

# STATE OF NEW YORK

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7596

2019-2020 Regular Sessions

## IN ASSEMBLY

May 13, 2019

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Introduced by M. of A. WRIGHT, DINOWITZ -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to the waiver of privileges

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

1 Section 1. The civil practice law and rules is amended by adding a new  
2 section 4550 to read as follows:

3 § 4550. Scope of waiver of privileges. (a) When disclosure is made in  
4 an action or to a government office or agency that waives any privilege  
5 provided in this article, or any privilege under subdivision (c) and  
6 paragraph two of subdivision (d) of section three thousand one hundred  
7 one of this chapter, the waiver extends to an undisclosed communication  
8 or information only if: (1) the waiver is intentional; (2) the disclosed  
9 and undisclosed communications or information concern the same subject  
10 matter; and (3) the disclosed and undisclosed communications ought in  
11 fairness to be considered together.

12 (b) When made in an action or to a government office or agency, a  
13 disclosure does not waive any privilege provided in this article, or any  
14 privilege under subdivision (c) and paragraph two of subdivision (d) of  
15 section three thousand one hundred one of this chapter, if: (1) the  
16 disclosure is inadvertent; (2) the holder of the privilege or protection  
17 took reasonable steps to prevent disclosure; and (3) the holder of the  
18 privilege or protection took reasonable steps to rectify the error  
19 unless the party in possession of the disclosure demonstrates that it  
20 will be unduly prejudiced by the nullification of the waiver.

21 § 2. This act shall take effect on the first of January next succeed-  
22 ing the date on which it shall have become a law, and shall apply to all  
23 actions pending on or commenced on or after such effective date.

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

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