

1 HB102
2 115799-1
3 By Representative Williams (J)
4 RFD: Judiciary
5 First Read: 12-JAN-10
6 PFD: 01/06/2010

2
3
4
5
6
7
8 SYNOPSIS: This bill would increase the minimum civil
9 penalty for willful and malicious misappropriation
10 of trade secrets and make it a crime to
11 intentionally remunerate a third person to
12 misappropriate a trade secret.

13 Amendment 621 of the Constitution of Alabama
14 of 1901, now appearing as Section 111.05 of the
15 Official Recompilation of the Constitution of
16 Alabama of 1901, as amended, prohibits a general
17 law whose purpose or effect would be to require a
18 new or increased expenditure of local funds from
19 becoming effective with regard to a local
20 governmental entity without enactment by a 2/3 vote
21 unless: it comes within one of a number of
22 specified exceptions; it is approved by the
23 affected entity; or the Legislature appropriates
24 funds, or provides a local source of revenue, to
25 the entity for the purpose.

26 The purpose or effect of this bill would be
27 to require a new or increased expenditure of local

1 funds within the meaning of the amendment. However,
2 the bill does not require approval of a local
3 governmental entity or enactment by a 2/3 vote to
4 become effective because it comes within one of the
5 specified exceptions contained in the amendment.

6
7 A BILL
8 TO BE ENTITLED
9 AN ACT

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

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

25 "§8-27-4.

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

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

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

5 "b. Recovery of any profits and other benefits
6 conferred by the misappropriation that are attributable to the
7 misappropriation (In establishing the misappropriator's
8 profits, the complainant is required to present proof only of
9 the misappropriator's gross revenue, and the misappropriator
10 is required to present proof of his or her deductible expenses
11 and the elements of profit attributable to factors other than
12 the trade secret.), and

13 "c. The actual damages suffered as a result of the
14 misappropriation;

15 "(2) Reasonable attorney's fees to the prevailing
16 party if:

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

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

21 "c. Willful and malicious misappropriation exists;
22 and

23 "(3) Exemplary damages in an amount not to exceed
24 the actual award made under subdivision (1), but not less than
25 ~~\$5,000~~ ten thousand dollars (\$10,000), if willful and
26 malicious misappropriation exists.

1 "(b) In addition to the civil damages and penalties
2 provided in subsection (a), a person who intentionally
3 remunerates or recruits a third person for actual or
4 threatened misappropriation of a trade secret and any person
5 who misappropriates a trade secret shall be guilty of a Class
6 C felony. In any criminal prosecution under this subsection
7 against an employer based on misappropriation of a trade
8 secret by its employee, the term "intentionally" shall mean
9 that the employer remunerated an employee with the intent that
10 the employee would misappropriate the trade secrets of
11 another, the trade secret that was misappropriated shall be
12 identified, and mere acceptance or receipt by an employer of a
13 trade secret of another, by itself, shall be insufficient to
14 prove criminal liability. Each act committed under this
15 subsection shall constitute a separate offense."

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

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