

ANTI-SECURITY PROVISIONS

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SUMMARY:

Anti-Secrecy Provisions:

16 states have statutes with anti-secrecy provisions, either specifying hazardous substance claims, or generally applying to court records. Of these states:

- **4 states have statutes with anti-secrecy provisions applicable to public hazards (AR, FL, LA, & WA).** These provisions generally prohibit secrecy agreements or orders which prevent the public from knowing about hazards. It should be noted that, at least in Washington, product liability claims and hazardous substance claims are used interchangeably. The public hazards anti-secrecy provision may therefore be considered to be product-liability focused.
- **12 states have statutes or court rules with anti-secrecy provisions applicable to Court Records in general (AZ, CA, DE, GA, ID, IN, MA, MI, ND, NJ, & NY).** These provisions typically carve out limitations on the availability of protective orders or sealing of records by requiring a showing of good cause or imposing more stringent requirements on the party seeking secrecy.

In addition to these states, other states have anti-secrecy provisions applicable to government parties to litigation. Such states include Arkansas (Ark. Code § 25-18-401 *et seq.* prohibits closed Court Records Generally in cases with government defendants), Kentucky (Files & hearings of National Resources Cabinet must remain open to public. Ky. Stat. §§ 224.10-210, 224.10-440), Nevada (Claims against government are subject to disclosure even if court record is sealed. Nev. Rev. Stat. § 41.0385), North Carolina (NC Stat. § 132-1.3 sets forth presumption of openness for settlements involving government parties), and Oregon (Or. Stat. § 30.402 prohibits confidential settlements with government defendant). It should be noted that this list does not include many states' broader "Sunshine" laws which require open records and proceedings, but are not litigation-specific.

Court Requirements:

Of those states with anti-secrecy provisions, **all 16 require court approval** prior to the sealing of records such as settlement agreements. While only **six of these statutes (DE, FL, MA, MI, NJ and NY) specifically require a finding of "good cause,"** the other statutes still require a substantive review of some sort (the standards of **California and Texas, e.g., are arguably MORE stringent than a good cause requirement**). This chart also notes two other states, Maine and Minnesota, which do not have anti-secrecy statutes, but DO have statutes requiring court approval for the sealing of court records.

In addition to the variation in standards, the procedure itself varies. Not all statutes requiring court review necessarily require a court hearing. While some statutes do not specify the procedure required, others require court approval through the form of court order and/or in camera review, which may preclude an actual hearing.

In addition, other states not listed in this chart require a finding of "good cause" or a comparable finding for the sealing of discovery documents, but such rules are discovery-specific and consequently not listed herein as anti-secrecy provisions. Other statutes not listed in this chart include those specific to specific courts (e.g. federal courts, appellate courts, or other local courts governed by rules not applicable to state courts generally) or to specific cases (e.g. adoption cases, criminal cases, or other statutes not applicable to civil actions generally).

Finally, other anti-secrecy rules may be contained in unpublished local rules specific to local courts, or in court decisions.

