

JAN 14 1999
JUDICIARY

HOUSE FILE 88
BY BOGGESS

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act providing a defense in an action for misappropriation of a
2 trade secret.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 550.2, Code 1999, is amended by adding
2 the following new subsections:

3 NEW SUBSECTION. 0. "Employee" means a person who has or
4 once had a contractual obligation to perform labor or services
5 for an employer for compensation, including a person for whom
6 the employer withholds federal or state tax liabilities from
7 the employee's compensation or a person who works as an
8 independent contractor.

9 NEW SUBSECTION. 0A. "Employer" means a person who has or
10 once had a contractual obligation to pay compensation to an
11 employee for performing labor or services. An employer
12 includes a profit or not-for-profit enterprise, the state, or
13 a political subdivision of the state.

14 NEW SUBSECTION. 5. "Trade secret owner" means the owner
15 of a trade secret or a person who is authorized to act on
16 behalf of the owner.

17 Sec. 2. NEW SECTION. 550.3A EMPLOYMENT RELATIONS --
18 NOTIFICATION REQUIREMENT.

19 1. If a trade secret owner is an employer who discloses
20 information that is a trade secret to an employee during the
21 course of their employment relationship, the trade secret
22 owner shall notify the employee that the information is a
23 trade secret protected by this chapter. The notice may be
24 provided prior to or after the disclosure. The notice may be
25 provided during the employment relationship or following its
26 termination.

27 2. The notice shall include all of the following:

28 a. An identification of the information that is a trade
29 secret. The notice shall describe the information
30 sufficiently to allow a reasonable person to identify the
31 information.

32 b. The terms and conditions for disclosure and use by the
33 employee.

34 c. A statement explaining the right of the trade secret
35 owner to bring a legal action against the employee under this

1 chapter for misappropriation.

2 3. A notice appearing in at least ten point boldface type
3 in substantially the following form shall comply with this
4 section's requirement for notice:

5 ATTENTION

6 (READ CAREFULLY)

7 (insert date)

8 Iowa Code Chapter 550 provides that a trade secret owner
9 may bring a legal action against a person who misappropriates
10 the trade secret. (insert employer's name) claims
11 ownership of a trade secret of (insert description
12 of information claimed to be a trade secret) as a trade secret
13 which cannot be disclosed or used except as authorized by
14 (insert employer's name). You are authorized to
15 disclose or use the trade secret subject to the following
16 restrictions (insert description of the manner
17 of disclosure or use authorized by the employer). If you
18 disclose or use this information in a manner that is not
19 authorized by (insert employer's name), you may be
20 subject to litigation and liable to pay damages.

21 Sec. 3. Section 550.5, Code 1999, is amended to read as
22 follows:

23 550.5 DEFENSE -- CONSENT OF DISCLOSURE OR FAILURE TO
24 PROVIDE NOTICE.

25 In an action brought under this chapter, a person who
26 discloses or uses a trade secret shall have a complete defense
27 to a claim of misappropriation if any of the following apply:

28 1. In an action for injunctive relief or damages against a
29 person under this chapter, it shall be a complete defense that
30 the person disclosing a trade secret made the disclosure or
31 authorized the use with the implied or express consent of the
32 owner of the trade secret.

33 2. In an action for damages, that the person was an
34 employee of the owner of the trade secret and all of the
35 following apply:

1 a. The trade secret was disclosed during the course of the
2 person's employment.

3 b. The person's employer failed to provide written notice
4 that the information disclosed to the person was a trade
5 secret as provided in section 550.3A.

6 c. The person disclosed or used the trade secret prior to
7 receiving the notice.

8 d. The person's disclosure or use was not a willful and
9 malicious misappropriation of the trade secret.

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EXPLANATION

11 Code chapter 550 protects trade secrets. Code section
12 550.4 provides that an owner of a trade secret is entitled to
13 recover damages for the misappropriation. This bill provides
14 that if a trade secret owner is an employer who discloses
15 information that is a trade secret to an employee during the
16 course of their employment relationship, the trade secret
17 owner must notify the employee that the information is a trade
18 secret. The bill provides that in an action for
19 misappropriation, a person shall have a complete defense if
20 the person was an employee of the person, the trade secret was
21 disclosed during the course of the person's employment, the
22 person's employer provided the written notice to the person,
23 the person disclosed or used the trade secret prior to
24 receiving the notice, and the person's disclosure or use was
25 not a willful and malicious misappropriation of the trade
26 secret.

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