

111TH CONGRESS
2D SESSION

H. R. 5419

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 HOUSE OF REPRESENTATIVES

MAY 26, 2010

Mr. NADLER of New York introduced the following bill; which was 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. SHORT TITLE.**

4 This Act may be cited as the “Sunshine in Litigation
5 Act of 2010”.

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 an order under
11 rule 26(c) of the Federal Rules of Civil Procedure restrict-
12 ing the disclosure of information obtained through dis-
13 covery, an order approving a settlement agreement that
14 would restrict the disclosure of such information, or an
15 order restricting access to court records unless in connec-
16 tion with such order the court has first made independent
17 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 order is no broader than
2 necessary to protect the confidentiality 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(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) 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) 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 to
5 a civil action, or approve or enforce an order subject to
6 subsection (a)(1), that prohibits or otherwise restricts a
7 party from disclosing any information relevant to such
8 civil action to any Federal or State agency with authority
9 to enforce laws regulating an activity relating to such in-
10 formation.

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

14 “(c)(1) Subject to paragraph (2), a court shall not
15 enforce any provision of a settlement agreement in any
16 civil action in which the pleadings state facts that are rel-
17 evant to the protection of public health or safety between
18 or among parties that prohibits one or more parties
19 from—

20 “(A) disclosing that a settlement was reached
21 or the terms of such settlement that involve matters
22 relevant to the protection of public health or safety,
23 other than the amount of money paid; or

1 “(B) discussing the civil action, or evidence pro-
2 duced in the civil action, that involves matters re-
3 lated to public health or safety.

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

6 “(A) 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 “(B) the requested order is no broader than
12 necessary to protect the confidentiality interest as-
13 serted.

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

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

24 (b) TECHNICAL AND CONFORMING AMENDMENT.—
25 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 (c) RULE OF CONSTRUCTION.—Nothing in the
4 amendments made by this act shall be construed to weak-
5 en or to limit—

6 (1) existing common law or constitutional
7 standards for information access; or

8 (2) confidentiality protections as a basis for a
9 protective order.

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

11 The amendments made by this Act shall—

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

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

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