

# HOUSE BILL No. 5312

October 23, 1997, Introduced by Reps. Richner, Perricone, McBryde, Fitzgerald, Goschka, Jellema, Kilpatrick, Scranton, Basham, Birkholz, Baird, Raczkowski, London, McNutt, Jansen, Cropsey and Kukuk and referred to the Committee on Commerce.

A bill to protect certain trade secrets; to prohibit disclosure of trade secrets; to provide for remedies; and to repeal acts and parts of acts.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 1. As used in this act:

2       (a) "Improper means" means the acquiring of a trade secret  
3 by theft, bribery, misrepresentation, breach, or inducement of a  
4 breach of a duty through electronic or any other means.

5       (b) "Misappropriation" means either of the following:

6       (i) Acquiring a trade secret of another by a person who  
7 knows or has reason to know that the trade secret was acquired by  
8 improper means.

9       (ii) Disclosure or use of a trade secret of another without  
10 express or implied consent by a person who did 1 or more of the  
11 following:

1 (A) Used improper means to acquire knowledge of the trade  
2 secret.

3 (B) At the time of disclosure or use, knew or had reason to  
4 know that his or her knowledge of the trade secret was derived  
5 from or through a person who had utilized improper means to  
6 acquire the trade secret.

7 (C) Knew or had reason to know that it was a trade secret  
8 and that knowledge of it had been acquired by accident or  
9 mistake.

10 (c) "Person" means an individual, corporation, partnership,  
11 association, governmental entity, or any other legal entity.

12 (d) "Trade secret" means information possessed by a person,  
13 including a formula, pattern, compilation, program, device,  
14 method, technique, or process, for which both of the following  
15 apply:

16 (i) The information has independent economic value to that  
17 person, actual or potential, by reason that it is not generally  
18 known to, and not readily ascertainable by, another person.

19 (ii) The person has made reasonable efforts to maintain its  
20 secrecy.

21 Sec. 2. (1) A person shall not misappropriate a trade  
22 secret of another.

23 (2) A person may file a cause of action in a court of compe-  
24 tent jurisdiction for injunctive relief and damages against a  
25 person who has misappropriated a trade secret of that person.

26 Sec. 3. (1) An injunction issued under this act shall  
27 continue for a reasonable period of time to eliminate any

1 commercial advantage to the person who misappropriated the trade  
2 secret.

3 (2) If there has been a material and prejudicial change of  
4 position by the person acquiring the trade secret prior to  
5 acquiring knowledge or reason to know of the misappropriation  
6 that renders a prohibitive injunction inequitable, the court may  
7 allow continued use of the trade secret by the person who misap-  
8 propriated it but shall require payment of a reasonable royalty  
9 for the period of time required under subsection (1).

10 Sec. 4. (1) A person is entitled to recover damages for the  
11 misappropriation of his or her trade secret. Damages shall  
12 include both the actual loss caused by the misappropriation and  
13 any unjust enrichment received by the person who misappropriated  
14 the trade secret.

15 (2) In addition to the damages under subsection (1), the  
16 court may order a reasonable royalty be paid any unauthorized use  
17 of the trade secret.

18 (3) If the court finds that the misappropriation was willful  
19 and malicious, the court may award damages in an amount not  
20 exceeding twice the amount allowed under subsection (1).

21 Sec. 5. If a claim of misappropriation is made in bad  
22 faith, a motion to terminate an injunction is made or resisted in  
23 bad faith, or willful and malicious misappropriation exists, the  
24 court may award reasonable attorney fees and costs to the pre-  
25 vailing party.

26 Sec. 6. In an action under this act, a court shall preserve  
27 the secrecy of an alleged trade secret by reasonable means, which

1 may include granting protective orders in connection with  
2 discovery proceedings, holding in-camera hearings, sealing the  
3 records of the action, and ordering any person involved in the  
4 litigation not to disclose an alleged trade secret without prior  
5 court approval.

6       Sec. 7. An action for misappropriation under this act shall  
7 be brought within 3 years from the date the person knew or should  
8 have known of the misappropriation. For the purposes of this  
9 section, a continuing misappropriation constitutes a single  
10 claim.

11       Enacting section 1. 1968 PA 329, MCL 752.771 to 752.773, is  
12 repealed.