

SEFF Legal Update 2009

EPSTEIN BECKER & GREEN P.C.

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Georgia Noncompetition Law

Legislative Issues

Regulatory Developments



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Georgia Noncompetition Law

- The *Atlanta Bread* case
 - In term non-compete subjected to strict scrutiny—same standards as post term
 - No “blue pencil” for in term—the court will not revise to make it work
 - No legislative “usurpation” of the area
So a Constitutional Amendment required



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- Georgia Noncompetition Law
 - The Legislative solution
 - Bill signed into law by the Governor last spring
 - Subject to a constitutional amendment to be on the ballot November 2010



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- Georgia Noncompetition Law
 - Atlanta Bread—future considerations
 - Choice of law issues
 - How to protect yourself from in-term competition



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Legislative Issues

- Employee Free Choice Act (“EFCA” or “Card Check”)
 - Over 50% sign cards, no vote needed (secret ballot)
 - If no contract reached within a relatively short time, then mandatory binding arbitration
 - Still around—as in: “it ain’t dead yet” or “rumors of its demise are greatly exaggerated”

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Legislative Issues

- Health Care Reform
 - House proposals
 - Obama proposal
 - Baucus proposal



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Legislative Issues

- Access to Capital
 - Revision in the Cap on Goodwill in SBA business acquisition loans to \$500,000 effective October 1 (just announced)
 - Other pending changes/issues
 - SB 1615 (Senator Snowe)
 - Extending 90% SBA Guarantee Rate (7(a) program) through 2010



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Legislative Issues

- Arbitration Fairness Act
 - Hank Johnson's Bill
 - Prohibits pre-dispute arbitration agreements in the consumer (and franchise) context
 - It also is still around (supported by the plaintiffs' bar)



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Regulatory Developments

- NASAA efforts to conform State law to the Revised FTC Rule
 - Maryland, New York and Rhode Island (first personal meeting/10 business days)
 - Michigan, Oregon, Washington and Wisconsin (10 business days)
 - NASAA recommendation to its members
- NASAA issues due to budget/staff problems



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Regulatory Developments

- “Red Flag” Rules from FTC
 - Confusion over to whom they apply
 - New compliance date—November 1

