

## CLAYTON ACT

[Chapter 323 of the 63rd Congress; 38 Stat. 730]

[As Amended Through P.L. 108–237, Enacted June 22, 2004]

【Currency: This publication is a compilation of the text of Chapter 363 of the 63rd Congress. It was last amended by the public law listed in the As Amended Through note above and below at the bottom of each page of the pdf version and reflects current law through the date of the enactment of the public law listed at <https://www.govinfo.gov/app/collection/comps/>】

【Note: While this publication does not represent an official version of any Federal statute, substantial efforts have been made to ensure the accuracy of its contents. The official version of Federal law is found in the United States Statutes at Large and in the United States Code. The legal effect to be given to the Statutes at Large and the United States Code is established by statute (1 U.S.C. 112, 204).】

An Act To supplement existing laws against unlawful restraints and monopolies,  
and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) “antitrust laws,” as used herein, includes the Act entitled “An Act to protect trade and commerce against unlawful restraints and monopolies,” approved July second, eighteen hundred and ninety; sections seventy-three to seventy-six, inclusive, of an Act entitled “An Act to reduce taxation, to provide revenue for the Government, and for other purposes,” of August twenty-seventh, eighteen hundred and ninety-four; an Act entitled “An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled ‘An Act to reduce taxation, to provide revenue for the Government, and for other purposes,’ ” approved February twelfth, nineteen hundred and thirteen; and also this Act.

“Commerce,” as used herein, means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided*, That nothing in this Act contained shall apply to the Philippine Islands.

The word “person” or “persons” wherever used in this Act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

(b) This Act may be cited as the "Clayton Act".

[15 U.S.C. 12]

SEC. 2. (a) That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefits of such discrimination, or with customers of either of them: *Provided*, That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered: *Provided, however*, That the Federal Trade Commission may, after due investigation and hearing to all interested parties, fix and establish quantity limits, and revise the same as it finds necessary, as to particular commodities or classes of commodities, where it finds that available purchasers in greater quantities are so few as to render differentials on account thereof unjustly discriminatory or promotive of monopoly in any line of commerce; and the foregoing shall then not be construed to permit differentials based on differences in quantities greater than those so fixed and established: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade: *And provided further*, That nothing herein contained shall prevent price changes from time to time where in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price or services or facilities furnished, the burden of rebutting the prima-facie case thus made by showing justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown, the Commission is authorized to issue an order terminating the discrimination: *Provided, however*, That nothing herein contained shall prevent a seller rebutting the prima-facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.

(c) That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to re-

ceive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(d) That it shall be unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(e) That it shall be unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(f) That it shall be unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by this section.

[15 U.S.C. 13]

SEC. 3. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, for use, consumption or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

[15 U.S.C. 14]

SEC. 4. (a) Except as provided in subsection (b), any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by

him sustained, and the cost of suit, including a reasonable attorney's fee. The court may award under this section, pursuant to a motion by such person promptly made, simple interest on actual damages for the period beginning on the date of service of such person's pleading setting forth a claim under the antitrust laws and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances. In determining whether an award of interest under this section for any period is just in the circumstances, the court shall consider only—

(1) whether such person or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay, or otherwise acted in bad faith;

(2) whether, in the course of the action involved, such person or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings; and

(3) whether such person or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof.

(b)(1) Except as provided in paragraph (2), any person who is a foreign state may not recover under subsection (a) an amount in excess of the actual damages sustained by it and the cost of suit, including a reasonable attorney's fee.

(2) Paragraph (1) shall not apply to a foreign state if—

(A) such foreign state would be denied, under section 1605(a)(2) of title 28 of the United States Code, immunity in a case in which the action is based upon a commercial activity, or an act, that is the subject matter of its claim under this section;

(B) such foreign state waives all defenses based upon or arising out of its status as a foreign state, to any claims brought against it in the same action;

(C) such foreign state engages primarily in commercial activities; and

(D) such foreign state does not function, with respect to the commercial activity, or the act, that is the subject matter of its claim under this section as a procurement entity for itself or for another foreign state.

(c) For purposes of this section—

(1) the term "commercial activity" shall have the meaning given it in section 1603(d) of title 28, United States Code, and

(2) the term "foreign state" shall have the meaning given it in section 1603(a) of title 28, United States Code.

[15 U.S.C. 15]

SEC. 4A. Whenever the United States is hereafter injured in its business or property by reason of anything forbidden in the antitrust laws it may sue therefor in the United States district court for the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall

recover threefold the<sup>1</sup> damages by it sustained and the cost of suit. The court may award under this section, pursuant to a motion by the United States promptly made, simple interest on actual damages for the period beginning on the date of service of the pleading of the United States setting forth a claim under the antitrust laws and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances. In determining whether an award of interest under this section for any period is just in the circumstances, the court shall consider only—

(1) whether the United States or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay or otherwise acted in bad faith;

(2) whether, in the course of the action involved, the United States or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings;

(3) whether the United States or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof; and

(4) whether the award of such interest is necessary to compensate the United States adequately for the injury sustained by the United States.

**[15 U.S.C. 15a]**

SEC. 4B. Any action to enforce any cause of action under section 4, 4A, or 4C shall be forever barred unless commenced within four years after the cause of action accrued. No cause of action barred under existing law on the effective date of this Act shall be revived by this Act.

**[15 U.S.C. 15b]**

#### ACTIONS BY STATE ATTORNEYS GENERAL

SEC. 4C. (a)(1) Any attorney general of a State may bring a civil action in the name of such State, as *parens patriae* on behalf of natural persons residing in such State, in any district court of the United States having jurisdiction of the defendant, to secure monetary relief as provided in this section for injury sustained by such natural persons to their property by reason of any violation of the Sherman Act. The court shall exclude from the amount of monetary relief awarded in such action any amount of monetary relief (A) which duplicates amounts which have been awarded for the same injury, or (B) which is properly allocable to (i) natural persons who have excluded their claims pursuant to subsection (b)(2) of this section, and (ii) any business entity.

