

IN THE SENATE

SENATE BILL NO. 1339, As Amended

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO THE IDAHO TRADE SECRETS ACT; AMENDING SECTION 48-801, IDAHO CODE, TO REVISE DEFINITIONS AND TO DEFINE A TERM; 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 physically retained by improper means; or

(b) Disclosure, physical 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, physical retention or use, knew or had reason to know that his knowledge or physical 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 physically 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 (6) "Physical retention" and "physical possession" means to keep,  
16 save, hold or preserve beyond mere mental memorization or knowledge, but  
17 shall include, and not be limited to, electronic means of preservation.

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

20 48-803. DAMAGES. (1) Except to the extent that a material and preju-  
21 dicial change of position prior to acquiring knowledge or reason to know of  
22 misappropriation renders a monetary recovery inequitable, a complainant is  
23 entitled to recover damages for misappropriation. Damages can include both  
24 the actual loss caused by misappropriation, costs reasonably incurred at-  
25 tempting to avoid the consequences of, or mitigating the damages of, the mis-  
26 appropriation and the unjust enrichment caused by misappropriation that is  
27 not taken into account in computing actual loss other damages. In lieu of  
28 damages measured by any other methods, the damages caused by misappropria-  
29 tion may be measured by imposition of liability for a reasonable royalty for  
30 a misappropriator's unauthorized disclosure or use of a trade secret.

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

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

38 (4) Any party named in litigation under this chapter who acts with  
39 knowledge of the misappropriation of a trade secret, or with deliberate or  
40 reckless disregard of the facts of a misappropriation, shall be jointly and  
41 severally liable for all damages established under this section where the  
42 parties were acting in concert. As used in this section, "acting in concert"  
43 means pursuing a common plan or design that results in a violation of this  
44 act.