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:

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

§ 4550. Waiver of privilege. (a) Scope of waiver. Where material protected by subdivision (c) and paragraph two of subdivision (d) of section thirty-one hundred one of this chapter or that is privileged under this article is disclosed in connection with any action or contemplated action under this chapter, or to any administrative body of the state of New York or any of its subdivisions, and such disclosure waives such privilege or protection, the waiver extends to an undisclosed communication or information only if:

1. the waiver is intentional;

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

3. they ought in fairness to be considered together.

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

1. the disclosure is inadvertent;

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

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

(c) Disclosure not governed by this chapter. When the disclosure is 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.

LBD11680-01-3

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

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

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

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

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

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

§ 2. This act shall take effect immediately.