

# STATE OF NEW YORK

4235

2019-2020 Regular Sessions

## IN SENATE

March 5, 2019

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed 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

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

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1 of the state, and every department, board, bureau, agency, public  
2 authority or other governmental instrumentality of the state or a poli-  
3 tical subdivision of the state.

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

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

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

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

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

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

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

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

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

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

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

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