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SENATE BILL NO. 384

Offered January 13, 2010

Prefiled January 12, 2010

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

Patron—Obenshain

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

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

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

A. When disclosure of a communication or information covered by the attorney-client privilege or work product protection made in a proceeding or to any public body as defined in § 2.2-3701 operates as a waiver of the 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. The disclosed and undisclosed communications or information ought in fairness be considered together.

B. Disclosure of a communication or information covered by the attorney-client privilege or work product protection made in a proceeding or to any public body as defined in § 2.2-3701 does not operate as a waiver of the privilege or protection 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, complying with the provisions of subdivision (b)(6)(ii) of Rule 4:1 of the Rules of the Supreme Court.

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

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

INTRODUCED

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