

Public Law 98-462
98th Congress

An Act

To promote research and development, encourage innovation, stimulate trade, and make necessary and appropriate modifications in the operation of the antitrust laws.

Oct. 11, 1984
[S. 1841]

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

National
Cooperative
Research Act of
1984.

SHORT TITLE

SECTION 1. This Act may be cited as the "National Cooperative Research Act of 1984".

15 USC 4301
note.

DEFINITIONS

SEC. 2. (a) For purposes of this Act:

15 USC 4301.

(1) The term "antitrust laws" has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that such section 5 applies to unfair methods of competition.

(2) The term "Attorney General" means the Attorney General of the United States.

(3) The term "Commission" means the Federal Trade Commission.

(4) The term "person" has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)).

(5) The term "State" has the meaning given it in section 4G(2) of the Clayton Act (15 U.S.C. 15g(2)).

(6) The term "joint research and development venture" means any group of activities, including attempting to make, making, or performing a contract, by two or more persons for the purpose of—

(A) theoretical analysis, experimentation, or systematic study of phenomena or observable facts,

(B) the development or testing of basic engineering techniques,

(C) the extension of investigative findings or theory of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, prototypes, equipment, materials, and processes,

(D) the collection, exchange, and analysis of research information, or

(E) any combination of the purposes specified in subparagraphs (A), (B), (C), and (D),

and may include the establishment and operation of facilities for the conducting of research, the conducting of such venture on a protected and proprietary basis, and the prosecuting of applications for patents and the granting of licenses for the

results of such venture, but does not include any activity specified in subsection (b).

(b) The term "joint research and development venture" excludes the following activities involving two or more persons:

(1) exchanging information among competitors relating to costs, sales, profitability, prices, marketing, or distribution of any product, process, or service that is not reasonably required to conduct the research and development that is the purpose of such venture,

(2) entering into any agreement or engaging in any other conduct restricting, requiring, or otherwise involving the production or marketing by any person who is a party to such venture of any product, process, or service, other than the production or marketing of proprietary information developed through such venture, such as patents and trade secrets, and

(3) entering into any agreement or engaging in any other conduct—

(A) to restrict or require the sale, licensing, or sharing of inventions or developments not developed through such venture, or

(B) to restrict or require participation by such party in other research and development activities, that is not reasonably required to prevent misappropriation of proprietary information contributed by any person who is a party to such venture or of the results of such venture.

RULE OF REASON STANDARD

15 USC 4302.

SEC. 3. In any action under the antitrust laws, or under any State law similar to the antitrust laws, the conduct of any person in making or performing a contract to carry out a joint research and development venture shall not be deemed illegal per se; such conduct shall be judged on the basis of its reasonableness, taking into account all relevant factors affecting competition, including, but not limited to, effects on competition in properly defined, relevant research and development markets.

LIMITATION ON RECOVERY

Claims.
15 USC 4303.

SEC. 4. (a) Notwithstanding section 4 of the Clayton Act (15 U.S.C. 15) and in lieu of the relief specified in such section, any person who is entitled to recovery on a claim under such section shall recover the actual damages sustained by such person, interest calculated at the rate specified in section 1961 of title 28, United States Code, on such actual damages as specified in subsection (d), and the cost of suit attributable to such claim, including a reasonable attorney's fee pursuant to section 5 of this Act if such claim—

(1) results from conduct that is within the scope of a notification that has been filed under section 6(a) of this Act for a joint research and development venture, and

(2) is filed after such notification becomes effective pursuant to section 6(c) of this Act.

(b) Notwithstanding section 4C of the Clayton Act (15 U.S.C. 15c), and in lieu of the relief specified in such section, any State that is entitled to monetary relief on a claim under such section shall recover the total damage sustained as described in subsection (a)(1) of such section, interest calculated at the rate specified in section

1961 of title 28, United States Code, on such total damage as specified in subsection (d), and the cost of suit attributable to such claim, including a reasonable attorney's fee pursuant to section 4C of the Clayton Act if such claim—

15 USC 15c.

(1) results from conduct that is within the scope of a notification that has been filed under section 6(a) of this Act for a joint research and development venture, and

(2) is filed after such notification becomes effective pursuant to section 6(c) of this Act.

(c) Notwithstanding any provision of any State law providing damages for conduct similar to that forbidden by the antitrust laws, any person who is entitled to recovery on a claim under such provision shall not recover in excess of the actual damages sustained by such person, interest calculated at the rate specified in section 1961 of title 28, United States Code, on such actual damages as specified in subsection (d), and the cost of suit attributable to such claim, including a reasonable attorney's fee pursuant to section 5 of this Act if such claim—

(1) results from conduct that is within the scope of a notification that has been filed under section 6(a) of this Act for a joint research and development venture, and

(2) is filed after notification has become effective pursuant to section 6(c) of this Act.

