

117TH CONGRESS
1ST SESSION

S. 2039

To improve the antitrust laws, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 14, 2021

Mr. LEE (for himself and Mr. GRASSLEY) introduced the following bill; which
was read twice and referred to the Committee on the Judiciary

A BILL

To improve the antitrust laws, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Tougher Enforcement
5 Against Monopolists Act” or the “TEAM Act”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. Definitions.

TITLE I—ONE AGENCY

Sec. 101. Short title.
Sec. 102. Findings.
Sec. 103. Definitions.

- Sec. 104. Transfer of antitrust enforcement functions from the Federal Trade Commission to the Department of Justice.
- Sec. 105. Removal of review authority from Federal Communications Commission and State entities.
- Sec. 106. Technical and conforming amendments.
- Sec. 107. Effective date.

TITLE II—MERGERS

- Sec. 201. Premerger notification filing fees.
- Sec. 202. Merger presumptions.
- Sec. 203. Merger notification requirements.

TITLE III—COMPETITION POLICY

- Sec. 301. Competitive impact statement.
- Sec. 302. Written explanations of enforcement and non-enforcement actions.
- Sec. 303. Studies.
- Sec. 304. Monopsony guidelines.

TITLE IV—RESTORING BOARD IMMUNITY

- Sec. 401. Short title.
- Sec. 402. Statement of findings and purpose.
- Sec. 403. Definitions.
- Sec. 404. Antitrust immunity.
- Sec. 405. Active supervision.
- Sec. 406. Judicial review.

TITLE V—OTHER IMPROVEMENTS TO ANTITRUST LAWS

- Sec. 501. Overturning Illinois Brick and Hanover Shoe.
- Sec. 502. Limitations on implied immunity from the antitrust laws.
- Sec. 503. Prejudgment interest.
- Sec. 504. Safe harbor for efforts to facilitate data portability and interoperability.
- Sec. 505. Study of assigning all antitrust cases to certain district courts of the United States.
- Sec. 506. Balancing harm and benefits.
- Sec. 507. Actions on behalf of consumers under Sherman Act.
- Sec. 508. Civil fines for knowing violations of the antitrust laws.
- Sec. 509. Direct evidence of intent to avoid or restrict competition.
- Sec. 510. Limit on contracting.
- Sec. 511. Prohibiting discrimination in distribution.
- Sec. 512. Authorizations of appropriations.

1 **SEC. 3. DEFINITIONS.**

2 In this Act:

- 3 (1) ANTITRUST LAWS.—The term “antitrust
- 4 laws” means—

1 (A) the Sherman Act (15 U.S.C. 1 et seq.);

2 and

3 (B) the Clayton Act (15 U.S.C. 12 et

4 seq.).

5 (2) ASSISTANT ATTORNEY GENERAL.—The

6 term “Assistant Attorney General” means the As-

7 sistant Attorney General for the Antitrust Division

8 of the Department of Justice.

9 (3) EXECUTIVE AGENCY.—The term “Executive

10 agency” has the meaning given that term in section

11 105 of title 5, United States Code.

12 **TITLE I—ONE AGENCY**

13 **SEC. 101. SHORT TITLE.**

14 This title may be cited as the “One Agency Act”.

15 **SEC. 102. FINDINGS.**

16 Congress finds the following:

17 (1) It is the policy of the United States to pro-

18 mote the vigorous, effective, and efficient enforce-

19 ment of the antitrust laws.

20 (2) The overlapping antitrust enforcement ju-

21 risdiction of the Department of Justice and the Fed-

22 eral Trade Commission has wasted taxpayer re-

23 sources, hampered enforcement efforts, and caused

24 uncertainty for businesses and consumers in the

25 United States.

1 (3) It is preferable that primary Federal re-
 2 sponsibility for enforcing the antitrust laws of the
 3 United States be given to a single agency, and the
 4 Department of Justice is best suited to do so.

5 **SEC. 103. DEFINITIONS.**

6 In this title:

7 (1) COMMISSION.—The term “Commission”
 8 means the Federal Trade Commission.

