

109TH CONGRESS  
1ST SESSION

# S. 1348

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

JUNE 30, 2005

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 2005”.

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) A court shall not enter an order under rule  
9 26(c) of the Federal Rules of Civil Procedure restricting  
10 the disclosure of information obtained through discovery,  
11 an order approving a settlement agreement that would re-  
12 strict the disclosure of such information, or an order re-  
13 stricting access to court records in a civil case unless the  
14 court has made 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 the disclosure of  
19 potential health or safety hazards is outweighed by  
20 a specific and substantial interest in maintaining the  
21 confidentiality of the information or records in ques-  
22 tion; 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 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 the time of, or after, such entry the court  
5 makes a separate finding of fact that the requirements  
6 of paragraph (1) have been met.

7       “(3) 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       “(4) This section shall apply even if an order under  
11 paragraph (1) is requested—

12           “(A) by motion pursuant to rule 26(c) of the  
13 Federal Rules of Civil Procedure; or  
14           “(B) by application pursuant to the stipulation  
15 of the parties.

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

20       “(B) No party shall request, as a condition for the  
21 production of discovery, that another party stipulate to an  
22 order that would violate this section.

23       “(b)(1) A court shall not approve or enforce any pro-  
24 vision of an agreement between or among parties to a civil  
25 action, or approve or enforce an order subject to sub-

1 section (a)(1), that prohibits or otherwise restricts a party  
2 from disclosing any information relevant to such civil ac-  
3 tion to any Federal or State agency with authority to en-  
4 force laws regulating an activity relating to such informa-  
5 tion.

6       “(2) Any such information disclosed to a Federal or  
7 State agency shall be confidential to the extent provided  
8 by law.

9       “(c)(1) Subject to paragraph (2), a court shall not  
10 enforce any provision of a settlement agreement between  
11 or among parties that prohibits 1 or more parties from—

12           “(A) disclosing that a settlement was reached  
13           or the terms of such settlement, other than the  
14           amount of money paid; or

15           “(B) discussing a case, or evidence produced in  
16           the case, that involves matters related to public  
17           health or safety.

18       “(2) Paragraph (1) does not apply if the court has  
19       made findings of fact that the public interest in the diselo-  
20       sure of potential health or safety hazards is outweighed  
21       by a specific and substantial interest in maintaining the  
22       confidentiality of the information.”.

23       (b) TECHNICAL AND CONFORMING AMENDMENT.—  
24       The table of sections for chapter 111 of title 28, United

1 States Code, is amended by adding after the item relating  
2 to section 1659 the following:

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

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

4 The amendments made by this Act shall—

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

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

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