

Be it enacted by the General Assembly of Virginia:

1. That §§ **59.1-336, 59.1-337, 59.1-338, 59.1-341** and **2.2-3705.7** of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered **59.1-338.2, 59.1-344, 59.1-345, 59.1-346, 59.1-347, 59.1-348, 59.1-349, 59.1-350,** and **59.1-351** as follows:

CHAPTER 26.
VIRGINIA UNIFORM TRADE SECRETS ACT.

§ **59.1-336.** Definitions.

As used in this chapter, ~~which may be cited as the Uniform Trade Secrets Act,~~ unless the context requires otherwise:

"Commission" means the State Corporation Commission.

"Improper means" includes theft, bribery, misrepresentation, use of a computer or computer network without authority, breach of a duty or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.

"Misappropriation" means:

1. 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
2. Disclosure or use of a trade secret of another without express or implied consent by a person who:
 - a. Used improper means to acquire knowledge of the trade secret; or
 - b. At the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was:
 - (1) Derived from or through a person who had utilized improper means to acquire it;
 - (2) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use;
 - (3) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or
 - (4) Acquired by accident or mistake.

"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.

"Registrant" means any person to whom the registration of a mark under this chapter or prior law is issued, and the legal representatives, successors, or assigns of such person.

"Trade secret" means information, including but not limited to, a formula, pattern, compilation, program, device, method, technique, or process, that:

1. 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
2. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

§ 59.1-337. Injunctive relief.

~~A. Actual Absent exceptional circumstances, actual or threatened misappropriation may shall 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.~~

~~B. 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.~~

~~C. In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.~~

§ 59.1-338. Damages.

A. Except where the user of a misappropriated trade secret has made a material and prejudicial change in his position prior to having either knowledge or reason to know of the misappropriation and the court determines that a monetary recovery would be 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. If a complainant is unable to prove a greater amount of damages by other methods of measurement, the damages caused by misappropriation can be measured exclusively by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

B. If willful and malicious misappropriation exists, the court may award punitive damages in an amount not exceeding twice any award made under subsection A ~~of this section, or \$350,000 whichever amount is less.~~

§ 59.1-338.2. Criminal penalties.

Any person who knowingly and intentionally misappropriates a trade secret or uses a misappropriated trade secret is guilty of a Class 1 misdemeanor and, upon a second or subsequent conviction, is guilty of a Class 6 felony. For purposes of this section, 'trade secret' shall not include the knowledge and skills that an individual acquires through experience, work or presence in a particular employment or service relationship and takes with him when he leaves such relationship, unless the individual, in violation of his employment or service agreement, retained a written copy of the knowledge or skills at issue when he departed such particular relationship.

§ 59.1-341. Effect on other law; interpretation.

A. Except as provided in subsection ~~B~~ of this section G, this chapter displaces conflicting tort, restitutionary, and other law of this ~~the~~ Commonwealth providing civil remedies for misappropriation of a trade secret.

B. *The provisions of this chapter shall be interpreted to be in harmony with the federal patent and copyright laws.*

C. *Trade secrets shall have the attributes of private property, including but not limited to the exclusive rights of possession, use, enjoyment, and disposition.*

D. *The scope and subject matter of a trade secret shall be interpreted to the fullest extent possible as not preempted by federal patent laws.*

E. *Subject matter that is not eligible or is eligible for U.S. patent that otherwise qualifies as a trade secret under this chapter shall be accorded full trade secret rights.*

F. *Trade secrets qualifying under this chapter shall not be held invalid or unenforceable for failure to disclose the trade secret in any federal or international patent or application for patent.*

G. This chapter does not affect:

1. Contractual remedies whether or not based upon misappropriation of a trade secret; or
2. Other civil remedies that are not based upon misappropriation of a trade secret; or
3. Criminal remedies, whether or not based upon misappropriation of a trade secret.

§59.1-344. Application for Registration with the Commission

Subject to the limitations set forth in this chapter, any person may file with the Commission, in a manner complying with the requirements of the Commission, an application for registration of a trade secret setting forth, but not limited to, the following information:

1. *The name and business address of the person applying for such registration; and, if a corporation, limited liability company, partnership, limited liability partnership, or any other legal entity, the state or other jurisdiction of incorporation, formation, or organization, as the case may be;*
2. *Classification of the trade secret based on the type of information to be protected consistent with the classification scheme developed by the Commission;*
3. *The date when the trade secret was first developed, and/or the date of its first use, if at all, anywhere and in this Commonwealth by the applicant or a predecessor in interest; and,*
4. *A statement that the trade secret meets the definition of "trade secret" as provided in § 59.1-366, that the applicant is the owner of the trade secret, that the trade secret is or will be in use in this Commonwealth, that trade secret was not acquired through misappropriation.*

The application shall be signed and verified (by oath, affirmation or declaration subject to perjury laws) by the applicant or by a person authorized by the applicant to make the application.

