

BILL ANALYSIS

Senate Research Center
85R24259 SCL-F

C.S.S.B. 1945
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State Affairs
4/20/2017
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2013, S.B. 953, the Uniform Trade Secrets Act, was enacted. The act modernized provisions of the Civil Practice and Remedies Code regarding the misappropriation of "trade secrets." Practitioners throughout the state have reported that the modernized act has greatly enhanced the ability of individuals to understand and fairly litigate trade secret misappropriation cases by providing clear and easy to understand definitions and procedures.

In May 2016, Congress approved the Defend Trade Secrets Act (DTSA), a federal law that created a civil cause of action for misappropriation of trade secrets. S.B. 1945 amends current law relating to the Texas Uniform Trade Secrets Act (TUTSA) by conforming it with some of the DTSA's provisions in order to eliminate forum shopping between state and federal courts.

S.B. 1945 aligns TUTSA definitions with those contained in DTSA and with federal and state case law to ensure uniformity and clarity between the state and federal laws. S.B. 1945 also preserves the common law rule in actions under TUTSA by specifying that an employee cannot be enjoined from using the general knowledge, skill, and experience he or she acquired during their employment and also amends TUTSA to incorporate the balancing test for excluding a party from participating in a proceeding of an action under TUTSA found in a recent Texas Supreme Court opinion.

S.B. 1945 makes application of its amendments prospective only and has a proposed effective date of September 1, 2017. (Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 1945 amends current law relating to the Texas Uniform Trade Secrets Act.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 134A.002, Civil Practice and Remedies Code, by adding Subdivisions (1-a), (3-a), and (7) and amending Subdivisions (3), (4), and (6) to define "clear and convincing," "owner," and "willful and malicious appropriation" and redefine "misappropriation," "proper means," and "trade secret."

SECTION 2. Amends Section 134A.003, Civil Practice and Remedies Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Authorizes actual or threatened misappropriation to be enjoined if the order does not prohibit a person from using general knowledge, skill, and experience that person acquired during employment.

(a-1) Creates this subsection from existing text and makes no further changes.

SECTION 3. Amends Section 134A.004(b), Civil Practice and Remedies Code, to change a reference to wilful to willful.

SECTION 4. Amends Section 134A.005, Civil Practice and Remedies Code, to change a reference to wilful to willful.

SECTION 5. Amends Section 134A.006, Civil Practice and Remedies Code, as follows:

Sec. 134A.006. PRESERVATION OF SECRECY. (a) Creates this subsection from existing text and makes no further changes.

(b) Provides that, in an action under this chapter, a presumption exists that a party is allowed to participate and assist counsel in the presentation of the party's case. Authorizes the court, at any stage of the action, to exclude a party and the party's representative or limit a party's access to the alleged trade secret of another party if other countervailing interests overcome the presumption. Requires the court, in making this determination, to conduct a balancing test that considers certain information.

SECTION 6. Makes application of Chapter 134A, Civil Practice and Remedies Code, as amended by this Act, prospective.

SECTION 7. Effective date: September 1, 2017.