

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 1071

Short Title: Limit Secrecy Orders. (Public)

Sponsors: Senators Hagan; Dalton, Hartsell, Horton, Kinnaird, Lucas, Odom, Rand, Reeves, and Soles.

Referred to: Judiciary II.

April 5, 2001

1 A BILL TO BE ENTITLED
2 AN ACT TO LIMIT THE USE OF SECRECY ORDERS AND AGREEMENTS IN
3 CERTAIN CIVIL ACTIONS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. The General Statutes are amended by adding a new Chapter to
6 read:

7 "Chapter 7C.

8 "Concealment of Public Hazards.

9 "**§ 7C-1. Power to enact.**

10 This Chapter is enacted in the exercise of the power of the General Assembly to
11 make rules of procedure and practice for the Superior Court and District Divisions, as
12 provided by Section 13(2) of Article IV of the North Carolina Constitution.

13 "**§ 7C-2. Findings.**

14 Matters of interest to the public health, safety, and welfare are often the subject of
15 private litigation in which representatives of the general public do not participate and
16 which frequently are settled or resolved under circumstances in which matters of the
17 greatest concern to the public interest are kept confidential from disclosure to the
18 representatives of the public by agreement of the private litigants. The General
19 Assembly, in recognition of the respective rights of private litigants and of the general
20 public, adopts this act to regulate the circumstances under which matters of public
21 interest in private litigation should be kept confidential.

22 "**§ 7C-3. Definitions.**

23 As used in this Chapter:

24 (1) 'Document' means all materials produced, generated, or obtained in the course
25 of litigation in any court, including releases and other documents terminating the
26 litigation, and any and all materials produced, generated, or obtained in discovery

1 whether contained in files of the clerk of superior court or contained in the files of
2 counsel for the litigants, but does not include:

- 3 a. Settlement documents.
4 b. Discovery documents not offered at trial.
5 c. Documents reviewed by the court in camera.
6 (2) 'Environmental hazard' means a release or threatened release of any
7 substance that poses a threat to public health or safety by presenting a
8 present or future danger of death, bodily injury, or physical or
9 emotional disability to persons exposed to any such substance. Such
10 substances may include any and all substances listed in any federal or
11 State list of hazardous substances produced in accordance with federal
12 or State statutes or regulations.
13 (3) 'Final protective order' means an order of any court of competent
14 jurisdiction entered pursuant to this Chapter determining that a
15 particular document or documents shall be protected from public
16 disclosure.
17 (4) 'Financial fraud' means any plan or scheme to sell an investment
18 product to the general public without full disclosure of the risks
19 associated with the purchase of the product, where the plan or scheme
20 would cause or has caused financial loss to one or more persons in one
21 or more transactions.
22 (5) 'Public health and safety' includes the health or safety of any one or
23 more members of the public.
24 (6) 'Trade secret' has the same meaning as in G.S. 66-152.

25 **"§ 7C-4. Concealment of certain public hazards prohibited.**

26 Notwithstanding any other provision of law to the contrary, in actions alleging
27 personal injury, wrongful death, monetary or property damages caused by a defective
28 product, an environment hazard, or a financial fraud, no protective order used to keep
29 from public disclosure information that provides evidence of a threat to public health or
30 safety shall be entered or enforceable unless a final protective order regarding that
31 information is entered by the court in accordance with G.S. 7C-5(a).

32 **"§ 7C-5. Procedure for obtaining a final protective order.**

33 (a) If the court in the exercise of its discretion grants a protective order or seals
34 documents but finds that there exists information in the documents protected which
35 provides evidence of a threat to public health or safety, the court may (i) enter an order
36 requiring the party seeking the protective order to preserve, until further order of the
37 court, the subject documents as identified to the satisfaction of the court; and (ii) notify
38 the Attorney General. The Attorney General shall comply with the order to maintain
39 confidentiality unless disclosure is required in its judgment to protect the health and
40 safety of the public, in which case the Attorney General may move for reconsideration
41 of the order of the court or may appeal the final protective order.

42 (b) Any interested party, including parties to the litigation, the Attorney General,
43 representatives of the media, or other interested person, may appeal the grant or denial
44 of a final protective order to the court of appeals, in accordance with the North Carolina

1 Rules of Appellate Procedure. For purposes of the appeal, the grant or denial of a final
2 protective order shall be considered a final judgment. The appellate court shall conduct
3 de novo review of the motion and documents as to which a final protective order has
4 been sought.

5 (c) Nothing in this section shall be deemed to compel disclosure of any document
6 or material protected by the constitution or laws of the United States or of this State.

7 (d) Nothing in this section shall be deemed to limit a court's authority or
8 discretion to prohibit the enforcement of a part or all of any confidentiality agreement,
9 settlement agreement, stipulated agreement, or protective order in any other cases.

10 (e) Nothing in this section shall be deemed to prohibit or compel the disclosure
11 of the monetary amount of the settlement agreement or the entry of an enforcement
12 order of that part of a confidentiality agreement, settlement agreement, or stipulated
13 agreement between the parties which requires the nondisclosure of the amount of any
14 money paid in settlement of a claim.

15 **"§ 7C-6. Interim protective orders for trade secrets.**

16 G.S. 7C-5 does not affect the issuance of any interim protective order or any
17 discovery order protecting the confidentiality or nondisclosure of documents and
18 materials which constitute trade secrets. However, any such interim protective or
19 discovery order which pertains to evidence of a threat to public health or safety shall
20 expire automatically 30 days after entry of final judgment. Nothing herein shall delay
21 the production of documents or information in the ordinary course of discovery as
22 provided for by the Rules of Civil Procedure. Any document which provides evidence
23 of a threat to public health or safety that was protected from disclosure by the terms or
24 any such discovery order or interim protective order shall not be sealed or subject to
25 further confidentiality pursuant to any agreement or interim protective order unless the
26 court issues a final protective order pursuant to the provisions of G.S. 7C-5.

27 **"§ 7C-7. Trade secrets generally.**

28 Except as set forth in G.S. 7C-5, a court shall preserve the secrecy of trade secrets by
29 reasonable means, which may include granting protective orders in connection with
30 discovery proceedings, holding in-camera hearings, and ordering any person involved in
31 the litigation not to disclose an alleged trade secret without prior court approval.

32 **"§ 7C-8. Mediation.**

33 Nothing in this Chapter interferes with the confidentiality of mediation
34 proceedings."

35 **SECTION 2.** This act is effective when it becomes law.