

3557

2013-2014 Regular Sessions

I N A S S E M B L Y

January 28, 2013

Introduced by M. of A. KEARNS -- read once and referred to the Committee
on Judiciary

AN ACT to amend the judiciary law, in relation to prohibiting courts
from sealing agreements or records involving a public body or institu-
tion or any public hazard or public harm

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

- 1 Section 1. The judiciary law is amended by adding a new section 4-a to
2 read as follows:
3 S 4-A. PROHIBITION AGAINST SEALING RECORDS INVOLVING A PUBLIC BODY OR
4 INSTITUTION. 1. UNDER NO CIRCUMSTANCES SHALL A COURT APPROVE SEALING A
5 SETTLEMENT AGREEMENT WHICH INVOLVES A PUBLIC BODY OR INSTITUTION. ANY
6 PORTION OF AN AGREEMENT OR CONTRACT ENTERED INTO BY A PUBLIC BODY WHICH
7 HAS THE PURPOSE OR EFFECT OF CONCEALING A PUBLIC HAZARD, ANY INFORMATION
8 CONCERNING A PUBLIC HAZARD, OR ANY INFORMATION WHICH MAY BE USEFUL TO
9 MEMBERS OF THE PUBLIC IN PROTECTING THEMSELVES FROM INJURY WHICH MAY
10 RESULT FROM THE PUBLIC HAZARD, IS VOID, CONTRARY TO PUBLIC POLICY, AND
11 MAY NOT BE ENFORCED. AS USED IN THIS SECTION, "PUBLIC HAZARD" MEANS AN
12 INSTRUMENTALITY, INCLUDING BUT NOT LIMITED TO ANY DEVICE, INSTRUMENT,
13 PERSON, PROCEDURE, PRODUCT, OR A CONDITION OF A DEVICE, INSTRUMENT,
14 PERSON, PROCEDURE OR PRODUCT, THAT HAS CAUSED AND IS LIKELY TO CAUSE
15 INJURY.
16 2. COURT RECORDS MAY NOT BE REMOVED FROM COURT FILES EXCEPT AS PERMIT-
17 TED BY STATUTE OR RULE. NO COURT ORDER OR OPINION ISSUED IN THE ADJUDI-
18 CATION OF A CASE MAY BE SEALED. OTHER COURT RECORDS, AS DEFINED IN
19 SUBDIVISION THREE OF THIS SECTION, ARE PRESUMED TO BE OPEN TO THE GENER-
20 AL PUBLIC AND MAY BE SEALED ONLY UPON A SHOWING OF ALL OF THE FOLLOWING:
21 A. A SPECIFIC, SERIOUS AND SUBSTANTIAL INTEREST WHICH CLEARLY
22 OUTWEIGHS:
23 (I) THIS PRESUMPTION OF OPENNESS;

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

LBD01069-01-3

1 (II) ANY PROBABLE ADVERSE EFFECT THAT SEALING WILL HAVE UPON THE
2 GENERAL PUBLIC HEALTH OR SAFETY; AND

3 B. NO LESS RESTRICTIVE MEANS THAN SEALING RECORDS WILL ADEQUATELY AND
4 EFFECTIVELY PROTECT THE SPECIFIC INTEREST ASSERTED.

5 3. FOR PURPOSES OF THIS SECTION, THE TERM "COURT RECORDS" MEANS:

6 A. ALL DOCUMENTS OF ANY NATURE FILED IN CONNECTION WITH ANY MATTER
7 BEFORE ANY CIVIL COURT, EXCEPT:

8 (I) DOCUMENTS FILED WITH A COURT IN CAMERA, SOLELY FOR THE PURPOSE OF
9 OBTAINING A RULING ON THE DISCOVERABILITY OF SUCH DOCUMENTS;

10 (II) DOCUMENTS IN COURT FILES TO WHICH ACCESS IS OTHERWISE RESTRICTED
11 BY LAW;

12 (III) DOCUMENTS FILED IN AN ACTION ORIGINALLY ARISING UNDER THE FAMILY
13 COURT ACT.

14 B. SETTLEMENT AGREEMENTS NOT FILED OF RECORD, EXCLUDING ALL REFERENCE
15 TO ANY MONETARY CONSIDERATION, THAT COULD RESTRICT DISCLOSURE OF INFOR-
16 MATION CONCERNING MATTERS THAT HAVE A PROBABLE ADVERSE EFFECT UPON THE
17 GENERAL PUBLIC HEALTH OR SAFETY, OR THE ADMINISTRATION OF PUBLIC OFFICE,
18 OR THE OPERATION OF GOVERNMENT.

19 S 2. This act shall take effect immediately.