

Nevada Uniform Trade Secrets Act

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Current through the 26th (2010) Special Session

TITLE 52. Trade Regulations And Practices.
CHAPTER 600A. Trade Secrets (Uniform Act).

Nev. Rev. Stat. Ann. § 600A.010 through 600A.100 (2011)

600A.010. **Short title.**

This chapter may be cited as the Uniform Trade Secrets Act.

600A.020. **Uniformity of application and construction.**

Repealed by Acts 1999, ch. 449, § 7, p. 2103.

600A.030. **Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Improper means" includes, without limitation:

- (a) Theft;
- (b) Bribery;
- (c) Misrepresentation;
- (d) Willful breach or willful inducement of a breach of a duty to maintain secrecy;
- (e) Willful breach or willful inducement of a breach of a duty imposed by common law, statute, contract, license, protective order or other court or administrative order; and
- (f) Espionage through electronic or other means.

2. "Misappropriation" means:

- (a) Acquisition of the trade secret of another by a person by improper means;
- (b) 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
- (c) Disclosure or use of a trade secret of another without express or implied consent by a person who:
 - (1) Used improper means to acquire knowledge of the trade secret;
 - (2) At the time of disclosure or use, knew or had reason to know that his or her knowledge of the trade secret was:
 - (l) Derived from or through a person who had used improper means to acquire it;

(II) Acquired under circumstances giving rise to a duty to maintain its secrecy 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

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

3. "Owner" means the person who holds legal or equitable title to a trade secret.

4. "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.

5. "Trade secret" means information, including, without limitation, a formula, pattern, compilation, program, device, method, technique, product, system, process, design, prototype, procedure, computer programming instruction or code that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other persons who can obtain commercial or economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

600A.032. Presumption of reasonable effort by owner to maintain secrecy; rebuttal of presumption.

The owner of a trade secret is presumed to make a reasonable effort to maintain its secrecy if the word "Confidential" or "Private" or another indication of secrecy is placed in a reasonably noticeable manner on any medium or container that describes or includes any portion of the trade secret. This presumption may be rebutted only by clear and convincing evidence that the owner did not take reasonable efforts to maintain the secrecy of the trade secret.

600A.035. Theft of trade secrets prohibited; criminal penalties.

A person who, with intent to injure an owner of a trade secret or with reason to believe that his or her actions will injure an owner of a trade secret, without limitation:

1. Steals, misappropriates, takes or conceals a trade secret or obtains a trade secret through fraud, artifice or deception;

2. Wrongfully copies, duplicates, sketches, draws, photographs, alters, destroys, photocopies, replicates, transmits, delivers, sends, mails, communicates or conveys a trade secret;

3. Receives, buys or possesses a trade secret with knowledge or reason to know that the trade secret was obtained as described in subsection 1 or 2;

4. Attempts to commit an offense described in subsection 1, 2 or 3;

5. Solicits another person to commit an offense described in subsection 1, 2 or 3; or

6. Conspires to commit an offense described in subsection 1, 2 or 3, and one of the conspirators performs an act to further the conspiracy,

is guilty of a category C felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years and may be further punished by a fine of not more than \$10,000.

600A.040. Actual or threatened misappropriation: Injunctive relief.

1. Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction must be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time to eliminate commercial or other advantage that otherwise would be derived from the misappropriation.

2. In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. 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.

3. In appropriate circumstances, the court may order affirmative acts to protect a trade secret. As used in this subsection, "affirmative acts" includes, without limitation, issuing an injunction or order requiring that a trade secret which has been misappropriated and posted, displayed or otherwise disseminated on the Internet be removed from the Internet immediately.

600A.050. Misappropriation: Damages.

1. Except to the extent that a material and prejudicial change of position before acquiring knowledge or reason to know of misappropriation

renders a monetary recovery inequitable, a complainant is entitled to recover damages for misappropriation. Damages include both loss caused by misappropriation and unjust enrichment caused by misappropriation that is not taken into account in computing the loss. In lieu of damages measured by any other methods, damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

2. If willful, wanton or reckless misappropriation or disregard of the rights of the owner of the trade secret exists, the court may award exemplary damages in an amount not exceeding twice the award made under subsection 1.

600A.055. Misappropriation and posting or dissemination on Internet: Effect.

A trade secret that is misappropriated and posted, displayed or otherwise disseminated on the Internet shall be deemed to remain a trade secret as defined in NRS 600A.030 and not to have "ceased to exist" for the purposes of subsection 1 of NRS 600A.040 if:

1. The owner, within a reasonable time after discovering that the trade secret has been misappropriated and posted, displayed or otherwise disseminated on the Internet, obtains an injunction or order issued by a court requiring that the trade secret be removed from the Internet; and

2. The trade secret is removed from the Internet within a reasonable time after the injunction or order requiring removal of the trade secret is issued by the court.

600A.060. Attorney's fees.

If:

1. A claim of misappropriation is made in bad faith;
2. A motion to terminate an injunction is made or resisted in bad faith; or
3. Willful and malicious misappropriation exists,

the court may award reasonable attorney's fees to the prevailing party.

600A.070. Preservation of secrecy.

In any civil or criminal action, the court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include, without limitation:

1. Granting protective orders in connection with discovery proceedings;
2. Holding hearings in camera;
3. Sealing the records of the action;
4. Determining the need for any information related to the trade secret before allowing discovery;
5. Allowing the owner of the trade secret to obtain a signed agreement of confidentiality from any party who obtains knowledge of the trade secret;
6. Ordering a person who obtains knowledge of the trade secret to return to the owner of the trade secret any writing which reflects or contains the trade secret; and
7. Ordering any person involved in the litigation not to disclose an alleged trade secret without previous court approval.

600A.080. Limitation of actions.

An action for misappropriation must be brought within 3 years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this section, a continuing misappropriation constitutes a single claim.

600A.090. Effect of chapter on other law and remedies.

1. Except as otherwise provided in subsection 2, this chapter displaces conflicting tort, restitutionary, and other law of this state providing civil remedies for misappropriation of a trade secret.

2. This chapter does not affect:

- (a) Contractual remedies, whether or not based upon misappropriation of a trade secret;
- (b) Other civil remedies that are not based upon misappropriation of a trade secret; or

(c) Except as otherwise provided in NRS 600A.035, criminal sanctions, whether or not based upon misappropriation of a trade secret.

600A.100. Inapplicability of chapter to acts which occurred before, or began before and continue after, July 1, 1987.

This chapter does not apply to a misappropriation that occurred before July 1, 1987, or to a misappropriation that began before and continues after July 1, 1987.

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