

Florida State University College of Law
Scholarship Repository

Staff Analysis

Florida Legislative Documents

1988

Session Law 88-254

Florida Senate & House of Representatives

Follow this and additional works at: <https://ir.law.fsu.edu/staff-analysis>



Part of the Legislation Commons

Recommended Citation

House of Representatives, Florida Senate &, "Session Law 88-254" (1988). *Staff Analysis*. 782.
<https://ir.law.fsu.edu/staff-analysis/782>

This Article is brought to you for free and open access by the Florida Legislative Documents at Scholarship Repository. It has been accepted for inclusion in Staff Analysis by an authorized administrator of Scholarship Repository. For more information, please contact efarrell@law.fsu.edu.

DOCUMENTATION LIST
LAWS OF FLORIDA, 1988
CHAPTER 88-254

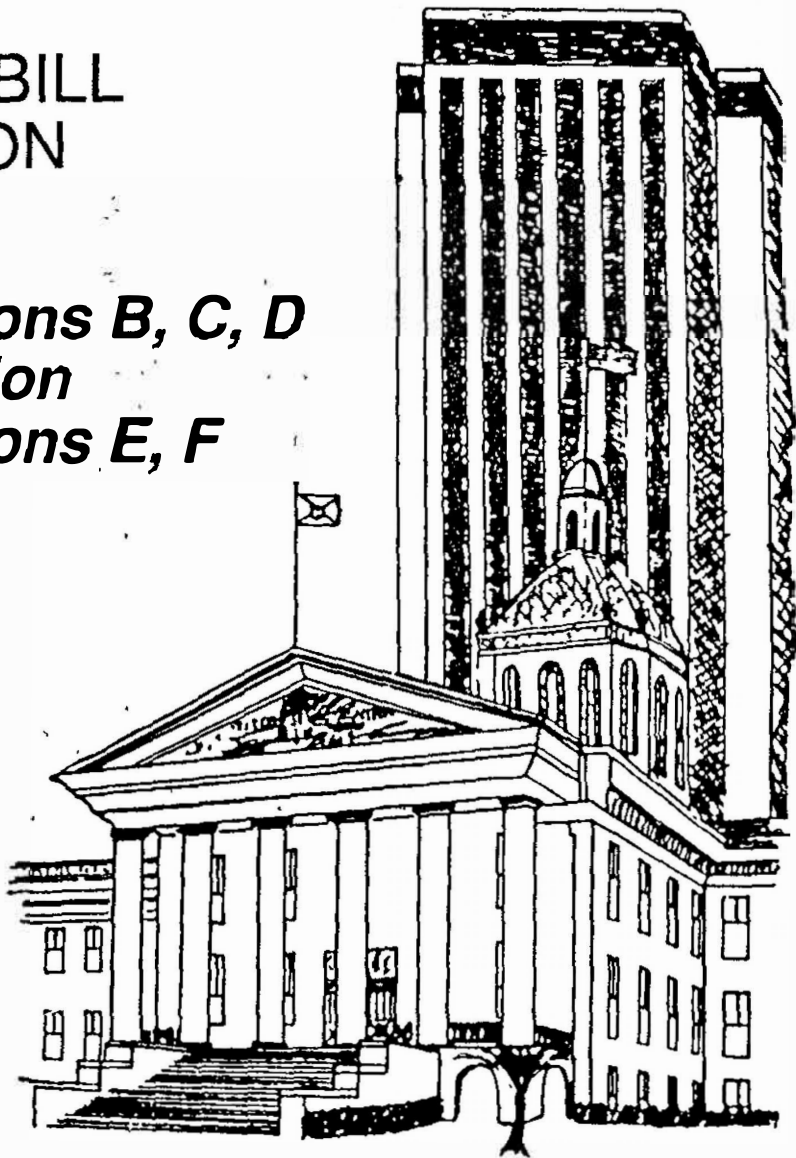
“Uniform Trade Practices Act”
(Florida Statutes §§ 688.001 - 688.009)

1. Joint Legislative Management Committee Division of Legislative Information. Final Legislative Bill Information, 1988 Regular Session. SB 233 (pp. 64-65) and HB 91 (p. 232)
2. House Bill (HB) 91 (1988)
3. House. Committee on Commerce. Staff Analysis of HB 91, February 16, 1988, prepared by David K. Sigerson, Jr.
4. House Committee on Commerce. Final Staff Analysis of HB 91, June 1, 1988, prepared by David K. Sigerson, Jr.
5. Senate Bill (SB) 233 (1988).
6. Senate. Committee on Judiciary-Civil. Staff Analysis of SB 233, May 20, 1988, prepared by M.T. Cochran.
7. Laws of Florida, 1988, Chapter 88-254 (in Vol I, part 2, pp. 1377-1380).

FLORIDA LEGISLATURE

FINAL LEGISLATIVE BILL INFORMATION

***1987 Special Sessions B, C, D
1988 Regular Session
1988 Special Sessions E, F***



prepared by:

Joint Legislative Management Committee
Legislative Information Division
Capitol Building, Room 826 — 488-4371

HISTORY OF SENATE BILLS

S 225 (CONTINUED)

to establish procedures to recover such amounts from recipients, etc. Amends 240 414. Effective Date Upon becoming law

02/03/88 SENATE Prefiled

02/11/88 SENATE Referred to Education, Appropriations

04/05/88 SENATE Introduced, referred to Education, Appropriations -SJ 27

04/15/88 SENATE Extension of time granted Committee Education

04/21/88 SENATE On Committee agenda—Education, 04/25/88, 2 00 pm, Room-A

04/25/88 SENATE Comm Report: Favorable by Education -SJ 166

04/26/88 SENATE Now in Appropriations -SJ 166

05/04/88 SENATE Extension of time granted Committee Appropriations

05/19/88 SENATE Extension of time granted Committee Appropriations

05/26/88 SENATE Withdrawn from Appropriations -SJ 430, Placed on Calendar

06/01/88 SENATE Placed on Special Order Calendar -SJ 611 & -SJ 612; Passed, YEAS 35 NAYS 0 -SJ 712

06/01/88 HOUSE In Messages

06/07/88 HOUSE Died in Messages

S 226 GENERAL BILL by Lehtinen

Crim Defendants/Investigation Costs, provides for payment of investigation costs by defendant when requested by investigating law enforcement agency & so ordered by court, requires itemized statement of such costs; provides for lien upon property of defendant or parent of minor defendant, provides for deposit & use of investigation costs collected, provides for payment of investigation costs as condition of probation or community control, etc Amends 948 03 Effective Date 10/01/88

02/03/88 SENATE Prefiled

02/11/88 SENATE Referred to Judiciary-Criminal; Appropriations

04/05/88 SENATE Introduced, referred to Judiciary-Criminal, Appropriations -SJ 27

04/15/88 SENATE Extension of time granted Committee Judiciary-Criminal

04/26/88 SENATE Withdrawn from Judiciary-Criminal, Appropriations, Indefinitely postponed -SJ 179

S 227 GENERAL BILL by Hair and others (Similar CS/H 589, H 603, S 236, S 694, Compare H 669, H 753, H 837, H 1617, S 939, S 1216)

Documentary Surtax/Housing, authorizes certain counties to levy discretionary surtax on certain documents to provide financial assistance for constructing, rehabilitating, or purchasing housing for certain low-income families; provides for future repeal of such authorization Effective Date 10/01/88.

02/03/88 SENATE Prefiled

02/11/88 SENATE Referred to Economic, Community and Consumer Affairs, Finance, Taxation and Claims

04/05/88 SENATE Introduced, referred to Economic, Community and Consumer Affairs, Finance, Taxation and Claims -SJ 27

04/15/88 SENATE Extension of time granted Committee Economic, Community and Consumer Affairs

04/29/88 SENATE Extension of time granted Committee Economic, Community and Consumer Affairs

05/13/88 SENATE Extension of time granted Committee Economic, Community and Consumer Affairs

05/19/88 SENATE On Committee agenda—Economic, Community and Consumer Affairs, 05/23/88, 10:00 am, Room-H

05/23/88 SENATE Comm Report: Favorable by Economic, Community and Consumer Affairs -SJ 366

05/24/88 SENATE Now in Finance, Taxation and Claims -SJ 366

05/27/88 SENATE Extension of time granted Committee Finance, Taxation and Claims

06/07/88 SENATE Died in Committee on Finance, Taxation and Claims

S 228 GENERAL BILL by Ros-Lehtinen and others (Similar CS/H 309, Compare ENG/S 152)

Divorce/Military Pension, provides that right to a military pension or military retirement benefits must be considered a marital asset in equitably distributing marital property, allows court to specify scheme of distribution, provides act does not nullify certain awards, allows court to modify certain judgments to distribute rights to such pension or retirement benefits Effective Date. Upon becoming law.

02/04/88 SENATE Prefiled

02/11/88 SENATE Referred to Judiciary-Civil

04/05/88 SENATE Introduced, referred to Judiciary-Civil -SJ 27

04/15/88 SENATE Extension of time granted Committee Judiciary-Civil

04/29/88 SENATE Extension of time granted Committee Judiciary-Civil

05/13/88 SENATE Extension of time granted Committee Judiciary-Civil

05/27/88 SENATE Extension of time granted Committee Judiciary-Civil

06/07/88 SENATE Died in Committee on Judiciary-Civil, Iden /Sim./ Compare bill passed, refer to SB 152 (Ch 88-98)

S 229 GENERAL BILL by Education (Similar H 353)

Student Achievement Tests, (OPEN GOVERNMENT SUNSET REVIEW) continues exemption of student achievement tests of college-level communication & computation skills & related documents from requirements of public records law, provides for future legislative review. Amends 229 551 Effective Date 10/01/88.

