

No: 101

WEST VIRGINIA LEGISLATURE  
REGULAR SESSION, 1986

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**ENROLLED**

SENATE BILL NO. 101

(By Senator.....*Sharpe, et al.*.....)

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PASSED .....*March 6,*..... 1986

In Effect.....*July 1, 1986*..... Passage



**ENROLLED**  
**Senate Bill No. 101**

(BY SENATORS SHARPE, COOK, PALUMBO, COLUMBO, FANNING,  
BURDETTE AND SHAW)

[Passed March 8, 1986; to take effect July 1, 1986.]

AN ACT to amend chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-two, relating to enacting the uniform trade secrets act; providing for definitions; allowing injunctive relief; prescribing measure of damages; allowing award of attorney's fees; requiring court to protect secrecy; statute of limitations; clarifying effect on other law; application of article and effective date.

*Be it enacted by the Legislature of West Virginia:*

That chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty-two, to read as follows:

**ARTICLE 22. UNIFORM TRADE SECRETS ACT.**

**§47-22-1. Definitions.**

1 As used in this article, unless the context requires  
2 otherwise:

3 (a) "Improper means" includes theft, bribery, mis-  
4 representation, breach or inducement of a breach of a  
5 duty to maintain secrecy or espionage through electronic  
6 or other means.

7 (b) "Misappropriation" means:

8 (1) Acquisition of a trade secret of another by a per-  
9 son who knows or has reason to know that the trade  
10 secret was acquired by improper means; or

11 (2) Disclosure or use of another person's trade secret  
12 without the other's express or implied consent by a per-  
13 son who:

14 (A) Used improper means to acquire knowledge of the  
15 trade secret; or

16 (B) At the time of disclosure or use, knew or had  
17 reason to know that his knowledge of the trade secret  
18 was:

19 (i) Derived from or through a person who had utilized  
20 improper means to acquire it; or

21 (ii) Acquired under circumstances giving rise to a duty  
22 to maintain its secrecy or limit its use; or

23 (iii) Derived from or through a person who owed a  
24 duty to the person seeking relief to maintain its secrecy  
25 or limit its use; or

26 (C) Before a material change of his position, knew or  
27 had reason to know that the information was a trade  
28 secret and that knowledge of it had been acquired by  
29 accident or mistake.

30 (c) "Person" means a natural person, corporation,  
31 business trust, estate, trust, partnership, association, joint  
32 venture, government, governmental subdivision or agen-  
33 cy or any other legal or commercial entity.

34 (d) "Trade secret" means information, including, but  
35 not limited to, a formula, pattern, compilation, program,  
36 device, method, technique or process, that:

37 (1) Derives independent economic value, actual or  
38 potential, from not being generally known to, and not  
39 being readily ascertainable by proper means by, other  
40 persons who can obtain economic value from its disclo-  
41 sure or use; and

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

**§47-22-2. Injunctive relief.**

1 (a) Actual or threatened misappropriation may be  
2 enjoined. Upon application to the court, an injunction  
3 shall be terminated when the trade secret has ceased to  
4 exist, but the injunction may be continued for an addi-  
5 tional reasonable period of time in order to eliminate  
6 commercial advantage that otherwise would be derived  
7 from the misappropriation.

8 (b) In exceptional circumstances, an injunction may  
9 condition future use upon payment of a reasonable royal-  
10 ty for no longer than the period of time for which the  
11 use could have been prohibited. Exceptional circum-  
12 stances include, but are not limited to, a material and  
13 prejudicial change of position prior to acquiring knowl-  
14 edge or reason to know of a misappropriation that renders  
15 a prohibitive injunction inequitable.

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

**§47-22-3. Damages.**

1 (a) Except to the extent that a material and prejudicial  
2 change of position prior to acquiring knowledge or reason  
3 to know of misappropriation renders a monetary recovery  
4 inequitable, a complainant is entitled to recover damages  
5 for misappropriation. Damages may include both the  
6 actual loss caused by the misappropriation and the unjust  
7 enrichment caused by the misappropriation. In lieu of  
8 damages measured by any other methods, the damages  
9 caused by misappropriation may be measured by imposi-  
10 tion of liability for a reasonable royalty for a misappro-  
11 priator's unauthorized disclosure or use of a trade secret.

12 (b) If willful and malicious misappropriation occurs,  
13 the court may award exemplary damages in an amount  
14 not exceeding twice any award made under subsection  
15 (a) of this section.

**§47-22-4. Attorney's fees.**

1 If (a) a claim of misappropriation is made in bad faith,  
2 or (b) a motion to terminate an injunction is made or  
3 resisted in bad faith, or (c) willful and malicious mis-

4 appropriation occurs, the court may award reasonable  
5 attorney's fees to the prevailing party.

**§47-22-5. Preservation of secrecy.**

1 In an action brought pursuant to this article, a court  
2 shall preserve the secrecy of an alleged trade secret by  
3 reasonable means, which may include granting protective  
4 orders in connection with discovery proceedings, holding  
5 in camera hearings, sealing the records of the action and  
6 ordering any person involved in the litigation not to dis-  
7 close an alleged trade secret without prior court approval.

**§47-22-6. Statute of limitations.**

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

**§47-22-7. Effect on other law.**

1 (a) Except as provided in subsection (b) of this section  
2 this article displaces conflicting tort, restitutionary and  
3 other law of this state providing civil remedies for mis-  
4 appropriation of a trade secret.

5 (b) This article does not affect:

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

8 (2) Other civil remedies that are not based upon mis-  
9 appropriation of a trade secret; or

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

**§47-22-8. Uniformity of application and construction.**

1 This article shall be applied and construed to effectu-  
2 ate its general purpose to make uniform the law with  
3 respect to the subject of this act among states enacting it.

**§47-22-9. Short title.**

1 This article may be cited as the "Uniform Trade Secrets  
2 Act."

**§47-22-10. Time of taking effect.**

1 This article takes effect on the first day of July; one  
2 thousand nine hundred eighty-six, and does not apply to  
3 misappropriations occurring prior to the effective date or  
4 to misappropriations which began prior to the effective  
5 date and continue past the effective date.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*[Handwritten Signature]*  
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Chairman Senate Committee

*Floyd Fuller*  
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Chairman House Committee

Originated in the Senate.

To take effect July 1, 1986.

*Ed C. Hulse*  
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Clerk of the Senate

*Donald L. Hoop*  
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Clerk of the House of Delegates

*Sanford*  
-----  
President of the Senate

*Joseph P. Allright*  
-----  
Speaker House of Delegates

The within *Approved* this the *26th*  
*Month*  
day of \_\_\_\_\_, 1986.

*Arthur M. ...*  
-----  
Governor



PRESENTED TO THE

GOVERNOR

Date 3/11/86

Time 9:39 a.m.

RECORDED

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SECRETARY OF STATE

FILED IN THE OFFICE OF  
SECRETARY OF STATE OF  
WEST VIRGINIA

THIS DATE 3/26/46