9 (2) EFFECTIVE DATE.—The term “effective
 10 date” means the date described in section 107.

11 (3) FTC ANTITRUST ACTION.—The term “FTC
 12 antitrust action” means any litigation or administra-
 13 tive proceeding initiated by the Commission that—

14 (A) is supervised by an FTC Antitrust
 15 Unit; or

16 (B) relates to the antitrust laws or section
 17 5 of the Federal Trade Commission Act (15
 18 U.S.C. 45), as in effect on the day before the
 19 effective date.

20 (4) FTC ANTITRUST ASSETS.—The term “FTC
 21 antitrust assets”—

22 (A) means all electronic or tangible records
 23 and files relating to matters supervised, as well
 24 as any physical assets or equipment owned and

1 used or retained, by an FTC Antitrust Unit;
2 and

3 (B) does not include any office space or
4 leased facilities or equipment.

5 (5) FTC ANTITRUST EMPLOYEE.—The term
6 “FTC antitrust employee” means an individual who
7 on the day before the effective date is employed by
8 the Federal Trade Commission and assigned to an
9 FTC Antitrust Unit.

10 (6) FTC ANTITRUST FUNCTION.—The term
11 “FTC antitrust function” means a function of the
12 Commission relating to the antitrust laws or unfair
13 methods of competition under section 5 of the Fed-
14 eral Trade Commission Act (15 U.S.C. 45), as in ef-
15 fect on the day before the effective date.

16 (7) FTC ANTITRUST FUNDING.—The term
17 “FTC antitrust funding” means—

18 (A) all amounts appropriated before the ef-
19 fective date by an Act of Congress to the Fed-
20 eral Trade Commission that are designated, by
21 Congress or the Commission, for an FTC Anti-
22 trust Unit; and

23 (B) all fees collected by the Federal Trade
24 Commission before the effective date under sec-

1 tion 7A of the Clayton Act (15 U.S.C. 18a) and
2 rules issued under that section.

3 (8) FTC ANTITRUST UNIT.—The term “FTC
4 Antitrust Unit” means—

5 (A) the Bureau of Competition of the
6 Commission; and

7 (B) each division of the Bureau of Eco-
8 nomics of the Commission that is designated to
9 work on FTC antitrust actions.

10 (9) FUNCTION.—The term “function” means
11 any duty, obligation, power, authority, responsibility,
12 right, privilege, activity, or program.

13 (10) TRANSITION PERIOD.—The term “transi-
14 tion period” means the period beginning on the ef-
15 fective date of this title and ending on the later of—

16 (A) the date that is 1 year after the effec-
17 tive date of this title; or

18 (B) the date that is 180 days after the
19 date described in subparagraph (A), which may
20 be extended by the Assistant Attorney General
21 once for an additional 180 days, if the Assist-
22 ant Attorney General determines that a period
23 longer than the period described in subpara-
24 graph (A) is necessary to avoid harm to the in-

1 terests of the United States or the effective en-
2 forcement of the antitrust laws.

3 **SEC. 104. TRANSFER OF ANTITRUST ENFORCEMENT FUNC-**
4 **TIONS FROM THE FEDERAL TRADE COMMIS-**
5 **SION TO THE DEPARTMENT OF JUSTICE.**

6 (a) TRANSFER OF FUNCTIONS.—

7 (1) IN GENERAL.—Except as provided in para-
8 graph (3)(D), there shall be transferred to the De-
9 partment of Justice all FTC antitrust functions,
10 FTC antitrust employees, FTC antitrust assets, and
11 FTC antitrust funding on the earlier of—

12 (A) the date determined by the Assistant
13 Attorney General under paragraph (2)(B); or

14 (B) the end of the transition period.

15 (2) REQUIREMENT.—The Assistant Attorney
16 General, taking care to minimize disruption to ongo-
17 ing enforcement matters and in consultation as nec-
18 essary with the Attorney General, the Office of Per-
19 sonnel Management, the General Services Adminis-
20 tration, and the Chairman of the Commission,
21 shall—

22 (A) take all necessary actions to complete
23 implementation of this title before the end of
24 the transition period; and

1 (B) determine the dates certain, which
2 may not be earlier than the effective date nor
3 later than the end of the transition period, on
4 which the transfers under paragraph (1) shall
5 occur.