(2) The court shall award the State as monetary relief threefold the total damage sustained as described in paragraph (1) of

<sup>1</sup> Section 5 of Public Law 101-588 (104 Stat. 2880) strikes "actual" and inserts "threefold the". The word "actual" appears two times, but has been executed only the first place it appears.

this subsection, and the cost of suit, including a reasonable attorney's fee. The court may award under this paragraph, pursuant to a motion by such State promptly made, simple interest on the total damage for the period beginning on the date of service of such State's pleading setting forth a claim under the antitrust laws and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances. In determining whether an award of interest under this paragraph for any period is just in the circumstances, the court shall consider only—

(A) whether such State or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay or otherwise acted in bad faith;

(B) whether, in the course of the action involved, such State or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings; and

(C) whether such State or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof.

(b)(1) In any action brought under subsection (a)(1) of this section, the State attorney general shall, at such times, in such manner, and with such content as the court may direct, cause notice thereof to be given by publication. If the court finds that notice given solely by publication would deny due process of law to any person or persons, the court may direct further notice to such person or persons according to the circumstances of the case.

(2) Any person on whose behalf an action is brought under subsection (a)(1) may elect to exclude from adjudication the portion of the State claim for monetary relief attributable to him by filing notice of such election with the court within such time as specified in the notice given pursuant to paragraph (1) of this subsection.

(3) The final judgment in an action under subsection (a)(1) shall be res judicata as to any claim under section 4 of this Act by any person on behalf of whom such action was brought and who fails to give such notice within the period specified in the notice given pursuant to paragraph (1) of this subsection.

(c) An action under subsection (a)(1) shall not be dismissed or compromised without the approval of the court, and notice of any proposed dismissal or compromise shall be given in such manner as the court directs.

(d) In any action under subsection (a)—

(1) the amount of the plaintiffs' attorney's fee, if any, shall be determined by the court; and

(2) the court may, in its discretion, award a reasonable attorney's fee to a prevailing defendant upon a finding that the State attorney general has acted in bad faith, vexatiously, wantonly, or for oppressive reasons.

[15 U.S.C. 15c]

## MEASUREMENT OF DAMAGES

SEC. 4D. In any action under section 4C(a)(1), in which there has been a determination that a defendant agreed to fix prices in violation of the Sherman Act, damages may be proved and assessed in the aggregate by statistical or sampling methods, by the computation of illegal overcharges, or by such other reasonable system of estimating aggregate damages as the court in its discretion may permit without the necessity of separately proving the individual claim of, or amount of damage to, persons on whose behalf the suit was brought.

【15 U.S.C. 15d】

## DISTRIBUTION OF DAMAGES

SEC. 4E. Monetary relief recovered in an action under section 4C(a)(1) shall—

(1) be distributed in such manner as the district court in its discretion may authorize; or

(2) be deemed a civil penalty by the court and deposited with the State as general revenues;

subject in either case to the requirement that any distribution procedure adopted afford each person a reasonable opportunity to secure his appropriate portion of the net monetary relief.

【15 U.S.C. 15e】

## ACTIONS BY ATTORNEY GENERAL OF THE UNITED STATES

SEC. 4F. (a) Whenever the Attorney General of the United States has brought an action under the antitrust laws, and he has reason to believe that any State attorney general would be entitled to bring an action under this Act based substantially on the same alleged violation of the antitrust laws, he shall promptly give written notification thereof to such State attorney general.

(b) To assist a State attorney general in evaluating the notice or in bringing any action under this Act, the Attorney General of the United States shall, upon request by such State attorney general, make available to him, to the extent permitted by law, any investigative files or other materials which are or may be relevant or material to the actual or potential cause of action under this Act.

【15 U.S.C. 15f】

## DEFINITIONS

SEC. 4G. For the purposes of sections 4C, 4D, 4E, and 4F of this Act:

(1) The term “State attorney general” means the chief legal officer of a State, or any other person authorized by State law to bring actions under section 4C of this Act, and includes the Corporation Counsel of the District of Columbia, except that such term does not include any person employed or retained on—

(A) a contingency fee based on a percentage of the monetary relief awarded under this section; or

- (B) any other contingency fee basis, unless the amount of the award of a reasonable attorney's fee to a prevailing plaintiff is determined by the court under section 4C(d)(1).
- (2) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.
- (3) The term "natural persons" does not include proprietorships or partnerships.

[15 U.S.C. 15g]

APPLICABILITY OF PARENS PATRIAE ACTIONS

SEC. 4H. Sections 4C, 4D, 4E, 4F, and 4G shall apply in any State, unless such State provides by law for its nonapplicability in such State.

[15 U.S.C. 15h]

SEC. 5. (a) A final judgment or decree heretofore or hereafter rendered in any civil or criminal proceeding brought by or on behalf of the United States under the antitrust laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any action or proceeding brought by any other party against such defendant under said laws as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: *Provided*, That this section shall not apply to consent judgments or decrees entered before any testimony has been taken. Nothing contained in this section shall be construed to impose any limitation on the application of collateral estoppel, except that, in any action or proceeding brought under the antitrust laws, collateral estoppel effect shall not be given to any finding made by the Federal Trade Commission under the antitrust laws or under section 5 of the Federal Trade Commission Act which could give rise to a claim for relief under the antitrust laws.

(b) Any proposal for a consent judgment submitted by the United States for entry in any civil proceeding brought by or on behalf of the United States under the antitrust laws shall be filed with the district court before which such proceeding is pending and published by the United States in the Federal Register at least 60 days prior to the effective date of such judgment. Any written comments relating to such proposal and any responses by the United States thereto, shall also be filed with such district court and published by the United States in the Federal Register within such sixty-day period. Copies of such proposal and any other materials and documents which the United States considered determinative in formulating such proposal, shall also be made available to the public at the district court and in such other districts as the court may subsequently direct. Simultaneously with the filing of such proposal, unless otherwise instructed by the court, the United States shall file with the district court, publish in the Federal Register, and thereafter furnish to any person upon request, a competitive impact statement which shall recite—

- (1) the nature and purpose of the proceeding;
- (2) a description of the practices or events giving rise to the alleged violation of the antitrust laws;

(3) an explanation of the proposal for a consent judgment, including an explanation of any unusual circumstances giving rise to such proposal or any provision contained therein, relief to be obtained thereby, and the anticipated effects on competition of such relief;

(4) the remedies available to potential private plaintiffs damaged by the alleged violation in the event that such proposal for the consent judgment is entered in such proceeding;

(5) a description of the procedures available for modification of such proposal; and

(6) a description and evaluation of alternatives to such proposal actually considered by the United States.

