S T A T E O F N E W Y O R K

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2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. DINOWITZ, ENGLEBRIGHT, MILLMAN, HOYT, GALEF, GOTTFRIED, HEASTIE, MARKEY, PHEFFER, REILLY -- Multi-Sponsored by -- M. of A. ARROYO, DESTITO, FINCH, HOOPER, McENENY, J. RIVERA, P. RIVERA, SWEENEY, WRIGHT, ZEBROWSKI -- read once and referred to the Committee on Aging

AN ACT to amend the public health law and the executive law, in relation to reporting of abuses of persons receiving care in residential health care facilities; and to repeal paragraph (e) of subdivision 6 of section 2803-d of the public health law relating to the confidentiality of information relating to such abuses

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Paragraph (c) of subdivision 6 of section 2803-d of the public health law, as amended by chapter 414 of the laws of 1986, is amended to read as follows:

(c) All information relating to any allegation which the commissioner has determined would not be sustained shall be expunged [one hundred twenty days] FIVE YEARS following notification of such determination to the person who made the report pursuant to this section, unless a proceeding pertaining to such allegation is pending pursuant to article seventy-eight of the civil practice law and rules. Whenever information is expunged, the commissioner shall notify any official notified pursuant to paragraph (a) of this subdivision that the information has been expunged.

S 2. Paragraph (e) of subdivision 6 of section 2803-d of the public health law is REPEALED and a new paragraph (e) is added to read as follows:

(E) (I) ALL INFORMATION RELATING TO ANY ALLEGATION THAT THE COMMISSIONER HAS DETERMINED WOULD NOT BE SUSTAINED, SHALL BE SEALED ONE HUNDRED TWENTY DAYS FOLLOWING NOTIFICATION OF SUCH DETERMINATION TO THE

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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PERSON WHO MADE THE REPORT. SUCH REPORTS MAY BE UNSEALED AND MADE AVAILABLE ONLY TO (A) THE SUBJECT OF THE REPORT; OR (B) A DISTRICT ATTORNEY, AN ASSISTANT DISTRICT ATTORNEY, THE ATTORNEY GENERAL, AN ASSISTANT ATTORNEY GENERAL, AN INVESTIGATOR EMPLOYED IN THE OFFICE OF A DISTRICT ATTORNEY OR THE ATTORNEY GENERAL, OR TO A POLICE OFFICER BY THE DIVISION OF STATE POLICE, BY A CITY, COUNTY, TOWN OR VILLAGE POLICE DEPARTMENT OR BY A COUNTY SHERIFF'S OFFICE WHEN SUCH OFFICIAL REPRESENTS THAT THE REPORT IS NECESSARY TO CONDUCT AN ACTIVE INVESTIGATION OR PROSECUTION RELATED TO ALLEGATIONS OF PHYSICAL ABUSE, MISTREATMENT OR NEGLECT, OR THE FAILURE TO REPORT SUCH AN INCIDENT.

(II) PERSONS GIVEN ACCESS TO REPORTS PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL NOT REDISCLOSE SUCH REPORTS EXCEPT AS NECESSARY TO CONDUCT SUCH APPROPRIATE INVESTIGATION OR PROSECUTION AND SHALL REQUEST OF THE COURT THAT ANY COPIES OF SUCH REPORTS PRODUCED IN ANY COURT PROCEEDING BE REDACTED TO REMOVE THE NAMES OF THE SUBJECTS AND OTHER PERSONS NAMED IN THE REPORTS OR THAT THE COURT ISSUE AN ORDER PROTECTING THE NAMES OF THE SUBJECTS AND OTHER PERSONS NAMED IN THE REPORTS FROM PUBLIC DISCLOSURE.

S 3. Paragraph (f) of subdivision 6 of section 2803-d of the public health law, as amended by chapter 340 of the laws of 1980, is amended to read as follows:

(f) [Information] ANY REPORT OF PHYSICAL ABUSE, MISTREATMENT OR NEGLECT, RECORD OF THE INVESTIGATION OF SUCH REPORT AND ALL OTHER INFORMATION RELATED TO SUCH REPORT SHALL BE CONFIDENTIAL AND SHALL BE EXEMPT FROM DISCLOSURE UNDER ARTICLE SIX OF THE PUBLIC OFFICERS LAW, PROVIDED HOWEVER THAT INFORMATION relating to a report made pursuant to this section shall be disclosed under any of the following conditions:

(i) pursuant to article six of the public officers law after expungement or amendment, if any, is made in accordance with a hearing conducted pursuant to this section, or at least forty-five days after a written determination is made by the commissioner concerning such report, whichever is later; provided, however, that the identity of the person who made the report, the victim, or any other person named, except a person who the commissioner has determined committed an act of physical abuse, neglect or mistreatment, shall not be disclosed unless such person authorizes such disclosure;

(ii) as may be required by the penal law or any lawful order or warrant issued pursuant to the criminal procedure law; or

(iii) to a person who has requested a hearing pursuant to this section, information relating to the determination upon which the hearing is to be conducted; provided, however, that the identity of the person who made the report or any other person who provided information in an investigation of the report shall not be disclosed unless such person authorizes such disclosure[.]; OR

(IV) TO A PROSECUTOR, INCLUDING THE ATTORNEY GENERAL, WHEN SUCH REQUEST IS MADE IN CONNECTION WITH AND NECESSARY TO THE FURTHERANCE OF A CRIMINAL INVESTIGATION RELATED TO THE ALLEGATIONS OF PHYSICAL ABUSE, NEGLECT OR MISTREATMENT, OR FAILURE TO REPORT SUCH ACTS. A PROSECUTOR WHO OBTAINS SUCH RECORDS SHALL MAINTAIN THEM AS CONFIDENTIAL AND SHALL NOT DISCLOSE THEM EXCEPT IN CONNECTION WITH GRAND JURY OR JUDICIAL PROCEEDINGS.

S 4. Subdivision 16 of section 296 of the executive law, as separately amended by section 3 of part N and section 14 of part AAA of chapter 56 of the laws of 2009, is amended to read as follows:

16. It shall be an unlawful discriminatory practice, unless specifically required or permitted by statute, for any person, agency, bureau,

corporation or association, including the state and any political subdivision thereof, to make any inquiry about, whether in any form of application or otherwise, or to act upon adversely to the individual involved, (A) any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, or by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law or (B) by a conviction which is sealed pursuant to section 160.58 of the criminal procedure law OR (C) ANY REPORT MADE UNDER SECTION TWENTY-EIGHT HUNDRED-THREE-D OF THE PUBLIC HEALTH LAW WHERE A DETERMINATION HAS BEEN MADE THAT THE ALLEGATION WOULD NOT BE SUSTAINED, in connection with the licensing, employment or providing of credit or insurance to such individual; provided, further, that no person shall be required to divulge information pertaining to any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, or by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law, or by a conviction which is sealed pursuant to section 160.58 of the criminal procedure law. The provisions of this subdivision shall not apply to the licensing activities of governmental bodies in relation to the regulation of guns, firearms and other deadly weapons or in relation to an application for employment as a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law; provided further that the provisions of this subdivision shall not apply to an application for employment or membership in any law enforcement agency with respect to any arrest or criminal accusation which was followed by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law, or by a conviction which is sealed pursuant to section 160.58 of the criminal procedure law.

S 5. This act shall take effect on the one hundred eightieth day after it shall have become a law.