

STATE OF NEW YORK

9593

IN ASSEMBLY

January 25, 2018

Introduced by M. of A. WEINSTEIN, SIMOTAS, DINOWITZ, TITONE, NOLAN, CAHILL -- Multi-Sponsored by -- M. of A. BARRON, CYMBROWITZ, D'URSO, ENGLEBRIGHT, GALEF, GLICK, GOTTFRIED, JAFFEE, JENNE, LUPARDO, MAGNARELLI, SIMON -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to enacting the "sunshine in litigation act" regarding protective orders

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision (a) of section 3103 of the civil practice law
2 and rules, as amended by chapter 205 of the laws of 2013, is amended to
3 read as follows:

4 (a) Prevention of abuse. ~~[The]~~ Subject to the provisions of section
5 thirty-one hundred forty-three of this chapter, the court may at any
6 time on its own initiative, or on motion of any party or of any person
7 from whom or about whom discovery is sought, make a protective order
8 denying, limiting, conditioning or regulating the use of any disclosure
9 device. Such order shall be designed to prevent unreasonable annoyance,
10 expense, embarrassment, disadvantage, or other prejudice to any person
11 or the courts.

12 § 2. The civil practice law and rules is amended by adding a new arti-
13 cle 31-A to read as follows:

ARTICLE 31-A

SUNSHINE IN LITIGATION ACT

16 Section 3141. Short title.

17 3142. Definitions.

18 3143. Sunshine in litigation; concealment of public hazards
19 prohibited.

20 § 3141. Short title. This article shall be known and may be cited as
21 the "sunshine in litigation act".

22 § 3142. Definitions. When used in this article, unless otherwise so
23 stated, the following terms shall have the following meanings:

24 (a) Governmental entity. "Governmental entity" shall mean the state
25 and any county, city, town, village or any other political subdivision
26 of the state, and every department, board, bureau, agency, public

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

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1 authority or other governmental instrumentality of the state or a poli-
2 tical subdivision of the state.

3 (b) Public hazard. "Public hazard" shall mean any condition of any
4 device, instrument, person, procedure, product or property that has
5 caused injury to the person or property of another, or which, unless
6 altered, removed, reassembled or changed in some manner, creates a risk
7 of injury to person or property in the future.

8 (c) Trade secret. "Trade secret" shall mean information, technical or
9 non-technical, including, but not limited to, a formula, pattern, compi-
10 lation, program, device, method, technique or process that:

11 1. derives independent economic value, actual or potential, from not
12 being generally known to, and not being readily ascertainable by proper
13 means, by other persons who can obtain economic value from its disclo-
14 sure or use; and

15 2. is the subject of efforts that are reasonable under the circum-
16 stances to maintain its secrecy.

17 § 3143. Sunshine in litigation; concealment of public hazards prohib-
18 ited. (a) Except in strict compliance with the provisions of this
19 section, no court shall enter, order or render a judgment in any action
20 or proceeding brought in this state which has the purpose or effect of
21 concealing a public hazard or concealing any pertinent information that
22 would identify a public hazard, nor shall the court enter an order or
23 render a judgment which has the purpose or effect of concealing any
24 information that may be useful to members of the public in protecting
25 their person or property from damage or injury that may result from
26 contact with a public hazard.

27 (b) Trade secrets which are not directly related to public hazards
28 shall be protected and not ordered to be released. In addition, the
29 provisions of this section shall not apply to other information that is
30 confidential because it is privileged under any provision of state or
31 federal law.

32 (c) Any provision of any agreement or contract entered into within
33 this state or pertaining to persons or property within this state, which
34 has the purpose or effect of concealing a public hazard or concealing
35 any information that would identify a public hazard, which information
36 may be useful to members of the public in protecting their person or
37 property from damage or injury resulting from contact with a public
38 hazard, is hereby declared to be void and contrary to public policy, and
39 shall not be enforced by the courts of this state, or otherwise.

40 (d) Any substantially affected person or representative of the estate
41 of such person, including but not limited to a representative of the
42 news media, shall be deemed to have standing to bring an action or
43 proceeding in a court of competent jurisdiction to contest an order,
44 judgment, agreement or contract on the grounds that it violates the
45 provisions of this section requiring disclosure of the existence of a
46 public hazard. Such person may contest such an order, judgment, agree-
47 ment or contract by motion brought before the court that entered the
48 order or judgment.

49 (e) Upon motion and good cause shown by a party attempting to prevent
50 release of information or materials allegedly concealing the existence
51 of a public hazard, including but not limited to disputes wherein such
52 information is alleged to be a trade secret protected by law, the court
53 shall examine the disputed information or materials in camera. If the
54 court determines that the information or materials or portions thereof
55 consist of information concerning a public hazard or information that
56 may be useful to members of the public in protecting themselves from

1 injury to person or property that may result from contact with such a
2 public hazard, the court shall order release of the information or mate-
3 rials. If such release is ordered, the court shall allow release of only
4 that portion of the information or materials necessary or useful to the
5 public in identifying the public hazard, and in protecting their person
6 or property from damage or injury that may result from contact with the
7 public hazard.

8 (f) Any provision of any agreement or contract entered into within
9 this state, or pertaining to persons or property within this state, that
10 has the purpose or effect of concealing information relating to the
11 settlement or resolution of any claim or action against any governmental
12 entity and that may be useful to members of the public in protecting
13 their person or property from damage or injury that may result from
14 contact with a public hazard is hereby declared to be void and contrary
15 to public policy, and shall not be enforced by the courts of this state,
16 or otherwise. Any document, record, contract or agreement relating to
17 any settlement, as set forth in this subdivision, shall be deemed a
18 public record subject to disclosure pursuant to article six of the
19 public officers law. The failure or refusal of any party to an action or
20 proceeding, or other person in custody of such a record, to disclose and
21 provide any document, record, contract or agreement as set forth in this
22 subdivision shall be subject to the sanctions as set forth in article
23 six of the public officers law, pursuant to the applicable law or rule.

24 § 3. This act shall take effect on the thirtieth day after it shall
25 have become a law.