

LC01884

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2002

A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE - PARTICULAR ACTIONS
LIMITATION OF SECRECY ORDERS AND AGREEMENT IN CERTAIN ACTIONS

Introduced By: Senators Igliozi, Badeau, Tassoni, Ruggerio, and McDonald

Date Introduced: February 07, 2002

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

SECTION 1. Title 10 of the General Laws entitled "Courts and Civil Procedure-
Procedure in Particular Actions" is hereby amended by adding thereto the following chapter:

CHAPTER 21

LIMITATION OF THE USE OF SECRECY ORDERS AND AGREEMENTS IN CERTAIN ACTIONS

10-21-1. Legislative Purpose. - - The general assembly finds and decrees that matters of
interest to the public health, safety and welfare are often the subject of private litigation in which
representatives of the general public do not participate and which frequently are settled or
resolved under circumstances in which matters of the greatest concern to the public interest are
kept confidential from disclosure to the representatives of the public by agreement of the private
litigants. The general assembly, in recognition of the respective rights of private litigants and of
the general public, adopts this chapter to regulate the circumstances under which matters of
public interest in private litigation should be kept confidential.

10-21-2. Definitions. - - As used in this chapter:

1) "Document" shall mean all materials produced, generated or obtained in the course of
litigation in any court, including settlement documents, releases and other documents terminating
the litigation, and any and all materials produced, generated or obtained in discovery whether
contained in files in the courthouses of the state of Rhode Island or contained in the files of
counsel for the litigants.

1 2) “Environmental hazard” shall mean a release or threatened release of any substance
2 that poses a threat to public health or safety by presenting a present or future danger of death,
3 bodily injury, or physical or emotional disability to persons exposed to any such substance. Such
4 substances may include any and all substances listed in any federal or state list of hazardous
5 substances produced in accordance with federal or state statutes or regulations.

6 3) “Final protective order” shall mean an order of any court of competent jurisdiction
7 entered pursuant to this chapter determining that a particular document or documents shall be
8 protected from public disclosure.

9 4) “Financial fraud” shall mean any plan or scheme to sell an investment product to the
10 general public without full disclosure of the risks associated with the purchase of the product,
11 where the plan or scheme would cause or has caused financial loss to one or more persons in one
12 or more transactions.

13 5) “Public health and safety” shall include the health or safety of any one or more
14 members of the public.

15 6) “Trade secret” shall mean and include anything tangible or intangible or electronically
16 kept or stored, which constitutes, represents, evidences or records secret scientific, technical,
17 merchandising, production or management information, or a design, process, procedure, formula,
18 invention or improvement, which gives the person owing it an opportunity to obtain an advantage
19 over competitors who do not know or use it, and which is not itself evidence of a defective
20 product or an environmental hazard or a financial fraud.

21 **10-21-3. Concealment of certain public hazards prohibited. - -** Notwithstanding any
22 other provision of law to the contrary, in actions alleging personal injury or wrongful death or
23 monetary or property damages caused by a defective product or an environmental hazard or a
24 financial fraud, no confidentiality agreement, settlement agreement, stipulated agreement, or
25 protective order to keep from public disclosure information that provides evidence of financial
26 fraud, a defective product, or an environmental hazard shall be entered or enforceable upon the
27 settlement or conclusion of any litigation or dispute, unless a final protective order regarding that
28 information is entered by the court in accordance with this chapter. Any agreement made by
29 private litigants to conceal documents, which agreement is not contained within and sanctioned
30 by a final protective order, shall be void and unenforceable as against public policy.

31 **10-21-4. Procedure for obtaining a final protective order. --** (a) Any litigant in any
32 judicial action may seek a final protective order from the Superior court in which the action is
33 pending upon the conclusion of the litigation.

34 (b) A final protective order shall be sought by written motion of one or more parties. The

1 motion shall identify the documents as to which a final protective order is sought, and shall
2 contain a request for a hearing. Documents shall be identified in a manner sufficient to alert the
3 court to their potential significance to the public and to the litigants but need not contain such
4 detailed identification as to disclose the contents of the documents. Documents which do not
5 allege evidence of financial fraud, a defective product, or an environmental hazard need not be
6 identified for review by the court. Any party opposing such motion may file an opposition to the
7 motion in order to alert the court to the opponent's position on the significance of the documents
8 to the interests of the public and the litigants.

9 (c) Notice of a motion for a final protective order shall be posted in a public place in the
10 courthouse in which the action is pending upon the filing of the motion. Such notice shall contain
11 the caption of the case and the date scheduled for any hearing upon the motion. Such notice shall
12 remain posted until the court has acted upon the motion.

