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LC01884/SUB A

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# STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2002

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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 Iglizzi, Badeau, Tassoni, Ruggerio, and McDonald

Date Introduced: February 07, 2002

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

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

3 CHAPTER 21

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

6 **10-21-1. Legislative Purpose.** -- The general assembly finds and decrees that matters of  
7 interest to the public health, safety and welfare are often the subject of private litigation in which  
8 representatives of the general public do not participate and which frequently are settled or  
9 resolved under circumstances in which matters of the greatest concern to the public interest are  
10 kept confidential from disclosure to the representatives of the public by agreement of the private  
11 litigants. The general assembly, in recognition of the respective rights of private litigants and of  
12 the general public, adopts this chapter to regulate the circumstances under which matters of  
13 public interest in private litigation should be kept confidential.

14 **10-21-2. Definitions.** -- As used in this chapter:

15 (1) "Document" shall mean all materials produced, generated or obtained in the course of  
16 litigation in any court, including settlement documents, releases and other documents terminating  
17 the litigation, and any and all materials produced, generated or obtained in discovery whether  
18 contained in files in the courthouses of the state of Rhode Island or contained in the files of  
19 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) “Protective order” shall mean an order of any court of competent jurisdiction entered  
7 specifically 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 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 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 protective order from the Superior court in which the action is pending  
33 upon the conclusion of the litigation.

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

1 motion shall identify the documents as to which a protective order is sought, and shall contain a  
2 request for a hearing. Documents shall be identified in a manner sufficient to alert the court to  
3 their potential significance to the public and to the litigants but need not contain such detailed  
4 identification as to disclose the contents of the documents. Documents which do not allege  
5 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 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 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, consumer advocates, and governmental bodies with an interest in the subject  
18 matter of the litigation of the filing of such motion and of the date scheduled for any hearing on  
19 the motion.

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

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

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

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

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

6 (1) Whether the document as to which a protective order is sought is subject to a common  
7 law and/or statutory privilege of protection;

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 (4) Whether the document is a public record within the meaning of the access to public  
14 records act.

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

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

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

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

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

29 (j) If the court in the exercise of its discretion grants a protective order but finds that there  
30 exists information in the documents protected which provides evidence of financial fraud, a  
31 defective product or an environmental hazard, the court shall: (1) enter an order requiring the  
32 party seeking the protection to preserve, until further order of the court, the subject documents as  
33 identified to the satisfaction of the court; and (2) notify all interested federal, state and local  
34 regulatory agencies and governmental bodies, including the attorney general of the state of

1 Rhode Island and consumer advocates. Any agency so notified shall comply with the order to  
2 maintain confidentiality unless disclosure is required in its judgment to protect the health and  
3 safety of the public, in which case the agency may move for reconsideration of the order of the  
4 court or may appeal the protective order.

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

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

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

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

29 (4) 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 (5) A motion, action or petition based on issues or facts asserted and decided in a prior  
33 motion or petition shall be dismissed unless the new motion, action or petition establishes to the  
34 satisfaction of the court newly discovered facts or circumstances supporting the new motion,

1 action or petition.

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

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

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

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

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

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

34 (1) The limitations on continuing confidentiality under this chapter do not limit and are

1 without prejudice to the confidentiality of communications or negotiations made by participants  
2 and mediators during the course of mediation negotiations and settlement discussions.

3 (2) Information which is available to the public or which is subject to discovery outside  
4 of the mediation shall not be deemed confidential or not subject to disclosure pursuant to this  
5 chapter; solely by reason of its introduction or use in the mediation process.

6 SECTION 2. Section 38-2-2 of the General Laws in Chapter 38-2 entitled "Access to  
7 Public Records" is hereby amended to read as follows:

8 **38-2-2. Definitions.** -- As used in this chapter:

9 (1) "Agency" or "public body" shall mean any executive, legislative, judicial, regulatory,  
10 or administrative body of the state, or any political subdivision thereof; including, but not limited  
11 to, any department, division, agency, commission, board, office, bureau, authority, any school,  
12 fire, or water district, or other agency of Rhode Island state or local government which exercises  
13 governmental functions, any authority as defined in section 42-35-1(b), or any other public or  
14 private agency, person, partnership, corporation, or business entity acting on behalf of and/or in  
15 place of any public agency.

