

1 HB102
2 116408-3
3 By Representative Williams (J)
4 RFD: Judiciary
5 First Read: 12-JAN-10
6 PFD: 01/06/2010

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2 ENROLLED, An Act,

3 To amend Section 8-27-4, Code of Alabama 1975,
4 relating to the remedies for misappropriation of a trade
5 secret, to increase the minimum civil penalty for willful and
6 malicious misappropriation and make it a crime to
7 intentionally remunerate a third person to misappropriate a
8 trade secret; and in connection therewith would have as its
9 purpose or effect the requirement of a new or increased
10 expenditure of local funds within the meaning of Amendment 621
11 of the Constitution of Alabama of 1901, now appearing as
12 Section 111.05 of the Official Recompilation of the
13 Constitution of Alabama of 1901, as amended.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. Section 8-27-4, Code of Alabama 1975, is
16 amended to read as follows:

17 "§8-27-4.

18 "(a) The remedies available for actual or threatened
19 misappropriation of a trade secret are:

20 "(1) To the extent that they are not duplicative:

21 "a. Such injunctive and other equitable relief as
22 may be appropriate with respect to any actual or threatened
23 misappropriation of a trade secret,

24 "b. Recovery of any profits and other benefits
25 conferred by the misappropriation that are attributable to the

1 misappropriation (In establishing the misappropriator's
2 profits, the complainant is required to present proof only of
3 the misappropriator's gross revenue, and the misappropriator
4 is required to present proof of his or her deductible expenses
5 and the elements of profit attributable to factors other than
6 the trade secret.), and

7 "c. The actual damages suffered as a result of the
8 misappropriation;

9 "(2) Reasonable attorney's fees to the prevailing
10 party if:

11 "a. A claim of actual or threatened misappropriation
12 is made or resisted in bad faith,

13 "b. A motion to terminate an injunction is made or
14 resisted in bad faith, or

15 "c. Willful and malicious misappropriation exists;
16 and

17 "(3) Exemplary damages in an amount not to exceed
18 the actual award made under subdivision (1), but not less than
19 ~~\$5,000~~ ten thousand dollars (\$10,000), if willful and
20 malicious misappropriation exists.

21 "(b) In addition to the civil damages and penalties
22 provided in subsection (a), a person who intentionally
23 remunerates or recruits a third person for actual or
24 threatened misappropriation of a trade secret and any person
25 who misappropriates a trade secret shall be guilty of a Class

1 C felony. In any criminal prosecution under this subsection
2 against an employer based on misappropriation of a trade
3 secret by its employee, the term "intentionally" shall mean
4 that the employer remunerated an employee with the intent that
5 the employee would misappropriate the trade secrets of
6 another, the another. The trade secret that was
7 misappropriated shall be clearly identified, and mere
8 identified. Mere acceptance or receipt by an employer of a
9 trade secret of another, by itself, shall be insufficient to
10 prove criminal liability. Each act committed under this
11 subsection shall constitute a separate offense."

12 Section 2. Although this bill would have as its
13 purpose or effect the requirement of a new or increased
14 expenditure of local funds, the bill is excluded from further
15 requirements and application under Amendment 621, now
16 appearing as Section 111.05 of the Official Recompilation of
17 the Constitution of Alabama of 1901, as amended, because the
18 bill defines a new crime or amends the definition of an
19 existing crime.

20 Section 3. This act shall become effective on the
21 first day of the third month following its passage and
22 approval by the Governor, or its otherwise becoming law.

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 19-JAN-10, as amended.

Greg Pappas
Clerk

Senate

14-APR-10

Passed