The application shall be accompanied by copies of the information claimed to constitute a trade secret.

The application shall be accompanied by a nonrefundable application fee, as reasonably set by the Commission.

§59.1-345 *Filing of Applications*

A. Upon the filing of an application for registration and payment of the application fee, the Commission shall cause the application to be examined for conformity with this chapter. The Commission's examination shall be limited to the information provided in the application and shall not include a substantive review of the claimed trade secret or an assessment as to whether the standards for trade secret protection set forth in §59.1-336 have been satisfied.

B. The applicant shall provide any additional relevant information requested by the Commission and may make, or authorize the Commission to make, such amendments to the application as may be reasonably requested by the Commission or deemed by the applicant to be advisable to conform with the requirements herein. The Commission may finally refuse registration to an applicant who fails to comply with such requests.

§59.1-346 *Certificate of Registration*

Upon compliance by the applicant with the requirements of this chapter, the Commission shall cause a certificate of registration to be issued and delivered to the applicant. The certificate shall show (i) the name and business address of the registrant and, if a corporation, limited liability company, partnership, limited liability partnership, or any other legal entity, the state or other jurisdiction of incorporation, formation, or organization, as the case may be; (ii) the date the trade secret was developed and the date, if any, claimed for the first use of the trade secret

anywhere and in this Commonwealth; (iii) the class of information to be protected; and (iv) the registration date and the term of the registration.

Any certificate of registration issued by the Commission under the provisions hereof, or a copy thereof duly certified by the clerk of the Commission, shall be prima facie evidence of the registrant's claim of trade secret protection and shall be admissible in evidence as competent and sufficient proof of the registration of such mark in any actions or judicial proceedings in any court of this Commonwealth.

§59.1-347 *Duration and Renewal*

A registration of a trade secret hereunder shall be effective for a term of ten years from the date of registration and, upon application filed within six months prior to the expiration of such term, in a manner complying with the requirements of the Commission, the registration may be renewed for a like term from the end of the expiring term. A renewal fee shall accompany the application for renewal of the registration.

§59.1-348 *Assignments and Change of Name*

A. Any trade secret and its registration hereunder shall be assignable with the good will of the business in which the trade secret is used. Assignment shall be by instruments in writing duly executed and may be filed with the Commission upon the payment of a fee. The Commission shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal thereof. An assignment of any registration under this chapter shall be void as against any subsequent purchaser for valuable consideration without notice, unless it is filed with the Commission within three months after the date of the assignment or prior to such subsequent purchase.

B. Any applicant effecting a change of name may file a certificate of name change with the Commission upon the payment of a fee. The Commission shall prescribe the form and content of such certificate. If the Commission issues a registration based on such applicant's request for a recognition of a change of name, the registration shall be issued in the new name of the applicant.

C. Any registrant effecting a change of name may file a certificate of name change with the Commission upon the payment of a fee. The Commission shall prescribe the form and content of such certificate. The Commission shall issue in the new name of the registrant a new certificate of registration for the remainder of the term of the registration or last renewal thereof.

D. A photocopy of any instrument referred to in this section shall be accepted for filing if it is certified by any of the parties thereto, or their successors, to be a true and correct copy of the original.

§59.1-349 *Records*

The Commission shall keep, for public examination only, a record of all applications accepted for registration under this chapter. The Commission is hereby prohibited from disclosing the

supporting documentation constituting a claimed trade secret unless required to do so by court order. Such documentation shall not be subject to disclosure under the Virginia Freedom of Information Act, §2.2-3700 et seq., nor shall the Virginia Public Records Act, § 42.1-76 et seq. apply.

§59.1-350 Claimed Trade Secrets Received by the Commission

All supporting documentation constituting a claimed trade secret shall be provided to the Commission at the applicant's or registrant's risk.

§59.1-351 Participation in Process

Filing an application for registration or maintaining a registration shall not constitute a waiver of secrecy or otherwise be considered inconsistent with reasonable efforts to maintain secrecy. Failure to file an application or maintain a registration shall not signify a failure to claim trade secret rights under common law or other provisions of this chapter.

§2.2-3705.7 Exclusions to application of chapter (FOIA); records of specific public bodies and certain other limited exemptions.

30. Documentation and materials constituting a claimed trade secret provided to the State Corporation Commission in support of an application made or a registration granted under the provisions of §59.1-344 et seq.