

Office of the Commissioner of Insurance of Georgia Proposes New Regulation Governing Protection of Trade Secret Information

August 01, 2014

The Office of the Commissioner of Insurance of Georgia ("OCI") has proposed a new rule concerning procedures to be followed by persons or entities asserting trade secret protection of information filed with the OCI to comply with a statute, regulation, bid or request for proposal. **Information Protected as Trade Secret**

The proposed regulation will implement section 50-18-72(a)(34), Georgia Code, which along with section 10-1-27 of the Georgia Code, extends trade secret protection to the following if they derive actual or potential economic value from not being generally known: technical and non-technical data, a formula, a compilation, a program, a method, a technique, financial data, financial plans, product plans, or a list of actual or potential customers or suppliers. **Procedures Proposed for Perfecting Trade Secret Claims**

If adopted, the proposed regulation (Regulation 120-2-2-.25, entitled "Trade Secret Assertions") will require certain procedures to protect the confidentiality of trade secret information submitted to the OCI:

1. A supporting affidavit will be required.

The affidavit must affirmatively state that the information constitutes a trade secret as defined in the Georgia Statutes. It must specify the information as to which trade secret protection is claimed. It must affirmatively state that the information is not publicly available elsewhere and that the entity does not wish the trade secret information to be made public. It must explain why the information is a trade secret, explain how its release would cause economic injury, and describe the steps the claimant has taken to maintain the secrecy of the information.

2. The affidavit must be submitted at the same time that trade secret information is submitted. However, if the information is submitted pursuant to an investigation, the submitting entity will be allowed to claim and designate trade secret information at any time before the conclusion of the investigation.
3. A trade secret notation must be placed on the documents containing the trade secret information.

Judicial Review

The proposed regulation and section 50-18-72(a)(34) of the Georgia Code establish a procedure for notifying the submitting person or entity if the OCI intends to release the information, and judicial review of the OCI's decision to release it, if sought quickly (within 10 days of such notice from the OCI). **Issues Not Currently Addressed in the Proposed Regulation**

The proposed regulation requires that "a trade secret notation must be placed on the documents containing the [trade secret] information" to perfect a claim of trade secret confidentiality. However, it does not make clear whether the required notation must be on every page of each submitted document, or only on the document's first page. It does not provide a procedure to satisfy this trade secret notation requirement when information is submitted to the OCI in electronic formats that do not accommodate such notations, such as certain kinds of data sets. It does not establish procedures to insure the continued confidentiality of trade secret information if the OCI extracts it from the claimant's original submission and reproduces it in the OCI's internal workpapers or other documents. Finally, the proposed regulation does not specify the level of detail required to establish economic injury. Depending on the level of detail provided in the affidavit concerning economic injury, a question may arise as to whether the affidavit itself includes trade secret information. **Input on Proposed Regulation**

Interested persons may submit written comments concerning the proposed regulation before 4:30 p.m. on September 5, 2014, to the attention of Vince Weigand, Administrative Procedure Division, Office of the Commissioner of Insurance, 1016 West Tower, Floyd Building, Two Martin Luther King, Jr. Drive, Atlanta, Georgia 30334. Oral comments of interested persons will be received during a public hearing on September 9, 2014, at 9:00 a.m. in the Hearing Room of the Office of the Commissioner of Insurance, Seventh Floor, West Tower, Floyd Building, Two Martin Luther King, Jr. Drive, Atlanta, Georgia 30334.

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