02/04/88 SENATE Prefiled

02/11/88 SENATE Referred to Education

S 229 (CONTINUED)

02/15/88 SENATE On Committee agenda—Education, 03/02/88, 9.00 am, Room-A

03/02/88 SENATE Comm Report Favorable by Education, placed on Calendar

04/05/88 SENATE Introduced, referred to Education -SJ 27, Comm Report Favorable by Education, placed on Calendar -SJ 53

04/12/88 SENATE Placed on Special Order Calendar -SJ 67, Passed; YEAS 36 NAYS 0 -SJ 86, Immediately certified -SJ 90

04/12/88 HOUSE In Messages

04/13/88 HOUSE Received, placed on Calendar -HJ 156

04/19/88 HOUSE Substituted for HB 353 -HJ 192; Read second time, Read third time; Passed, YEAS 117 NAYS 0 -HJ 192

04/21/88 Ordered enrolled -SJ 163

04/27/88 Signed by Officers and presented to Governor -SJ 208

05/03/88 Approved by Governor, Chapter No. 88-18 -SJ 268

S 230 GENERAL BILL by Governmental Operations (Similar H 814)

Capitol Center Planning Commission, (SUNDOWN) corrects boundary description of Capitol Center Planning District; deletes obsolete provisions re initial commission appointments, adds provisions for filling vacancies, authorizes commission to obtain professional, expert, clerical, or other assistance, etc Amends 272 12, revives & readopts 212 12(2)(3) Effective Date. 10/01/88

02/04/88 SENATE Prefiled

02/11/88 SENATE Referred to Governmental Operations

02/15/88 SENATE On Committee agenda—Governmental Operations, 03/01/88, 2:00 pm, Room-H

03/01/88 SENATE Comm Report Favorable by Governmental Operations, placed on Calendar

04/05/88 SENATE Introduced, referred to Governmental Operations -SJ 27, Comm. Report: Favorable by Governmental Operations, placed on Calendar -SJ 53

04/12/88 SENATE Placed on Special Order Calendar -SJ 67, Passed, YEAS 38 NAYS 0 -SJ 83, Immediately certified -SJ 90

04/12/88 HOUSE In Messages

04/13/88 HOUSE Received, placed on Calendar -HJ 156; Substituted for HB 814, Read second time -HJ 163; Read third time; Passed, YEAS 116 NAYS 0 -HJ 164

04/19/88 Ordered enrolled -SJ 163

04/22/88 Signed by Officers and presented to Governor -SJ 191

04/28/88 Approved by Governor, Chapter No. 88-13 -SJ 268

S 231 GENERAL BILL by Meek (Similar ENG/H 459)

Minority Business Enterprises; specifies that procedures for reserving certain contracts apply only to bids entered by certified minority business enterprise, or to contractors who use such enterprises as subcontractors or subvendors, rather than to any minority business enterprise; provides penalties for false representation as certified minority business enterprise, etc Amends 287.062, .094, .0943. Effective Date Upon becoming law.

02/04/88 SENATE Prefiled

02/11/88 SENATE Referred to Commerce, Governmental Operations

04/05/88 SENATE Introduced, referred to Commerce; Governmental Operations -SJ 27

04/15/88 SENATE Extension of time granted Committee Commerce

04/29/88 SENATE Extension of time granted Committee Commerce

05/03/88 SENATE On Committee agenda—Commerce, 05/05/88, 1 00 pm, Room-A

05/05/88 SENATE Comm Report: Favorable with 1 amendment(s) by Commerce -SJ 246

05/09/88 SENATE Now in Governmental Operations -SJ 246

05/13/88 SENATE On Committee agenda—Governmental Operations, 05/17/88, 2:00 pm, Room-H; Extension of time granted Committee Governmental Operations

05/17/88 SENATE Comm. Report: Favorable by Governmental Operations, placed on Calendar -SJ 310

05/26/88 SENATE Placed on Special Order Calendar -SJ 426, Amendment adopted -SJ 455; Iden /Sim House Bill substituted; Laid on Table under Rule, Iden /Sim /Compare Bill passed, refer to HB 459 (Ch. 88-327) -SJ 456

S 232 GENERAL BILL by Woodson (Compare H 1120, S 911)

Emergency Medical Services Grants, redefines term "emergency medical services" & defines term "prehospital care system" for purposes of "Florida Emergency Medical Services Grant Act of 1973", requires county commissioners to distribute funds received from Emergency Medical Services T F to agencies that operate prehospital care systems & to certain municipalities within county. Amends 401 107, 113. Effective Date 10/01/88.

02/04/88 SENATE Prefiled

02/11/88 SENATE Referred to Health and Rehabilitative Services, Appropriations

04/05/88 SENATE Introduced, referred to Health and Rehabilitative Services, Appropriations -SJ 27

04/12/88 SENATE Withdrawn from Health and Rehabilitative Services, Appropriations, Indefinitely postponed -SJ 82

S 233 GENERAL BILL by Grant and others (Identical H 91)

Uniform Trade Secrets Act, creates said act; authorizes enjoining of misappropriation of trade secrets, provides for damages & award of attorney's fees, provides

HISTORY OF SENATE BILLS

S 233 (CONTINUED)

for preservation of secrecy of trade secrets by court, provides statute of limitations, specifies effect on other laws, provides for construction, provides for applicability, etc. Effective Date 10/01/88

- 02/04/88 SENATE Prefiled
 02/11/88 SENATE Referred to Commerce, Judiciary—Civil
 04/05/88 SENATE Introduced, referred to Commerce, Judiciary—Civil —SJ 28
 04/15/88 SENATE Extension of time granted Committee Commerce
 04/18/88 SENATE On Committee agenda—Commerce, 04/20/88, 2:00 pm, Room—A
 04/20/88 SENATE Comm Report. Favorable by Commerce —SJ 142
 04/21/88 SENATE Now in Judiciary—Civil —SJ 142
 04/29/88 SENATE Extension of time granted Committee Judiciary—Civil
 05/13/88 SENATE Extension of time granted Committee Judiciary—Civil
 05/19/88 SENATE On Committee agenda—Judiciary—Civil, 05/24/88, 9:00 am, Room—B
 05/24/88 SENATE Comm Report. Favorable by Judiciary—Civil, placed on Calendar —SJ 375
 05/31/88 SENATE Placed on Consent Calendar —SJ 549
 06/01/88 SENATE Placed on Consent Calendar —SJ 611, Iden./Sim. House Bill substituted; Laid on Table under Rule, Iden /Sim / Compare Bill passed, refer to HB 91 (Ch. 88—254) —SJ 708

S 234 GENERAL BILL by Grant (Identical H 22, Compare CS/ENG/H 243, ENG/H 1620, CS/ENG/S 522)

Southwest Florida Water Management; provides that one member of governing board of Southwest Florida Water Management District be resident of Pasco County. Amends 373.073 Effective Date: Upon becoming law

- 02/04/88 SENATE Prefiled
 02/11/88 SENATE Referred to Natural Resources and Conservation
 04/05/88 SENATE Introduced, referred to Natural Resources and Conservation —SJ 28
 04/15/88 SENATE Extension of time granted Committee Natural Resources and Conservation
 04/29/88 SENATE Extension of time granted Committee Natural Resources and Conservation
 05/13/88 SENATE Extension of time granted Committee Natural Resources and Conservation
 05/27/88 SENATE Extension of time granted Committee Natural Resources and Conservation
 06/07/88 SENATE Died in Committee on Natural Resources and Conservation, Iden /Sim /Compare bill passed, refer to CS/SB 522 (Ch. 88—242)

S 235 GENERAL BILL by Brown (Compare H 485, ENG/S 173)

Unclaimed Motor Vehicles; requires H S M.V Dept. to be notified of certain liens upon recovered, towed, or stored vehicles, requires dept. to suspend registration of person's motor vehicles until satisfaction of any lien for towing & storage charges has been demonstrated to dept.; provides for sale of certain motor vehicles in satisfaction of lien for recovery, towing, or storage charges. Amends 713.78. Effective Date 10/01/88

- 02/04/88 SENATE Prefiled
 02/11/88 SENATE Referred to Transportation
 04/05/88 SENATE Introduced, referred to Transportation —SJ 28
 04/15/88 SENATE Extension of time granted Committee Transportation
 04/29/88 SENATE Extension of time granted Committee Transportation
 05/13/88 SENATE Extension of time granted Committee Transportation
 05/27/88 SENATE Extension of time granted Committee Transportation
 06/07/88 SENATE Died in Committee on Transportation, Iden./Sim / Compare bill passed, refer to SB 173 (Vetoed by Governor—07/01/88)

S 236 GENERAL BILL by Girardeau and others (Identical H 603, Similar CS/H 589, S 227, S 694, Compare H 669, H 753, H 837, H 1617, S 939, S 1216)

Documentary Surtax/Housing; authorizes counties to levy discretionary surtax on certain documents to provide financial assistance for constructing, rehabilitating, or purchasing housing for certain low-income families; provides for administration, collection, & distribution of proceeds of surtax, provides exception; requires annual report to Revenue Dept. Creates 212.056 Effective Date: 07/01/88 or upon becoming law, whichever occurs later

- 02/04/88 SENATE Prefiled
 02/11/88 SENATE Referred to Economic, Community and Consumer Affairs; Finance, Taxation and Claims
 04/05/88 SENATE Introduced, referred to Economic, Community and Consumer Affairs; Finance, Taxation and Claims —SJ 28
 04/15/88 SENATE Extension of time granted Committee Economic, Community and Consumer Affairs
 04/29/88 SENATE Extension of time granted Committee Economic, Community and Consumer Affairs
 05/13/88 SENATE Extension of time granted Committee Economic, Community and Consumer Affairs
 05/27/88 SENATE Extension of time granted Committee Economic, Community and Consumer Affairs
 06/07/88 SENATE Died in Committee on Economic, Community and Consumer Affairs

S 237 JOINT RESOLUTION by Girardeau (Similar H 728)

Elected Public Officers/Party Change; constitutional amendment to require each state or local public officer elected in a partisan election as member of political party to resign that office if he changes his party registration during term of office Amends a. 5, Art. II

- 02/04/88 SENATE Prefiled
 02/11/88 SENATE Referred to Rules and Calendar
 04/05/88 SENATE Introduced, referred to Rules and Calendar —SJ 28
 04/12/88 SENATE Withdrawn from Rules and Calendar; Rereferred to Judiciary—Civil; Rules and Calendar —SJ 81, Motion to reconsider pending —SJ 83, Motion to reconsider failed —SJ 87
 04/15/88 SENATE Extension of time granted Committee Judiciary—Civil
 04/29/88 SENATE Extension of time granted Committee Judiciary—Civil
 05/13/88 SENATE Extension of time granted Committee Judiciary—Civil
 05/27/88 SENATE Extension of time granted Committee Judiciary—Civil
 06/07/88 SENATE Died in Committee on Judiciary—Civil

S 238 GENERAL BILL by Girardeau and others (Similar CS/H 955)

State Fund Investments/S. Africa; requires divestiture of moneys in state-operated trust funds which are invested in obligations of companies & financial institutions doing certain business with Republic of So. Africa or Namibia, prohibits such investments in future; provides phasing schedule for such divestiture; provides certain duties for Administration Board Creates 215.442. Effective Date 07/01/88 or upon becoming law, whichever occurs later

- 02/04/88 SENATE Prefiled
 02/11/88 SENATE Referred to Governmental Operations; Appropriations; Finance, Taxation and Claims
 04/05/88 SENATE Introduced, referred to Governmental Operations; Appropriations; Finance, Taxation and Claims —SJ 28
 04/13/88 SENATE On Committee agenda—Governmental Operations, 04/18/88, 2:00 pm, Room—H
 04/15/88 SENATE Extension of time granted Committee Governmental Operations
 04/18/88 SENATE Comm Report Favorable with 1 amendment(s) by Governmental Operations —SJ 129
 04/19/88 SENATE Now in Appropriations —SJ 129
 05/04/88 SENATE Extension of time granted Committee Appropriations
 05/19/88 SENATE Extension of time granted Committee Appropriations
 06/07/88 SENATE Died in Committee on Appropriations

S 239 GENERAL BILL/CS by Personnel, Retirement and Collective Bargaining; Margolis (Similar CS/ENG/H 203)

Firefighters Health Project; creates Fla. Firefighters, Paramedics, & Police Officers Health Project at University of Miami School of Medicine; prescribes duties of project; provides for annual audit & report, provides for review & repeal Creates 112.185. Appropriation. Effective Date: 07/01/88 or upon becoming law, whichever occurs later.