State	MAIN PROVISION	COURT APPROVAL REQUIRED TO SEAL/PREVENT DISCLOSURE?
AL	Current Status: None	N/A
AK	Current Status: None	N/A
AZ	<p>Current Status: Court Records Generally</p> <p>Description of law: Az. Sup. Ct. Rule 123 generally mandates that public records such as Court Records be kept open, with some exceptions for, e.g., financial account information, work product, some juvenile & criminal records.</p> <p>Legislative History: Enacted 1997.</p>	<p>Current Status: Yes; Court must state reason for sealing.</p> <p>Description of law: "All case records are open to the public except as may be closed by law, or as provided in this rule. Upon closing any record the court shall state the reason for the action, including a reference to any statute, case, rule or administrative order relied upon." Az. Sup. Ct. Rule 123 (d).</p>
AR	<p>Current Status: Hazards</p> <p>Description of law: Ark. Code § 16-55-122 prohibits (settlement and other) contract provisions restricting disclosure of environmental hazards.</p> <p>Legislative History: En. 1991.</p>	Not specifically addressed by statute.
CA	<p>Current Status: Court Records Generally</p> <p>Description of law: Under Cal Pretrial & Trial Rule 243.1 and Cal. Rules of Court, Rule 12.5, court may only order a record filed under sealed if it makes "if it expressly finds that:</p> <ol style="list-style-type: none"> (1) There exists an overriding interest that overcomes the right of public access to the record; (2) The overriding interest supports sealing the record; (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) The proposed sealing is narrowly tailored; and (5) No less restrictive means exist to achieve the overriding interest." <p>In addition, California 1st App. Dist. Rule 8 requires disclosure in any motion of reversal of judgment re. whether the judgment involves torts that affect the public or a significant number of persons; and L.A. Cty. Superior Ct. Rules 7.19 and 12.20; San Diego Cty. Coordinated Rules of Superior & Muni. Cts. Rule 11.6; and San Francisco Superior Ct. Rule 10.5 generally prohibit confidentiality agreements & protective orders.</p> <p>Legislative History: En. 2001.</p> 	<p>Current Status: Yes</p> <p>Description of law: Cal. Rules of Court, Rule 12.5: "(A) The court must not permit a record to be filed under seal based solely upon the agreement or stipulation of the parties. (B) A party requesting that a record be filed under seal must file a motion for a reviewing court order to file the record under seal. (C) The court may order a record filed under seal only if it makes the findings required by rule 243.1(d)-(e)."</p>
CO	Current Status: None	N/A
CT	Current Status: None	N/A
DE	<p>Current Status: Court Records Generally</p> <p>Description of law: In Chancery Court cases, files generally prohibited from being placed under seal. Del. Chancery Ct. Rule 5(g).</p> <p>Legislative History: Amd. Eff. 1999.</p>	<p>Current Status: Yes, good cause required, but review is in camera.</p> <p>Description of law: Del. Chancery Ct. Rule 5(g)(2) Documents shall not be filed under seal unless and except to the extent that the person seeking such filing under seal shall have first obtained, for good cause shown, an order of this Court specifying those documents or categories of documents which should be filed under seal; provided, however, the Court may, in its discretion, receive and review any document in camera without public disclosure thereof and in connection with any such review, may determine whether good cause exists for the filing of such document under seal.</p>
DC	Current Status: None	N/A

