HOUSE COMMITTEE: COMMERCE

Public Hearing on HB/SB # (please circle one): 125

Bill Title: Adopting the uniform trade secrets act

Date: 4/18/89

L.O.B. Room #: 207 Time Public Hearing Called To Order: 10:05 a.m.

(please circle, if absent)

Committee Members: Reps. Arnesen, Bicknell, Braiterman, Christy, Dionne, Drolet, Fair, Foss, Fraser, Gourdeau, Hill, Hunt, Krueger, MacAskill, Packard, Pantzer, Provencal, Rodgers, Tolpin Tsiros.

Bill Sponsors: Sen. McLane, Dist. 15

Testimony

* Use asterisk if written testimony and/or amendments are submitted.

Speaker and Comments: Senator Susan McLane introduced her bill. She believes strongly in the principle of uniform laws. Extensive study goes into proposed legislation. This bill amends the Commercial Code which New Hampshire has adopted, but trade secrets are not part of the law.

The hearing was suspended on SB 125 and opened on SB 173 to allow Senator McLane to speak and then leave.

Attorney Michael Ruedig, uniform law commissioner for New Hampshire, explained the makeup of the conference and the need for uniformity. He also answered questions on the bill analysis.

John McCabe, legislative aide to the Uniform Law Commission, Chicago, Illinois, supports the bill. This is a kind of tort remedy action which raises economic questions. Twenty-six states have adopted this, three more states have passed and are awaiting signature by governors. Trade secrets must have economic value, i.e., blueprints, plans, chemical formula. The original Coca-Cola formulas was a trade secret, was advertised and sold as a unique problem. Another fundamental is misappropriation by "improper" means. There are remedies in this bill--equity in law. There is injunctive relief if appropriate. Information taken by improper means, if it can be

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Speaker and Comments: proved, can be remedied under this bill. There is not much case law in New Hampshire. You could bring a suit today, but they would have to look to other case law. The act has been out since 1979 when we hit 26--that became the majority for uniformity. There has been widespread acceptance. There is discretion to the judge, but the remedies provision takes away the confusion. Trade secret law has always been state law-- patent and trademark federal law. Some states have adopted amendments to the act, but overall they are uniform. The "loser" pays.

Jim Cook of the New Hampshire High Tech Council and member of the board, supports the bill. The key here is clarification. He provided instances where this law would have been helpful.

Joseph Donnelly of the NSS Corporation supports the bill. He gave an explanation of his business and the importance to them of keeping

(If necessary, please use plain white sheet for additional testimony)

Hearing (Closed) Recessed (please circle one) Time: 11:20 a.m.

Hearing Reconvened. Time Hearing Closed: _____

Respectfully submitted,

Rep. [signature], Clerk

information confidential in a highly competitive industry. They want a clear cut methodology for relief. To obtain patents or trademarks, you have to reveal your secret--with trade secret law you do not.

Deborah Watros, marketing manager for Snap Software, supports the bill. In the development state of software, they tinker and rewrite. There is no purpose in copyrighting until the product is sold. The problem is that when you lose an employee, the employee takes a lot of information with them that a competitor can use.

David Makey of Amherst International supports the bill. His products are not patentable and could be reverse engineered. This would be of advantage to a small company to lay groundwork for defense.

The following subcommittee was appointed: Rep. Krueger, chairman; Rep. Packard; Rep. Provencal.