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:

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

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

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

ARTICLE 31-A

SUNSHINE IN LITIGATION ACT

Section 3141. Short title.
3142. Definitions.
3143. Sunshine in litigation; concealment of public hazards prohibited.

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

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

(a) Governmental entity. "Governmental entity" shall mean the state and any county, city, town, village or any other political subdivision 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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authority or other governmental instrumentality of the state or a political subdivision of the state.

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

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

1. derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means, by other persons who can obtain economic value from its disclosure or use; and

2. is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

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

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

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

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

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

injury to person or property that may result from contact with such a public hazard, the court shall order release of the information or materials. If such release is ordered, the court shall allow release of only that portion of the information or materials necessary or useful to the public in identifying the public hazard, and in protecting their person or property from damage or injury that may result from contact with the public hazard.

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

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