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**BULLETIN NO. 2021-05**

**TO:** All insurers admitted in Alabama

**FROM:** Jim L. Ridling  
Commissioner of Insurance *APPROVE 07/23/21  
JLR*

**DATE:** July 23, 2021

**RE:** Alabama Act No. 2021-237 – claims of trade secret confidentiality on insurance filings with the Department of Insurance

**EFFECTIVE:** Immediate

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On April 20, 2021, the Governor of Alabama approved Ala. Act. No. 2021-237, which amends Ala. Code § 27-13-3. The act became effective immediately upon approval.

For purposes of this Bulletin, § 27-13-3, as amended by Ala. Act No. 2021-237, now states that “insurance filings in the [C]ommissioner’s office submitted in accordance with this chapter” - Chapter 13 of Title 27 which relates to rates and rating organizations – “shall be open to public inspection . . .” The section, as amended, requires the Alabama Department of Insurance to keep confidential and separate from records subject to public inspection filings deemed “confidential as commercially valuable trade secrets under Chapter 27 of Title 8” of the Code of Alabama.

This Bulletin is intended to implement Ala. Act No. 2021-237.

1. Under Ala. Code § 8-27-2(1), a “trade secret” is defined to be information that
  - a. Is used or intended for use in a trade or business;
  - b. Is included or embodied in a formula, pattern, compilation, computer software, drawing, device, method, technique, or process;
  - c. is not publicly known and is not generally known in the trade or business of the person asserting that it is a trade secret;
  - d. Cannot be readily ascertained or derive from publicly available information;

- e. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; and
- f. Has significant economic value.

As written, the above definition requires that all elements be present to deem information to be a “trade secret” for purposes of Ala. Act No. 2021-237.

2. The public policy of Ala. Code § 27-13-3, as amended by Ala. Act No. 2021-237, is that “insurance filings” are open to public inspection. “Trade secret” confidentiality treatment is thus an “exception” to this public policy. Given this public policy of openness, a filing party asserting a “trade secret” confidentiality claim should limit its claim to information that is genuinely asserted to be a “trade secret.”

3. Filings seeking “trade secret” confidentiality must be made electronically through SERFF<sup>SM</sup>. Instructions on how to request confidentiality can be found in the “Complete Industry Manual” on page 145. The manual can be found in SERFF<sup>SM</sup> by going to the “Help” link, open User Manual, scroll to bottom, and open complete industry manual. The Confidentiality option allows a user the ability to make the case for a request that a) the entire filing or b) only certain parts of a filing be kept confidential and not be made available via Public Access. The entire submission or selected pieces will be labeled with an icon to indicate a request for confidentiality. The filing party must state its reasons for requesting “trade secret” designation and confidentiality with reference to the elements of the statutory “trade secret” definition referenced above and in Ala. Code § 27-13-3, as amended by Ala. Act No. 2021-237. A model filing or other filing open to public inspection in another State will not be deemed by the Department to be a “trade secret” subject to confidentiality.

4. The burden of establishing the existence of a “trade secret” and a claim of confidentiality under Ala. Code § 27-13-3, as amended by Ala. Act No. 2021-237, rests on the filing party asserting “trade secret” designation and confidentiality.

5. The Department of Insurance will review such information and “trade secret” confidentiality assertion. The Department will keep designated information confidential and not open to public inspection during the period of such review. The Department will use reasonable efforts to provide a determination within 30 business days of filing, though particular situations may require a longer time period. Any questions that arise during the Department’s review will be asked and should be answered in SERFF<sup>SM</sup>. If the Department agrees with the “trade secret” confidentiality designation, the relevant information will thereafter be treated as confidential and not open to public inspection. The Department reserves the right to override the request; however, before the request is overridden, the user will receive a “Note to Filer” advising of why the confidentiality request is not allowed. If the insurer decides to withdraw the submission, that communication should be sent as a “Note to Reviewer” and the filing will be withdrawn. If the insurer decides to move forward with changes, the confidentiality request will be overridden, and the icon will change from red to grey.

**Questions concerning this Bulletin should be sent in writing to:**

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