- 02/04/88 SENATE Prefiled
 02/11/88 SENATE Referred to Personnel, Retirement and Collective Bargaining; Governmental Operations; Appropriations
 04/05/88 SENATE Introduced, referred to Personnel, Retirement and Collective Bargaining; Governmental Operations, Appropriations —SJ 28
 04/07/88 SENATE On Committee agenda—Personnel, Retirement and Collective Bargaining, 04/12/88, 2:00 pm, Room—C
 04/12/88 SENATE Comm Report. CS by Personnel, Retirement and Collective Bargaining —SJ 104
 04/14/88 SENATE CS read first time —SJ 124; Now in Governmental Operations —SJ 104
 04/15/88 SENATE Extension of time granted Committee Governmental Operations
 04/25/88 SENATE On Committee agenda—Governmental Operations, 04/27/88, 2:00 pm, Room—H
 04/27/88 SENATE Comm. Report: Favorable with 1 amendment(s) by Governmental Operations —SJ 211
 04/29/88 SENATE Now in Appropriations —SJ 212
 05/04/88 SENATE Extension of time granted Committee Appropriations
 05/19/88 SENATE Withdrawn from Appropriations —SJ 355, Placed on Calendar
 05/26/88 SENATE Placed on Special Order Calendar —SJ 426; Amendments adopted, Iden /Sim House Bill substituted; Laid on Table under Rule, Iden./Sim./Compare Bill passed, refer to CS/HB 203 (Ch 88—263) —SJ 456

S 240 GENERAL BILL/ENG by Crenshaw and others (Identical H 1400, Compare H 1177, ENG/H 1409, CS/S 335)

State Lottery; removes authorization for prize winner to assign portion of prize to certain financial institutions, deletes & reenacts at a later date provisions requiring retailers to provide accessibility for disabled persons Amends 24.115, 112 Effective Date 04/12/88 except as otherwise provided.

- 02/04/88 SENATE Prefiled
 02/11/88 SENATE Referred to Commerce
 02/15/88 SENATE On Committee agenda—Commerce, 03/01/88, 9:00 am, Room—A
 03/01/88 SENATE Comm Report Favorable by Commerce, placed on Calendar

HISTORY OF HOUSE BILLS

H 91 GENERAL BILL by Canady and others (Identical S 233)

Uniform Trade Secrets Act, creates said act, authorizes enjoining of misappropriation of trade secrets, provides for damages & award of attorney's fees, provides for preservation of secrecy of trade secrets by court, provides statute of limitations, specifies effect on other laws, provides for construction, provides for applicability, etc. Effective Date. 10/01/88

11/18/87 HOUSE Prefiled
 12/09/87 HOUSE Referred to Commerce, Appropriations
 02/11/88 HOUSE Subreferred to Subcommittee on General Commerce
 02/12/88 HOUSE On subcommittee agenda—Commerce, 03/02/88, 1.00 pm, 317C
 03/02/88 HOUSE Subcommittee Recommendation pending ratification by full Committee. Favorable
 04/05/88 HOUSE Introduced, referred to Commerce, Appropriations—HJ 15, Subreferred to Subcommittee on General Commerce, Subcommittee Recommendation pending ratification by full Committee: Favorable
 04/14/88 HOUSE On Committee agenda—Commerce, 04/18/88, 1.15 pm, 317C—For ratification of subreferral, On Committee agenda—Commerce, 04/18/88, 1.15 pm, 317C
 04/18/88 HOUSE Preliminary Committee Action by Commerce. Favorable
 04/20/88 HOUSE Comm Report. Favorable by Commerce—HJ 229, Now in Appropriations—HJ 229
 05/03/88 HOUSE Withdrawn from Appropriations—HJ 314, Placed on Calendar
 05/10/88 HOUSE Placed on Special Order Calendar
 05/16/88 HOUSE Read second time—HJ 483
 05/17/88 HOUSE Read third time, Passed; YEAS 111 NAYS 0—HJ 508
 05/18/88 SENATE In Messages
 05/23/88 SENATE Received, referred to Commerce; Judiciary—Civil—SJ 362
 05/27/88 SENATE Extension of time granted Committee Commerce
 06/01/88 SENATE Withdrawn from Commerce; Judiciary—Civil—SJ 707, Substituted for SB 233; Passed, YEAS 35 NAYS 0—SJ 708
 06/01/88 Ordered enrolled
 06/21/88 Signed by Officers and presented to Governor
 07/05/88 Approved by Governor, Chapter No 88-254

H 92 GENERAL BILL/ENG by Hodges (Similar CS/S 553)

Pari-mutuel Wagering/Sundays, authorizes horseracing, harness racing, greyhound dogracing, & jai alai permitholders to operate on Sundays subject to certain limitations. Amends 550 51, 04, 081, 083, 0831, 291, 34, 43, 45, 551 11. Effective Date: Upon becoming law

11/20/87 HOUSE Prefiled
 12/09/87 HOUSE Referred to Regulated Industries & Licensing, Appropriations
 12/15/87 HOUSE Subreferred to Subcommittee on Pari-mutuels and the Lottery, On Committee agenda—Regulated Industries & Licensing, 01/05/88, 2 00 pm, 413C—For ratification of subreferral
 01/15/88 HOUSE On subcommittee agenda—Regulated Industries & Licensing, 02/03/88, 9:00 am, 413C
 02/03/88 HOUSE Subcommittee Recommendation pending ratification by full Committee. Favorable with 1 amendment
 02/19/88 HOUSE On Committee agenda—Regulated Industries & Licensing, 03/09/88, 2 00 pm, 413C
 03/09/88 HOUSE Preliminary Committee Action by Regulated Industries & Licensing: Favorable with 1 amendment
 03/11/88 HOUSE Comm. Report: Favorable with 1 amendment(s) by Regulated Industries & Licensing, Now in Appropriations
 04/05/88 HOUSE Introduced, referred to Regulated Industries & Licensing; Appropriations—HJ 15, Subreferred to Subcommittee on Pari-mutuels and the Lottery, Subcommittee Recommendation pending ratification by full Committee. Favorable with 1 amendment; Preliminary Committee Action by Regulated Industries & Licensing. Favorable with 1 amendment; Comm Report: Favorable with 1 amendment(s) by Regulated Industries & Licensing—HJ 79
 04/18/88 HOUSE On Committee agenda—Appropriations, 04/20/88, 1 15 pm, 21—HOB
 04/21/88 HOUSE Comm. Report: Favorable by Appropriations, placed on Calendar—HJ 230
 04/25/88 HOUSE Placed on Special Order Calendar
 04/26/88 HOUSE Read second time—HJ 255, Amendment pending—HJ 255
 05/17/88 HOUSE Pending amendment adopted—HJ 537
 05/18/88 HOUSE Read third time, Passed as amended; YEAS 76 NAYS 41—HJ 552
 05/19/88 SENATE In Messages
 05/23/88 SENATE Received, referred to Commerce, Finance, Taxation and Claims—SJ 364
 05/27/88 SENATE Extension of time granted Committee Commerce
 06/07/88 SENATE Died in Committee on Commerce

H 93 GENERAL BILL by Trammell (Similar CS/S 1247)

Lease Agreement/Failure to Comply, provides that failure to comply with lease does not constitute theft under certain circumstances, provides exceptions &

H 93 (CONTINUED)

penalties, applies to all actions pending on or after 10/01/88. Amends 812 014 Effective Date. 10/01/88

11/20/87 HOUSE Prefiled
 12/09/87 HOUSE Referred to Criminal Justice
 01/15/88 HOUSE Subreferred to Subcommittee on Crimes, Penalties and Prosecutions, On subcommittee agenda—Criminal Justice, 02/02/88, 2.00 pm, 317C
 02/02/88 HOUSE Subcommittee Recommendation pending ratification by full Committee. Favorable
 02/15/88 HOUSE On Committee agenda—Criminal Justice, 03/08/88, 10:00 am, 21—HOB—Not considered
 04/05/88 HOUSE Introduced, referred to Criminal Justice—HJ 15, Subreferred to Subcommittee on Crimes, Penalties and Prosecutions; Subcommittee Recommendation pending ratification by full Committee: Favorable
 04/18/88 HOUSE On Committee agenda—Criminal Justice, 04/20/88, 3:30 pm, Morris Hall
 04/20/88 HOUSE Preliminary Committee Action by Criminal Justice. Favorable
 04/22/88 HOUSE Comm. Report. Favorable by Criminal Justice, placed on Calendar—HJ 233
 04/28/88 HOUSE Placed on Special Order Calendar; Read second time—HJ 285
 05/04/88 HOUSE Read third time, Passed, YEAS 114 NAYS 0—HJ 330
 05/05/88 SENATE In Messages
 05/10/88 SENATE Received, referred to Judiciary—Civil—SJ 253
 05/13/88 SENATE Extension of time granted Committee Judiciary—Civil
 05/27/88 SENATE Extension of time granted Committee Judiciary—Civil
 06/01/88 SENATE Withdrawn from Judiciary—Civil, Substituted for CS/SB 1247; Passed; YEAS 32 NAYS 0—SJ 697
 06/01/88 Ordered enrolled
 06/21/88 Signed by Officers and presented to Governor
 07/06/88 Approved by Governor; Chapter No. 88-312

H 94 GENERAL BILL by Kelly; Dunbar and others (Compare CS/ENG/H 1502, CS/CS/S 127)

Interior Designers Licensing Act, creates said act; provides for examination & eligibility & for contents of exam & administration, provides for licensure without exam, continuing education & for inactive status licenses, provides for grounds for disciplinary actions & for actions by D P R; authorizes practice of interior design by firms & corporations, creates advisory committee; provides applicability, etc. Effective Date. 10/01/88.

