

Calendar No. 935

110TH CONGRESS
2D SESSION**S. 2449****[Report No. 110–439]**

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

DECEMBER 11, 2007

Mr. KOHL (for himself, Mr. LEAHY, and Mr. GRAHAM) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

AUGUST 1, 2008

Reported by Mr. LEAHY, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Sunshine in Litigation
3 Act of 2007”.

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

6 (a) ~~IN GENERAL.~~—Chapter 111 of title 28, United
7 States Code, is amended by adding at the end the fol-
8 lowing:

9 **“§ 1660. Restrictions on protective orders and sealing**
10 **of cases and settlements**

11 ~~“(a)(1) A court shall not enter an order under rule~~
12 ~~26(e) of the Federal Rules of Civil Procedure restricting~~
13 ~~the disclosure of information obtained through discovery,~~
14 ~~an 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 in a civil case unless the~~
17 ~~court has made findings of fact that—~~

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

21 ~~“(B)(i) the public interest in the disclosure of~~
22 ~~potential health or safety hazards is outweighed by~~
23 ~~a specific and substantial interest in maintaining the~~
24 ~~confidentiality of the information or records in ques-~~
25 ~~tion; and~~

1 “(ii) the requested protective order is no broad-
 2 er than necessary to protect the privacy interest as-
 3 serted.

4 “(2) No order entered in accordance with paragraph
 5 (1), other than an order approving a settlement agree-
 6 ment, shall continue in effect after the entry of final judg-
 7 ment, unless at the time of, or after, such entry the court
 8 makes a separate finding of fact that the requirements
 9 of paragraph (1) have been 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(e) 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) No party shall request, as a condition for the
 24 production of discovery, that another party stipulate to an
 25 order that would violate this section.

1 “(b)(1) A court shall not approve or enforce any pro-
 2 vision of an agreement between or among parties to a civil
 3 action, or approve or enforce an order subject to sub-
 4 section (a)(1), that prohibits or otherwise restricts a party
 5 from disclosing any information relevant to such civil ac-
 6 tion to any Federal or State agency with authority to en-
 7 force laws regulating an activity relating to such informa-
 8 tion.

9 “(2) Any such information disclosed to a Federal or
 10 State agency shall be confidential to the extent provided
 11 by law.

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

15 “(A) disclosing that a settlement was reached
 16 or the terms of such settlement, other than the
 17 amount of money paid; or

18 “(B) discussing a case, or evidence produced in
 19 the case, that involves matters related to public
 20 health or safety.

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

1 ~~(b) TECHNICAL AND CONFORMING AMENDMENT.—~~

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

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

5 SEC. 3. EFFECTIVE DATE.

6 The amendments made by this Act shall—

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

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

11 **SECTION 1. SHORT TITLE.**

12 *This Act may be cited as the “Sunshine in Litigation*
13 *Act of 2008”.*

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

16 (a) *IN GENERAL.*—Chapter 111 of title 28, United
17 States Code, is amended by adding at the end the following:

18 *“§ 1660. Restrictions on protective orders and sealing*
19 *of cases and settlements*

20 “(a)(1) A court shall not enter an order under rule
21 26(c) of the Federal Rules of Civil Procedure restricting the
22 disclosure of information obtained through discovery, an
23 order approving a settlement agreement that would restrict
24 the disclosure of such information, or an order restricting

1 *access to court records in a civil case unless the court has*
 2 *made findings of fact that—*

3 “(A) *such order would not restrict the disclosure*
 4 *of information which is relevant to the protection of*
 5 *public health or safety; or*

6 “(B)(i) *the public interest in the disclosure of po-*
 7 *tential health or safety hazards is outweighed by a*
 8 *specific and substantial interest in maintaining the*
 9 *confidentiality of the information or records in ques-*
 10 *tion; and*

11 “(ii) *the requested protective order is no broader*
 12 *than necessary to protect the privacy interest asserted.*

13 “(2) *No order entered in accordance with paragraph*
 14 *(1), other than an order approving a settlement agreement,*
 15 *shall continue in effect after the entry of final judgment,*
 16 *unless at the time of, or after, such entry the court makes*
 17 *a separate finding of fact that the requirements of para-*
 18 *graph (1) have been met.*

19 “(3) *The party who is the proponent for the entry of*
 20 *an order, as provided under this section, shall have the bur-*
 21 *den of proof in obtaining such an order.*

22 “(4) *This section shall apply even if an order under*
 23 *paragraph (1) is requested—*

24 “(A) *by motion pursuant to rule 26(c) of the*
 25 *Federal Rules of Civil Procedure; or*

1 “(B) by application pursuant to the stipulation
2 of the parties.

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

7 “(B) No party shall request, as a condition for the pro-
8 duction of discovery, that another party stipulate to an
9 order that would violate this section.

10 “(b)(1) A court shall not approve or enforce any provi-
11 sion of an agreement between or among parties to a civil
12 action, or approve or enforce an order subject to subsection
13 (a)(1), that prohibits or otherwise restricts a party from
14 disclosing any information relevant to such civil action to
15 any Federal or State agency with authority to enforce laws
16 regulating an activity relating to such information.

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

20 “(c)(1) Subject to paragraph (2), a court shall not en-
21 force any provision of a settlement agreement described
22 under subsection (a)(1) between or among parties that pro-
23 hibits 1 or more parties from—

1 “(A) disclosing that a settlement was reached or
 2 the terms of such settlement, other than the amount
 3 of money paid; or

4 “(B) discussing a case, or evidence produced in
 5 the case, that involves matters related to public health
 6 or safety.

7 “(2) Paragraph (1) does not apply if the court has
 8 made findings of fact that the public interest in the disclo-
 9 sure of potential health or safety hazards is outweighed by
 10 a specific and substantial interest in maintaining the con-
 11 fidentiality of the information.

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

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

22 (b) *TECHNICAL AND CONFORMING AMENDMENT.*—The
 23 table of sections for chapter 111 of title 28, United States
 24 Code, is amended by adding after the item relating to sec-
 25 tion 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*

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