

SENATE No. 850

By Ms. Pines, petition (accompanied by bill, Senate, No. 850) of Lois G. Pines for legislation relative to the standards for the sealing of court records. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Two.

AN ACT RELATIVE TO PRODUCT SAFETY.

1 *Whereas*, It is appropriate for the legislature to set standards
2 for sealing court records, which recognize and protect the public's
3 legitimate interest in open court proceedings:

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 231 of the General Laws is hereby amended by adding
2 the following new section: —

3 Section _____. (A) Court records may not be removed from
4 court files except as permitted by statute or rule. No court order
5 or opinion issued in the adjudication of a case may be sealed.
6 Other court records, as defined in this rule are presumed to be
7 open to the general public and may be sealed only upon a showing
8 of all of the following:

9 (1) a specific, serious and substantial interest which clearly
10 outweighs:

11 (a) this presumption of openness;

12 (b) any probable adverse effect that sealing will have upon the
13 general public health or safety;

14 (2) no less restrictive means than sealing records will
15 adequately and effectively protect the specific interest asserted.

16 (B) For purposes of this section, court records means:

17 (1) all documents of any nature filed in connection with any
18 matter before any civil court, except:

19 (a) documents filed with a court in camera, solely for the
20 purpose of obtaining a ruling on the discoverability of such
21 documents;

22 (b) documents in court files to which access is otherwise
23 restricted by law;

24 (c) documents filed in an action originally arising under
25 chapters 208, 209, 209A, 209B, 209C, and 210.

26 (2) settlement agreements not filed of record, excluding all
27 reference to any monetary consideration, that seek to restrict
28 disclosure of information concerning matters that have a probable
29 adverse effect upon the general public health or safety, or the
30 administration of public office, or the operation of government.

31 (3) discovery, not filed of record, concerning matters that have
32 a probable adverse effect upon the general public health or safety,
33 or the administration of public office, or the operation of
34 government, except discovery in cases originally initiated to
35 preserve bona fide trade secrets or other intangible property
36 rights.

37 (C) Court records may be sealed only upon a party's written
38 motion, which shall be open to public inspection. The movant
39 shall post a public notice at the place where notices for meetings
40 of county governmental bodies are required to be posted, stating:
41 that a hearing will be held in open court on a motion to seal court
42 records in the specific case; that any person may intervene and
43 be heard concerning the sealing of court records; the specific time
44 and place of the hearing; the style and number of the case; a brief
45 but specific description of both the nature of the case and the
46 records which are sought to be sealed; and the identity of the
47 movant. Immediately after posting such notice, the movant shall
48 file a verified copy of the posted notice with the clerk of the court
49 in which the case is pending and with the Clerk of the
50 Massachusetts Supreme Judicial Court.

51 (D) A hearing, open to the public, on a motion to seal court
52 records shall be held in open court as soon as practicable, but not
53 less than fourteen days after the motion is filed and notice is
54 posted. Any party may participate in the hearing. Non-parties may
55 intervene as a matter of right for the limited purpose of
56 participating in the proceedings, upon payment of the fee required

57 for filing a plea in intervention. The court may inspect records
58 in camera when necessary. The court may determine a motion
59 relating to sealing or unsealing court records in accordance with
60 the procedures prescribed by rule eleven of the Massachusetts
61 Rules of Civil Procedure.

62 (E) A temporary sealing order may issue upon motion and
63 notice to any parties who have answered in the case pursuant to
64 rules five, seven, and eight of the Massachusetts Rules of Civil
65 Procedure upon a showing of compelling need from specific facts
66 shown by affidavit or by verified petition that immediate and
67 irreparable injury will result to a specific interest of the applicant
68 before notice can be posted and a hearing held as otherwise
69 provided herein. The temporary order shall set the time for the
70 hearing required by paragraph 4 and shall direct that the movant
71 immediately give the public notice required by paragraph 3. The
72 court may modify or withdraw any temporary order upon motion
73 by any party or intervenor, notice to the parties, and hearing
74 conducted as soon as practicable. Issuance of a temporary order
75 shall not reduce in any way the burden of proof of a party
76 requesting sealing at the hearing required by paragraph 4.

77 (F) A motion relating to sealing or unsealing court records shall
78 be decided by written order, open to the public, which shall state:
79 the style and number of the case; the specific reason for finding
80 and concluding whether the showing required by paragraph 1, has
81 been made; the specific portions of the court records which are
82 to be sealed; and the time period for which the sealed portions
83 of the court records are to be sealed. The order shall not be
84 included in any judgment or other order but shall be a separate
85 document in the case; however, the failure to comply with this
86 requirement shall not affect its appealability.

87 (G) Any person may intervene as a matter of right at any time
88 before or after judgement to seal or unseal court records. A court
89 that issues a sealing order retains continuing jurisdiction to
90 enforce, alter, or vacate that order. An order sealing or unsealing
91 court records shall not be reconsidered on a motion of any party
92 or intervenor who had actual notice of the hearing preceding
93 issuance of the order, without first showing changed circum-
94 stances materially affecting the order. Such circumstances need

95 not be related to the case in which the order was issued. However,
96 the burden of making the showing required by paragraph 1, shall
97 always be on the party seeking to seal records.

98 (H) Any order (or portion of an order or judgement) relating
99 to sealing or unsealing court records shall be deemed to be severed
100 from the case and a final judgement which may be appealed by
101 any party or intervenor who participated in the hearing preceding
102 issuance of such order. The appellate court may abate the appeal
103 and order the trial court to direct that further public notice be
104 given, or to hold further hearings, or to make additional findings.

105 (I) Access to documents in court files not defined as court
106 records by this rule remains governed by existing law. This rule
107 does not apply to any court records sealed in an action in which
108 a final judgement has been entered before its effective date only
109 with regard to:

110 (1) all court records filed or exchanged after the effective date;

111 (2) any motion to alter or vacate an order restricting access to
112 court records, issued before the effective date.