(c) the United States shall also cause to be published, commencing at least 60 days prior to the effective date of the judgment described in subsection (b) of this section, for 7 days over a period of 2 weeks in newspapers of general circulation of the district in which the case has been filed, in the District of Columbia, and in such other districts as the court may direct—

(i) a summary of the terms of the proposal for the consent judgment,

(ii) a summary of the competitive impact statement filed under subsection (b),

(iii) and a list of the materials and documents under subsection (b) which the United States shall make available for purposes of meaningful public comment, and the place where such materials and documents are available for public inspection.

(d) during the 60-day period as specified in subsection (b) of this section, and such additional time as the United States may request and the court may grant, the United States shall receive and consider any written comments relating to the proposal for the consent judgment submitted under subsection (b). the Attorney General or his designee shall establish procedures to carry out the provisions of this subsection, but such 60-day time period shall not be shortened except by order of the district court upon a showing that (1) extraordinary circumstances require such shortening and (2) such shortening is not adverse to the public interest. At the close of the period during which such comments may be received, the United States shall file with the district court and cause to be published in the Federal Register a response to such comments. Upon application by the United States, the district court may, for good cause (based on a finding that the expense of publication in the Federal Register exceeds the public interest benefits to be gained from such publication), authorize an alternative method of public dissemination of the public comments received and the response to those comments.

(e)(1) Before entering any consent judgment proposed by the United States under this section, the court shall determine that entry of such judgment is in the public interest. For the purpose of such determination, the court shall consider—

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and

modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

(2) Nothing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.

(f) In making its determination under subsection (e), the court may—

(1) take testimony of Government officials or experts or such other expert witnesses, upon motion of any party or participant or upon its own motion, as the court may deem appropriate;

(2) appoint a special master and such outside consultants or expert witnesses as the court may deem appropriate; and request and obtain the views, evaluations, or advice of any individual, group or agency of government with respect to any aspects of the proposed judgment or the effect of such judgment, in such manner as the court deems appropriate;

(3) authorize full or limited participation in proceedings before the court by interested persons or agencies, including appearance *amicus curiae*, intervention as a party pursuant to the Federal Rules of Civil Procedure, examination of witnesses or documentary materials, or participation in any other manner and extent which serves the public interest as the court may deem appropriate.

(4) review any comments including any objections filed with the United States under subsection (d) concerning the proposed judgment and the responses of the United States to such comments and objections; and

(5) take such other action in the public interest as the court may deem appropriate.

(g) Not later than 10 days following the date of the filing of any proposal for a consent judgment under subsection (b), each defendant shall file with the district court a description of any and all written or oral communications by or on behalf of such defendant, including any and all written or oral communications on behalf of such defendant by any officer, director, employee, or agent of such defendant, or other person, with any officer or employee of the United States concerning or relevant to such proposal, except that any such communications made by counsel of record alone with the Attorney General or the employees of the Department of Justice alone shall be excluded from the requirements of this subsection. Prior to the entry of any consent judgment pursuant to the anti-trust laws, each defendant shall certify to the district court that the requirements of this subsection have been complied with and

that such filing is a true and complete description of such communications known to the defendant or which the defendant reasonably should have known.

(h) Proceedings before the district court under subsections (e) and (f) of this section, and the competitive impact statement filed under subsection (b) of this section, shall not be admissible against any defendant in any action or proceeding brought by any other party against such defendant under the antitrust laws or by the United States under section 4A of this Act nor constitute a basis for the introduction of the consent judgment as prima facie evidence against such defendant in any such action or proceeding.

(i) Whenever any civil or criminal proceeding is instituted by the United States to prevent, restrain, or punish violations of any of the antitrust laws, but not including an action under section 4A, the running of the statute of limitations in respect of every private or State right of action arising under said laws and based in whole or in part on any matter complained of in said proceeding shall be suspended during the pendency thereof and for one year thereafter: *Provided, however,* That whenever the running of the statute of limitations in respect of a cause of action arising under section 4 or 4C is suspended hereunder, any action to enforce such cause of action shall be forever barred unless commenced either within the period of suspension or within four years after the cause of action accrued.

【15 U.S.C. 16】

SEC. 6. that<sup>2</sup> the labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

【15 U.S.C. 17】

SEC. 7. That no person engaged in commerce or in any activity affecting commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another person engaged also in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

No person shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of one or more persons engaged in commerce or in any activity affecting commerce, where in any line of commerce, or in any activity affecting commerce in any section

<sup>2</sup> So in original.

of the country, the effect of such acquisition, of such stocks or assets, or of the use of such stock by the voting or granting of proxies or otherwise, may be substantially to lessen competition, or to tend to create a monopoly.

This section shall not apply to persons purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce or in any activity affecting commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*, That nothing in this section shall be held or construed to authorize or made lawful anything heretofore prohibited or made illegal by the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Nothing contained in this section shall apply to transactions duly consummated pursuant to authority given by the Secretary of Transportation, Federal Power Commission, Surface Transportation Board, the Securities and Exchange Commission in the exercise of its jurisdiction under section 10 of the Public Utility Holding Company Act of 1935, the United States Maritime Commission, or the Secretary of Agriculture under any statutory provision vesting such power in such Commission, Board, or Secretary.