16 (2) "Chief administrative officer" means the highest authority of the public body as  
17 defined in subsection (a) of this section.

18 (3) "Public business" means any matter over which the public body has supervision,  
19 control, jurisdiction, or advisory power.

20 (4) (i) "Public record" or "public records" shall mean all documents, papers, letters,  
21 maps, books, tapes, photographs, films, sound recordings, magnetic or other tapes, electronic data  
22 processing records, computer stored data (including electronic mail messages, except specifically  
23 for any electronic mail messages of or to elected officials with or relating to those they represent  
24 and correspondence of or to elected officials in their official capacities) or other material  
25 regardless of physical form or characteristics made or received pursuant to law or ordinance or in  
26 connection with the transaction of official business by any agency, or any records not protected  
27 by traditional common law or statutory-based privilege or protection, and which would be  
28 available by law to an opposing party in litigation. For the purposes of this chapter, the following  
29 records shall not be deemed public:

30 (A) (I) All records which are identifiable to an individual applicant for benefits, client,  
31 patient, student, or employee, including, but not limited to, personnel, medical treatment, welfare,  
32 employment security, pupil records, all records relating to a client/attorney relationship and to a  
33 doctor/patient relationship, and all personal or medical information relating to an individual in  
34 any files, including information relating to medical or psychological facts, personal finances,

1 welfare, employment security, student performance, or information in personnel files maintained  
2 to hire, evaluate, promote, or discipline any employee of a public body; provided, however, with  
3 respect to employees, the name, gross salary, salary range, total cost of paid fringe benefits, gross  
4 amount received in overtime, and other remuneration in addition to salary, job title, job  
5 description, dates of employment and positions held with the state or municipality, work location,  
6 business telephone number, the city or town of residence, and date of termination shall be public.

7 (II) Notwithstanding the provisions of this section, or any other provision of the general  
8 laws to the contrary, the pension records of all persons who are either current or retired members  
9 of the retirement systems established by the general laws as well as all persons who become  
10 members of those retirement systems after June 17, 1991 shall be open for public inspection.  
11 "Pension records" as used in this section shall include all records containing information  
12 concerning pension and retirement benefits of current and retired members of the retirement  
13 systems established in title 8, title 36, title 42, and title 45 and future members of said systems,  
14 including all records concerning retirement credits purchased and the ability of any member of  
15 the retirement system to purchase retirement credits, but excluding all information regarding the  
16 medical condition of any person and all information identifying the member's designated  
17 beneficiary or beneficiaries.

18 (B) Trade secrets and commercial or financial information obtained from a person, firm,  
19 or corporation which is of a privileged or confidential nature.

20 (C) Child custody and adoption records, records of illegitimate births, and records of  
21 juvenile proceedings before the family court.

22 (D) All records maintained by law enforcement agencies for criminal law enforcement  
23 and all records relating to the detection and investigation of crime, including those maintained on  
24 any individual or compiled in the course of a criminal investigation by any law enforcement  
25 agency. Provided, however, such records shall not be deemed public only to the extent that the  
26 disclosure of the records or information (a) could reasonably be expected to interfere with  
27 investigations of criminal activity or with enforcement proceedings, (b) would deprive a person of  
28 a right to a fair trial or an impartial adjudication, (c) could reasonably be expected to constitute an  
29 unwarranted invasion of personal privacy, (d) could reasonably be expected to disclose the  
30 identity of a confidential source, including a state, local, or foreign agency or authority, or any  
31 private institution which furnished information on a confidential basis, or the information  
32 furnished by a confidential source, (e) would disclose techniques and procedures for law  
33 enforcement investigations or prosecutions, or would disclose guidelines for law enforcement  
34 investigations or prosecutions or (f) could reasonably be expected to endanger the life or physical



1 safety of any individual. Records relating to management and direction of a law enforcement  
2 agency and records or reports reflecting the initial arrest of an adult and the charge or charges  
3 brought against an adult shall be public.