6 (3) PERSONNEL.—

7 (A) ASSIGNMENT.—An FTC antitrust em-
8 ployee transferred to the Department of Justice
9 under this title shall be assigned to the Anti-
10 trust Division of the Department of Justice.

11 (B) EFFECT ON PERSONNEL.—Except as
12 provided in subparagraph (C), the transfer
13 under this title of an FTC antitrust employee
14 shall not cause the employee to be separated or
15 reduced in grade or compensation for 1 year
16 after the transfer date.

17 (C) EXECUTIVE SCHEDULE.—Notwith-
18 standing subparagraph (B), the Assistant At-
19 torney General may appoint an FTC antitrust
20 employee in a Senior Executive Service position,
21 as defined in section 3132 of title 5, United
22 States Code, to a position within the Antitrust
23 Division rate payable for a position at level 15,
24 step 10 of the General Schedule.

1 (D) VOLUNTARY NONTRANSFER OF PER-
2 SONNEL.—Notwithstanding paragraph (1), an
3 FTC antitrust employee may, with the consent
4 of the Chairman of the Commission, elect to re-
5 main an employee of the Commission assigned
6 to a non-FTC Antitrust Unit.

7 (E) OFFICE SPACE.—Upon request from
8 the Assistant Attorney General, and in con-
9 sultation as necessary with the General Services
10 Administration, the Commission shall allow the
11 Department of Justice to use any office space
12 or leased facilities previously used by FTC anti-
13 trust employees until such time as the Depart-
14 ment of Justice may provide its own office
15 space or facilities. After the transfer of FTC
16 antitrust funding to the Department of Justice,
17 the Department of Justice shall compensate the
18 Commission for the costs of the use of such of-
19 fice space or leased facilities.

20 (F) RESTRUCTURING.—Notwithstanding
21 any other provision of law, the Assistant Attor-
22 ney General is authorized to restructure the
23 Antitrust Division before the expiration of the
24 transition period, as the Assistant Attorney
25 General determines is appropriate, to carry out

the purposes of this title and accomplish the efficient enforcement of the antitrust laws.

(4) ANTITRUST ACTIONS.—

(A) IN GENERAL.—As soon as is reasonably practicable during the transition period, all open investigations, litigations, matters, or other proceedings being supervised by an FTC antitrust unit and relating to the antitrust laws or unfair methods of competition under section 5 of the Federal Trade Commission Act (15 U.S.C. 45), as in effect on the day before the effective date, shall be transferred to and assumed by the Department of Justice.

(B) HANDLING OF CERTAIN ADMINISTRATIVE PROCEEDINGS.—Administrative proceedings that were initiated by the Commission, were unresolved as of the first day of the transition period, and relate to enforcement of the antitrust laws or unfair methods of competition under section 5 of the Federal Trade Commission Act (15 U.S.C. 45), as in effect on the day before the effective date, shall be treated in the following manner:

(i) Any such proceeding pending before an administrative law judge shall be

1 dismissed without prejudice and the matter
2 shall be referred to the Assistant Attorney
3 General.

4 (ii) For any such proceeding pending
5 on appeal before the Commission, the ad-
6 ministrative appeal shall cease, the ruling
7 of the administrative law judge shall be
8 treated as the final decision of the Com-
9 mission, and the Court of Appeals for the
10 District of Columbia Circuit shall have ju-
11 risdiction over any appeal therefrom.

12 (C) INTERVENTION.—

13 (i) IN GENERAL.—In any FTC anti-
14 trust action before a court of the United
15 States as of the first day of the transition
16 period, the court shall allow the Depart-
17 ment of Justice to—

18 (I) intervene and assume rep-
19 resentation of the Federal Govern-
20 ment from the Commission; and

21 (II) amend any complaint origi-
22 nally brought by the Commission for
23 the purpose of alleging violations of
24 statutes other than the Federal Trade

1 Commission Act as necessary and
2 where appropriate.

3 (ii) SCHEDULING ORDER UPON RE-
4 QUEST.—Upon the request of the Commis-
5 sion or the Department of Justice, and in
6 consultation with all parties to the matter,
7 the court shall issue an order making such
8 scheduling adjustments as necessary to fa-
9 cilitate the transfer of prosecutorial re-
10 sponsibilities under this subparagraph.

