

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend the Code of Virginia by adding in Article 9 of Chapter 14 of Title 8.01 a section*
3 *numbered 8.01-420.7, relating to limitations on waivers of attorney-client privilege and work product*
4 *protection.*

5 [S 384]

6 Approved

7 **Be it enacted by the General Assembly of Virginia:**

8 **1. That the Code of Virginia is amended by adding in Article 9 of Chapter 14 of Title 8.01 a**
9 **section numbered 8.01-420.7 as follows:**

10 *§ 8.01-420.7. Attorney-client privilege and work product protection; limitations on waiver.*

11 *A. When disclosure of a communication or information covered by the attorney-client privilege or*
12 *work product protection made in a proceeding or to any public body as defined in § 2.2-3701 operates*
13 *as a waiver of the privilege or protection, the waiver extends to an undisclosed communication or*
14 *information only if:*

15 *1. The waiver is intentional;*

16 *2. The disclosed and undisclosed communications or information concern the same subject matter;*
17 *and*

18 *3. The disclosed and undisclosed communications or information ought in fairness be considered*
19 *together.*

20 *B. Disclosure of a communication or information covered by the attorney-client privilege or work*
21 *product protection made in a proceeding or to any public body as defined in § 2.2-3701 does not*
22 *operate as a waiver of the privilege or protection if:*

23 *1. The disclosure is inadvertent;*

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

25 *3. The holder promptly took reasonable steps to rectify the error, including, if applicable, complying*
26 *with the provisions of subdivision (b)(6)(ii) of Rule 4:1 of the Rules of the Supreme Court.*

27 *C. A court may order that the privilege or protection is not waived by the disclosure connected with*
28 *the litigation pending before the court, in which case the disclosure does not operate as a waiver in any*
29 *other proceeding.*

30 *D. An agreement on the effect of the disclosure in a proceeding is binding only on the parties to the*
31 *agreement, unless it is incorporated into a court order.*

32 *E. This section shall not limit any otherwise applicable waiver of attorney-client privilege or work*
33 *product protection by an inmate who files an action challenging his conviction or sentence.*

ENROLLED

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