

114TH CONGRESS  
2D SESSION

# S. 3370

To restrict confidentiality agreements that prohibit the disclosure of information relating to hazards to public safety or health, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 21, 2016

Mr. WHITEHOUSE introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To restrict confidentiality agreements that prohibit the disclosure of information relating to hazards to public safety or health, 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 “Safety Over Secrecy  
5 Act of 2016”.

6 **SEC. 2. RESTRICTIONS ON CERTAIN CONFIDENTIALITY**  
7 **AGREEMENTS IN SETTLEMENTS.**

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

1   **“§ 1660. Restrictions on certain confidentiality agree-**  
 2                   **ments in settlements**

3           “(a) DEFINITION.—In this section, the term ‘hazard  
 4 to public safety or health’ means an activity, substance,  
 5 or condition that has a potential to cause harm to the  
 6 health or safety of the public.

7           “(b) DISCLOSURE IN GENERAL.—

8                   “(1) IN GENERAL.—Except as provided in para-  
 9 graph (2), a court may not approve or order the en-  
 10 forcement of any provision in a settlement agree-  
 11 ment, or other agreement relating to a settlement,  
 12 between or among parties in a civil suit if—

13                           “(A) a pleading filed in the suit alleges  
 14 facts that are relevant to protecting the public  
 15 from a hazard to public safety or health; and

16                           “(B) the provision prohibits a party  
 17 from—

18                                   “(i) disclosing the fact that the settle-  
 19 ment was reached;

20                                   “(ii) disclosing the terms of the settle-  
 21 ment, other than the amount of money, if  
 22 any, paid under the settlement;

23                                   “(iii) discussing the suit or evidence  
 24 produced in the suit; or

25                                   “(iv) otherwise discussing the hazard  
 26 to public safety or health.

1 “(2) BALANCE OF INTERESTS.—

2 “(A) IN GENERAL.—On a motion by a  
3 party to an agreement described in paragraph  
4 (1), a court may approve or order the enforce-  
5 ment of a provision described in paragraph  
6 (1)(B), despite the fact that a pleading de-  
7 scribed in paragraph (1)(A) is filed in the suit,  
8 if the court, based on an independent finding of  
9 fact, determines that—

10 “(i) the public interest in the disclo-  
11 sure of facts that are relevant to protecting  
12 the public from a hazard to public safety  
13 or health is outweighed by a specific and  
14 substantial interest in maintaining the con-  
15 fidentiality of the information or records  
16 that are covered by the provision; and

17 “(ii) the requested order is no broader  
18 than necessary to protect the specific and  
19 substantial interest in maintaining con-  
20 fidentiality described in clause (i).

21 “(B) CONSIDERATIONS.—With respect to  
22 the balancing of interests described in subpara-  
23 graph (A)(i)—

24 “(i) there shall be a rebuttable pre-  
25 sumption that the interest in protecting fi-

nancial, medical, or other similar personal information relating to an identifiable individual outweighs the public interest described in subparagraph (A)(i);

“(ii) a general interest in the settlement of disputes may not serve as a specific and substantial interest described in subparagraph (A)(i); and

“(iii) a court may redact language in a settlement agreement, in order to accommodate—

“(I) the privacy of personal information; and

“(II) the public benefit of awareness of hazards to public safety and health.

“(c) DISCLOSURE TO FEDERAL OR STATE AGENCIES.—

“(1) IN GENERAL.—A court may not approve or order the enforcement of any provision of a settlement agreement, or other agreement relating to a settlement, between or among parties in a civil suit if—

1           “(A) a pleading filed in the suit alleges  
2 facts that are relevant to protecting the public  
3 from a hazard to public safety or health; and

4           “(B) the provision prohibits or otherwise  
5 restricts a party from disclosing a fact de-  
6 scribed in subparagraph (A) to a Federal or  
7 State agency with authority to enforce a law or  
8 regulate an activity relating to that fact.

9           “(2) CONFIDENTIALITY MAINTAINED.—The  
10 confidentiality of a fact described in paragraph  
11 (1)(A) that is disclosed to a Federal or State agency  
12 described in paragraph (1)(B) shall be protected to  
13 the extent otherwise provided under any other law,  
14 regulation, or agreement.”.

15       (b) TECHNICAL AND CONFORMING AMENDMENT.—  
16 The table of sections for chapter 111 of title 28, United  
17 States Code, is amended by adding at the end the fol-  
18 lowing:

“1660. Restrictions on certain confidentiality agreements in settlements.”.