State	MAIN PROVISION	COURT APPROVAL REQUIRED TO SEAL/PREVENT DISCLOSURE?
FL	<p>Current Status: Hazards</p> <p>Description of law: Court orders & settlement agreements may not conceal information about public hazards. Fl. Stat. § 69.081</p> <p>Legislative History: En. 1990.</p>	<p>Current Status: Yes, good cause required</p> <p>Description of law: "Upon motion and good cause shown by a party attempting to prevent disclosure of information or materials which have not previously been disclosed, including but not limited to alleged trade secrets, the court shall examine the disputed information or materials in camera. If the court finds that the information or materials or portions thereof consist of information concerning a public hazard or information which may be useful to members of the public in protecting themselves from injury which may result from a public hazard, the court shall allow disclosure of the information or materials. If allowing disclosure, the court shall allow disclosure of only that portion of the information or materials necessary or useful to the public regarding the public hazard." Fl. Stat. § 69.081(7).</p>
GA	<p>Current Status: Court Records Generally</p> <p>Description of law: Ct. Records are public and generally available for public inspection. Ga. Uniform Superior Ct. Rule 21.</p> <p>Legislative History: Amd. Eff. 1997.</p>	<p>Current Status: Yes, hearing required</p> <p>Description of law: Ga. Uniform Superior Ct. Rule 21.1 "Motions and Orders. Upon motion by any party to any civil action, after hearing, the court may limit access to court files respecting that action. The order of limitation shall specify the part of the file to which access is limited, the nature and duration of the limitation, and the reason for limitation."</p>
HI	<p>Current Status: None</p>	<p>N/A</p>
ID	<p>Current Status: Court Records Generally.</p> <p>Description of law: Files may be either disclosed or sealed, determined on case-by-case basis. If court decides against disclosure & in favor of privacy, "it must fashion the least restrictive exception from disclosure consistent with privacy interests" and make written determinations mandated by statute. Id. Ct. Admin. Rule 32.</p> <p>Legislative History: Amd. Eff. 1994.</p>	<p>Current Status: Yes</p> <p>Description of law: Before a court may enter an order denying disclosure or sealing documents or materials from disclosure under paragraph (l), it must also make one or more of the following determinations in writing: (1) That the documents or materials contain highly intimate or embarrassing facts or statements, the publication of which would be highly objectionable to a reasonable person, or (2) That the documents or materials contain facts or statements that the court finds might be libelous, or (3) That the documents or materials contain facts or statements, the dissemination or publication of which would reasonably result in economic or financial loss or harm to a person having an interest in the documents or materials, or compromise the security of personnel, records or public property of or used by the judicial department, or (4) That the documents or materials contain facts or statements that might threaten or endanger the life or safety of individuals. Id. Ct. Admin. Rule 32(f).</p>
IL	<p>Current Status: None</p>	<p>N/A</p>
IN	<p>Current Status: Court Records Generally</p> <p>Description of law: Burden is on party seeking to seal a file, which requires a hearing first, and an unsealing at the earliest possible time after need to seal ceases to exist. In. Code § 5-14-3-5.5.</p> <p>Legislative History: En. 1986.</p>	<p>Current Status: Yes.</p> <p>Description of law: Burden is on party seeking to seal a file, which requires a hearing first, and an unsealing at the earliest possible time after need to seal ceases to exist. In. Code § 5-14-3-5.5.</p>
IA	<p>Current Status: None</p>	<p>N/A</p>
KS	<p>Current Status: None</p>	<p>N/A</p>
KY	<p>Current Status: None.</p>	<p>N/A</p>

State	MAIN PROVISION	COURT APPROVAL REQUIRED TO SEAL/PREVENT DISCLOSURE?
LA	<p>Current Status: Hazard</p> <p>Description of law: Courts may not grant protective orders protecting information relating to public hazards. La. Code Civ. Pro. Art. 1426.</p> <p>Legislative History: Original enactment date unclear. Amd. 1995.</p>	<p>Current Status: Yes</p> <p>Description of law: See generally La. Code Civ. Pro. Art. 1426, requiring court approval for protective orders in discovery, but specifically including agreements between parties in subsection (D).</p>
ME	<p>Current Status: None</p>	<p>Current Status: Yes</p> <p>Description of law: Maine R.C.P. Rule 79(b)(1): "Motion to Impound. Upon the filing of a motion or other request to impound or seal documents or other materials, the clerk shall separate such materials from the publicly available file and keep them impounded or sealed pending the court's adjudication of the motion."</p>
MD	<p>Current Status: None</p>	<p>N/A</p>
MA	<p>Current Status: Court Records Generally</p> <p>Description of law: A court hearing is a prerequisite to impound Court Records & keep them unavailable for public inspection. Court can only grant upon showing of good cause, considering factors including community interests. Mass. Uniform Rules on Impoundment Procedure Rule 7.</p> <p>Legislative History: No legislative history provided.</p>	<p>Current Status: Yes, good cause required</p> <p>Description of law: A court hearing is a prerequisite to impound Court Records & keep them unavailable for public inspection. Court can only grant upon showing of good cause, considering factors including community interests. Mass. Uniform Rules on Impoundment Procedure Rule 7.</p>
MI	<p>Current Status: Court Records Generally</p> <p>Description of law: Sealed records generally disfavored. Mi Court Rules 8.105, 8.119.</p> <p>Legislative History: Mi Court Rules 8.105 amd. 1999, Mi Court Rules 8.119 en. 1999.</p>	<p>Current Status: Yes</p> <p>Description of law: "(F) Sealed Records. (1) Except as otherwise provided by statute or court rule, a court may not enter an order that seals courts records, in whole or in part, in any action or proceeding, unless (a) a party has filed a written motion that identifies the specific interest to be protected, (b) the court has made a finding of good cause, in writing or on the record, which specifies the grounds for the order, and (c) there is no less restrictive means to adequately and effectively protect the specific interest asserted. (2) In determining whether good cause has been shown, the court must consider the interests of the public as well as of the parties. (3) The court must provide any interested person the opportunity to be heard concerning the sealing of the records." Mi Court Rules 8.119.</p>
MN	<p>Current Status: None</p>	<p>Current Status: Yes.</p> <p>Description of law: Court records are accessible to the public except for civil case records which were made inaccessible to the public by protective or other order of the court. Public Access to Records of the Judicial Branch Rule 4(subd.1)(f).</p>