[15 U.S.C. 18]

SEC. 7A. (a) Except as exempted pursuant to subsection (c), no person shall acquire, directly or indirectly, any voting securities or assets of any other person, unless both persons (or in the case of a tender offer, the acquiring person) file notification pursuant to rules under subsection (d)(1) and the waiting period described in subsection (b)(1) has expired, if—

(1) the acquiring person, or the person whose voting securities or assets are being acquired, is engaged in commerce or in any activity affecting commerce; and

(2) as a result of such acquisition, the acquiring person would hold an aggregate total amount of the voting securities and assets of the acquired person—

(A) in excess of \$200,000,000 (as adjusted and published for each fiscal year beginning after September 30, 2004, in the same manner as provided in section 8(a)(5) to reflect the percentage change in the gross national product for such fiscal year compared to the gross national product for the year ending September 30, 2003); or

(B)(i) in excess of \$50,000,000 (as so adjusted and published) but not in excess of \$200,000,000 (as so adjusted and published); and

(ii)(I) any voting securities or assets of a person engaged in manufacturing which has annual net sales or total assets of \$10,000,000 (as so adjusted and published) or more are being acquired by any person which has total assets or annual net sales of \$100,000,000 (as so adjusted and published) or more;

(II) any voting securities or assets of a person not engaged in manufacturing which has total assets of \$10,000,000 (as so adjusted and published) or more are being acquired by any person which has total assets or annual net sales of \$100,000,000 (as so adjusted and published) or more; or

(III) any voting securities or assets of a person with annual net sales or total assets of \$100,000,000 (as so adjusted and published) or more are being acquired by any person with total assets or annual net sales of \$10,000,000 (as so adjusted and published) or more.

In the case of a tender offer, the person whose voting securities are sought to be acquired by a person required to file notification under this subsection shall file notification pursuant to rules under subsection (d).

(b)(1) The waiting period required under subsection (a) shall—

(A) begin on the date of the receipt by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (hereinafter referred to in this section as the “Assistant Attorney General”) of—

(i) the completed notification required under subsection (a), or

(ii) if such notification is not completed, the notification to the extent completed and a statement of the reasons for such noncompliance,

from both persons, or, in the case of a tender offer, the acquiring person; and

(B) end on the thirtieth day after the date of such receipt (or in the case of a cash tender offer, the fifteenth day), or on such later date as may be set under subsection (e)(2) or (g)(2).

(2) The Federal Trade Commission and the Assistant Attorney General may, in individual cases, terminate the waiting period

specified in paragraph (1) and allow any person to proceed with any acquisition subject to this section, and promptly shall cause to be published in the Federal Register a notice that neither intends to take any action within such period with respect to such acquisition.

(3) As used in this section—

(A) The term “voting securities” means any securities which at present or upon conversion entitle the owner or holder thereof to vote for the election of directors of the issuer or, with respect to unincorporated issuers, persons exercising similar functions.

(B) The amount or percentage of voting securities or assets of a person which are acquired or held by another person shall be determined by aggregating the amount or percentage of such voting securities or assets held or acquired by such other person and each affiliate thereof.

(c) The following classes of transactions are exempt from the requirements of this section—

(1) acquisitions of goods or realty transferred in the ordinary course of business;

(2) acquisitions of bonds, mortgages, deeds of trust, or other obligations which are not voting securities;

(3) acquisitions of voting securities of an issuer at least 50 per centum of the voting securities of which are owned by the acquiring person prior to such acquisition;

(4) transfers to or from a Federal agency or a State or political subdivision thereof;

(5) transactions specifically exempted from the antitrust laws by Federal statute;

(6) transactions specifically exempted from the antitrust laws by Federal statute if approved by a Federal agency, if copies of all information and documentary material filed with such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General;

(7) transactions which require agency approval under section 10(e) of the Home Owners’ Loan Act,<sup>3</sup> section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)), or section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842), except that a portion of a transaction is not exempt under this paragraph if such portion of the transaction (A) is subject to section 4(k) of the Bank Holding Company Act of 1956; and (B) does not require agency approval under section 3 of the Bank Holding Company Act of 1956;

(8) transactions which require agency approval under section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843) or section 5 of the Home Owners’ Loan Act of 1933<sup>4</sup> (12 U.S.C. 1464), if copies of all information and documentary material filed with any such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General at least 30 days prior to consummation of the proposed transaction, except that a portion of a transaction is not

<sup>3</sup> 12 U.S.C. 1467a.

<sup>4</sup> So in law. This reference to “Home Owners’ Loan Act of 1933” probably should be to “Home Owners’ Loan Act”. See section 301 of Public Law 101-73 (103 Stat. 277).

exempt under this paragraph if such portion of the transaction (A) is subject to section 4(k) of the Bank Holding Company Act of 1956; and (B) does not require agency approval under section 4 of the Bank Holding Company Act of 1956;

(9) acquisitions, solely for the purpose of investment, of voting securities, if, as a result of such acquisition, the securities acquired or held do not exceed 10 per centum of the outstanding voting securities of the issuer;

(10) acquisitions of voting securities, if, as a result of such acquisition, the voting securities acquired do not increase, directly or indirectly, the acquiring person's per centum share of outstanding voting securities of the issuer;

(11) acquisitions, solely for the purpose of investment, by any bank, banking association, trust company, investment company, or insurance company, of (A) voting securities pursuant to a plan of reorganization or dissolution; or (B) assets in the ordinary course of its business; and

(12) such other acquisitions, transfers, or transactions, as may be exempted under subsection (d)(2)(B).

(d) The Federal Trade Commission, with the concurrence of the Assistant Attorney General and by rule in accordance with section 553 of title 5, United States Code, consistent with the purposes of this section—

(1) shall require that the notification required under subsection (a) be in such form and contain such documentary material and information relevant to a proposed acquisition as is necessary and appropriate to enable the Federal Trade Commission and the Assistant Attorney General to determine whether such acquisition may, if consummated, violate the antitrust laws; and

(2) may—

(A) define the terms used in this section;

(B) exempt, from the requirements of this section, classes of persons, acquisitions, transfers, or transactions which are not likely to violate the antitrust laws; and

(C) prescribe such other rules as may be necessary and appropriate to carry out the purposes of this section.

