

110TH CONGRESS  
1ST SESSION

# H. R. 3013

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 14, 2007

Received; read twice and referred to the Committee on the Judiciary

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## AN ACT

To provide appropriate protection to attorney-client privileged communications and attorney work product.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Attorney-Client Priva-  
3 lege Protection Act of 2007”.

4 **SEC. 2. FINDINGS AND PURPOSE.**

5 (a) FINDINGS.—Congress finds the following:

6 (1) Justice is served when all parties to litiga-  
7 tion are represented by experienced diligent counsel.

8 (2) Protecting attorney-client privileged commu-  
9 nications from compelled disclosure fosters voluntary  
10 compliance with the law.

11 (3) To serve the purpose of the attorney-client  
12 privilege, attorneys and clients must have a degree  
13 of confidence that they will not be required to dis-  
14 close privileged communications.

15 (4) The ability of an organization to have effec-  
16 tive compliance programs and to conduct com-  
17 prehensive internal investigations is enhanced when  
18 there is clarity and consistency regarding the attor-  
19 ney-client privilege.

20 (5) Prosecutors, investigators, enforcement offi-  
21 cials, and other officers or employees of Government  
22 agencies have been able to, and can continue to, con-  
23 duct their work while respecting attorney-client and  
24 work product protections and the rights of individ-  
25 uals, including seeking and discovering facts crucial  
26 to the investigation and prosecution of organizations.

12 (8) Waiver demands and other tactics of Gov-  
13 ernment agencies are encroaching on the constitu-  
14 tional rights and other legal protections of employ-  
15 ees.

16 (9) The attorney-client privilege, work product  
17 doctrine, and payment of counsel fees shall not be  
18 used as devices to conceal wrongdoing or to cloak  
19 advice on evading the law.

20 (b) PURPOSE.—It is the purpose of this Act to place  
21 on each agency clear and practical limits designed to pre-  
22 serve the attorney-client privilege and work product pro-  
23 tections available to an organization and preserve the con-  
24 stitutional rights and other legal protections available to  
25 employees of such an organization.

1   **SEC. 3. DISCLOSURE OF ATTORNEY-CLIENT PRIVILEGE OR**  
2                   **ADVANCEMENT OF COUNSEL FEES AS ELE-**  
3                   **MENTS OF COOPERATION.**

4       (a) IN GENERAL.—Chapter 201 of title 18, United  
5 States Code, is amended by inserting after section 3013  
6 the following:

7   **“§ 3014. Preservation of fundamental legal protec-**  
8                   **tions and rights in the context of inves-**  
9                   **tigations and enforcement matters re-**  
10                   **garding organizations**

11     “(a) DEFINITIONS.—In this section:

12           “(1) ATTORNEY-CLIENT PRIVILEGE.—The term  
13       ‘attorney-client privilege’ means the attorney-client  
14       privilege as governed by the principles of the com-  
15       mon law, as they may be interpreted by the courts  
16       of the United States in the light of reason and expe-  
17       rience, and the principles of article V of the Federal  
18       Rules of Evidence.

19           “(2) ATTORNEY WORK PRODUCT.—The term  
20       ‘attorney work product’ means materials prepared  
21       by or at the direction of an attorney in anticipation  
22       of litigation, particularly any such materials that  
23       contain a mental impression, conclusion, opinion, or  
24       legal theory of that attorney.

1        “(b) IN GENERAL.—In any Federal investigation or  
2 criminal or civil enforcement matter, an agent or attorney  
3 of the United States shall not—

4            “(1) demand, request, or condition treatment  
5 on the disclosure by an organization, or person affiliated  
6 with that organization, of any communication  
7 protected by the attorney-client privilege or any at-  
8 torney work product;

9            “(2) condition a civil or criminal charging deci-  
10 sion relating to a organization, or person affiliated  
11 with that organization, on, or use as a factor in de-  
12 termining whether an organization, or person affiliated  
13 with that organization, is cooperating with the  
14 Government—

15            “(A) any valid assertion of the attorney-clie-  
16 ent privilege or privilege for attorney work  
17 product;

18            “(B) the provision of counsel to, or con-  
19 tribution to the legal defense fees or expenses  
20 of, an employee of that organization;

21            “(C) the entry into a joint defense, infor-  
22 mation sharing, or common interest agreement  
23 with an employee of that organization if the or-  
24 ganization determines it has a common interest

1           in defending against the investigation or en-  
2           forcement matter;

3           “(D) the sharing of information relevant to  
4           the investigation or enforcement matter with an  
5           employee of that organization; or

6           “(E) a failure to terminate the employ-  
7           ment of or otherwise sanction any employee of  
8           that organization because of the decision by  
9           that employee to exercise the constitutional  
10          rights or other legal protections of that em-  
11          ployee in response to a Government request; or  
12          “(3) demand or request that an organization, or  
13          person affiliated with that organization, not take any  
14          action described in paragraph (2).

15          “(c) INAPPLICABILITY.—Nothing in this Act shall  
16          prohibit an agent or attorney of the United States from  
17          requesting or seeking any communication or material that  
18          such agent or attorney reasonably believes is not entitled  
19          to protection under the attorney-client privilege or attor-  
20          ney work product doctrine.

21          “(d) VOLUNTARY DISCLOSURES.—Nothing in this  
22          Act is intended to prohibit an organization from making,  
23          or an agent or attorney of the United States from accept-  
24          ing, a voluntary and unsolicited offer to share the internal  
25          investigation materials of such organization.

1       “(e) NOT TO AFFECT EXAMINATION OR INSPECTION  
2 ACCESS OTHERWISE PERMITTED.—This Act does not af-  
3 fect any other federal statute that may authorize, in the  
4 course of an examination or inspection, an agent or attor-  
5 ney of the United States to require or compel the produc-  
6 tion of attorney-client privileged material or attorney work  
7 product.

8        “(f) CHARGING DECISIONS NOT TO INCLUDE DEC-  
9    SIONS TO CHARGE UNDER INDEPENDENT PROHIBI-  
10   TIONS.—It is not conditioning a charging decision under  
11   subsection (b)(2) of this section to charge an organization  
12   or person affiliated with that organization for conduct de-  
13   scribed in subparagraph (B), (C), or (D) of that sub-  
14   section under a federal law which makes that conduct in  
15   itself an offense.”.

16 (b) CONFORMING AMENDMENT.—The table of sec-  
17 tions for chapter 201 of title 18, United States Code, is  
18 amended by adding at the end the following:

“3014. Preservation of fundamental legal protections and rights in the context of investigations and enforcement matters regarding organizations.”.

Passed the House of Representatives November 13,  
2007.

Attest: **LORRAINE C. MILLER,**

*Clerk.*