11/23/87 HOUSE Prefiled
 12/09/87 HOUSE Referred to Regulatory Reform, Finance & Taxation, Appropriations
 12/15/87 HOUSE Subreferred to Subcommittee on Professional Regulation; On subcommittee agenda—Regulatory Reform, 01/05/88, 1 00 pm, Morris Hall; On Committee agenda, pending subcommittee action—Regulatory Reform, 01/05/88, 4 00 pm, Morris Hall
 04/05/88 HOUSE Introduced, referred to Regulatory Reform; Finance & Taxation; Appropriations—HJ 15; Subreferred to Subcommittee on Professional Regulation; On subcommittee agenda—Regulatory Reform, 04/06/88, 8:00 am, Morris Hall—Temporarily passed, or 04/07/88, 10:00 am, Morris Hall—Not considered
 06/07/88 HOUSE Died in Committee on Regulatory Reform, Iden/Sim/ Compare bill passed, refer to CS/HB 1502 (Ch. 88-383)

H 95 GENERAL BILL by Burke

Relief/Pitts & Lee, provides appropriation as compensation for having been victims of a miscarriage of justice. Claim with Appropriation. \$900,000. Effective Date: 07/01/88.

11/23/87 HOUSE Prefiled
 12/09/87 HOUSE Referred to Select Committee on Claims; Appropriations
 04/05/88 HOUSE Introduced, referred to Select Committee on Claims, Appropriations—HJ 15
 06/07/88 HOUSE Died in Committee on Select Committee on Claims

H 96 MEMORIAL by Banjanin

Strategic Defense System/Funding, urges U.S. Congress to fund research & development of a strategic defense system.

11/24/87 HOUSE Prefiled
 12/15/87 HOUSE Referred to Science & Technology
 04/05/88 HOUSE Introduced, referred to Science & Technology—HJ 15
 06/07/88 HOUSE Died in Committee on Science & Technology

H 97 GENERAL BILL by Banjanin and others (Compare ENG/H 1653, ENG/S 331)

Illegal Decals/Motor Vehicles, prohibits persons who own or operate motor vehicle from affixing to such vehicle any sticker, decal, emblem or other device containing certain obscene descriptions, photographs or depictions; provides penalty. Creates 847 002 Effective Date 10/01/88.

12/01/87 HOUSE Prefiled
 12/15/87 HOUSE Referred to Judiciary, Appropriations
 04/05/88 HOUSE Introduced, referred to Judiciary, Appropriations—HJ 16

(CONTINUED ON NEXT PAGE)

By Representative Canady

1 A bill to be entitled
 2 An act relating to trade secrets; creating the
 3 Uniform Trade Secrets Act; providing
 4 definitions; authorizing the enjoining of
 5 misappropriation of trade secrets; providing
 6 for damages and award of attorney's fees;
 7 providing for preservation of secrecy of trade
 8 secrets by the court; providing a statute of
 9 limitations; specifying effect on other laws;
 10 providing for construction; providing an
 11 effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Short title.--This act may be cited as the
 16 Uniform Trade Secrets Act.

17 Section 2. Definitions.--As used in this act, unless
 18 the context requires otherwise:

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

23 (2) "Misappropriation" means:

24 (a) Acquisition of a trade secret of another by a
 25 person who knows or has reason to know that the trade secret
 26 was acquired by improper means; or

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

29 1. Used improper means to acquire knowledge of the
 30 trade secret; or

31

1 2. At the time of disclosure or use, knew or had
 2 reason to know that his knowledge of the trade secret was:
 3 a. Derived from or through a person who had utilized
 4 improper means to acquire it;
 5 b. Acquired under circumstances giving rise to a duty
 6 to maintain its secrecy or limit its use; or
 7 c. Derived from or through a person who owed a duty to
 8 the person seeking relief to maintain its secrecy or limit its
 9 use; or
 10 3. Before a material change of his position, knew or
 11 had reason to know that it was a trade secret and that
 12 knowledge of it had been acquired by accident or mistake.
 13 (3) "Person" means a natural person, corporation,
 14 business trust, estate, trust, partnership, association, joint
 15 venture, government, governmental subdivision or agency, or
 16 any other legal or commercial entity.
 17 (4) "Trade secret" means information, including a
 18 formula, pattern, compilation, program, device, method,
 19 technique, or process, that:
 20 (a) Derives independent economic value, actual or
 21 potential, from not being generally known to, and not being
 22 readily ascertainable by proper means by, other persons who
 23 can obtain economic value from its disclosure or use; and
 24 (b) Is the subject of efforts that are reasonable
 25 under the circumstances to maintain its secrecy.
 26 Section 3. Injunctive relief.--
 27 (1) Actual or threatened misappropriation may be
 28 enjoined. Upon application to the court, an injunction shall
 29 be terminated when the trade secret has ceased to exist, but
 30 the injunction may be continued for an additional reasonable
 31

1 period of time in order to eliminate commercial advantage that
2 otherwise would be derived from the misappropriation.

3 (2) In exceptional circumstances, an injunction may
4 condition future use upon payment of a reasonable royalty for
5 no longer than the period of time for which use could have
6 been prohibited. Exceptional circumstances include, but are
7 not limited to, a material and prejudicial change of position
8 prior to acquiring knowledge or reason to know of
9 misappropriation that renders a prohibitive injunction
10 inequitable.

11 (3) In appropriate circumstances, affirmative acts to
12 protect a trade secret may be compelled by court order.

13 Section 4. Damages.--

14 (1) Except to the extent that a material and
15 prejudicial change of position prior to acquiring knowledge or
16 reason to know of misappropriation renders a monetary recovery
17 inequitable, a complainant is entitled to recover damages for
18 misappropriation. Damages can include both the actual loss
19 caused by misappropriation and the unjust enrichment caused by
20 misappropriation that is not taken into account in computing
21 actual loss. In lieu of damages measured by any other
22 methods, the damages caused by misappropriation may be
23 measured by imposition of liability for a reasonable royalty
24 for a misappropriator's unauthorized disclosure or use of a
25 trade secret.

26 (2) If willful and malicious misappropriation exists,
27 the court may award exemplary damages in an amount not
28 exceeding twice any award made under subsection (1).

29 Section 5. Attorney's fees.--If a claim of
30 misappropriation is made in bad faith, a motion to terminate
31 an injunction is made or resisted in bad faith, or willful and

1 malicious misappropriation exists, the court may award
2 reasonable attorney's fees to the prevailing party.

3 Section 6. Preservation of secrecy.--In an action
4 under this act, a court shall preserve the secrecy of an
5 alleged trade secret by reasonable means, which may include
6 granting protective orders in connection with discovery
7 proceedings, holding in-camera hearings, sealing the records
8 of the action, and ordering any person involved in the
9 litigation not to disclose an alleged trade secret without
10 prior court approval.

11 Section 7. Statute of limitations.--An action for
12 misappropriation must be brought within 3 years after the
13 misappropriation is discovered or by the exercise of
14 reasonable diligence should have been discovered. For the
15 purposes of this section, a continuing misappropriation
16 constitutes a single claim.

17 Section 8. Effect on other law.--

18 (1) Except as provided in subsection (2), this act
19 displaces conflicting tort, restitutionary, and other law of
20 this state providing civil remedies for misappropriation of a
21 trade secret.

22 (2) This act does not affect:

23 (a) Contractual remedies, whether or not based upon
24 misappropriation of a trade secret;

25 (b) Other civil remedies that are not based upon
26 misappropriation of a trade secret; or

27 (c) Criminal remedies, whether or not based upon
28 misappropriation of a trade secret.

29 Section 9. Uniformity of application and
30 construction.--This act shall be applied and construed to
31

1 effectuate its general purpose to make uniform the law with
 2 respect to the subject of this act among states enacting it.

3 Section 10. This act shall take effect October 1,
 4 1988, and does not apply to misappropriation occurring prior
 5 to said date. With respect to a continuing misappropriation
 6 that began prior to said date, this act also does not apply to
 7 the continuing misappropriation that occurs after said date.

8

9 *****

10 HOUSE SUMMARY

11 Creates the Uniform Trade Secrets Act. Authorizes the
 12 enjoining of misappropriation of trade secrets. Provides
 13 for damages and award of attorney's fees. Provides for
 14 preservation of secrecy of trade secrets by the court.
 15 Provides a statute of limitations. Specifies effect on
 16 other laws.

15

16

17

18 This publication was produced at an average cost of 1.5 cents
 19 per single page in compliance with the Rules and for
 the information of members of the Legislature and the public.

20

21

22

23

24

25

26

27

28

29

30

31

STORAGE NAME: sa-hb91
Date: February 16, 1988
Revised: _____
Final: _____

HOUSE OF REPRESENTATIVES
COMMERCE COMMITTEE
STAFF ANALYSIS

HB 91

BILL #: HB 91
RELATING TO: Uniform Trade Secret Act
SPONSOR(S): Representative Canady
EFFECTIVE DATE: October 1, 1988
COMPANION BILLS: _____
OTHER COMMITTEES OF REFERENCE: (1) Appropriations
(2) _____

I. SUMMARY:

This bill creates the Uniform Trade Secrets Act (UTSA) as recommended by the National Conference of Commissioners on Uniform State Laws.

A. Current Law & Present Situation:

Trade secrets and patents are closely related concepts. A valid patent amounts to a legal monopoly granted by the U.S. Patent Office for 17 years. The inventor must, however, publicly disclose the invention. If the patent is invalidated then the invention or process is disclosed to competitors with a complete loss of benefit or advantage to the inventor. In view of this risk, the Uniform Law Commissioners report that many businesses choose, instead, to rely on state trade secret laws for protection as no such disclosure is involved.

Although control of patent law is reserved to the federal government by the United States Constitution, Kewanee Oil Co. v. Bicron Corp., 416 U.S. 470 (1974), established that neither the patent clause of the U.S. Constitution nor federal patent laws pre-empt state trade secret laws regardless of whether or not the information protected is patentable.

A trade secret is commercially valuable information which can take many different forms. Due to the fact that the information is not generally known to others and is not readily ascertainable by proper means, gives rise to the need for protection. According to Uniform Law Commissioners: "A trade secret, generally, would be exclusive knowledge, of economic value, which has been generated by the labors of a specific person or persons who have an interest in protecting its value."

Until 1979, the states had been left to develop trade secret laws on their own by statute or common (case) law, with the apparent result that

-668 MAY 10 1988

trade secret law has developed unevenly in the different states. This, despite presumed importance to multi-state businesses and industries, especially those engaged in highly innovative fields such as electronics, chemicals, and bio-technology. In 1979, the Uniform Law Commissioners approved the Uniform Trade Secrets Act and recommended its adoption in all states.

