to the Texas Uniform Trade Secrets Act.), **As Engrossed**

<b>No significant fiscal implication to the State is anticipated.</b>
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The bill would amend the Texas Uniform Trade Secrets Act in the Civil Practice and Remedies Code to revise certain definitions and the elements of misappropriation claims.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council

**LBB Staff:** UP, SD, LBO, MW, PBO

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**March 24, 2017**

**TO:** Honorable Gary Elkins, Chair, House Committee on Government Transparency & Operation

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB1995** by Elkins (Relating to the Texas Uniform Trade Secrets Act.), **As Introduced**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Texas Uniform Trade Secrets Act in the Civil Practice and Remedies Code to revise certain definitions and the elements of misappropriation claims. The bill would allow a court, under certain circumstances, to seal records and exclude parties from hearings in order to protect trade secrets. The Office of Court Administration has indicated that it could implement the provisions of the bill with existing resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council

**LBB Staff:** UP, LBO, MW, PBO