

113TH CONGRESS
2D SESSION

S. 2364

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 20, 2014

Mr. BLUMENTHAL (for himself, Mr. GRAHAM, Mr. LEAHY, Mr. WHITEHOUSE, and Mr. MARKEY) 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 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Sunshine in Litigation
3 Act of 2014”.

**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:

1 **“§ 1660. Restrictions on protective orders and sealing**
2 **of cases and settlements**

3 “(a)(1) Except as provided under subsection (e), in
4 any civil action in which the pleadings state facts that are
5 relevant to the protection of public health or safety, a
6 court shall not enter, by stipulation or otherwise, an order
7 otherwise authorized under rule 26(c) of the Federal Rules
8 of Civil Procedure restricting the disclosure of information
9 obtained through discovery, an order approving a settle-
10 ment agreement that would restrict the disclosure of such
11 information, or an order restricting access to court records
12 unless in connection with such order the court has first
13 made independent 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 the disclosure of
18 past, present, or potential health or safety hazards
19 is outweighed by a specific and substantial interest
20 in maintaining the confidentiality of the information
21 or records in question; and

22 “(ii) the requested order is no broader than
23 necessary to protect the confidentiality interest as-
24 serted.

25 “(2) No order entered as a result of the operation
26 paragraph (1), other than an order approving a settlement

1 agreement, may continue in effect after the entry of final
2 judgment, unless at the time of, or after, such entry the
3 court makes a separate finding of fact that the require-
4 ments of paragraph (1) continue to be met.

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

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

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

12 “(B) by application pursuant to the stipulation
13 of the parties.

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

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

21 “(b)(1) In any civil action in which the pleadings
22 state facts that are relevant to the protection of public
23 health or safety, a court shall not approve or enforce any
24 provision of an agreement between or among parties, or
25 approve or enforce an order entered as a result of the op-

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

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

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

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

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

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

22 “(A) the public interest in the disclosure of
 23 past, present, or potential public health or safety
 24 hazards is outweighed by a specific and substantial

1 interest in maintaining the confidentiality of the in-
2 formation or records in question; and

3 “(B) the requested order is no broader than
4 necessary to protect the confidentiality interest as-
5 serted.

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

12 “(e) Nothing in this section—

13 “(1) shall prohibit a court from entering an
14 order that would restrict the disclosure of informa-
15 tion, or an order restricting access to court records,
16 if in either instance such order is necessary to pro-
17 tect from public disclosure—

18 “(A) information classified under criteria
19 established by an Executive order to be kept se-
20 cret in the interest of national defense or for-
21 eign policy; or

22 “(B) intelligence sources and methods; or

23 “(2) shall be construed to permit, require, or
24 authorize the disclosure of information that—

1 “(A) is classified under criteria established
 2 by an Executive order to be kept secret in the
 3 interest of national defense or foreign policy; or
 4 “(B) reveals intelligence sources and meth-
 5 ods.”.

6 (b) **TECHNICAL AND CONFORMING AMENDMENT.**—
 7 The table of sections for chapter 111 of title 28, United
 8 States Code, is amended by adding after the item relating
 9 to section 1659 the following:

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

10 **SEC. 3. EFFECTIVE DATE AND APPLICATION.**

11 The amendments made by this Act shall—

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

14 (2) apply only to orders entered in civil actions
 15 or agreements entered into on or after the effective
 16 date of this Act; and

17 (3) not provide a basis for the—

18 (A) granting of a motion to reconsider,
 19 modify, amend or vacate a protective order or
 20 settlement order entered into before the effec-
 21 tive date of this Act; or

22 (B) reversal on appeal of a protective order
 23 or settlement order entered into before the ef-
 24 fective date of this Act.