(d) Interest shall be awarded on the damages involved for the period beginning on the earliest date for which injury can be established and ending on the date of judgment, unless the court finds that the award of all or part of such interest is unjust in the circumstances.

(e) This section shall be applicable only if the challenged conduct of a person defending against a claim is not in violation of any decree or order, entered or issued after the effective date of this Act, in any case or proceeding under the antitrust laws or any State law similar to the antitrust laws challenging such conduct as part of a joint research and development venture.

ATTORNEY'S FEES

SEC. 5. (a) Notwithstanding sections 4 and 16 of the Clayton Act, in any claim under the antitrust laws, or any State law similar to the antitrust laws, based on the conducting of a joint research and development venture, the court shall, at the conclusion of the action—

15 USC 4304.
15 USC 15, 26.

(1) award to a substantially prevailing claimant the cost of suit attributable to such claim, including a reasonable attorney's fee, or

(2) award to a substantially prevailing party defending against any such claim the cost of suit attributable to such claim, including a reasonable attorney's fee, if the claim, or the claimant's conduct during the litigation of the claim, was frivolous, unreasonable, without foundation, or in bad faith.

(b) The award made under subsection (a) may be offset in whole or in part by an award in favor of any other party for any part of the cost of suit, including a reasonable attorney's fee, attributable to conduct during the litigation by any prevailing party that the court finds to be frivolous, unreasonable, without foundation, or in bad faith.

DISCLOSURE OF JOINT RESEARCH AND DEVELOPMENT VENTURE

15 USC 4305.

SEC. 6. (a) Any party to a joint research and development venture, acting on such venture's behalf, may, not later than 90 days after entering into a written agreement to form such venture or not later than 90 days after the date of the enactment of this Act, whichever is later, file simultaneously with the Attorney General and the Commission a written notification disclosing—

- (1) the identities of the parties to such venture, and
- (2) the nature and objectives of such venture.

Any party to such venture, acting on such venture's behalf, may file additional disclosure notifications pursuant to this section as are appropriate to extend the protections of section 4. In order to maintain the protections of section 4, such venture shall, not later than 90 days after a change in its membership, file simultaneously with the Attorney General and the Commission a written notification disclosing such change.

Federal
Register,
publication.

(b) Except as provided in subsection (e), not later than 30 days after receiving a notification filed under subsection (a), the Attorney General or the Commission shall publish in the Federal Register a notice with respect to such venture that identifies the parties to such venture and that describes in general terms the area of planned activity of such venture. Prior to its publication, the contents of such notice shall be made available to the parties to such venture.

(c) If with respect to a notification filed under subsection (a), notice is published in the Federal Register, then such notification shall operate to convey the protections of section 4 as of the earlier of—

- (1) the date of publication of notice under subsection (b), or
- (2) if such notice is not so published within the time required by subsection (b), after the expiration of the 30-day period beginning on the date the Attorney General or the Commission receives the applicable information described in subsection (a).

Public informa-
tion.
Confidentiality.

(d) Except with respect to the information published pursuant to subsection (b)—

- (1) all information and documentary material submitted as part of a notification filed pursuant to this section, and

(2) all other information obtained by the Attorney General or the Commission in the course of any investigation, administrative proceeding, or case, with respect to a potential violation of the antitrust laws by the joint research and development venture with respect to which such notification was filed, shall be exempt from disclosure under section 552 of title 5, United States Code, and shall not be made publicly available by any agency of the United States to which such section applies except in a judicial or administrative proceeding in which such information and material is subject to any protective order.

(e) Any person who files a notification pursuant to this section may withdraw such notification before notice of the joint research and development venture involved is published under subsection (b). Any notification so withdrawn shall not be subject to subsection (b) and shall not confer the protections of section 4 on any person with respect to whom such notification was filed.

(f) Any action taken or not taken by the Attorney General or the Commission with respect to notifications filed pursuant to this section shall not be subject to judicial review.

(g)(1) Except as provided in paragraph (2), for the sole purpose of establishing that a person is entitled to the protections of section 4, the fact of disclosure of conduct under section 6(a) and the fact of publication of a notice under section 6(b) shall be admissible into evidence in any judicial or administrative proceeding.

(2) No action by the Attorney General or the Commission taken pursuant to this section shall be admissible into evidence in any such proceeding for the purpose of supporting or answering any claim under the antitrust laws or under any State law similar to the antitrust laws.

Approved October 11, 1984.

LEGISLATIVE HISTORY—S. 1841 (H.R. 5041):

HOUSE REPORTS: No. 98-1044 (Comm. of Conference) and No. 98-656 accompanying

H.R. 5041 (Comm. on the Judiciary).

SENATE REPORT No. 98-427 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 130 (1984):

May 1, H.R. 5041 considered and passed House.

July 31, considered and passed Senate.

Aug. 9, considered and passed House, amended, in lieu of H.R. 5041.

Sept. 26, Senate agreed to conference report.

Oct. 1, House agreed to conference report.