

IN THE SENATE

SENATE BILL NO. 1339

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO THE IDAHO TRADE SECRETS ACT; AMENDING SECTION 48-801, IDAHO CODE, TO REVISE DEFINITIONS; AND AMENDING SECTION 48-803, IDAHO CODE, TO REVISE PROVISIONS RELATING TO DAMAGES AND FEES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 48-801, Idaho Code, be, and the same is hereby amended to read as follows:

48-801. DEFINITIONS. As used in this chapter unless the context requires otherwise:

(1) "Improper means" include theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.

(2) "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 or retained by improper means; or

(b) Disclosure, retention or use of a trade secret of another without express or implied consent by a person who:

(A) Used improper means to acquire knowledge of the trade secret; or

(B) At the time of disclosure, retention or use, knew or had reason to know that his knowledge or possession of the trade secret was:

(i) Derived from or through a person who had utilized improper means to acquire it;

(ii) Acquired under circumstances giving rise to a duty to maintain its secrecy, return it or limit its use; or

(iii) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(C) Before a material change of his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired or retained by accident or mistake.

(3) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(4) "Computer program" means information which is capable of causing a computer to perform logical operation(s) and:

(a) Is contained on any media or in any format;

(b) Is capable of being input, directly or indirectly, into a computer; and

1 (c) Has prominently displayed a notice of copyright, or other propri-
2 etary or confidential marking, either within or on the media containing
3 the information.

4 (5) "Trade secret" means information, including a formula, pattern,
5 compilation, program, computer program, device, method, technique, or
6 process, that:

7 (a) Derives independent economic value, actual or potential, from not
8 being generally known to, and not being readily ascertainable by proper
9 means by, other persons who can obtain economic value from its disclo-
10 sure or use; and

11 (b) Is the subject of efforts that are reasonable under the circum-
12 stances to maintain its secrecy. Trade secrets as defined in this
13 subsection are subject to disclosure by a public agency according to
14 chapter 3, title 9, Idaho Code.

15 SECTION 2. That Section 48-803, Idaho Code, be, and the same is hereby
16 amended to read as follows:

17 48-803. DAMAGES. (1) Trade secret misappropriation, once proven,
18 creates a rebuttable presumption that the complainant has been harmed by
19 the misappropriation. Except to the extent that a material and prejudi-
20 cial change of position prior to acquiring knowledge or reason to know of
21 misappropriation renders a monetary recovery inequitable, a complainant
22 is entitled to recover damages for misappropriation. Damages can include
23 ~~both~~ the actual loss caused by misappropriation, costs reasonably incurred
24 attempting to avoid the consequences of, or mitigating the damages of, the
25 misappropriation and the unjust enrichment caused by misappropriation that
26 is not taken into account in computing ~~actual loss~~ other damages. In lieu of
27 damages measured by any other methods, the damages caused by misappropria-
28 tion may be measured by imposition of liability for a reasonable royalty for
29 a misappropriator's unauthorized disclosure or use of a trade secret.

30 (2) If willful and malicious misappropriation exists, the court may
31 award exemplary damages in an amount not exceeding twice any award made under
32 subsection (1) of this section.

33 (3) In any action arising under this chapter, whether the complainant
34 seeks injunctive relief or damages or both, the prevailing party shall be al-
35 lowed reasonable attorney's fees to be set by the court and to be taxed and
36 collected as costs.

37 (4) A person who knowingly takes possession of or retains, whether di-
38 rectly or through an agent or an attorney, a trade secret that the person
39 knows or should have known was misappropriated by another person within the
40 meaning of this chapter, is in violation of this chapter and is jointly and
41 severally liable for the damages caused by any possession, retention or mis-
42 appropriation, including any award for attorney's fees and costs.