13 (d) The clerk of the court in which the motion for a final protective order is pending shall
14 provide written notice of the filing of such motion to the attorney general. Such notice shall
15 contain the caption of the case and the date scheduled for any hearing upon the motion. Upon
16 receipt of such notice, the attorney general shall notify any and all federal, state or local
17 regulatory agencies and governmental bodies with an interest in the subject matter of the
18 litigation of the filing of such motion and of the date scheduled for any hearing on the motion.

19 (e) The court shall conduct a hearing upon a motion for a final protective order. Such
20 hearing shall be conducted no sooner than twenty-one (21) days after the filing of a motion for a
21 final protective order, in order to afford due notice of the hearing date to the public
22 representatives. The court may permit representatives of the public interest, including the
23 attorney general, representatives of federal, state and local regulatory or governmental bodies,
24 representatives of the media, and other persons, in addition to the parties to the litigation, to
25 address the court on the issuance and scope of the proposed final protective order. The court shall
26 retain the authority and discretion to conduct said hearing in the manner most conducive to just
27 resolution of the issues, and may review documents in camera.

28 (f) The court shall independently examine the basis and scope of the proposed final
29 protective order and shall make written findings pursuant to this section for each document
30 proposed for nondisclosure under the final protective order.

31 (g) A final protective order shall be entered only for a good cause shown in order to
32 protect public health and safety and to encourage the broadest availability to the public of
33 information that provides evidence of financial fraud, a defective product or an environmental
34 hazard. The burden of proving that a final protective order should issue rests upon the party

1 seeking the order, and that party must satisfy the burden by a fair preponderance of the evidence
2 that a final protective order should issue.

3 (h) In exercising its discretion to grant a final protective order, a court may consider the
4 following factors in addition to others:

5 (1) Whether the document as to which a final protective order is sought would have been
6 excluded from introduction into evidence at trial because of any privilege, exclusionary rule, or
7 testimonial disqualification, in accordance with the rules of evidence;

8 (2) Whether disclosure of the document would violate any interest or right protected or
9 guaranteed by the constitution or laws of the United States or of the state of Rhode Island;

10 (3) Whether disclosure of the document would reveal a trade secret or secrets or
11 confidential personal or business information which is not a trade secret, and that information
12 does not provide evidence of a financial fraud, a defective product or an environmental hazard;

13 (i) If the court finds that a party is seeking issuance of a final protective order to prevent
14 disclosure of trade secrets, which provide evidence of financial fraud, a defective product or an
15 environmental hazard, the court may issue the final protective order if the court makes written
16 findings which determine that there has been a particularized showing made of all of the
17 following by the moving party:

18 (1) A final protective order will not conceal information which may enable members of
19 the public to protect themselves from financial fraud, a defective product or an environmental
20 hazard; and

21 (2) The party seeking the final protective order has a cognizable interest in the document,
22 in that the document contains trade secrets as defined in this chapter; and

23 (3) Public disclosure would cause serious harm to the party requesting confidentiality.

24 In making such a finding, the court shall consider whether disclosure of the trade secret
25 information that provides evidence of financial fraud, a defective product, or an environmental
26 hazard, would benefit any competitor of the party requesting confidentiality.

27 (j) If the court in the exercise of its discretion grants a final protective order but finds that
28 there exists information in the documents protected which provides evidence of financial fraud, a
29 defective product or an environmental hazard, the court shall: (1) enter an order requiring the
30 party seeking the protective to preserve, until further order of the court, the subject documents as
31 identified to the satisfaction of the court; and (2) notify all interested federal, state and local
32 regulatory agencies and governmental bodies, including the attorney general of the state of
33 Rhode Island. Any agency so notified shall comply with the order to maintain confidentiality
34 unless disclosure is required in its judgment to protect the health and safety of the public, in

1 which case the agency may move for reconsideration of the order of the court or may appeal the
2 final protective order.

3 (k) Any interested party, including parties to the litigation, the attorney general,
4 representatives of federal, state or local regulatory agencies or governmental bodies, or
5 representatives of the media or other interested person, may appeal the grant or denial of a final
6 protective order to the Supreme Court, in accordance with rules of appellate procedure. For
7 purposes of the appeal, the grant or denial of a final protective order shall be considered a final
8 judgment. The Supreme Court shall conduct de novo review of the motion and documents as to
9 which a final protective order has been sought.

10 (l)(1) Any person, other than a party to a contract or other agreement subject to this
11 section, may contest any order, judgment, agreement, or contract that violates this section by
12 motion in the court that entered the order or judgment, or by commencing an action for
13 declaratory judgment. The motion or action shall specify the basis upon which the violation is
14 alleged.

