Sec. 101.609. APPLICABILITY OF OTHER PROVISIONS OF CHAPTER OR TITLE 1; SYNONYMOUS TERMS.

SECTION 8. Section 101.609, Business Organizations Code, is amended by adding Subsection (c) to read as follows:

(c) To the extent not inconsistent with this subchapter, a series and the governing persons and officers associated with the series have the powers and rights provided by Subchapters C and D, Chapter 3, and Subchapter F, Chapter 10. For purposes of those provisions, and as the context requires:

1. a reference to “entity,” “domestic entity,” or “filing entity” includes the “series”;
2. a reference to “governing person” includes “governing person associated with the series”;
3. a reference to “governing authority” includes “governing authority associated with the series”; and
4. a reference to “officer” includes “officer associated with the series.”

SECTION 9. Subchapter M, Chapter 101, Business Organizations Code, is amended by adding Section 101.622 to read as follows:

Sec. 101.622. SERIES NOT A SEPARATE DOMESTIC ENTITY OR ORGANIZATION. For purposes of this chapter and Title 1, a series has the rights, powers, and duties provided by this subchapter to the series but is not a separate domestic entity or organization.

SECTION 10. Subchapter B, Chapter 154, Business Organizations Code, is amended by adding Section 154.104 to read as follows:

Sec. 154.104. RIGHTS OF THIRD PERSONS UNDER PARTNERSHIP AGREEMENT. A partnership agreement may provide rights to any person, including a person who is not a party to the partnership agreement, to the extent provided by the partnership agreement.

SECTION 11. Subsection (c), Section 24.003, Business & Commerce Code, is repealed.

SECTION 12. This Act takes effect September 1, 2013.

Passed the Senate on March 27, 2013: Yeas 30, Nays 0; passed the House on April 18, 2013: Yeas 143, Nays 0, two present not voting.

Approved May 2, 2013.

Effective September 1, 2013.

CHAPTER 10

S.B. No. 953

AN ACT
relating to the adoption of the Uniform Trade Secrets Act.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 134A to read as follows:

CHAPTER 134A. TRADE SECRETS

Sec. 134A.001. SHORT TITLE. This chapter may be cited as the Texas Uniform Trade Secrets Act.

Sec. 134A.002. DEFINITIONS. In this chapter:

(1) “Claimant” means a party seeking to recover damages under this chapter, including a plaintiff, counterclaimant, cross-claimant, or third-party plaintiff. In an action in which a party seeks recovery of damages under this chapter on behalf of another person, “claimant” includes both that other person and the party seeking recovery of damages.
“Improper means” includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, to limit use, or to prohibit discovery of a trade secret, or espionage through electronic or other means.

“Misappropriation” means:

(A) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(B) disclosure or use of a trade secret of another without express or implied consent by a person who:

(i) used improper means to acquire knowledge of the trade secret;

(ii) at the time of disclosure or use, knew or had reason to know that the person’s knowledge of the trade secret was:

(a) derived from or through a person who had utilized improper means to acquire it;

(b) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(c) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(iii) before a material change of the person’s position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

“Proper means” means discovery by independent development, reverse engineering unless prohibited, or any other means that is not improper.

“Reverse engineering” means the process of studying, analyzing, or disassembling a product or device to discover its design, structure, construction, or source code provided that the product or device was acquired lawfully or from a person having the legal right to convey it.

“Trade secret” means information, including a formula, pattern, compilation, program, device, method, technique, process, financial data, or list of actual or potential customers or suppliers, that:

(A) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(B) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Sec. 134A.003. INJUNCTIVE RELIEF. (a) Actual or threatened misappropriation may be enjoined. On application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(b) In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances include a material and prejudicial change of position before acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.

(c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

Sec. 134A.004. DAMAGES. (a) In addition to or in lieu of injunctive relief, a claimant is entitled to recover damages for misappropriation. Damages can include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator’s unauthorized disclosure or use of a trade secret.
(b) If wilful and malicious misappropriation is proven by clear and convincing evidence, the fact finder may award exemplary damages in an amount not exceeding twice any award made under Subsection (a).

Sec. 134A.005. ATTORNEY’S FEES. The court may award reasonable attorney’s fees to the prevailing party if:

(1) a claim of misappropriation is made in bad faith;
(2) a motion to terminate an injunction is made or resisted in bad faith; or
(3) wilful and malicious misappropriation exists.

Sec. 134A.006. PRESERVATION OF SECRECY. In an action under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means. There is a presumption in favor of granting protective orders to preserve the secrecy of trade secrets. Protective orders may include provisions limiting access to confidential information to only the attorneys and their experts, holding in camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

Sec. 134A.007. EFFECT ON OTHER LAW. (a) Except as provided by Subsection (b), this chapter displaces conflicting tort, restitutionary, and other law of this state providing civil remedies for misappropriation of a trade secret.

(b) This chapter does not affect:

(1) contractual remedies, whether or not based upon misappropriation of a trade secret;
(2) other civil remedies that are not based upon misappropriation of a trade secret; or
(3) criminal remedies, whether or not based upon misappropriation of a trade secret.

(c) To the extent that this chapter conflicts with the Texas Rules of Civil Procedure, this chapter controls. Notwithstanding Section 22.004, Government Code, the supreme court may not amend or adopt rules in conflict with this chapter.

(d) This chapter does not affect the disclosure of public information by a governmental body under Chapter 552, Government Code.

Sec. 134A.008. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

SECTION 2. Subdivision (2), Section 134.002, Civil Practice and Remedies Code, is amended to read as follows:

(2) “Theft” means unlawfully appropriating property or unlawfully obtaining services as described by Section 31.03, 31.04, [31.05], 31.06, 31.07, 31.11, 31.12, 31.13, or 31.14, Penal Code.

SECTION 3. The change in law made by this Act applies to the misappropriation of a trade secret made on or after the effective date of this Act. A misappropriation of a trade secret made before and a continuing misappropriation beginning before the effective date of this Act are governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2013.

Passed the Senate on April 9, 2013: Yeas 31, Nays 0; passed the House on April 23, 2013: Yeas 146, Nays 1, two present not voting.

Approved May 2, 2013.

Effective September 1, 2013.

CHAPTER 11

H.B. No. 174

AN ACT

relating to creating American Indian Heritage Day.