Florida operates primarily under common law principles for trade secrets protection and misappropriation and does not presently have a comprehensive trade secrets law. However, there are numerous statutory references to trade secrets. Most of these references establish exemptions from the public records law recognizing the confidentiality of trade secrets that have been disclosed to, or relate to, the operation of a governmental agency. A most recent example of this is the Department of the Lottery's confidentiality provision "which includes trade secrets." (s. 24.105(14)(a), Florida Statutes).

In addition, Florida criminal statutes define a trade secret (s. 812.081(1)(c), Florida Statutes) and make it a crime to obtain trade secrets by theft, robbery, embezzlement (s. 812.081(2), Florida Statutes) or fraud (s. 817.11 - 13, Florida Statutes). Willfully disclosing or taking computer data, programs, or supporting documentation that is considered a trade secret is a crime against "intellectual property." (s. 815.04(3), Florida Statutes).

Twenty-two states have adopted some form of the UTSA.

B. Effect of Proposed Changes:

In large part, the UTSA codifies the principles of common law trade secret protection while maintaining essential distinctions from patent law.

Section 1. of the bill provides that the Act shall be known as the Uniform Trade Secrets Act.

Section 2. of this bill provides unitary definitions of the terms: "Improper means", "Misappropriation", "Person", and "Trade secret". The significant factor here is that, while definitions of terms often vary from state to state, these terms would be the same in all states adopting the UTSA.

The proposed definition of the term "trade secret" is also somewhat significant because it expands the coverage of common law trade secrets protection in two ways. First, protection is extended to a person who has not yet put the trade secret information to use. Second, so-called "negative" information would be protected, i.e., information involving lengthy (and expensive) research leading to failure - mistakes a competitor could profit by avoiding.

It should be noted that this definition is somewhat different from the one contained in current Florida law, s. 812.081(1)(c), Florida Statutes, which, as mentioned, is the definition used in Florida's criminal

section on misappropriation of trade secrets. The proposed definition in the UTSA is somewhat broader than the common law definition.

Section 3. of the bill provides for injunctive relief. An important feature in this section is that under certain "exceptional" circumstances an injunction can require future use of the trade secret on the payment of a reasonable royalty. An exceptional circumstance can occur when the person unknowingly acquires a misappropriated trade secret and changes his position in a material and prejudicial way (i.e., invests heavily in a new process or equipment) prior to learning of the misappropriation. Payment of royalties would only continue for as long as the court would have prohibited use of the trade secret. In addition, the court may order holders of trade secrets to take affirmative steps to protect the secret information.

Section 4. of the bill provides for damages. The court is given a full range of flexibility in fixing damages including the award of both actual damages and unjust enrichment. Damages may be measured by imposition of liability for a reasonable royalty. In addition, willful and malicious misappropriation is limited to not more than twice the normal award.

Section 5. of the bill provides the court with authority to award attorney's fees to the prevailing party in cases involving bad faith claims or defenses, or willful and malicious misappropriation.

Section 6. of the bill pertains to preservation of secrecy granting the court broad authority to protect trade secrets information before, during, and after trial.

Section 7. provides a three year statute of limitations within which actions for misappropriation must be brought. The significance of this section is that statutes of limitations sometimes vary in length depending upon the cause of action, i.e., whether the claim is brought in quasi contract, restitution, tort, etc.

In addition, the UTSA establishes that a misappropriation is not a continuing wrong. Generally, in the instance of a continuing wrong the limitation period begins at the time the act of misappropriation occurs. The UTSA delays the beginning of the statute of limitations clock until discovery is or should have been made.

Section 8. of the bill pertains to the bill's effect on other laws. The UTSA is intended to displace other conflicting state civil remedies for misappropriation of trade secrets, such as for tort, or restitution claims. This section also spells out what state laws it is not intended to displace, i.e., it is not intended to cover state criminal laws or contractual remedies regarding misappropriation of trade secrets. Furthermore, this section indicates that it does not affect civil remedies

not based upon misappropriation of trade secrets. For example, according to the Uniform Law Commissioner's Comments, it would not apply to a duty imposed by law that is not based upon the existence of trade secret information such as an agent's duty of loyalty to his principal.

Section 9. of the bill provides that it is the legislative intent that the general purpose of the Act is to make uniform the trade secret laws among the states adopting it.

Section 10. of the bill provides an effective date of October 1, 1988 for "misappropriation" of trade secrets occurring after that date and specifically does not apply to misappropriation occurring before then including a continuing misappropriation which began prior to, and continues after, the effective date.

II. ECONOMIC IMPACT:

A. Public:

No definite information was received or found that revealed a specific quantifiable public economic impact resulting from this proposal. However, the following arguments were advanced claiming a positive economic value for the proposal.

The Uniform Law Commissioners assert that the uniform act will bring clarity, simplicity, and uniformity to trade secrets law; an area dominated by specialists. This, it is argued, will lead to a greater number of attorneys willing to represent clients in trade secret litigation. Thus, private industry should be able to more easily, and therefore, more cheaply, obtain legal counsel in trade secret matters. Whether or not legal costs attributable to adoption of the uniform act are ultimately reduced remains to be seen, and in any case would be most difficult to measure or project in dollar terms.

In addition, for industries doing business in more than one state, uniformity of the law should remove uncertainties and simplify protection of trade secrets. There is probably some economic value to this, but this, too, is not readily quantifiable.

B. Government: None

III. STATE COMPREHENSIVE PLAN IMPACT:

The stated purpose of the bill is to make trade secrets law uniform among the states adopting the uniform act, (see Section 9.). This would be consistent with the policy contained in the governmental efficiency part of the State Comprehensive Plan in that it tends to "... promote cooperation

in, (judicial) governmental activities between, ... state ... governmental units." s. 187.201(20)(b)5., Florida Statutes.

IV. COMMENTS: None.

V. AMENDMENTS: None.

VI. PREPARED BY:


David Sigerson

VII. STAFF DIRECTOR:


H. Fred Varn

STORAGE NAME: h0091-f.co
Date: June 1, 1988

HOUSE OF REPRESENTATIVES
HOUSE COMMERCE COMMITTEE
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 91

RELATING TO: Uniform Trade Secrets Act

SPONSOR(S): Representative Canady & Others

EFFECTIVE DATE: October 1, 1988

DATE BECAME LAW: _____

CHAPTER #: 88- Laws of Florida

COMPANION BILL(S): Identical to S233

OTHER COMMITTEES OF REFERENCE: (1) Appropriations

(2) _____

I. SUMMARY:

House Bill 91 creates the Uniform Trade Secrets Act (UTSA) as recommended, with 1985 amendments, by the National Conference of Commissioners on Uniform State Laws.

A. Current Law & Present Situation:

Trade secrets and patents are closely related concepts. A valid patent amounts to a legal monopoly granted by the U.S. Patent Office for 17 years. The inventor must, however, publicly disclose the invention. If the patent is invalidated then the invention or process is disclosed to competitors with a complete loss of benefit or advantage to the inventor. In view of this risk, the Uniform Law Commissioners report that many businesses choose, instead, to rely on state trade secret laws for protection as no such disclosure is involved.

Although control of patent law is reserved to the federal government by the United States Constitution, the case of Kewanee Oil Co. v. Bicron Corp., 416 U.S. 470 (1974), established that neither the patent clause of the U.S. Constitution nor federal patent laws pre-empt state trade secret laws regardless of whether or not the information protected is patentable.

A trade secret is commercially valuable information which can take many different forms. The fact that the information is not generally known to others and is not readily ascertainable by proper means, gives rise to the need for protection. According to Uniform Law Commissioners: "A trade secret, generally, would be exclusive knowledge, of economic value, which

has been generated by the labors of a specific person or persons who have an interest in protecting its value."

Until 1979, the states had been left to develop trade secret laws on their own by statute or common (case) law, with the apparent result that trade secret law has developed unevenly in the different states. This, despite its presumed importance to multi-state businesses and industries, especially those engaged in highly innovative fields such as electronics, chemicals, and bio-technology. In 1979, the Uniform Law Commissioners approved the Uniform Trade Secrets Act and recommended its adoption in all states.

Florida operates primarily under common law principles for trade secrets protection and misappropriation and does not presently have a comprehensive trade secrets law. However, there are numerous statutory references to trade secrets. Most of these references establish exemptions from the public records law recognizing the confidentiality of trade secrets that have been disclosed, or relate, to the operation of a governmental agency. An example of this is the recently enacted Department of the Lottery confidentiality provision which includes trade secrets, (s. 6, ch. 87-65, Laws of Florida; s. 24.105(14)(a), Florida Statutes).

In addition, Florida criminal statutes define a trade secret (s. 812.081(1)(c), Florida Statutes) and make it a crime to obtain trade secrets by theft, robbery, embezzlement (s. 812.081(2), Florida Statutes) or fraud (ss. 817.11 - 13, Florida Statutes). Willfully disclosing or taking computer data, programs, or supporting documentation that is considered a trade secret is a crime against "intellectual property." (s. 815.04(3), Florida Statutes).

Twenty-two states have adopted some form of the UTSA.

B. Effect of Proposed Changes:

In a large part, the UTSA codifies the principles of common law trade secret protection while maintaining essential distinctions from patent law.

Section 1 of the bill provides that the Act shall be known as the Uniform Trade Secrets Act.

Section 2 provides unitary definitions of the terms: "Improper means", "Misappropriation", "Person", and "Trade secret". The significant factor here is that, while definitions of terms often vary from state to state, these terms will be the same in all states adopting the UTSA.

The definition of the term "trade secret" is also somewhat significant because it expands the coverage of common law trade secrets protection in two ways. First, protection is extended to a person who has not yet put the trade secret information to use. Second, so-called "negative" information would be protected, i.e., information involving lengthy (and expensive) research leading to failure - mistakes a competitor could profit by avoiding.

It should be noted that this definition is phrased somewhat different from and worded less extensively than the one contained in current Florida law, s. 812.081(1)(c), Florida Statutes, which, as mentioned, is the definition used in Florida to prosecute criminal misappropriation of trade secrets. The two definitions, however, contain the same basic elements.

Section 3 provides for injunctive relief. An important feature in this section is that under certain "exceptional" circumstances an injunction can condition future use of the trade secret upon the payment of a reasonable royalty. An exceptional circumstance can occur when the person unknowingly acquires a misappropriated trade secret and changes his position in a material and prejudicial way (i.e., invests heavily in a new process or equipment) prior to learning of the misappropriation. Payment of royalties would only continue for as long as the court would have prohibited use of the trade secret. In addition, the court may order holders of trade secrets to take affirmative steps to protect the secret information.

Section 4 provides for damages. The court is given a full range of options in fixing damages including the award of both actual damages and unjust enrichment. When other methods would be unsuitable, damages may be measured by imposition of liability for a reasonable royalty. In addition, the court may take willful and malicious misappropriation into consideration, but damages are limited to not more than twice the normal award.