(e)(1)(A) The Federal Trade Commission or the Assistant Attorney General may, prior to the expiration of the 30-day waiting period (or in the case of a cash tender offer, the 15-day waiting period) specified in subsection (b)(1) of this section, require the submission of additional information or documentary material relevant to the proposed acquisition, from a person required to file notification with respect to such acquisition under subsection (a) of this section prior to the expiration of the waiting period specified in subsection (b)(1) of this section, or from any officer, director, partner, agent, or employee of such person.

(B)(i) The Assistant Attorney General and the Federal Trade Commission shall each designate a senior official who does not have direct responsibility for the review of any enforcement recommendation under this section concerning the transaction at issue, to hear any petition filed by such person to determine—

(I) whether the request for additional information or documentary material is unreasonably cumulative, unduly burdensome, or duplicative; or

(II) whether the request for additional information or documentary material has been substantially complied with by the petitioning person.

(ii) Internal review procedures for petitions filed pursuant to clause (i) shall include reasonable deadlines for expedited review of such petitions, after reasonable negotiations with investigative staff, in order to avoid undue delay of the merger review process.

(iii) Not later than 90 days after the date of the enactment of this Act<sup>5</sup>, the Assistant Attorney General and the Federal Trade Commission shall conduct an internal review and implement reforms of the merger review process in order to eliminate unnecessary burden, remove costly duplication, and eliminate undue delay, in order to achieve a more effective and more efficient merger review process.

(iv) Not later than 120 days after the date of enactment of this Act<sup>5</sup>, the Assistant Attorney General and the Federal Trade Commission shall issue or amend their respective industry guidance, regulations, operating manuals and relevant policy documents, to the extent appropriate, to implement each reform in this subparagraph.

(v) Not later than 180 days after the date the of enactment of this Act<sup>5</sup>, the Assistant Attorney General and the Federal Trade Commission shall each report to Congress—

(I) which reforms each agency has adopted under this subparagraph;

(II) which steps each has taken to implement such internal reforms; and

(III) the effects of such reforms.

(2) The Federal Trade Commission or the Assistant Attorney General, in its or his discretion, may extend the 30-day waiting period (or in the case of a cash tender offer, the 15-day waiting period) specified in subsection (b)(1) of this section for an additional period of not more than 30 days (or in the case of a cash tender offer, 10 days) after the date on which the Federal Trade Commission or the Assistant Attorney General, as the case may be, receives from any person to whom a request is made under paragraph (1), or in the case of tender offers, the acquiring person, (A) all the information and documentary material required to be submitted pursuant to such a request, or (B) if such request is not fully complied with, the information and documentary material submitted and a statement of the reasons for such noncompliance. Such additional period may be further extended only by the United States district court, upon an application by the Federal Trade Commission or the Assistant Attorney General pursuant to subsection (g)(2).

<sup>5</sup>This subparagraph was added by section 603(c)(2) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2001 (114 Stat. 2762A-110), as contained in and enacted by the reference to H. R. 5547 as introduced on October 27, 2000, made by section 1(a)(2) of Public Law 106-553 (114 Stat. 2762). References to the “date of the enactment of this Act” in clauses (iii), (iv), and (v) of this subparagraph should be references to the date of the enactment of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2001; that date of enactment is December 21, 2001.

(f) If a proceeding is instituted or an action is filed by the Federal Trade Commission, alleging that a proposed acquisition violates section 7 of this Act or section 5 of the Federal Trade Commission Act, or an action is filed by the United States, alleging that a proposed acquisition violates such section 7 or section 1 or 2 of the Sherman Act, and the Federal Trade Commission or the Assistant Attorney General (1) files a motion for a preliminary injunction against consummation of such acquisition pendente lite, and (2) certifies the United States district court for the judicial district within which the respondent resides or carries on business, or in which the action is brought, that it or he believes that the public interest requires relief pendente lite pursuant to this subsection, then upon the filing of such motion and certification, the chief judge of such district court shall immediately notify the chief judge of the United States court of appeals for the circuit in which such district court is located, who shall designate a United States district judge to whom such action shall be assigned for all purposes.

(g)(1) Any person, or any officer, director, or partner thereof, who fails to comply with any provision of this section shall be liable to the United States for a civil penalty of not more than \$10,000 for each day during which such person is in violation of this section. Such penalty may be recovered in a civil action brought by the United States.

(2) If any person, or any officer, director, partner, agent, or employee thereof, fails substantially to comply with the notification requirement under subsection (a) or any request for the submission of additional information or documentary material under subsection (e)(1) of this section within the waiting period specified in subsection (b)(1) and as may be extended under subsection (e)(2), the United States district court—

(A) may order compliance;

(B) shall extend the waiting period specified in subsection (b)(1) and as may have been extended under subsection (e)(2) until there has been substantial compliance, except that, in the case of a tender offer, the court may not extend such waiting period on the basis of a failure, by the person whose stock is sought to be acquired, to comply substantially with such notification requirement or any such request; and

(C) may grant such other equitable relief as the court in its discretion determines necessary or appropriate, upon application of the Federal Trade Commission or the Assistant Attorney General.

(h) Any information or documentary material filed with the Assistant Attorney General or the Federal Trade Commission pursuant to this section shall be exempt from disclosure under section 552 of title 5, United States Code, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this section is intended to prevent disclosure to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

(i)(1) Any action taken by the Federal Trade Commission or the Assistant Attorney General or any failure of the Federal Trade Commission or the Assistant Attorney General to take any action

under this section shall not bar any proceeding or any action with respect to such acquisition at any time under any other section of this Act or any other provision of law.

(2) Nothing contained in this section shall limit the authority of the Assistant Attorney General or the Federal Trade Commission to secure at any time from any person documentary material, oral testimony, or other information under the Antitrust Civil Process Act, the Federal Trade Commission Act, or any other provision of law.

(j) Beginning not later than January 1, 1978, the Federal Trade Commission, with the concurrence of the Assistant Attorney General, shall annually report to the Congress on the operation of this section. Such report shall include an assessment of the effects of this section, of the effects, purpose, and need for any rules promulgated pursuant thereto, and any recommendations for revisions of this section.

