

104TH CONGRESS
1ST SESSION

S. 374

To amend chapter 111 of title 28, United States Code, relating to protective orders, sealing of cases, disclosures of discovery information in civil actions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 8 (legislative day, JANUARY 30), 1995

Mr. KOHL introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend chapter 111 of title 28, United States Code, relating to protective orders, sealing of cases, disclosures of discovery information in civil actions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Sunshine in Litigation
5 Act of 1995”.

1 **SEC. 2. PROTECTIVE ORDERS AND SEALING OF CASES AND**
2 **SETTLEMENTS RELATING TO PUBLIC**
3 **HEALTH OR SAFETY.**

4 (a) IN GENERAL.—Chapter 111 of title 28, United
5 States Code, is amended by adding at the end thereof the
6 following new section:

7 **“§1659. Protective orders and sealing of cases and**
8 **settlements relating to public health or**
9 **safety**

10 “(a)(1) A court shall enter an order under rule 26(c)
11 of the Federal Rules of Civil Procedure restricting the dis-
12 closure of information obtained through discovery or an
13 order restricting access to court records in a civil case only
14 after making particularized findings of fact that—

15 “(A) such order would not restrict the disclo-
16 sure of information which is relevant to the protec-
17 tion of public health or safety; or

18 “(B)(i) the public interest in disclosure of po-
19 tential health or safety hazards is clearly outweighed
20 by a specific and substantial interest in maintaining
21 the confidentiality of the information or records in
22 question; and

23 “(ii) the requested protective order is no broad-
24 er than necessary to protect the privacy interest as-
25 serted.

1 “(2) No order entered in accordance with the provi-
2 sions of paragraph (1) shall continue in effect after the
3 entry of final judgment, unless at or after such entry the
4 court makes a separate particularized finding of fact that
5 the requirements of paragraph (1) (A) or (B) have been
6 met.

7 “(b) The party who is the proponent for the entry
8 of an order, as provided under this section, shall have the
9 burden of proof in obtaining such an order.

10 “(c)(1) No agreement between or among parties in
11 a civil action filed in a court of the United States may
12 contain a provision that prohibits or otherwise restricts a
13 party from disclosing any information relevant to such
14 civil action to any Federal or State agency with authority
15 to enforce laws regulating an activity relating to such in-
16 formation.

17 “(2) Any disclosure of information to a Federal or
18 State agency as described under paragraph (1) shall be
19 confidential to the extent provided by law.”.

20 (b) TECHNICAL AND CONFORMING AMENDMENT.—
21 The table of sections for chapter 111 of title 28, United
22 States Code, is amended by adding after the item relating
23 to section 1658 the following:

“1659. Protective orders and sealing of cases and settlements relating to public
health or safety.”.

1 **SEC. 3. EFFECTIVE DATE.**

2 The amendments made by this Act shall take effect
3 30 days after the date of the enactment of this Act and
4 shall apply only to orders entered in civil actions or agree-
5 ments entered into on or after such date.

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