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Florida Senate & House of Representatives

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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)


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
S 225 (CONTINUED)  
02/26/88 SENATE Reported Favorable by Education, Appropriations

S 230 GENERAL BILL by Governmental Operations (Similar H 814)  
02/08/88 SENATE Prefiled  
03/01/88 SENATE Intro. referred to Governmental Operations—SJ 611, 03/03/88, 2:00 pm, Room-H  
03/02/88 SENATE Prefiled  
03/04/88 SENATE Committee Report: Favorable by Governmental Operations

S 231 GENERAL BILL by Meek (Similar ENG/H 458)  
Minority Business Enterprises: specifies that any contract for reserving certain contracts apply only to businesses certified by minority business enterprises; or to contractors who use such enterprises as subcontractors or subvendors, rather than to any minority business enterprise; provides penalties for false representations of minority owned enterprises, etc. Amends SB 152, H 91, SB 1216. Effective Date Upon becoming law.

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 01/01/88.

S 233 GENERAL BILL by Grant and others (Identical H 911)  
Uniform Trade Secrets Act, creates new act; authorizes ensuring of misappropriation of trade secrets, provides for damages & award of attorney's fees. Provides (CONTINUED ON NEXT PAGE)
$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
04/19/88 SENATE 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
04/25/88 SENATE Referred to Committee Commerce, Judiciary-Civil
05/13/88 SENATE Extension of time granted Committee Commerce
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 276
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./Comm. bill passed, refer to CS/SB 522 (Ch. 88-242)

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

Unclaimed Motor Vehicles. Provides that S. M.V. Dept. to be notified of certain liens upon recovered, towed, or stored vehicles, requires dept. to suspend registration of certain 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
04/25/88 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./Comparative bill passed, refer to SB 173 (Vetted by Governor on 07/01/88)

$236 GENERAL BILL by Girardeau and others (Identical H 603, Similar CS/H 589, S 227, S 694, Compare H 669, H 753, S 857, H 1617, S 930, S 1218)

Domestic暴力/Abuse; authorizes counties to levy discretionary surtax on certain lines 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
04/05/88 SENATE Introduced, referred to Economic, Community and Consumer Affairs; Finance, Taxation and Claims
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

$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

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 Referred 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
04/13/88 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

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

State Fund Investments/Sec. Affairs: 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 Namib, 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
05/05/88 SENATE Extension of time granted Committee Appropriations
05/06/88 SENATE Extension of time granted Committee Appropriations
06/07/88 SENATE Died in Committee on Appropriations

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

Firefighters Health Project creates Fire, Firefighters, Paramedics, & Police Officers Health Project at University of Minnesota School of Medicine; provides 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 Favorable with 1 amendment(s) 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
04/08/88 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./Comparative Bill passed, refer to CS/HB 203 (Ch. 88-263)–SJ 456

$240 GENERAL BILL/ENG by Cronshaw and others (Identical H 1400, Compare H 1177, ENG/H 1400, 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

(Continued on Next Page)
H 92 GENERAL BILL by Hodges (Similar CS/S 553)

Parimutuel Wagering/Sundays, authorizes horseracing, harness racing, greyhound dog racing, & jai alai - permits 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.
12/15/87 HOUSE Subcommittee recommended ratification by full Committee. Favorable
01/15/88 HOUSE On committee agenda - Regulated Industries & Licensing, 02/03/88, 9:00 am, 413C; For ratification of subreferral
01/15/88 HOUSE On committee 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; Placed on calendar - HJ 230
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
04/05/88 HOUSE Introduced, referred to Regulated Industries & Licensing; Appropriations - HJ 15. Subferred 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, Now in Appropriations - HJ 79
04/18/88 HOUSE On committee agenda - Appropriations, 04/20/88, 11:30 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 652
05/19/88 HOUSE In Messages
05/20/88 HOUSE Received, referred to Commerce, Finance, Taxation and Claims - SJ 364
06/07/88 HOUSE Died in committee on commerce

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

Lease Agreement/Failure to Comply, provides that failure to comply with lease does not constitute theft under certain circumstances, provides exemptions & 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 Subferred to Subcommittee on Crimes, Penalties and Punishments, Senate Appropriations on crimes - Criminal Justice, 02/02/88, 2:00 pm, 317C
02/02/88 HOUSE Subcommittee recommendation pending ratification by full Committee. Favorable
05/18/88 HOUSE On committee agenda - Criminal Justice, 03/09/88, 10:00 am, 21-HOB - Not considered
04/05/88 HOUSE Introduced, referred to Criminal Justice - HJ 15, Subferred to Subcommittee on Crimes, Penalties and Punishments. Subcommittee recommendation pending ratification by full Committee Favorable
04/18/88 HOUSE On committee agenda - Criminal Justice, 04/20/88, 1:30 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 HOUSE In Messages
05/10/88 HOUSE Referred to Judiciary-Civil - SJ 253
05/13/88 HOUSE Extension of time granted Committee Judiciary-Civil
05/27/88 HOUSE Extension of time granted Committee Judiciary-Civil
06/01/88 HOUSE Withdrawn from Judiciary-Civil, Substituted for CS/58 1247; Passed; YEAS 52 NAYS 0 - SJ 697
06/08/88 HOUSE Ordered enrolled
06/21/88 HOUSE Signed by officers and presented to Governor
07/06/88 HOUSE Approved by Governor, Chapter No. 86-312

H 94 GENERAL BILL by Kelly; Dunbar and others (Compare CS/ENG/H 1602, CS/ENG/H 127)

Interstate Designer Licensing Act, creates said act, provides for examinations & eligibility & for contents of exam & administration, provides for licensure without exam, continues 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 Subferred to Subcommittee on Professional Regulation; On committee 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; Subcommittee on Professional Regulation; On committee 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, 1stsim/Compare bill passed, refer to CS/HB 1502 (Ch. 88-393)

H 95 GENERAL BILL by Burke

Relief/Pitts & Lee, provides appropriation for compensation for having been victimized of a miscarriage of justice. Claim with appropriation. $900.00. 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 Benjamin

Strategic Defense System/Funding urges USA 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 Benjamin and others (Compare ENG/H 1855, EN/G/H 331)

Illegal Devices/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.

12/15/87 HOUSE Prefiled
12/15/87 HOUSE Referred to Judiciary, Appropriations
04/05/88 HOUSE Introduced, referred to Judiciary, Appropriations - HJ 15 (CONTINUED ON NEXT PAGE)
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

CODING: Words stricken are deletions; words underlined are additions.
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

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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

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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.

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HOUSE SUMMARY

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

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

CODING: Words stricken are deletions; words underlined are additions.
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
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 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 Siggerson
H. Fred Varn

VII. STAFF DIRECTOR: H. Fred Varn
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:  

VI. STAFF DIRECTOR:  

H. Fred Varn

STANDARD FORM 5/88
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

CODING: Words stricken are deletions; words underlined are additions.
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

CODING: Words stricken are deletions; words underlined are additions.
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.

HOUSE SUMMARY

Creates the Uniform Trade Secrets Act. Authorizes the
enjoining of misappropriation of trade secrets. Provides
for damages and award of attorney's fees. Provides for
preservation of secrecy of trade secrets by the court.
Provides a statute of limitations. Specifies effect on
other laws.
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 of 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 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.
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.--
CHAPTER 88-254

LAWS OF FLORIDA

(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:
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
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

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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.

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HOUSE SUMMARY

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