

COUNCIL OF THE DISTRICT OF COLUMBIA

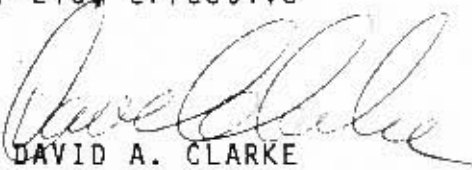
NOTICE

D.C. LAW 7-216

"Uniform Trade Secrets Act of 1988".

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P. L. 93-198, "the Act", the Council of the District of Columbia adopted Bill No. 7-426 on first and second readings November 29, 1988, and December 13, 1988, respectively. Following the signature of the Mayor on January 6, 1989, this legislation was assigned Act No. 7-291 published in the January 20, 1989, edition of the D.C. Register, (Vol. 36 page 519) and transmitted to Congress on January 23, 1989 for a 30-day review, in accordance with Section 602(c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 7-216, effective March 16, 1989.


DAVID A. CLARKE
Chairman to the Council

Dates Counted During the 30-day Congressional Review Period:

January 24,25,26,27,30,31
February 1,2,3,6,7,8,9,21,22,23,24,27,28
March 1,2,3,6,7,8,9,10,13,14,15

Codification,
New Chapter 5 of title 48,
District of Columbia Code
(1989 Supp.)

AN ACT

D.C. ACT 7 - 291

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JAN 06 1989

To enact the Uniform Trade Secrets Act in the District of Columbia.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Uniform Trade Secrets Act of 1988".

Sec. 2. DEFINITIONS. For the purposes of this act, the term:

New, Section
48-501

(1) "Improper means" means 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:

(i) Used improper means to acquire knowledge of the trade secret; or

(ii) At the time of disclosure or use, knew or had reason to know that the trade secret was:

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

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

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

(iii) Before a material change in his or her position, knew or had reason to know that the information was a trade secret and knowledge of the trade secret had been acquired by accident or mistake.

(3) "Person" means a natural person, corporation, 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 actual or potential independent economic value, from not being generally known to, and not being readily ascertainable by, proper means by another who can obtain economic value from its disclosure or use; and

(B) Is the subject of reasonable efforts to maintain its secrecy.

Sec. 3. Injunctive relief.

New, Section
48-502

(a) 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 a reasonable period of time 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 a misappropriation that renders a prohibitive injunction inequitable.

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

Sec. 4. Damages.

New, Section
48-503

(a) A complainant is entitled to recover damages for misappropriation, unless a material and prejudicial change of position prior to acquiring knowledge or reason to know of the misappropriation renders a monetary recovery inequitable. Damages may include both the actual loss caused by the misappropriation and the unjust enrichment caused by the misappropriation that is not taken into account in computing actual loss. Instead of damages measured by other methods, the damages caused by misappropriation may be measured by the imposition of liability for a reasonable royalty for the unauthorized disclosure or use of a trade secret by a misappropriator.

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

Sec. 5. Attorney's fees.

New, Section
48-504

The court may award reasonable attorney's fees to the prevailing party if:

- (1) A claim of misappropriation is made in bad faith;
- (2) A motion to terminate an injunction is made or resisted in bad faith; or
- (3) Willful and malicious misappropriation exists.

Sec. 6. Preservation of secrecy.

New, Section
48-505

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, or 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.

Sec. 7. Statute of limitations.

New, Section
48-506

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.

Sec. 8. Effect on other law.

New, Section
48-507

(a) Except as provided in subsection (b) of this section, this act supercedes conflicting tort, restitution and other law of the District of Columbia providing civil remedies for misappropriation of a trade secret.

(b) This act does not affect:

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

Sec. 9. Uniformity of application and construction.

New, Section
48-508

This act shall be applied and construed to make uniform the law with respect to trade secrets among the District of Columbia and those states enacting it.

Sec. 10. Applicability.

New, Section
48-509

This act does not apply to misappropriation occurring prior to the effective date of this act. With respect to a continuing misappropriation that began prior to the effective date of this act, the act does not apply to the

continuing misappropriation that occurs after the effective date of this act.

Sec. 11. Disclosure of information to enforce the Occupational Safety and Health Act of 1988 and Pesticide Operations Act of 1978.