State	MAIN PROVISION	COURT APPROVAL REQUIRED TO SEAL/PREVENT DISCLOSURE?
MS	Current Status: None	<p>N/A</p> <p>(but Appellate Court rules, which, along with Federal District Court Rules, are not generally tracked in this chart, provide that "Where parties shall file documents physically under seal with the clerk of the appellate courts, such documents shall remain sealed until the appellate court by order removes the seal. The mere filing of documents with a request that they be sealed shall not constitute the filing of sealed documents. Such documents shall remain open until the appellate court on motion of a party or on its own motion orders that they be sealed." Miss. App. Rules 48A(c). District Court Rule 38.6(B) similarly requires a court finding of good cause).</p>
MO	Current Status: None	<p>Current Status: No</p> <p>Description of law: See, e.g., Mo. Sixteenth Judicial Circuit Court Rule 100.4.14(1). A protective order entered in any cause shall be by independent order, titled "Protective Order" and shall: identify with particularity the item(s) that are to be sealed or specify that the entire case file is to be sealed, and identify the person(s) to whom access to the sealed item(s) is permitted without order of the court.</p>
MT	Current Status: None	N/A
NE	Current Status: None	N/A
NV	Current Status: None	N/A
NH	Current Status: None	N/A
NJ	<p>Current Status: Court Records Generally</p> <p>Description of law: Records may only be sealed or protective orders granted upon showing of good cause. N.J. Rules of Court 1:2-1, 4:10-3.</p> <p>Legislative History: N.J. Rules of Court 1:2-1 amd. eff. 1992, N.J. Rules of Court 4:10-3 en. 1972 to replace former rule.</p>	<p>Current Status: Yes, Good cause required</p> <p>Description of law: "If a proceeding is required to be conducted in open court, no record of any portion thereof shall be sealed by order of the court except for good cause shown, which shall be set forth on the record." N.J. Rules of Court 1:2-1</p>
NM	Current Status: None	N/A
NY	<p>Current Status: Court Records Generally</p> <p>Description of Law: Records filed with clerk (as opposed to disclosed documents not filed with clerk but protected by protective orders) shall only be sealed upon findings of good cause; court must consider interests of public as well as parties. Uniform Rules for N.Y. Trial Courts Rule § 216.1.</p> <p>Legislative History: No legislative history provided.</p>	<p>Current Status: Yes, Good cause required, hearing allowed.</p> <p>Description of Law: (a) Except where otherwise provided by statute or rule, a court shall not enter an order in any action or proceeding sealing the court records, whether in whole or in part, except upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and an opportunity to be heard. Uniform Rules for N.Y. Trial Courts Rule § 216.1.</p>
NC	Current Status: None	N/A

