

112TH CONGRESS  
1ST SESSION

# H. R. 592

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.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 9, 2011

Mr. NADLER introduced the following bill; which was referred to the  
Committee on the Judiciary

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## 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 2011”.

1 **SEC. 2. RESTRICTIONS ON PROTECTIVE ORDERS AND SEAL-**  
2 **ING OF CASES AND SETTLEMENTS.**

3 (a) IN GENERAL.—Chapter 111 of title 28, United  
4 States Code, is amended by adding at the end the fol-  
5 lowing:

6 **“§ 1660. Restrictions on protective orders and sealing**  
7 **of cases and settlements**

8 “(a)(1) In any civil action in which the pleadings  
9 state facts that are relevant to the protection of public  
10 health or safety, a court shall not enter, by stipulation or  
11 otherwise, an order otherwise authorized under rule 26(c)  
12 of the Federal Rules of Civil Procedure restricting the dis-  
13 closure of information obtained through discovery, an  
14 order otherwise authorized approving a settlement agree-  
15 ment that would restrict the disclosure of such informa-  
16 tion, or an order otherwise authorized restricting access  
17 to court records unless in connection with such order the  
18 court has first made independent findings of fact that—

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

22 “(B)(i) the public interest in the disclosure of  
23 past, present, or potential public health or safety  
24 hazards is outweighed by a specific and substantial  
25 interest in maintaining the confidentiality of the in-  
26 formation or records in question; and

1           “(ii) the requested order is no broader than  
2           necessary to protect the confidentiality interest as-  
3           serted.

4           “(2) No order entered as a result of the operation  
5 of paragraph (1), other than an order approving a settle-  
6 ment agreement, may continue in effect after the entry  
7 of final judgment, unless at the time of, or after, such  
8 entry the court makes a separate finding of fact that the  
9 requirements of paragraph (1) continue to be met.

10          “(b) In any civil action in which the pleadings state  
11 facts that are relevant to the protection of public health  
12 or safety, a court shall not enforce any provision of an  
13 agreement between or among parties to a civil action, or  
14 enforce an order entered as a result of the operation of  
15 subsection (a)(1), to the extent that such provision or such  
16 order prohibits or otherwise restricts a party from dis-  
17 closing any information relevant to such civil action to any  
18 Federal or State agency with authority to enforce laws  
19 regulating an activity relating to such information.

20          “(c)(1) Subject to paragraph (2), a court shall not  
21 enforce any provision of a settlement agreement in any  
22 civil action in which the pleadings state facts that are rel-  
23 evant to the protection of public health or safety, between  
24 or among parties that prohibits one or more parties  
25 from—

1           “(A) disclosing the fact that such settlement  
2           was reached or the terms of such settlement (exclud-  
3           ing any money paid) that involve matters relevant to  
4           the protection of public health or safety; or

5           “(B) discussing matters relevant to the protec-  
6           tion of public health or safety involved in such civil  
7           action.

8           “(2) Paragraph (1) applies unless the court has made  
9           independent findings of fact that—

10           “(A) the public interest in the disclosure of  
11           past, present, or potential public health or safety  
12           hazards is outweighed by a specific and substantial  
13           interest in maintaining the confidentiality of the in-  
14           formation in question; and

15           “(B) the requested order is no broader than  
16           necessary to protect the confidentiality interest as-  
17           serted.

18           “(d) Notwithstanding subsections (a)(1)(B)(i) and  
19           (c)(2)(A), when weighing the interest in maintaining con-  
20           fidentiality under this section, there shall be a rebuttable  
21           presumption that the interest in protecting personally  
22           identifiable information of an individual outweighs the  
23           public interest in disclosure.

24           “(e) Nothing in this section shall be construed to per-  
25           mit, require, or authorize the disclosure of classified infor-

1 mation (as defined under section 1 of the Classified Infor-  
2 mation Procedures Act (18 U.S.C. App.)).”.

3 (b) **TECHNICAL AND CONFORMING AMENDMENT.**—

4 The table of sections for chapter 111 of title 28, United  
5 States Code, is amended by adding after the item relating  
6 to section 1659 the following:

“1660. Restrictions on protective orders and sealing of cases and settlements.”.

7 **SEC. 3. EFFECTIVE DATE.**

8 The amendments made by this Act shall—

9 (1) take effect 30 days after the date of enact-  
10 ment of this Act; and

11 (2) apply only to orders entered in civil actions  
12 or agreements entered into on or after such date.

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