



Sen. John J. Cullerton

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09300HB1191sam002

LRB093 03378 WGH 51658 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. The party seeking a confidentiality order has
13 the right to appeal an order denying confidentiality, and any
14 such appeal shall be governed by Supreme Court Rule 307.

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

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

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

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

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

1 (j) Any person who satisfies the requirements of Section
2 2-408 of this Code may intervene in an action for the purpose
3 of challenging a confidentiality order.

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

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

14 Section 97. Severability. The provisions of this Act are
15 severable under Section 1.31 of the Statute on Statutes.".