

STATE OF NEW YORK

7482

2023-2024 Regular Sessions

IN SENATE

May 31, 2023

Introduced by Sen. RYAN -- 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 waiver of privilege

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. Waiver of privilege. (a) Scope of waiver. Where material
4 protected by subdivision (c) and paragraph two of subdivision (d) of
5 section thirty-one hundred one of this chapter or that is privileged
6 under this article is disclosed in connection with any action or contem-
7 plated action under this chapter, or to any administrative body of the
8 state of New York or any of its subdivisions, and such disclosure waives
9 such privilege or protection, the waiver extends to an undisclosed
10 communication or information only if:

11 1. the waiver is intentional;

12 2. the disclosed and undisclosed communications or information concern
13 the same subject matter; and

14 3. they ought in fairness to be considered together.

15 (b) Inadvertent disclosure. Disclosure that is not intended to waive
16 the privilege shall not waive the privilege if:

17 1. the disclosure is inadvertent;

18 2. the holder of the privilege or protection took reasonable steps to
19 prevent disclosure; and

20 3. the holder promptly took reasonable steps to rectify the error,
21 including (if applicable) notifying the party receiving the material of
22 the claim of privilege and the basis for its assertion.

23 (c) Disclosure not governed by this chapter. When the disclosure is
24 made in an action not governed by this chapter, and is not the subject

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

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1 of an order concerning waiver, the disclosure does not operate as a
2 waiver in an action governed by this chapter if the disclosure:

3 1. would not be a waiver under this section if it had been made in a
4 judicial action governed by this chapter; or

5 2. is not a waiver under the applicable law of where the disclosure
6 occurred.

7 (d) Controlling effect of a court order. In an action governed by this
8 chapter, a court may order that the privilege or protection is not
9 waived by disclosure connected with the litigation pending before the
10 court, in which event the disclosure is also not a waiver in any other
11 action.

12 (e) Controlling effect of a party agreement. An agreement on the
13 effect of disclosure in an action subject to this chapter is binding
14 only on the parties to the agreement, unless it is incorporated into a
15 court order.

16 (f) Nothing in this section shall affect or alter the law with respect
17 to waiver of any privilege not described in subdivision (a) of this
18 section or waiver by means other than disclosure.

19 § 2. This act shall take effect immediately.