

## **BILL ANALYSIS**

Senate Research Center

S.B. 953  
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State Affairs  
7/11/2013  
Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The term "trade secrets" broadly refers to any confidential business information which provides a business with a competitive edge. This encompasses manufacturing, commercial, and industrial secrets. A number of practices may constitute a trade secret, including sales methods, distribution methods, consumer profiles, and advertising strategies. The unauthorized use of such information is regarded as unfair practice and a violation of the trade secret.

The majority of states have adopted the Uniform Trade Secrets Act (UTSA), which provides a framework for litigating trade secret issues. Currently, Texas has no central law governing this particular area, instead relying on several different areas of the law, all of which are necessary to address the legal issues surrounding trade secret litigation. As a result, Texas law is not as harmonious as the framework provided by the UTSA.

S.B. 953 adopts a modified version of the UTSA, which provides consistent and predictable statutory language for trade secret protection, updates the definition of "trade secret" to reflect current business practices and technologies, and clarifies that certain business practices do not constitute misappropriation of trade secrets. S.B. 953 also provides easily applied standards for injunctive relief and offers an avenue for recovering attorney's fees against wilful and malicious misappropriators of trade secrets, which is currently done through the Texas Theft Liability Act. S.B. 953 updates Texas law to represent modern governance of trade secrets around the country.

S.B. 953 amends current law relating to the adoption of the Uniform Trade Secrets Act.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the Texas Supreme Court is restricted in SECTION 1 (Section 134A.007, Civil Practice and Remedies Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Title 6, Civil Practice and Remedies Code, by adding Chapter 134A, as follows:

#### CHAPTER 134A. TRADE SECRETS

Sec. 134A.001. SHORT TITLE. Authorizes this chapter to be cited as the Texas Uniform Trade Secrets Act.

Sec. 134A.002. DEFINITIONS. Defines "claimant," "improper means," "misappropriation," "proper means," "reverse engineering," and "trade secret" in this chapter.

Sec. 134A.003. INJUNCTIVE RELIEF. (a) Authorizes actual or threatened misappropriation to be enjoined. Requires an injunction, on application to the court, to be terminated when the trade secret has ceased to exist, but authorizes the injunction to be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(b) Authorizes an injunction, in exceptional circumstances, to condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Provides that exceptional circumstances include a material and prejudicial change of position before acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.

(c) Authorizes affirmative acts to protect a trade secret, in appropriate circumstances, to be compelled by court order.

Sec. 134A.004. DAMAGES. (a) Provides that in addition to or in lieu of injunctive relief, a claimant is entitled to recover damages for misappropriation. Provides that damages can include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. Authorizes the damages caused by misappropriation, in lieu of damages measured by any other methods, to be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

(b) Authorizes the fact finder, if wilful and malicious misappropriation is proven by clear and convincing evidence, to award exemplary damages in an amount not exceeding twice any award made under Subsection (a).

Sec. 134A.005. ATTORNEY'S FEES. Authorizes the court to award reasonable attorney's fees to the prevailing party if a claim of misappropriation is made in bad faith, a motion to terminate an injunction is made or resisted in bad faith, or wilful and malicious misappropriation exists.

Sec. 134A.006. PRESERVATION OF SECRECY. Requires the court, in an action under this chapter, to preserve the secrecy of an alleged trade secret by reasonable means. Provides that there is a presumption in favor of granting protective orders to preserve the secrecy of trade secrets. Authorizes protective orders to include provisions limiting access to confidential information to only the attorneys and their experts, holding in camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

Sec. 134A.007. EFFECT ON OTHER LAW. (a) Provides that, except as provided by Subsection (b), this chapter displaces conflicting tort, restitutionary, and other law of this state providing civil remedies for misappropriation of a trade secret.

(b) Provides that this chapter does not affect:

(1) contractual remedies, whether or not based upon misappropriation of a trade secret;

(2) other civil remedies that are not based upon misappropriation of a trade secret; or

(3) criminal remedies, whether or not based upon misappropriation of a trade secret.

(c) Provides that, to the extent that this chapter conflicts with the Texas Rules of Civil Procedure, this chapter controls. Prohibits the Texas Supreme Court, notwithstanding Section 22.004 (Rules of Civil Procedure), Government Code, from amending or adopting rules in conflict with this chapter.

(d) Provides that this chapter does not affect the disclosure of public information by a governmental body under Chapter 552 (Public Information), Government Code.

Sec. 134A.008. UNIFORMITY OF APPLICATION AND CONSTRUCTION. Requires that this chapter be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

SECTION 2. Amends Section 134.002(2), Civil Practice and Remedies Code, to redefine "theft."

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2013.