



Sen. John J. Cullerton

Filed: 5/18/2004

09300HB1191sam001

LRB093 03378 WGH 50867 a

1 AMENDMENT TO HOUSE BILL 1191

2 AMENDMENT NO. _____. Amend House Bill 1191 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Code of Civil Procedure is amended by
5 adding Section 2-1021 as follows:

6 (735 ILCS 5/2-1021 new)

7 Sec. 2-1021. Product liability; confidentiality orders.

8 (a) As used in this Section, "product liability action"
9 means a lawsuit for damages for personal injury or wrongful
10 death caused by an instrumentality, a device, an instrument, a
11 product, or a condition of an instrumentality, a device, an
12 instrument, or a product that has caused and is likely to cause
13 personal injury or death in other members of the public.

14 (b) As used in this Section, "confidentiality order" means
15 a court order that limits the disclosure or dissemination of
16 information obtained through discovery in a product liability
17 action.

18 (c) For good cause shown, a party required to respond to
19 discovery in a product liability action may obtain a
20 confidentiality order. If the court finds that such a
21 confidentiality order is appropriate, the order shall be
22 narrowly drafted and may permit the subsequent designation of
23 specific confidential materials. The party requesting the
24 materials shall object with reasonable particularity to any

1 such designation of confidential materials that do not meet the
2 standard in subsection (d).

3 (d) Upon objection of a party to a designation that limits
4 disclosure or dissemination of materials under a
5 confidentiality order, the party seeking to limit disclosure or
6 dissemination pursuant to a claim of confidentiality must
7 demonstrate to the court, by a preponderance of the evidence, a
8 specific, serious, and substantial interest in confidentiality
9 that outweighs the adverse effect of confidentiality upon the
10 general public health or safety. The court shall make written
11 findings in support of its decision to grant or deny
12 confidentiality.

13 (e) Nothing in this Section precludes the use of
14 confidentiality orders to protect trade secrets, consistent
15 with the standard in subsection (d).

16 (f) No agreement or order resolving or terminating a
17 product liability action may require any party to keep
18 confidential any information that is not covered by a
19 confidentiality order, with the exception of information about
20 settlement amounts or other benefits provided under a
21 settlement agreement. Any provision of a settlement agreement
22 that violates this subsection (f) is severable from the
23 remainder of the agreement, notwithstanding any provision to
24 the contrary, and the remainder of the agreement shall remain
25 in force.

26 (g) Nothing in this Section shall affect the scope of
27 discovery under applicable court rules or the court's power to
28 supervise the discovery process.

29 (h) This Section does not apply to or affect laws or
30 regulations safeguarding the confidentiality of medical
31 records.

32 (i) This Section does not apply to healthcare services.

33 (j) Any person who satisfies the requirements of Section
34 2-408 of this Code may intervene in an action for the purpose

1 of challenging a confidentiality order, whether or not the
2 action is still pending.

3 (k) No person shall enter into an agreement to resolve a
4 potential product liability action if that agreement conceals
5 information, the disclosure of which is necessary to protect
6 the public health and safety. An agreement shall be void as
7 against public policy only upon a final judicial determination
8 that the agreement violates this subsection (k).

9 (l) This Section applies to all confidentiality orders
10 entered into or executed with respect to product liability
11 actions and all agreements entered into on or after the
12 effective date of this amendatory Act of the 93rd General
13 Assembly."