



## S. 2450 – To amend the Federal Rules of Evidence to address the waiver of attorney-client privilege and the work product doctrine

---

### FLOOR SITUATION

S. 2450 is being considered on the floor under suspension of the rules and will require a two-thirds majority vote for passage. This legislation was introduced by Senator Patrick Leahy (D-VT) on December 11, 2007. The bill passed the Senate by unanimous consent on February 27, 2008.

S. 2450 is expected to be considered on the floor of the House on September 8, 2008.

---

### SUMMARY

S. 2450 amends the Federal Rules of Evidence regarding the disclosure of communication or information covered under attorney-client privilege and work product protection. This bill clarifies that when a disclosure is made in a federal proceeding, and waives the attorney-client privilege or work-product protection, the waiver extends to an undisclosed communication or information in a federal or state proceeding in certain cases. The waiver must be intentional, the disclosed and undisclosed communications or information must concern the same subject matter, and they ought in fairness to be considered together.

S. 2450 provides that if a disclosure is made in a federal proceeding, it does not operate as a waiver in a federal or state proceeding if the disclosure is inadvertent, the holder of the privilege took reasonable steps to prevent disclosure, and the holder promptly took reasonable steps to rectify the error.

Finally, this legislation states that when a disclosure is made in a state proceeding, it does not operate as a waiver in a federal proceeding if the disclosure would not be a waiver under this rule if it had been made in a federal proceeding, or is not waived under law of the state where the disclosure occurred.

---

### BACKGROUND

In recent years, the rise of email and other electronic communication and records have greatly increased the volume of documents which must be reviewed by attorneys during litigation, in order to prevent the unintentional disclosure of information protected by attorney-client privilege. Such review of email and other electronic information has dramatically driven up the time and costs of litigation. This legislation attempts to amend the Federal Rules of Evidence in order to limit the consequences of inadvertent disclosure of privileged information.

The Federal Rules of Evidence were adopted by Congress in 1975 (P.L. 93-595), and govern the admission of evidence in Federal courts. Many states also model their evidence rules after the Federal Rules of Evidence. The Supreme Court is allowed to amend the Rules, subject to Congressional approval.

---

### COST

The Congressional Budget Office (CBO) estimates that implementing S. 2450 “would have no significant effect on the federal budget.” [Full CBO Cost Estimate](#)

---

### STAFF CONTACT

For questions or further information contact Adam Hepburn at 6-2302.