Section 5 provides the court with authority to award attorney's fees to the prevailing party in cases involving bad faith claims or defenses, or willful and malicious misappropriation.

Section 6 pertains to preservation of secrecy granting the court broad authority to protect trade secrets before, during, and after trial.

Section 7 provides a three-year statute of limitations within which actions for misappropriation must be brought. The significance of this section is that statutes of limitations sometimes vary in length depending upon the cause of action, i.e., whether the claim is brought in quasi contract, restitution, tort, etc. The UTSA provides uniformity.

Furthermore, the UTSA establishes that a misappropriation is not a continuing wrong. Generally, in the instance of a continuing wrong the limitation period begins at the time the act of misappropriation occurs. The UTSA delays the start of the statute of limitations "clock" until discovery is or should have been made.

Section 8 pertains to the UTSA's effect on other laws. The UTSA is intended to displace other conflicting state civil remedies for misappropriation of trade secrets, such as for tort, or restitution claims. This section also spells out what state laws it is not intended to displace, i.e., it is not intended to cover state criminal laws or contractual remedies regarding misappropriation of trade secrets. Furthermore, this section indicates that

it does not affect civil remedies not based upon misappropriation of trade secrets. For example, according to the Uniform Law Commissioner's Comments, it would not apply to a duty imposed by law that is not based upon the existence of trade secret information, such as an agent's duty of loyalty to his principal.

Section 9 provides that it is the legislative intent that the general purpose of the Act is to make uniform the trade secret laws among the states adopting it.

Section 10 provides that the UTSA applies to misappropriation of trade secrets occurring on or after October 1, 1988, and specifically does not apply to misappropriation occurring before then, including a continuing misappropriation which began prior to, and continues after, the effective date.

II. ECONOMIC IMPACT:

A. Public:

No definite information was received or found that revealed a specific quantifiable public economic impact resulting from this proposal. However, the following arguments were advanced claiming a positive economic value for the proposal.

The Uniform Law Commissioners assert that the uniform act will bring clarity, simplicity, and uniformity to trade secret laws; an area dominated by specialists. This, it is argued, will lead to a greater number of attorneys willing to represent clients in trade secret litigation. Thus, private industry should be able to more easily, and therefore, more cheaply, obtain legal counsel in trade secret matters. Whether or not legal costs attributable to adoption of the uniform act are ultimately reduced remains to be seen, and in any case would be most difficult to measure or project in dollar terms.

In addition, it is argued that for industries doing business in more than one state, uniformity of the law should remove uncertainties and simplify protection of trade secrets. There is probably some economic value to this argument, but this, too, is not readily quantifiable.

B. Government: None

III. STATE COMPREHENSIVE PLAN IMPACT:

The stated purpose of the bill is to make trade secret laws uniform among the states adopting the uniform act, (see Section 9). This would be consistent with the policy contained in the governmental efficiency part of the State Comprehensive Plan in that it tends to "... promote cooperation

in, (judicial) governmental activities between, ... state ... governmental units." s. 187.201(20)(b)5., Florida Statutes.

IV. COMMENTS:

LEGISLATIVE HISTORY:

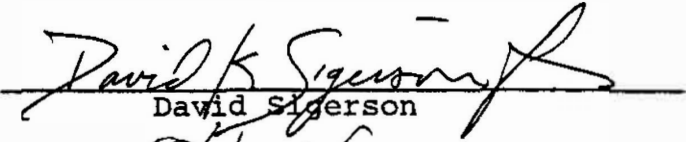
Enacted Bill:

House Bill 91 by Representative Canady and others was prefiled on November 11, 1987, and referred to the Committees on Commerce and Appropriations. The Subcommittee on Labor and Employment Security of the House Commerce Committee considered the bill on March 2, 1988, and reported the bill favorably to the Full Committee. The Full Commerce Committee considered HB 91 on April 14, and reported it favorably. After being withdrawn from the Appropriations Committee and placed on the Calendar (HJ 00314), HB 91 passed the House by a vote of 111 to 0 on May 17 (HJ 00508) and was sent to the Senate. Then on June 1, HB 91 was withdrawn from the Senate Committees on Commerce and Judiciary-Civil, substituted for its identical Senate companion, and passed by a vote of 35 to 0 (SJ 00708).

Disposition of Companion:

Senate Bill 233 was prefiled by Senator Grant on February 2, 1988, and subsequently introduced and referred to the Committees on Commerce and Judiciary-Civil on April 5. The Committee on Commerce considered the bill on April 20, and reported it favorably. On April 24, the bill was also given a favorable report by the Judiciary-Civil Committee and placed on the Calendar. Senate Bill 233 was placed on the Consent Calendar on June 1, and laid on the table as its identical House companion (HB 91) was substituted and passed (SJ 00708).

V. PREPARED BY:


David Sigerson

VI. STAFF DIRECTOR:


H. Fred Varn

By Senators Grant, Crawford, and Frank

This publication was produced at an average cost of 1.5 cents per page for the information of members of the legislature and the public.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

A bill to be entitled
An act relating to trade secrets; creating the
Uniform Trade Secrets Act; providing
definitions; authorizing the enjoining of
misappropriation of trade secrets; providing
for damages and award of attorney's fees;
providing for preservation of secrecy of trade
secrets by the court; providing a statute of
limitations; specifying effect on other laws;
providing for construction; providing an
effective date.

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

Section 1. Short title.--This act may be cited as the
Uniform Trade Secrets Act.

Section 2. Definitions.--As used in this act, unless
the context requires otherwise:

(1) "Improper means" includes 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 by improper means; or

(b) 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; or

- 1 2. At the time of disclosure or use, knew or had
2 reason to know that his knowledge of the trade secret was:
- 3 a. Derived from or through a person who had utilized
4 improper means to acquire it;
- 5 b. Acquired under circumstances giving rise to a duty
6 to maintain its secrecy or limit its use; or
- 7 c. Derived from or through a person who owed a duty to
8 the person seeking relief to maintain its secrecy or limit its
9 use; or

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

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

17 (4) "Trade secret" means information, including a
18 formula, pattern, compilation, program, device, method,
19 technique, or process, that:

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

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

26 Section 3. Injunctive relief.--

27 (1) Actual or threatened misappropriation may be
28 enjoined. Upon application to the court, an injunction shall
29 be terminated when the trade secret has ceased to exist, but
30 the injunction may be continued for an additional reasonable
31

1 period of time in order to eliminate commercial advantage that
2 otherwise would be derived from the misappropriation.

3 (2) In exceptional circumstances, an injunction may
4 condition future use upon payment of a reasonable royalty for
5 no longer than the period of time for which use could have
6 been prohibited. Exceptional circumstances include, but are
7 not limited to, a material and prejudicial change of position
8 prior to acquiring knowledge or reason to know of
9 misappropriation that renders a prohibitive injunction
10 inequitable.

11 (3) In appropriate circumstances, affirmative acts to
12 protect a trade secret may be compelled by court order.

13 Section 4. Damages.--

14 (1) Except to the extent that a material and
15 prejudicial change of position prior to acquiring knowledge or
16 reason to know of misappropriation renders a monetary recovery
17 inequitable, a complainant is entitled to recover damages for
18 misappropriation. Damages can include both the actual loss
19 caused by misappropriation and the unjust enrichment caused by
20 misappropriation that is not taken into account in computing
21 actual loss. In lieu of damages measured by any other
22 methods, the damages caused by misappropriation may be
23 measured by imposition of liability for a reasonable royalty
24 for a misappropriator's unauthorized disclosure or use of a
25 trade secret.

26 (2) If willful and malicious misappropriation exists,
27 the court may award exemplary damages in an amount not
28 exceeding twice any award made under subsection (1).

29 Section 5. Attorney's fees.--If a claim of
30 misappropriation is made in bad faith, a motion to terminate
an injunction is made or resisted in bad faith, or willful and

1 malicious misappropriation exists, the court may award
2 reasonable attorney's fees to the prevailing party.

3 Section 6. Preservation of secrecy.--In an action
4 under this act, a court shall preserve the secrecy of an
5 alleged trade secret by reasonable means, which may include
6 granting protective orders in connection with discovery
7 proceedings, holding in-camera hearings, sealing the records
8 of the action, and ordering any person involved in the
9 litigation not to disclose an alleged trade secret without
10 prior court approval.

11 Section 7. Statute of limitations.--An action for
12 misappropriation must be brought within 3 years after the
13 misappropriation is discovered or by the exercise of
14 reasonable diligence should have been discovered. For the
15 purposes of this section, a continuing misappropriation
16 constitutes a single claim.

17 Section 8. Effect on other law.--

18 (1) Except as provided in subsection (2), this act
19 displaces conflicting tort, restitutionary, and other law of
20 this state providing civil remedies for misappropriation of a
21 trade secret.

22 (2) This act does not affect:

23 (a) Contractual remedies, whether or not based upon
24 misappropriation of a trade secret;

25 (b) Other civil remedies that are not based upon
26 misappropriation of a trade secret; or

27 (c) Criminal remedies, whether or not based upon
28 misappropriation of a trade secret.

29 Section 9. Uniformity of application and
30 construction.--This act shall be applied and construed to
31

1 effectuate its general purpose to make uniform the law with
2 respect to the subject of this act among states enacting it.

3 Section 10. This act shall take effect October 1,
4 1988, and does not apply to misappropriation occurring prior
5 to said date. With respect to a continuing misappropriation
6 that began prior to said date, this act also does not apply to
7 the continuing misappropriation that occurs after said date.

8
9

10 *****

11 HOUSE SUMMARY

12 Creates the Uniform Trade Secrets Act. Authorizes the
13 enjoining of misappropriation of trade secrets. Provides
14 for damages and award of attorney's fees. Provides for
15 preservation of secrecy of trade secrets by the court.
16 Provides a statute of limitations. Specifies effect on
17 other laws.

16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Wilkes</u>	<u>Fort</u>	1. <u>COM</u>	<u>Favorable</u>
2. <u>Cochran</u> <i>MC</i>	<u>Lester</u> <i>DL</i>	2. <u>JCI</u>	<u>Favorable</u>
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

Uniform Trade Secrets Act

BILL NO. AND SPONSOR:

SB 233 by
Senator Grant, et al

I. SUMMARY:

A. Present Situation:

Although control of patent law is reserved to the federal government by the U.S. Constitution, Kewanee Oil Co. v. Bicron Corp., 416 U.S. 470 (1974), established that neither the patent clause of the U.S. Constitution nor federal patent laws preempt state trade secret laws regardless of whether or not the information protected is patentable.

