

112TH CONGRESS  
1ST SESSION

# S. 623

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 SENATE OF THE UNITED STATES

MARCH 17, 2011

Mr. KOHL introduced the following bill; which was read twice and 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 approving a settlement agreement that would re-  
15 strict the disclosure of such information, or an order re-  
16 stricting access to court records unless in connection with  
17 such order the court has first made independent findings  
18 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 health or safety hazards  
24 is outweighed by a specific and substantial interest  
25 in maintaining the confidentiality of the information  
26 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           paragraph (1), other than an order approving a settlement  
6           agreement, may continue in effect after the entry of final  
7           judgment, unless at the time of, or after, such entry the  
8           court makes a separate finding of fact that the require-  
9           ments of paragraph (1) continue to be met.

10          “(3) The party who is the proponent for the entry  
11          of an order, as provided under this section, shall have the  
12          burden of proof in obtaining such an order.

13          “(4) This section shall apply even if an order under  
14          paragraph (1) is requested—

15                 “(A) by motion pursuant to rule 26(c) of the  
16                 Federal Rules of Civil Procedure; or

17                 “(B) by application pursuant to the stipulation  
18                 of the parties.

19          “(5)(A) The provisions of this section shall not con-  
20          stitute grounds for the withholding of information in dis-  
21          covery that is otherwise discoverable under rule 26 of the  
22          Federal Rules of Civil Procedure.

23          “(B) A court shall not approve any party’s stipulation  
24          or request to stipulate to an order that would violate this  
25          section.

1       “(b)(1) In any civil action in which the pleadings  
2 state facts that are relevant to the protection of public  
3 health or safety, a court shall not approve or enforce any  
4 provision of an agreement between or among parties, or  
5 approve or enforce an order entered as a result of the op-  
6 eration of subsection (a)(1), to the extent that such provi-  
7 sion or such order prohibits or otherwise restricts a party  
8 from disclosing any information relevant to such civil ac-  
9 tion to any Federal or State agency with authority to en-  
10 force laws regulating an activity relating to such informa-  
11 tion.

12       “(2) Any such information disclosed to a Federal or  
13 State agency shall be confidential to the extent provided  
14 by law.

15       “(c)(1) Subject to paragraph (2), a court shall not  
16 enforce any provision of a settlement agreement described  
17 under subsection (a)(1) between or among parties that  
18 prohibits 1 or more parties from—

19               “(A) disclosing the fact that such settlement  
20 was reached or the terms of such settlement, other  
21 than the amount of money paid; or

22               “(B) discussing a civil action, or evidence pro-  
23 duced in the civil action, that involves matters rel-  
24 evant to the protection of public health or safety.

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

3           “(A) the public interest in the disclosure of  
4 past, present, or potential public health or safety  
5 hazards is outweighed by a specific and substantial  
6 interest in maintaining the confidentiality of the in-  
7 formation or records in question; and

8           “(B) the requested order is no broader than  
9 necessary to protect the confidentiality interest as-  
10 sserted.

11       “(d) When weighing the interest in maintaining con-  
12 fidentiality under this section, there shall be a rebuttable  
13 presumption that the interest in protecting personally  
14 identifiable information relating to financial, health or  
15 other similar information of an individual outweighs the  
16 public interest in disclosure.

17       “(e) Nothing in this section shall be construed to per-  
18 mit, require, or authorize the disclosure of classified infor-  
19 mation (as defined under section 1 of the Classified Infor-  
20 mation Procedures Act (18 U.S.C. App.)).”.

21       (b) TECHNICAL AND CONFORMING AMENDMENT.—  
22 The table of sections for chapter 111 of title 28, United  
23 States Code, is amended by adding after the item relating  
24 to section 1659 the following:

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

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

2 The amendments made by this Act shall—

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

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

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