HR 3013 RFS

110th CONGRESS

1st Session

H. R. 3013

IN THE SENATE OF THE UNITED STATES

November 14, 2007

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

AN ACT

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Attorney-Client Privilege Protection Act of 2007'.

SEC. 2. FINDINGS AND PURPOSE.

(a) Findings- Congress finds the following:

(1) Justice is served when all parties to litigation are represented by experienced diligent counsel.

(2) Protecting attorney-client privileged communications from compelled disclosure fosters voluntary compliance with the law.

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

(4) The ability of an organization to have effective compliance programs and to conduct comprehensive internal investigations is enhanced when there is clarity and consistency regarding the attorney-client privilege.

(5) Prosecutors, investigators, enforcement officials, and other officers or

employees of Government agencies have been able to, and can continue to, conduct their work while respecting attorney-client and work product protections and the rights of individuals, including seeking and discovering facts crucial to the investigation and prosecution of organizations.

(6) Despite the existence of these legitimate tools, the Department of Justice and other agencies have increasingly employed tactics that undermine the adversarial system of justice, such as encouraging organizations to waive attorney-client privilege and work product protections to avoid indictment or other sanctions.

(7) An indictment can have devastating consequences on an organization, potentially eliminating the ability of the organization to survive post-indictment or to dispute the charges against it at trial.

(8) Waiver demands and other tactics of Government agencies are encroaching on the constitutional rights and other legal protections of employees.

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

(b) Purpose- It is the purpose of this Act to place on each agency clear and practical limits designed to preserve the attorney-client privilege and work product protections available to an organization and preserve the constitutional rights and other legal protections available to employees of such an organization.

SEC. 3. DISCLOSURE OF ATTORNEY-CLIENT PRIVILEGE OR ADVANCEMENT OF COUNSEL FEES AS ELEMENTS OF COOPERATION.

(a) In General- Chapter 201 of title 18, United States Code, is amended by inserting after section 3013 the following:

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

`(a) Definitions- In this section:

`(1) ATTORNEY-CLIENT PRIVILEGE- The term `attorney-client privilege' means the attorney-client privilege as governed by the principles of the common law, as they may be interpreted by the courts of the United States in the light of reason and experience, and the principles of article V of the Federal Rules of Evidence.

`(2) ATTORNEY WORK PRODUCT- The term `attorney work product' means materials prepared by or at the direction of an attorney in anticipation of litigation, particularly any such materials that contain a mental impression, conclusion, opinion, or legal theory of that attorney.

`(b) In General- In any Federal investigation or criminal or civil enforcement matter, an agent or attorney of the United States shall not--

`(1) demand, request, or condition treatment on the disclosure by an organization, or person affiliated with that organization, of any communication protected by the attorney-client privilege or any attorney work product;

`(2) condition a civil or criminal charging decision relating to a organization, or person affiliated with that organization, on, or use as a factor in determining whether an organization, or person affiliated with that organization, is cooperating with the Government--

`(A) any valid assertion of the attorney-client privilege or privilege for attorney work product;

`(B) the provision of counsel to, or contribution to the legal defense fees or expenses of, an employee of that organization;

`(C) the entry into a joint defense, information sharing, or common interest agreement with an employee of that organization if the organization determines it has a common interest in defending against the investigation or enforcement matter;

`(D) the sharing of information relevant to the investigation or enforcement matter with an employee of that organization; or

`(E) a failure to terminate the employment of or otherwise sanction any employee of that organization because of the decision by that employee to exercise the constitutional rights or other legal protections of that employee in response to a Government request; or

`(3) demand or request that an organization, or person affiliated with that organization, not take any action described in paragraph (2).

`(c) Inapplicability- Nothing in this Act shall prohibit an agent or attorney of the United States from requesting or seeking any communication or material that such agent or attorney reasonably believes is not entitled to protection under the attorney-client privilege or attorney work product doctrine.

`(d) Voluntary Disclosures- Nothing in this Act is intended to prohibit an

organization from making, or an agent or attorney of the United States from accepting, a voluntary and unsolicited offer to share the internal investigation materials of such organization.

`(e) Not to Affect Examination or Inspection Access Otherwise Permitted- This Act does not affect any other federal statute that may authorize, in the course of an examination or inspection, an agent or attorney of the United States to require or compel the production of attorney-client privileged material or attorney work product.

`(f) Charging Decisions Not to Include Decisions to Charge Under Independent Prohibitions- It is not conditioning a charging decision under subsection (b)(2) of this section to charge an organization or person affiliated with that organization for conduct described in subparagraph (B), (C), or (D) of that subsection under a federal law which makes that conduct in itself an offense.'.

(b) Conforming Amendment- The table of sections for chapter 201 of title 18, United States Code, is 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.

END

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