15 (2) Upon the filing of such motion or action, the court shall conduct a hearing and review
16 of the challenged materials in accordance with subsections (b) through (k) of this section, and
17 shall also consider whether the original concealment of the documents by the parties to the
18 litigation was willful or was the result of excusable failure to comply with the procedures set forth
19 above. If the court finds that the original concealment was in willful violation of this chapter, the
20 court may award such sanctions as it deems appropriate. Any person injured by such willful
21 violation of this chapter shall have a cause of action for damages against any persons found to
22 have willfully violated this chapter, including litigants and their counsel.

23 (3) Any person bringing an action under this subsection who prevails in any part of his or
24 her motion or action, shall be entitled to costs and reasonable attorneys' fees from the party
25 seeking protection of the documents.

26 (4) If the court finds that the motion or action contesting the order, judgment,
27 agreement, or contract is wholly insubstantial, frivolous, or not advanced in good faith, the court
28 may award costs and reasonable attorneys' fees to the party seeking protection.

29 (5) If more than one person files a motion or action pursuant to this section, the court may
30 consolidate the proceedings. If more than one motion or petition raises the same issues, the court
31 shall consolidate the proceedings.

32 (6) A motion or petition based on issues or facts asserted and decided in a prior motion or
33 petition shall be dismissed unless the new motion or petition established to the satisfaction of the
34 court newly discovered facts or circumstances supporting the new motion or petition.

1 (m) Nothing in this chapter shall be deemed to compel disclosure of any document or
2 material protected by the constitution or laws of the United States or of the state of Rhode Island.

3 (n) Nothing in this chapter shall be deemed to limit a court's authority or discretion to
4 prohibit the enforcement of a part or all of any confidentiality agreement, settlement agreement,
5 stipulated agreement or protective order in any other cases.

6 (o) Nothing in this chapter shall be deemed to prohibit the entry or enforcement of that
7 part of a confidentiality agreement, settlement agreement, or stipulated agreement between the
8 parties which requires the nondisclosure of the amount of any money paid in settlement of a
9 claim, provided, however, that a defendant shall not make any offer to settle a case contingent
10 upon a claimant agreeing to a confidentiality agreement, settlement agreement, or stipulated
11 agreement which requires the nondisclosure of the amount of any money paid in settlement of a
12 claim. The making of such a contingent offer shall constitute an unfair and deceptive act or
13 practice.

14 **10-21-5. Interim protective orders for trade secrets. --** Section four of this chapter
15 shall not affect the issuance of any temporary protective order or any discovery order protecting
16 the confidentiality or nondisclosure of documents and materials which constitute trade secrets.
17 However, any such temporary protective or discovery order, which pertains to evidence of
18 financial fraud, a defective product, or any environmental hazard shall expire automatically thirty
19 (30) days after entry of final judgment. Nothing herein shall delay the production of documents
20 or information in the ordinary course of discovery as provided for by the Rhode Island rules of
21 civil procedure. Any document which provides evidence of financial fraud, a defective product,
22 or an environmental hazard that was protected from disclosure by the terms or any such discovery
23 order or temporary protective order shall not be sealed or subject to further confidentiality
24 pursuant to any agreement or temporary protective order unless the court issues a final protective
25 order pursuant to the provisions of section four of this chapter.

26 **10-21-6. Trade Secrets Generally. - -** Except as set forth in section four of this chapter,
27 a court shall preserve the secrecy of trade secrets by reasonable means, which may include
28 granting protective orders in connection with discovery proceedings, holding in-camera hearings,
29 and ordering any person involved in the litigation not to disclose an alleged trade secret without
30 prior court approval.

31 **10-21-7. Mediation. - -** When the persons agree to conduct and participate in a
32 mediation for the purpose of comprising, settling or resolving a dispute, in whole or in part:

33 (1) The limitations on continuing confidentiality under this chapter do not limit and are
34 without prejudice to the confidentiality of communications or negotiations made by participants

- 1 and mediators during the course of mediation negotiations and settlement discussions.
- 2 (2) Information which is available to the public or which is subject to discovery outside
- 3 of the mediation shall not be deemed confidential or not subject to disclosure pursuant to this
- 4 chapter; solely by reason of its introduction or use in the mediation process.
- 5 SECTION 2. This act shall take effect upon passage.

=====
LC01884
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO COURTS AND CIVIL PROCEDURE - PARTICULAR ACTIONS
LIMITATION OF SECRECY ORDERS AND AGREEMENT IN CERTAIN ACTIONS

- 1 This act would regulate through the Superior Court the circumstances under which
- 2 matters of public interest in private litigation should be kept confidential.
- 3 This act would take effect upon passage.

=====

LC01884

=====

