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

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 institution or any public hazard or public harm

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

Section 1. The judiciary law is amended by adding a new section 4-a to read as follows:

S 4-A. PROHIBITION AGAINST SEALING RECORDS INVOLVING A PUBLIC BODY OR INSTITUTION. 1. UNDER NO CIRCUMSTANCES SHALL A COURT APPROVE SEALING A SETTLEMENT AGREEMENT WHICH INVOLVES A PUBLIC BODY OR INSTITUTION. ANY PORTION OF AN AGREEMENT OR CONTRACT ENTERED INTO BY A PUBLIC BODY WHICH HAS THE PURPOSE OR EFFECT OF CONCEALING A PUBLIC HAZARD, ANY INFORMATION CONCERNING A PUBLIC HAZARD, OR ANY INFORMATION WHICH MAY BE USEFUL TO MEMBERS OF THE PUBLIC IN PROTECTING THEMSELVES FROM INJURY WHICH MAY RESULT FROM THE PUBLIC HAZARD, IS VOID, CONTRARY TO PUBLIC POLICY, AND MAY NOT BE ENFORCED. AS USED IN THIS SECTION, "PUBLIC HAZARD" MEANS AN INSTRUMENTALITY, INCLUDING BUT NOT LIMITED TO ANY DEVICE, INSTRUMENT, PERSON, PROCEDURE, PRODUCT, OR A CONDITION OF A DEVICE, INSTRUMENT, PERSON, PROCEDURE OR PRODUCT, THAT HAS CAUSED AND IS LIKELY TO CAUSE INJURY.

2. COURT RECORDS MAY NOT BE REMOVED FROM COURT FILES EXCEPT AS PERMITTED BY STATUTE OR RULE. NO COURT ORDER OR OPINION ISSUED IN THE ADJUDICATION OF A CASE MAY BE SEALED. OTHER COURT RECORDS, AS DEFINED IN SUBDIVISION THREE OF THIS SECTION, ARE PRESUMED TO BE OPEN TO THE GENERAL PUBLIC AND MAY BE SEALED ONLY UPON A SHOWING OF ALL OF THE FOLLOWING:

A. A SPECIFIC, SERIOUS AND SUBSTANTIAL INTEREST WHICH CLEARLY OUTWEIGHS:

(I) THIS PRESUMPTION OF OPENNESS;

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

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

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

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

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

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

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

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

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

S 2. This act shall take effect immediately.