(k) If the end of any period of time provided in this section falls on a Saturday, Sunday, or legal public holiday (as defined in section 6103(a) of title 5 of the United States Code), then such period shall be extended to the end of the next day that is not a Saturday, Sunday, or legal public holiday.

[15 U.S.C. 18a]

SEC. 8. (a)(1) No person shall, at the same time, serve as a director or officer in any two corporations (other than banks, banking associations, and trust companies) that are—

(A) engaged in whole or in part in commerce; and

(B) by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the antitrust laws;

if each of the corporations has capital, surplus, and undivided profits aggregating more than \$10,000,000 as adjusted pursuant to paragraph (5) of this subsection.

(2) Notwithstanding the provisions of paragraph (1), simultaneous service as a director or officer in any two corporations shall not be prohibited by this section if—

(A) the competitive sales of either corporation are less than \$1,000,000, as adjusted pursuant to paragraph (5) of this subsection;

(B) the competitive sales of either corporation are less than 2 per centum of that corporation's total sales; or

(C) the competitive sales of each corporation are less than 4 per centum of that corporation's total sales.

For purposes of this paragraph, "competitive sales" means the gross revenues for all products and services sold by one corporation in competition with the other, determined on the basis of annual gross revenues for such products and services in that corporation's last completed fiscal year. For the purposes of this paragraph, "total sales" means the gross revenues for all products and services sold by one corporation over that corporation's last completed fiscal year.

(3) The eligibility of a director or officer under the provisions of paragraph (1) shall be determined by the capital, surplus and

undivided profits, exclusive of dividends declared but not paid to stockholders, of each corporation at the end of that corporation's last completed fiscal year.

(4) For purposes of this section, the term "officer" means an officer elected or chosen by the Board of Directors.

(5) For each fiscal year commencing after September 30, 1990, the \$10,000,000 and \$1,000,000 thresholds in this subsection shall be increased (or decreased) as of October 1 each year by an amount equal to the percentage increase (or decrease) in the gross national product, as determined by the Department of Commerce or its successor, for the year then ended over the level so established for the year ending September 30, 1989. As soon as practicable, but not later than January 31 of each year, the Federal Trade Commission shall publish the adjusted amounts required by this paragraph.

(b) When any person elected or chosen as a director or officer of any corporation subject to the provisions hereof is eligible at the time of his election or selection to act for such corporation in such capacity, his eligibility to act in such capacity shall not be affected by any of the provisions hereof by reason of any change in the capital, surplus and undivided profits, or affairs of such corporation from whatever cause, until the expiration of one year from the date on which the event causing ineligibility occurred.

【15 U.S.C. 19】

SEC. 9.<sup>6</sup>

【Section 10 is repealed by P.L. 101-588, sec. 3, 104 Stat. 2880.】

SEC. 11. (a) That authority to enforce compliance with sections 2, 3, 7, and 8 of this Act by the persons respectively subject thereto is hereby vested in the Surface Transportation Board where applicable to common carriers subject to jurisdiction under subtitle IV of title 49, United States Code; in the Federal Communications Commission where applicable to common carriers engaged in wire or radio communication or radio transmission of energy; in the Secretary of Transportation where applicable to air carriers and foreign air carriers subject to the Federal Aviation Act of 1958; in the Federal Reserve Board where applicable to banks, banking associations, and trust companies; and in the Federal Trade Commission where applicable to all other character of commerce to be exercised as follows:

(b) Whenever the Commission, Board, or Secretary vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections 2, 3, 7, and 8 of this Act, it shall issue and serve upon such person and the Attorney General a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission, Board, or Secretary requiring such person to cease and desist from the violation of the law so charged in said complaint. The Attorney General shall have the

<sup>6</sup> Repealed by the Act of June 25, 1948, chap. 645, sec. 21 (62 Stat. 862).

right to intervene and appear in said proceeding and any person may make application, and upon good cause shown may be allowed by the Commission, Board, or Secretary, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission, Board, or Secretary. If upon such hearing the Commission, Board, or Secretary, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing, in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock, or other share capital, or assets, held or rid itself of the directors chosen contrary to the provisions of sections 7 and 8 of this Act, if any there be, in the manner and within the time fixed by said order. Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until the record in the proceeding has been filed in a court of appeals of the United States, as hereinafter provided, the Commission, Board, or Secretary may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section. After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, the Commission, Board, or Secretary may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any report or order made or issued by it under this section, whenever in the opinion of the Commission, Board, or Secretary conditions of fact or of law have so changed as to require such action or if the public interest shall so require: *Provided, however,* That the said person may, within sixty days after service upon him or it of said report or order entered after such a reopening, obtain a review thereof in the appropriate court of appeals of the United States, in the manner provided in subsection (c) of this section.

(c) Any person required by such order of the commission, board, or Secretary to cease and desist from any such violation may obtain a review of such order in the court of appeals of the United States for any circuit within which such violation occurred or within which such person resides or carries on business, by filing in the court, within sixty days after the date of the service of such order, a written petition praying that the order of the commission, board, or Secretary be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the commission, board, or Secretary, and thereupon the commission, board, or Secretary shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon such filing of the petition the court shall have jurisdiction of the proceeding and of the question determined therein concurrently with the commission, board, or Secretary until the filing of the record, and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the commission, board, or Secretary, and enforcing the same to the extent that such order is affirmed, and to issue

such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pendente lite. The findings of the commission, board, or Secretary as to the facts, if supported by substantial evidence, shall be conclusive. To the extent that the order of the commission, board, or Secretary is affirmed, the court shall issue its own order commanding obedience to the terms of such order of the commission, board, or Secretary. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, board, or Secretary, the court may order such additional evidence to be taken before the commission, board, or Secretary, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission, board, or Secretary may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and shall file such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28 of the United States Code.

(d) Upon the filing of the record with it the jurisdiction of the court of appeals to affirm, enforce, modify, or set aside orders of the commission, board, or Secretary shall be exclusive.