Trade secrets and patents are closely related concepts. A valid patent amounts to a legal monopoly granted by the U.S. Patent Office for 17 years. The inventor must, however, publicly disclose the invention. If the patent is invalidated then the invention or process is disclosed to competitors with a complete loss of benefit or advantage to the inventor. I. Kayton, Kayton on Patents (2d ed. 1983). In view of this risk, the Uniform Law Commissioners report that many businesses choose, instead, to rely on state trade secret laws for protection as no such disclosure is involved. See Commentary, Uniform Trade Secrets Act With 1985 Amendments, National Conference of Commissioners on Uniform State Laws.

A trade secret is commercially valuable information which can take many different forms. The fact that the information is not generally known to others and is not readily ascertainable by proper means, gives rise to the need for protection. Kayton at 29. According to the Uniform Law Commissioners: "A trade secret, generally, would be exclusive knowledge, of economic value, which has been generated by the labors of a specific person or persons who have an interest in protecting its value."

Until 1979, the states had been left to develop trade secret laws on their own by statute or case law, with the apparent result that trade secret law has developed differently in the different states. In 1979, the Uniform Law Commissioners approved the Uniform Trade Secrets Act (UTSA) and recommended its adoption in all states.

Florida operates primarily under common law principles for trade secret protection and misappropriation and does not presently have a comprehensive trade secrets law. However, there are numerous statutory references to trade secrets. Most of these references establish exemptions from the public records law recognizing the confidentiality of trade secrets that have been disclosed to a governmental agency. A most recent example of this is the Department of the Lottery's confidentiality provision "which includes trade secrets." s. 24.105(14)(a), F.S.

In addition, Florida criminal statutes define a trade secret s. 812.081(1)(c), F.S. and make it a crime to obtain trade secrets

by theft, robbery, embezzlement s. 812.081(2), F.S. or fraud s. 817.11 - s. 817.13, F.S. Willfully disclosing or taking computer data, programs, or supporting documentation that is considered a trade secret is a crime against "intellectual property." s. 815.04(3), F.S.

Twenty-two states have adopted some form of the UTSA.

B. Effect of Proposed Changes:

Section by Section Analysis:

This bill creates the Uniform Trade Secrets Act (UTSA) as recommended by the National Conference of Commissioners on Uniform State Laws. In large part, the UTSA codifies the principles of common law trade secret protection while maintaining essential distinctions from patent law.

Section 1 of the bill provides that the act shall be known as the Uniform Trade Secrets Act.

Section 2 of this bill provides uniform definitions of the terms: "Improper means," "Misappropriation," "Person," and "Trade secret." The significant factor here is that, while definitions of terms often vary from state to state, these terms would be the same in all states adopting the UTSA.

The proposed definition of the term "trade secret" is also somewhat significant because it expands the coverage of common law trade secrets protection in two ways. First, protection is extended to a person who has not yet put the trade secret information to use. Second, so-called "negative" information would be protected, i.e., information involving lengthy (and expensive) research leading to failure - mistakes a competitor could profit by avoiding.

It should be noted that this definition is somewhat different from the one contained in current Florida law, s. 812.081(1)(c), F.S., which, as mentioned, is the definition used in Florida's criminal section on misappropriation of trade secrets. The proposed definition in the UTSA is somewhat broader than the common law definition.

Section 3 of the bill provides for injunctive relief. An important feature in this section is that under certain "exceptional" circumstances an injunction can require future use of the trade secret on the payment of a reasonable royalty. An exceptional circumstance can occur when the person unknowingly acquires a misappropriated trade secret and changes his position in a material and prejudicial way (i.e., invests heavily in a new process or equipment) prior to learning of the misappropriation. Payment of royalties would only continue for as long as the court would have prohibited use of the trade secret. In addition, the court may order holders of trade secrets to take affirmative steps to protect the secret information.

Section 4 of the bill provides for damages. The court is given a full range of flexibility in fixing damages including the award of both actual damages and unjust enrichment. Damages may be measured by imposition of liability for a reasonable royalty. In addition, damages for willful and malicious misappropriation are limited to not more than twice the amount awarded through actual damages, unjust enrichment, or imposition of royalties.

Section 5 of the bill provides the court with authority to award attorney's fees to the prevailing party in cases involving bad faith claims or motions to terminate an injunction, or willful and malicious misappropriation.

Section 6 of the bill pertains to preservation of secrecy granting the court broad authority to protect trade secrets information before, during, and after trial.

Section 7 provides a three year statute of limitations within which actions for misappropriation must be brought and establishes that a continuing misappropriation constitutes a single claim.

Section 8 of the bill pertains to the bill's effect on other laws. The UTSA is intended to displace other conflicting state civil remedies for misappropriation of trade secrets, such as for tort, or restitution claims. This section also spells out what state laws it is not intended to displace, i.e., it is not intended to cover state criminal laws or contractual remedies regarding misappropriation of trade secrets. Furthermore, this section indicates that it does not affect civil remedies not based upon misappropriation of trade secrets. For example, according to the Uniform Law Commissioner's Comments, it would not apply to a duty imposed by law that is not based upon the existence of trade secret information such as an agent's duty of loyalty to his principal.

Section 9 of the bill provides that it is the legislative intent that the general purpose of the act is to make uniform the trade secret laws among the states adopting it.

Section 10 of the bill provides an effective date of October 1, 1988, for "misappropriation" of trade secrets occurring after that date and specifically does not apply to misappropriation occurring before then including a continuing misappropriation which began prior to, and continues after, the effective date.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

The Uniform Law Commissioners assert that the uniform act will bring clarity, simplicity, and uniformity to trade secrets law, an area dominated by specialists. This, it is argued, will lead to a greater number of attorneys willing to represent clients in trade secret litigation. Thus, private industry should be able to more easily, and therefore, more cheaply, obtain legal counsel in trade secret matters. Whether or not legal costs attributable to adoption of the uniform act are ultimately reduced remains to be seen, and in any case would be most difficult to measure or project in dollar terms.

In addition, for industries doing business in more than one state, uniformity of the law should remove uncertainties and simplify protection of trade secrets. There is probably some economic value to this, but it is not readily quantifiable.

B. Government:

None.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.

GENERAL ACTS
RESOLUTIONS AND MEMORIALS
ADOPTED BY THE
TENTH LEGISLATURE OF FLORIDA
UNDER THE CONSTITUTION
AS REVISED IN 1968

During the Regular Session
April 5, 1988 through June 7, 1988
and Special Sessions
September 21 - October 8, 1987; October 12 - 14, 1987;
December 8 - 10, 1987; February 2 - 4, 1988; and
June 8, 1988



Volume I, Part Two

Published by Authority of Law

Under Direction of the

JOINT LEGISLATIVE MANAGEMENT
COMMITTEE

TALLAHASSEE

1988

Section 3. Paragraph (a) of subsection (1) of section 320.58, Florida Statutes, is amended to read:

320.58 License inspectors; powers, appointment.--

(1)(a) The department shall appoint as many license inspectors and supervisors as it deems necessary to enforce the provisions of chapters 319, 320, 322, and 324. In order to enforce the provisions of these laws, the inspectors are empowered to enter on both publicly owned and privately owned property and to issue uniform traffic citations to persons found in violation thereof. The department is further empowered to delegate the power to issue uniform traffic citations to persons acting as its agents for the purpose of enforcing the registration provisions of chapter 320, which may include, but not be limited to, personnel employed by district school boards as agreed to by the school board and the county tax collector.

Section 4. Subsection (2) of section 320.02, Florida Statutes, is amended to read:

320.02 Registration required; application for registration forms--

(2)(a) The application for registration shall include the street address of the owner's permanent residence or the address of his permanent place of business. If the owner does not have a permanent residence or permanent place of business or if the owner's permanent residence or permanent place of business cannot be identified by a street address, the application shall include:

1. If the vehicle is registered to a business, the name and street address of the permanent residence of an owner of the business, an officer of the corporation, or an employee who is in a supervisory position.

2. If the vehicle is registered to an individual, the name and street address of the permanent residence of a close relative or friend who is a resident of this state.

(b) The department shall prescribe a form upon which motor vehicle owners ~~may shall~~ record odometer readings when registering their motor vehicles, ~~except that odometer readings are not required to be recorded for apportionable vehicles.~~

Section 5. This act shall take effect October 1, 1988.

Approved by the Governor July 5, 1988.

Filed in Office Secretary of State July 5, 1988.

CHAPTER 88-254

House Bill No. 91

An act relating to trade secrets; creating the Uniform Trade Secrets Act; providing definitions; authorizing the enjoining of misappropriation of trade secrets; providing for damages and award of attorney's fees; providing for preservation of secrecy of trade secrets by the court;

providing a statute of limitations; specifying effect on other laws; providing for construction; providing an effective date.

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

Section 1. Short title.--This act may be cited as the Uniform Trade Secrets Act.

Section 2. Definitions.--As used in this act, unless the context requires otherwise:

(1) "Improper means" includes 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 by improper means; or

(b) 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; or

2. At the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was:

a. Derived from or through a person who had utilized improper means to acquire it;

b. Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

c. 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 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) "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) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

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

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

Section 3. Injunctive relief.--

(1) Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial 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, but are not limited to, a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.

(3) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

Section 4. Damages.--

(1) Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant is entitled to recover damages for misappropriation. 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. In lieu of damages measured by any other methods, the 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 and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (1).

Section 5. Attorney's fees.--If a claim of misappropriation is made in bad faith, a motion to terminate an injunction is made or resisted in bad faith, or willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.

Section 6. Preservation of secrecy.--In an action under this act, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, 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.

Section 7. Statute of limitations.--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.

Section 8. Effect on other law.--

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

(2) This act 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) Criminal remedies, whether or not based upon misappropriation of a trade secret.

Section 9. Uniformity of application and construction.--This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

Section 10. This act shall take effect October 1, 1988, and does not apply to misappropriation occurring prior to said date. With respect to a continuing misappropriation that began prior to said date, this act also does not apply to the continuing misappropriation that occurs after said date.

Approved by the Governor July 5, 1988.

Filed in Office Secretary of State July 5, 1988.

CHAPTER 88-255

House Bill No. 108

An act relating to the fine arts; amending s. 265.603, F.S., revising the definition of "sponsoring organization," under the Fine Arts Endowment Program of 1985, to exclude museums owned and operated by community colleges; amending s. 265.26, F.S.; providing that certain funds be held in a separate trust fund by the direct-support organization for the Ringling Museum of Art; providing that the fund may be used for supplemental salaries and personnel; authorizing the board of trustees to permit use of property, facilities, and personal services; requiring audits of the direct-support organization; exempting certain records from ch. 119, F.S.; providing for review under the Open Government Sunset Review Act; deleting certain provisions regarding a contract between the museum and a direct-support organization; repealing s. 265.261(2), (3), F.S., which relate to the use of property, facilities, and services of the museum and to the audit of direct-support organizations; amending s. 265.605, F.S.; providing for the allocation of funds in the Fine Arts Endowment Trust Fund; providing an effective date.