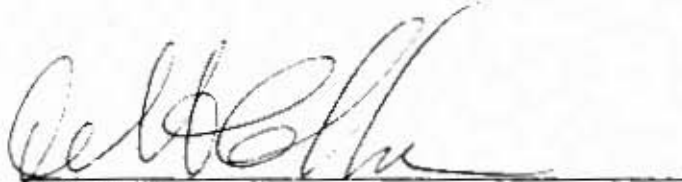
New, Section
58-510

(a) Nothing in this act shall prevent the disclosure of accurate and specific information to the Mayor, other District officers or their representatives, private or public sector employees, or the Occupational Safety and Health Commission if necessary to enforce the District of Columbia Occupational Safety and Health Act of 1988, signed by the Mayor on November 2, 1988 (D.C. Act 7-245; to be codified at D.C. Code, sec. 36-1201 et seq.).

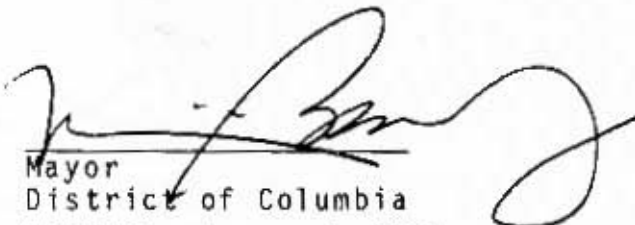
(b) Nothing in this act shall prevent the disclosure of information to the Mayor or other District officers or employees if necessary to enforce the Pesticide Operations Act of 1978, effective April 18, 1978 (D.C. Law 2-70; 20 DCMR 1300 et seq.).

Sec. 12. Effective Date.

This act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code, sec. 1-233(c)(1)).



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED: January 6, 1989



COUNCIL OF THE DISTRICT OF COLUMBIA
Council Period Seven

RECORD OF OFFICIAL COUNCIL VOTE

DOCKET NO: 37-426

Item on Consent Calendar

ACTION & DATE: Adopted First Reading, 11-29-88

VOICE VOTE: Approved

Recorded vote on request

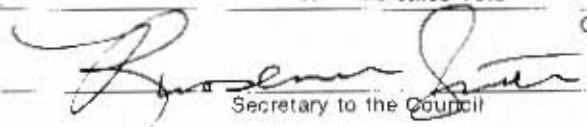
Absent: Rolark

ROLL CALL VOTE: — RESULT () () ()

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. CLARKE					NATHANSON					THOMAS SR.				
CRAWFORD					RAY					WILSON				
JARVIS					ROLARK					WINTER				
KANE					SCHWARTZ									
MASON					SMITH, JR.									

X — Indicates Vote A.B. — Absent N.V. — Present, not voting

CERTIFICATION RECORD


Secretary to the Council

12-22-88
Date

Item on Consent Calendar

ACTION & DATE: Adopted Final Reading, 12-13-88

VOICE VOTE: Approved

Recorded vote on request

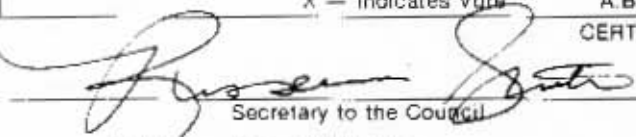
Absent: Wilson and Smith

ROLL CALL VOTE: — RESULT () () ()

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. CLARKE					NATHANSON					THOMAS, SR.				
CRAWFORD					RAY					WILSON				
JARVIS					ROLARK					WINTER				
KANE					SCHWARTZ									
MASON					SMITH, JR.									

X — Indicates Vote A.B. — Absent N.V. — Present, not voting

CERTIFICATION RECORD


Secretary to the Council

12-22-88
Date

Item on Consent Calendar

ACTION & DATE: _____

VOICE VOTE: _____

Recorded vote on request

Absent: _____

ROLL CALL VOTE: — RESULT () () ()

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. CLARKE					NATHANSON					THOMAS, SR.				
CRAWFORD					RAY					WILSON				
JARVIS					ROLARK					WINTER				
KANE					SCHWARTZ									
MASON					SMITH, JR.									

X — Indicates Vote A.B. — Absent N.V. — Present, not voting

CERTIFICATION RECORD

Secretary to the Council

Date