(e) No order of the commission, board, or Secretary or judgment of the court to enforce the same shall in anywise relieve or absolve any person from any liability under the antitrust laws.

(f) Complaints, orders, and other processes of the commission, board, or Secretary under this section may be served by anyone duly authorized by the commission, board, or Secretary, either (1) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (2) by leaving a copy thereof at the residence or the principal office or place of business of such person; or (3) by mailing by registered or certified mail a copy thereof addressed to such person at his or its residence or principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post office receipt for said complaint, order, or other process mailed by registered or certified mail as aforesaid shall be proof of the service of the same.

(g) Any order issued under subsection (b) shall become final—

(1) upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; but the commission, board, or Secretary may thereafter modify or set aside its order to the extent provided in the last sentence of subsection (b); or

(2) upon the expiration of the time allowed for filing a petition for certiorari, if the order of the commission, board, or Sec-

retary has been affirmed, or the petition for review has been dismissed by the court of appeals, and no petition for certiorari has been duly filed; or

(3) upon the denial of a petition for certiorari, if the order of the commission, board, or Secretary has been affirmed or the petition for review has been dismissed by the court of appeals; or

(4) upon the expiration of thirty days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the order of the commission, board, or Secretary be affirmed or the petition for review be dismissed.

(h) If the Supreme Court directs that the order of the commission, board, or Secretary be modified or set aside, the order of the commission, board, or Secretary rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of thirty days from the time it was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected to accord with the mandate, in which event the order of the commission, board, or Secretary shall become final when so corrected.

(i) If the order of the commission, board, or Secretary is modified or set aside by the court of appeals, and if (1) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the commission, board, or Secretary rendered in accordance with the mandate of the court of appeals shall become final on the expiration of thirty days from the time such order of the commission, board, or Secretary was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected so that it will accord with the mandate, in which event the order of the commission, board, or Secretary shall become final when so corrected.

(j) If the Supreme Court orders a rehearing; or if the case is remanded by the court of appeals to the commission, board, or Secretary for a rehearing, and if (1) the time allowed for filing a petition for certiorari has expired, and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the commission, board, or Secretary rendered upon such rehearing shall become final in the same manner as though no prior order of the commission, board, or Secretary had been rendered.

(k) As used in this section the term "mandate", in case a mandate has been recalled prior to the expiration of thirty days from the date of issuance thereof, means the final mandate.

(l) Any person who violates any order issued by the commission, board, or Secretary under subsection (b) after such order has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than \$5,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the United States. Each separate violation of any such order shall be a separate offense, except that in the case of a violation through continuing failure or neglect

to obey a final order of the commission, board, or Secretary each day of continuance of such failure or neglect shall be deemed a separate offense.

【15 U.S.C. 21】

SEC. 12. That any suit, action, or proceeding under the anti-trust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

【15 U.S.C. 22】

SEC. 13. That in any suit, action, or proceeding brought by or on behalf of the United States subpoenas for witnesses who are required to attend a court of the United States in any judicial district in any case, civil or criminal, arising under the antitrust laws may run into any other district: *Provided*, That in civil cases no writ of subpoena shall issue for witnesses living out of the district in which the court is held at a greater distance than one hundred miles from the place of holding the same without the permission of the trial court being first had upon proper application and cause shown.

【15 U.S.C. 23】

SEC. 14. That whenever a corporation shall violate any of the penal provisions of the antitrust laws, such violation shall be deemed to be also that of the individual directors, officers, or agents of such corporation who shall have authorized, ordered, or done any of the acts constituting in whole or in part such violation, and such violation shall be deemed a misdemeanor, and upon conviction therefor of any such director, officer, or agent he shall be punished by a fine of not exceeding \$5,000 or by imprisonment for not exceeding one year, or by both, in the discretion of the court.

【15 U.S.C. 24】

SEC. 15. That the several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this Act, and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition, and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. Whenever it shall appear to the court before which any such proceeding may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not, and subpoenas to that end may be served in any district by the marshal thereof.

【15 U.S.C. 25】

SEC. 16. That any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections two, three, seven and eight of this Act, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: *Provided*, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit for injunctive relief against any common carrier subject to the jurisdiction of the Surface Transportation Board under subtitle IV of title 49, United States Code. In any action under this section in which the plaintiff substantially prevails, the court shall award the cost of suit, including a reasonable attorney's fee, to such plaintiff.

【15 U.S.C. 26】

SEC. 17.<sup>7</sup>

SEC. 18.<sup>7</sup>

SEC. 19.<sup>7</sup>

SEC. 20. That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this

<sup>7</sup> Repealed by the Act of June 25, 1948, chap. 646, sec. 39, 62 Stat. 992.

paragraph be considered or held to be violations of any law of the United States.

[29 U.S.C. 52]

SEC. 21.<sup>8</sup>

SEC. 22.<sup>8</sup>

SEC. 23.<sup>8</sup>

SEC. 24.<sup>8</sup>

SEC. 25.<sup>9</sup>

SEC. 26. (a) Except as provided in subsection (b), it shall be unlawful for any person engaged in commerce, in the course of such commerce, directly or indirectly to impose any condition, restriction, agreement, or understanding that—

(1) limits the use of credit instruments in any transaction concerning the sale, resale, or transfer of gasohol or other synthetic motor fuel of equivalent usability in any case in which there is no similar limitation on transactions concerning such person's conventional motor fuel; or

(2) otherwise unreasonably discriminates against or unreasonably limits the sale, resale, or transfer of gasohol or other synthetic motor fuel of equivalent usability in any case in which such synthetic or conventional motor fuel is sold for use, consumption, or resale within the United States.

(b)(1) Nothing in this section or in any other provision of law in effect on the date of the enactment of this Act<sup>9</sup> which is specifically applicable to the sale of petroleum products shall preclude any person referred to in subsection (a) from imposing a reasonable fee for credit on the sale, resale, or transfer of the gasohol or other synthetic motor fuel referred to in subsection (a) if such fee equals no more than the actual costs to such person of extending that credit.