4 (E) Any records which would not be available by law or rule of court to an opposing  
5 party in litigation, including, but not limited to, records protected by privilege in the nature of  
6 attorney client privilege, medical confidentiality, or other common law or statutory-based  
7 privilege or protection.

8 (F) Scientific and technological secrets and the security plans of military and law  
9 enforcement agencies, the disclosure of which would endanger the public welfare and security.

10 (G) Any records which disclose the identity of the contributor of a bona fide and lawful  
11 charitable contribution to the public body whenever public anonymity has been requested of the  
12 public body with respect to the contribution by the contributor.

13 (H) Reports and statements of strategy or negotiation involving labor negotiations or  
14 collective bargaining.

15 (I) Reports and statements of strategy or negotiation with respect to the investment or  
16 borrowing of public funds, until such time as those transactions are entered into.

17 (J) Any minutes of a meeting of a public body which are not required to be disclosed  
18 pursuant to chapter 46 of title 42.

19 (K) Preliminary drafts, notes, impressions, memoranda, working papers, and work  
20 products; provided, however, any documents submitted at a public meeting of a public body shall  
21 be deemed public.

22 (L) Test questions, scoring keys, and other examination data used to administer a  
23 licensing examination, examination for employment or promotion, or academic examinations;  
24 provided, however, that a person shall have the right to review the results of his or her  
25 examination.

26 (M) Correspondence of or to elected officials with or relating to those they represent and  
27 correspondence of or to elected officials in their official capacities.

28 (N) The contents of real estate appraisals, engineering, or feasibility estimates and  
29 evaluations made for or by an agency relative to the acquisition of property or to prospective  
30 public supply and construction contracts, until such time as all of the property has been acquired  
31 or all proceedings or transactions have been terminated or abandoned; provided the law of  
32 eminent domain shall not be affected by this provision.

33 (O) All tax returns.

34 (P) All investigatory records of public bodies, with the exception of law enforcement

1 agencies, pertaining to possible violations of statute, rule, or regulation other than records of final  
2 actions taken provided that all records prior to formal notification of violations or noncompliance  
3 shall not be deemed to be public.

4 (Q) Records of individual test scores on professional certification and licensing  
5 examinations; provided, however, that a person shall have the right to review the results of his or  
6 her examination.

7 (R) Requests for advisory opinions until such time as the public body issues its opinion.

8 (S) Records, reports, opinions, information, and statements required to be kept  
9 confidential by federal law or regulation or state law, or rule of court.

10 (T) Judicial bodies are included in the definition only in respect to their administrative  
11 function provided that records kept pursuant to the provisions of chapter 16 of title 8 are exempt  
12 from the operation of this chapter.

13 (U) Library records which by themselves or when examined with other public records,  
14 would reveal the identity of the library user requesting, checking out, or using any library  
15 materials.

16 (V) Printouts from TELE -- TEXT devices used by people who are deaf or hard of  
17 hearing or speech impaired.

18 (W) All records received by the insurance division of the department of business  
19 regulation from other states, either directly or through the National Association of Insurance  
20 Commissioners, if those records are accorded confidential treatment in that state. Nothing  
21 contained in this title or any other provision of law shall prevent or be construed as prohibiting  
22 the commissioner of insurance from disclosing otherwise confidential information to the  
23 insurance department of this or any other state or country, at any time, so long as the agency or  
24 office receiving the records agrees in writing to hold it confidential in a manner consistent with  
25 the laws of this state.

26 (ii) However, any reasonably segregable portion of a public record excluded by this  
27 section shall be available for public inspections after the deletion of the information which is the  
28 basis of the exclusion, if disclosure of the segregable portion does not violate the intent of this  
29 section.

30 (5) "Supervisor of the regulatory body" means the chief or head of a section having  
31 enforcement responsibility for a particular statute or set of rules and regulations within a  
32 regulatory agency.

33 (6) "Prevailing plaintiff" means and shall include those persons and entities deemed  
34 prevailing parties pursuant to 42 U.S.C. section 1988.

1 SECTION 3. This act shall take effect upon passage.

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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

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- 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.

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