State	MAIN PROVISION	COURT APPROVAL REQUIRED TO SEAL/PREVENT DISCLOSURE?
ND	<p>Current Status: Court Records Generally</p> <p>Description of Law: "In ruling on whether specific records should be disclosed or sealed by order of the court, the court shall determine and make a finding of fact as to whether the interest for closure exceeds the interest in public disclosure. If the court prohibits or limits a disclosure, it must fashion the least restrictive exception from disclosure." N.D. Admin. Rule 41, Section 5.</p>	<p>Current Status: Yes</p> <p>Description of Law: "Other Prohibitions or Limitations on Disclosure. Records subject to inspection, examination, and copying under Section 3 and not exempt from disclosure under Section 4, may be prohibited or limited from disclosure by order of the court on a case-by-case basis. In ruling on whether specific records should be disclosed or sealed by order of the court, the court shall determine and make a finding of fact as to whether the interest for closure exceeds the interest in public disclosure. If the court prohibits or limits a disclosure, it must fashion the least restrictive exception from disclosure. In applying these rules, the court is referred to traditional legal concepts in the law of North Dakota." N.D. Admin. Rule 41, Section 5.</p>
OH	Current Status: None	N/A
OK	Current Status: None	N/A
OR	Current Status: None	N/A
PA	Current Status: None	N/A
RI	Current Status: None	N/A
SC	Current Status: None	N/A
SD	Current Status: None	N/A
TN	Current Status: None	<p>N/A</p> <p>(But note: the rules of one local court in Davidson County state that "all papers, documents and files shall be available for public inspection except as specifically exempted by court order or statute. The motion seeking such an order must contain sufficient facts to overcome the presumption in favor of disclosure." Tenn. Davidson County R. Local Prac. Rule 7.02. The comment to the rule further notes that "The standards relating to the appropriateness of sealing documents and/or court files is set forth in <i>Ballard v. Herzke</i>, 924 S.W.2d 652 (Tenn. 1996)."</p>
TX	<p>Current Status: Court Records Generally</p> <p>Description of law: Strong presumption of openness of Court Records, with stringent statutory requirements for overcoming presumption. Court Records is defined to also include settlement agreements not filed with the court but which affect public health or safety, administration of public office or operation of government. Tx. Civ. Pro. Rule 76a. Legislative History: En. 1990.</p>	<p>Current Status: Yes, hearing required</p> <p>Description of law: "1. Standard for Sealing Court Records. Court records may not be removed from court files except as permitted by statute or rule. No court order or opinion issued in the adjudication of a case may be sealed. Other court records, as defined in this rule, are presumed to be open to the general public and may be sealed only upon a showing of all of the following: (a) a specific, serious and substantial interest which clearly outweighs: (1) this presumption of openness; (2) any probable adverse effect that sealing will have upon the general public health or safety; (b) no less restrictive means than sealing records will adequately and effectively protect the specific interest asserted. . . 4. Hearing. A hearing, open to the public, on a motion to seal court records shall be held in open court as soon as practicable, but not less than fourteen days after the motion is filed and notice is posted." Tx. Civ. Pro. Rule 76a.</p>

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UT	Current Status: None	N/A
VT	Current Status: None	N/A
VA	Current Status: None	N/A
WA	<p>Current Status: Hazards/Product Liability</p> <p>Description of law: Public generally has right to information re. hazards/product liability claims. Wa. Stat. § 4.24.601.</p> <p>Legislative History: En. 1994.</p>	<p>Current Status: Yes</p> <p>Description of law: Wa. Stat. § 4.24.601(4)(b): "Confidentiality provisions may be entered into or ordered or enforced by the court only if the court finds, based on the evidence, that the confidentiality provision is in the public interest. In determining the public interest, the court shall balance the right of the public to information regarding the alleged risk to the public from the product or substance as provided in subsection (2) of this section against the right of the public to protect the confidentiality of information as provided in subsection (3) of this section."</p>
WV	Current Status: None	N/A
WI	Current Status: None	N/A
WY	Current Status: None	N/A