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

by Senators Grant, Crawford, and Frank

This publication was produced at an average cost of 1.5 cents per page for the information of members of the Legislature and the public.

1 A bill to be entitled

2 An act relating to trade secrets; creating the

3 Uniform Trade Secrets Act; providing

4 definitions; authorizing the enjoining of

5 misappropriation of trade secrets; providing

6 for damages and award of attorney's fees;

7 providing for preservation of secrecy of trade

8 secrets by the court; providing a statute of

9 limitations; specifying effect on other laws;

10 providing for construction; providing an

11 effective date.

13 Be It Enacted by the Legislature of the State of Florida:

15 Section 1. Short title.--This act may be cited as the
16 Uniform Trade Secrets Act.

17 Section 2. Definitions.--As used in this act, unless
18 the context requires otherwise:

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

23 (2) "Misappropriation" means:

24 (a) Acquisition of a trade secret of another by a
25 person who knows or has reason to know that the trade secret
26 was acquired by improper means; or

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

29 1. Used improper means to acquire knowledge of the
30 trade secret; or

1 2. At the time of disclosure or use, knew or had
 2 reason to know that his knowledge of the trade secret was:
 3 a. Derived from or through a person who had utilized
 4 improper means to acquire it;
 5 b. Acquired under circumstances giving rise to a duty
 6 to maintain its secrecy or limit its use; or
 7 c. Derived from or through a person who owed a duty to
 8 the person seeking relief to maintain its secrecy or limit its
 9 use; or

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

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

17 (4) "Trade secret" means information, including a
 18 formula, pattern, compilation, program, device, method,
 19 technique, or process, that:

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

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

26 Section 3. Injunctive relief.--

27 (1) Actual or threatened misappropriation may be
 28 enjoined. Upon application to the court, an injunction shall
 29 be terminated when the trade secret has ceased to exist, but
 30 the injunction may be continued for an additional reasonable
 31

1 period of time in order to eliminate commercial advantage that
2 otherwise would be derived from the misappropriation.

3 (2) In exceptional circumstances, an injunction may
4 condition future use upon payment of a reasonable royalty for
5 no longer than the period of time for which use could have
6 been prohibited. Exceptional circumstances include, but are
7 not limited to, a material and prejudicial change of position
8 prior to acquiring knowledge or reason to know of
9 misappropriation that renders a prohibitive injunction
10 inequitable.

11 (3) In appropriate circumstances, affirmative acts to
12 protect a trade secret may be compelled by court order.

13 Section 4. Damages.--

14 (1) Except to the extent that a material and
15 prejudicial change of position prior to acquiring knowledge or
16 reason to know of misappropriation renders a monetary recovery
17 inequitable, a complainant is entitled to recover damages for
18 misappropriation. Damages can include both the actual loss
19 caused by misappropriation and the unjust enrichment caused by
20 misappropriation that is not taken into account in computing
21 actual loss. In lieu of damages measured by any other
22 methods, the damages caused by misappropriation may be
23 measured by imposition of liability for a reasonable royalty
24 for a misappropriator's unauthorized disclosure or use of a
25 trade secret.

26 (2) If willful and malicious misappropriation exists,
27 the court may award exemplary damages in an amount not
28 exceeding twice any award made under subsection (1).

29 Section 5. Attorney's fees.--If a claim of
30 misappropriation is made in bad faith, a motion to terminate
an injunction is made or resisted in bad faith, or willful and

1 malicious misappropriation exists, the court may award
2 reasonable attorney's fees to the prevailing party.

3 Section 6. Preservation of secrecy.--In an action
4 under this act, a court shall preserve the secrecy of an
5 alleged trade secret by reasonable means, which may include
6 granting protective orders in connection with discovery
7 proceedings, holding in-camera hearings, sealing the records
8 of the action, and ordering any person involved in the
9 litigation not to disclose an alleged trade secret without
10 prior court approval.

11 Section 7. Statute of limitations.--An action for
12 misappropriation must be brought within 3 years after the
13 misappropriation is discovered or by the exercise of
14 reasonable diligence should have been discovered. For the
15 purposes of this section, a continuing misappropriation
16 constitutes a single claim.

17 Section 8. Effect on other law.--

18 (1) Except as provided in subsection (2), this act
19 displaces conflicting tort, restitutionary, and other law of
20 this state providing civil remedies for misappropriation of a
21 trade secret.

22 (2) This act does not affect:

23 (a) Contractual remedies, whether or not based upon
24 misappropriation of a trade secret;

25 (b) Other civil remedies that are not based upon
26 misappropriation of a trade secret; or

27 (c) Criminal remedies, whether or not based upon
28 misappropriation of a trade secret.

29 Section 9. Uniformity of application and
30 construction.--This act shall be applied and construed to
31

1 effectuate its general purpose to make uniform the law with
2 respect to the subject of this act among states enacting it.

3 Section 10. This act shall take effect October 1,
4 1988, and does not apply to misappropriation occurring prior
5 to said date. With respect to a continuing misappropriation
6 that began prior to said date, this act also does not apply to
7 the continuing misappropriation that occurs after said date.

8

9

10

11

HOUSE SUMMARY

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

By Representative Canady

1 A bill to be entitled
2 An act relating to trade secrets; creating the
3 Uniform Trade Secrets Act; providing
4 definitions; authorizing the enjoining of
5 misappropriation of trade secrets; providing
6 for damages and award of attorney's fees;
7 providing for preservation of secrecy of trade
8 secrets by the court; providing a statute of
9 limitations; specifying effect on other laws;
10 providing for construction; providing an
11 effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Short title.--This act may be cited as the
16 Uniform Trade Secrets Act.

17 Section 2. Definitions.--As used in this act, unless
18 the context requires otherwise:

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

23 (2) "Misappropriation" means.

24 (a) Acquisition of a trade secret of another by a
25 person who knows or has reason to know that the trade secret
26 was acquired by improper means; or

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

29 1. Used improper means to acquire knowledge of the
30 trade secret; or

31

1 2. At the time of disclosure or use, knew or had
2 reason to know that his knowledge of the trade secret was,
3 a. Derived from or through a person who had utilized
4 improper means to acquire it;
5 b. Acquired under circumstances giving rise to a duty
6 to maintain its secrecy or limit its use; or
7 c. Derived from or through a person who owed a duty to
8 the person seeking relief to maintain its secrecy or limit its
9 use; or

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

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

17 (4) "Trade secret" means information, including a
18 formula, pattern, compilation, program, device, method,
19 technique, or process, that:

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

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

26 Section 3. Injunctive relief.--

27 (1) Actual or threatened misappropriation may be
28 enjoined. Upon application to the court, an injunction shall
29 be terminated when the trade secret has ceased to exist, but
30 the injunction may be continued for an additional reasonable
31

1 period of time in order to eliminate commercial advantage that
2 otherwise would be derived from the misappropriation.

3 (2) In exceptional circumstances, an injunction may
4 condition future use upon payment of a reasonable royalty for
5 no longer than the period of time for which use could have
6 been prohibited. Exceptional circumstances include, but are
7 not limited to, a material and prejudicial change of position
8 prior to acquiring knowledge or reason to know of
9 misappropriation that renders a prohibitive injunction
10 inequitable.

11 (3) In appropriate circumstances, affirmative acts to
12 protect a trade secret may be compelled by court order.

13 Section 4. Damages.--

14 (1) Except to the extent that a material and
15 prejudicial change of position prior to acquiring knowledge or
16 reason to know of misappropriation renders a monetary recovery
17 inequitable, a complainant is entitled to recover damages for
18 misappropriation. Damages can include both the actual loss
19 caused by misappropriation and the unjust enrichment caused by
20 misappropriation that is not taken into account in computing
21 actual loss. In lieu of damages measured by any other
22 methods, the damages caused by misappropriation may be
23 measured by imposition of liability for a reasonable royalty
24 for a misappropriator's unauthorized disclosure or use of a
25 trade secret.

26 (2) If willful and malicious misappropriation exists,
27 the court may award exemplary damages in an amount not
28 exceeding twice any award made under subsection (1).

29 Section 5. Attorney's fees.--If a claim of
30 misappropriation is made in bad faith, a motion to terminate
31 an injunction is made or resisted in bad faith, or willful and

1 malicious misappropriation exists, the court may award
2 reasonable attorney's fees to the prevailing party.

3 Section 6. Preservation of secrecy.--In an action
4 under this act, a court shall preserve the secrecy of an
5 alleged trade secret by reasonable means, which may include
6 granting protective orders in connection with discovery
7 proceedings, holding in-camera hearings, sealing the records
8 of the action, and ordering any person involved in the
9 litigation not to disclose an alleged trade secret without
10 prior court approval.

11 Section 7. Statute of limitations.--An action for
12 misappropriation must be brought within 3 years after the
13 misappropriation is discovered or by the exercise of
14 reasonable diligence should have been discovered. For the
15 purposes of this section, a continuing misappropriation
16 constitutes a single claim.

17 Section 8. Effect on other law.--

18 (1) Except as provided in subsection (2), this act
19 displaces conflicting tort, restitutionary, and other law of
20 this state providing civil remedies for misappropriation of a
21 trade secret.

22 (2) This act does not affect:

23 (a) Contractual remedies, whether or not based upon
24 misappropriation of a trade secret;

25 (b) Other civil remedies that are not based upon
26 misappropriation of a trade secret; or

27 (c) Criminal remedies, whether or not based upon
28 misappropriation of a trade secret.

29 Section 9. Uniformity of application and
30 construction.--This act shall be applied and construed to
31

1 effectuate its general purpose to make uniform the law with
2 respect to the subject of this act among states enacting it.

3 Section 10. This act shall take effect October 1,
4 1988, and does not apply to misappropriation occurring prior
5 to said date. With respect to a continuing misappropriation
6 that began prior to said date, this act also does not apply to
7 the continuing misappropriation that occurs after said date.

8

9

10

HOUSE SUMMARY

11

Creates the Uniform Trade Secrets Act. Authorizes the
12 enjoining of misappropriation of trade secrets. Provides
for damages and award of attorney's fees. Provides for
13 preservation of secrecy of trade secrets by the court.
Provides a statute of limitations. Specifies effect on
14 other laws.

14

15

16

17

18 This publication was produced at an average cost of 1.5 cents
19 per single page in compliance with the Rules and for
the information of members of the Legislature and the public.

20

21

22

23

24

25

26

27

28

29

30

31