

S.C. Code Ann. § 39-8-60

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South Carolina Code of Laws Annotated by LexisNexis® > Title 39. Trade and Commerce (Chs. 1 — 79) > Chapter 8. Trade Secrets (§§ 39-8-1 — 39-8-130)

§ 39-8-60. Preservation of secrecy during discovery proceedings of civil actions; substantial need defined.

(A) In an action under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding hearings in-camera, 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.

(B) In any civil action where discovery is sought of information designated by its holder as a trade secret, before ordering discovery a court shall first determine whether there is a substantial need by the party seeking discovery for the information.

“Substantial need” as used in this section means:

- (1) the allegations in the initial pleading setting forth the factual predicate for or against liability have been plead with particularity;
- (2) the information sought is directly relevant to the allegations plead with particularity in the initial pleading;
- (3) the information is such that the proponent of the discovery will be substantially prejudiced if not permitted access to the information; and
- (4) a good faith basis exists for the belief that testimony based on or evidence deriving from the trade secret information will be admissible at trial.

(C) Direct access to computer databases containing trade secret information, so-called “real time” discovery, shall not be ordered by the court unless the court finds that the proponent of the discovery cannot obtain this information by any other means and provided that the information sought is not subject to any privilege.

(D) Upon motion of the holder of the trade secret information, a court may condition the production of trade secret information on the posting of an appropriate bond.

(E) Information produced pursuant to this section must be governed by an appropriate written protective order of the court.

(F) Information produced pursuant to this section may only be disclosed to persons identified in the written protective order of the court and may be used or disclosed only in the action in which it

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is produced. Litigation-sharing orders pertaining to trade secret information must not be entered by the court.

(G) A person receiving trade secret information pursuant to this section is subject to the jurisdiction of the courts of this State.

(H) When information produced pursuant to this section is discussed or otherwise disclosed at a trial or hearing, the owner of the produced trade secret information is allowed to obtain individually signed confidentiality agreements from all parties that are present in the courtroom or are party to any procedures where trade secret information is discussed, presented, or otherwise made known to any party not already under a confidentiality agreement with the trade secret owner.

(I) All trade secret information and any copies, duplicates, or other writings which reflect or contain the trade secret information, or excerpts therefrom, must be returned to the holder of the trade secrets at the conclusion of the litigation.

(J) This section applies to any civil action brought within or without this State where discovery is sought of trade secret information present in this State.

History

1997 Act No. 38, § 1, eff May 21, 1997.

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