

106TH CONGRESS
1ST SESSION

S. 957

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

MAY 4, 1999

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. PROTECTIVE ORDERS AND SEALING OF CASES**
4 **AND SETTLEMENTS RELATING TO PUBLIC**
5 **HEALTH OR SAFETY.**

6 (a) SHORT TITLE.—This section may be cited as the
7 “Sunshine in Litigation Act of 1999”.

1 (b) PROTECTIVE ORDERS AND SEALING OF CASES.—
 2 Chapter 111 of title 28, United States Code, is amended
 3 by adding at the end the following new section:

4 **“§ 1660. Protective orders and sealing of cases and**
 5 **settlements relating to public health or**
 6 **safety**

7 “(a)(1) A court shall enter an order under rule 26(c)
 8 of the Federal Rules of Civil Procedure restricting the dis-
 9 closure of information obtained through discovery, an
 10 order approving a settlement agreement that would re-
 11 strict the disclosure of such information, or an order re-
 12 stricting access to court records in a civil case only after
 13 making particularized findings of fact that—

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

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

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

1 “(2) No order entered in accordance with paragraph
 2 (1) (other than an order approving a settlement agree-
 3 ment) shall continue in effect after the entry of final judg-
 4 ment, unless at or after such entry the court makes a sep-
 5 arate particularized finding of fact that the requirements
 6 of paragraph (1) (A) or (B) have been 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 court of the United States may approve
 11 or enforce any provision of an agreement between or
 12 among parties to a civil action, or approve or enforce an
 13 order subject to subsection (a)(1), that prohibits or other-
 14 wise restricts a party from disclosing any information rel-
 15 evant to such civil action to any Federal or State agency
 16 with authority to enforce laws regulating an activity relat-
 17 ing to such information.

18 “(2) Any such information disclosed to a Federal or
 19 State agency shall be confidential to the extent provided
 20 by law.”.

21 (c) 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. Protective orders and sealing of cases and settlements relating to public
 health or safety.”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall take effect 30 days after the date of en-
3 actment of this Act and shall apply only to orders entered
4 in civil actions or agreements entered into on or after such
5 date.

