

23102278D

HOUSE BILL NO. 1502

Offered January 11, 2023

Prefiled January 3, 2023

A *BILL to amend the Code of Virginia by adding in Article 7 of Chapter 6 of Title 18.2 a section numbered 18.2-213.3, relating to theft of or trafficking in trade secrets; penalty.*

Patrons—Wyatt, LaRock, Tata, Walker and Wiley

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 7 of Chapter 6 of Title 18.2 a section numbered 18.2-213.3 as follows:

§ 18.2-213.3. Theft of or trafficking in trade secrets; penalty.

A. As used in this section, unless context requires a different meaning:

"Endeavor" means to attempt or try.

"Foreign agent" means any officer, employee, proxy, servant, delegate, or representative of a foreign government.

"Foreign instrumentality" means any agency, bureau, ministry, component, institution, association, or legal, commercial, or business organization, corporation, firm, or entity that is substantially owned, controlled, sponsored, commanded, managed, or dominated by a foreign government.

"Obtain or use" means taking or exercising control over property, making any unauthorized use, disposition, or transfer of property, obtaining property by fraud, willful misrepresentation of a future act, or false promise, or conduct previously known as stealing; larceny; purloining; abstracting; embezzlement; misapplication; misappropriation; conversion; or obtaining money or property by false pretenses,

"Trade secret" means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information that is for use, or is used, in the operation of a business and that provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. A "trade secret" may include any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof, whether tangible or intangible, and regardless of whether or how it is stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing, irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains.

"Traffic" means to sell, transfer, distribute, dispense, or otherwise dispose of property and to buy, receive, possess, obtain control of, or use property with the intent to sell, transfer, distribute, dispense, or otherwise dispose of such property.

B. It is unlawful for a person to willfully and without authorization obtain or use, or endeavor to obtain or use, a trade secret with the intent to either temporarily or permanently (i) deprive or withhold from the owner thereof the control or benefit of a trade secret or (ii) appropriate a trade secret to his own use or to the use of another person not entitled to the trade secret.

Any person who violates this subsection is guilty of a Class 6 felony.

C. It is unlawful for a person to willfully traffic in, or endeavor to traffic in, a trade secret that he knows or should know was obtained or used without authorization.

Any person who violates this subsection is guilty of a Class 5 felony.

D. 1. Any person who violates subsection B with the intent to benefit a foreign government, a foreign agent, or a foreign instrumentality is guilty of a Class 5 felony.

2. Any person who violates subsection C with the intent to benefit a foreign government, a foreign agent, or a foreign instrumentality is guilty of a Class 4 felony.

E. Any person convicted of violating this section shall be ordered to pay restitution to the owner of the trade secret. The amount of restitution shall include the value of the benefit derived from the offense, including any expenses for research and design and other costs of reproducing the trade secret that the person has avoided by committing the offense.

F. It is not a defense to a violation of this section if the person charged with such violation either returned or intended to return the unlawfully obtained or used trade secret.

G. A person who owns a trade secret that is unlawfully obtained or used may bring a civil action to enjoin the continued improper use of such trade secret, and a court may require affirmative actions to protect the trade secret. Where exceptional circumstances render an injunction inequitable, a court may

INTRODUCED

HB1502

59 condition future use of the trade secret on the payment of a reasonable royalty for no longer than the
60 period of time for which such use could have been prohibited.

61 H. A person may not be held criminally or civilly liable under this section for the disclosure of a
62 trade secret when such disclosure is (i) made confidentially to an attorney, law-enforcement officer, or
63 other federal, state, or local government official for the purpose of reporting or investigating a
64 suspected violation of law or (ii) made in a complaint or other document filed under seal in a lawsuit
65 or other proceeding.

66 I. Notwithstanding the provisions of § 59.1-341, the penalties and remedies provided in this section
67 shall be separate and distinct from any other offense or civil remedy. If the acts or activities violating
68 this section also violate another provision of law, a prosecution under this section shall not prohibit or
69 bar any prosecution or proceeding under such other provision or the imposition of any penalties
70 provided for thereby.

71 2. That the provisions of this act may result in a net increase in periods of imprisonment or
72 commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the
73 necessary appropriation cannot be determined for periods of imprisonment in state adult
74 correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2022, Special Session I,
75 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of
76 \$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary
77 appropriation cannot be determined for periods of commitment to the custody of the Department
78 of Juvenile Justice.