(2) The prohibitions in this section shall not apply to any person who makes available sufficient supplies of gasohol and other synthetic motor fuels of equivalent usability to satisfy his customers' needs for such products, if the gasohol and other synthetic fuels are made available on terms and conditions which are equivalent to the terms and conditions on which such person's conventional motor fuel products are made available.

(3) Nothing in this section shall—

(A) preclude any person referred to in subsection (a) from requiring reasonable labeling of pumps dispensing the gasohol or other synthetic motor fuel referred to in subsection (a) to indicate, as appropriate, that such gasohol or other synthetic motor fuel is not manufactured, distributed, or sold by such person;

(B) preclude such person from issuing appropriate disclaimers of product liability for damage resulting from use of the gasohol or other synthetic motor fuel;

(C) require such person to provide advertising support for the gasohol or other synthetic motor fuel; or

(D) require such person to furnish or provide, at such person's own expense, any additional pumps, tanks, or other re-

<sup>8</sup> Repealed by the Act of June 25, 1948, chap. 645, sec. 21, 62 Stat. 862.

<sup>9</sup> So in original. See Pub. L. 96-493, sec. 2, December 2, 1980, 94 Stat. 2568.

lated facilities required for the sale of the gasohol or other synthetic motor fuel.

(c) As used in this section, “United States” includes the several States, the District of Columbia, any territory of the United States, and any insular possession or other place under the jurisdiction of the United States.

[15 U.S.C. 26a]

SEC. 27. (a) Subject to subsections (b) through (d), the conduct, acts, practices, or agreements of persons in the business of organized professional major league baseball directly relating to or affecting employment of major league baseball players to play baseball at the major league level are subject to the antitrust laws to the same extent such conduct, acts, practices, or agreements would be subject to the antitrust laws if engaged in by persons in any other professional sports business affecting interstate commerce.

(b) No court shall rely on the enactment of this section as a basis for changing the application of the antitrust laws to any conduct, acts, practices, or agreements other than those set forth in subsection (a). This section does not create, permit or imply a cause of action by which to challenge under the antitrust laws, or otherwise apply the antitrust laws to, any conduct, acts, practices, or agreements that do not directly relate to or affect employment of major league baseball players to play baseball at the major league level, including but not limited to—

(1) any conduct, acts, practices, or agreements of persons engaging in, conducting or participating in the business of organized professional baseball relating to or affecting employment to play baseball at the minor league level, any organized professional baseball amateur or first-year player draft, or any reserve clause as applied to minor league players;

(2) the agreement between organized professional major league baseball teams and the teams of the National Association of Professional Baseball Leagues, commonly known as the “Professional Baseball Agreement”, the relationship between organized professional major league baseball and organized professional minor league baseball, or any other matter relating to organized professional baseball’s minor leagues;

(3) any conduct, acts, practices, or agreements of persons engaging in, conducting or participating in the business of organized professional baseball relating to or affecting franchise expansion, location or relocation, franchise ownership issues, including ownership transfers, the relationship between the Office of the Commissioner and franchise owners, the marketing or sales of the entertainment product of organized professional baseball and the licensing of intellectual property rights owned or held by organized professional baseball teams individually or collectively;

(4) any conduct, acts, practices, or agreements protected by Public Law 87–331 (15 U.S.C. § 1291 et seq.) (commonly known as the “Sports Broadcasting Act of 1961”);

(5) the relationship between persons in the business of organized professional baseball and umpires or other individuals

who are employed in the business of organized professional baseball by such persons; or

(6) any conduct, acts, practices, or agreements of persons not in the business of organized professional major league baseball.

(c) Only a major league baseball player has standing to sue under this section. For the purposes of this section, a major league baseball player is—

(1) a person who is a party to a major league player's contract, or is playing baseball at the major league level; or

(2) a person who was a party to a major league player's contract or playing baseball at the major league level at the time of the injury that is the subject of the complaint; or

(3) a person who has been a party to a major league player's contract or who has played baseball at the major league level, and who claims he has been injured in his efforts to secure a subsequent major league player's contract by an alleged violation of the antitrust laws: *Provided however*, That for the purposes of this paragraph, the alleged antitrust violation shall not include any conduct, acts, practices, or agreements of persons in the business of organized professional baseball relating to or affecting employment to play baseball at the minor league level, including any organized professional baseball amateur or first-year player draft, or any reserve clause as applied to minor league players; or

(4) a person who was a party to a major league player's contract or who was playing baseball at the major league level at the conclusion of the last full championship season immediately preceding the expiration of the last collective bargaining agreement between persons in the business of organized professional major league baseball and the exclusive collective bargaining representative of major league baseball players.

(d)(1) As used in this section, "person" means any entity, including an individual, partnership, corporation, trust or unincorporated association or any combination or association thereof. As used in this section, the National Association of Professional Baseball Leagues, its member leagues and the clubs of those leagues, are not "in the business of organized professional major league baseball".

(2) In cases involving conduct, acts, practices, or agreements that directly relate to or affect both employment of major league baseball players to play baseball at the major league level and also relate to or affect any other aspect of organized professional baseball, including but not limited to employment to play baseball at the minor league level and the other areas set forth in subsection (b), only those components, portions or aspects of such conduct, acts, practices, or agreements that directly relate to or affect employment of major league players to play baseball at the major league level may be challenged under subsection (a) and then only to the extent that they directly relate to or affect employment of major league baseball players to play baseball at the major league level.

(3) As used in subsection (a), interpretation of the term “directly” shall not be governed by any interpretation of section 151<sup>10</sup> et seq. of title 29, United States Code (as amended).

(4) Nothing in this section shall be construed to affect the application to organized professional baseball of the nonstatutory labor exemption from the antitrust laws.

(5) The scope of the conduct, acts, practices, or agreements covered by subsection (b) shall not be strictly or narrowly construed.

**[15 U.S.C. 26b]**

**SEC. 28.** If any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

**[15 U.S.C. 27]**

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<sup>10</sup>So in original. Probably should be “section 2 of the National Labor relations Act”.