11 (D) CONSENT DECREES.—At the end of
12 the transition period, the Department of Justice
13 shall have sole authority to enforce violations
14 of, approve modifications to, or rescind any con-
15 sent decree entered into by the Commission be-
16 fore the effective date that concerns conduct al-
17 leged to violate the antitrust laws or unfair
18 methods of competition under section 5 of the
19 Federal Trade Commission Act (15 U.S.C. 45),
20 as in effect on the day before the effective date.

21 (5) AUTHORITY TO CONDUCT INVESTIGATIVE
22 STUDIES.—

23 (A) REPORTS OF PERSONS, PARTNER-
24 SHIPS, AND CORPORATIONS.—

1 (i) IN GENERAL.—The Department of
2 Justice may require, by general or special
3 orders, persons, partnerships, and corpora-
4 tions, engaged in or whose business affects
5 commerce to file with the Department in
6 such form as the Department may pre-
7 scribe annual or special reports or answers
8 in writing to specific questions, furnishing
9 to the Department such information as the
10 Department may require as to the organi-
11 zation, business, conduct, practices, man-
12 agement, and relation to other corpora-
13 tions, partnerships, and individuals of the
14 respective persons, partnerships, and cor-
15 porations filing such reports or answers in
16 writing.

17 (ii) OATH.—Reports and answers re-
18 quired under clause (i) shall—

19 (I) be made under oath or other-
20 wise as the Department may pre-
21 scribe;

22 (II) pertain solely to competition
23 or the application of the antitrust
24 laws; and

1 (III) be filed with the Depart-
2 ment within such reasonable period as
3 the Department may prescribe, unless
4 additional time be granted in any case
5 by the Department.

6 (B) PUBLICATION OF INFORMATION OR
7 REPORTS.—

8 (i) IN GENERAL.—Except as provided
9 in clause (ii), the Department of Justice—

10 (I) shall make public from time
11 to time such portions of the informa-
12 tion obtained by the Department
13 under this paragraph as are in the
14 public interest;

15 (II) may make annual and spe-
16 cial reports to Congress that include
17 recommendations for additional legis-
18 lation; and

19 (III) shall provide for the publi-
20 cation of reports and decisions of the
21 Department in such form and manner
22 as may be best adapted for public in-
23 formation and use.

1 (ii) PROHIBITION AGAINST PUBLICA-
2 TION OF PRIVILEGED OR CONFIDENTIAL
3 INFORMATION.—

4 (I) IN GENERAL.—Except as pro-
5 vided in subclause (II), the Depart-
6 ment of Justice shall not make public
7 any trade secret or any commercial or
8 financial information that is obtained
9 from any person and that is privileged
10 or confidential.

11 (II) EXCEPTION.—The Depart-
12 ment may disclose information de-
13 scribed in subclause (I) to—

14 (aa) officers and employees
15 of appropriate Federal law en-
16 forcement agencies or to any offi-
17 cer or employee of any State law
18 enforcement agency upon the
19 prior certification of an officer of
20 any such Federal or State law
21 enforcement agency that such in-
22 formation will be maintained in
23 confidence and will be used only
24 for official law enforcement pur-
25 poses; or

(bb) any officer or employee of any foreign law enforcement agency under the same circumstances that making material available to foreign law enforcement agencies is permitted under section 21(b) of the Federal Trade Commission Act (15 U.S.C. 57b–2(b)).

(6) BENEFIT OF ANTITRUST DIVISION.—All FTC antitrust assets and FTC antitrust funding transferred under this subsection shall be for the exclusive use and benefit of the Antitrust Division of the Department of Justice.

(b) TRANSITION PERIOD.—

(1) IN GENERAL.—Except as provided in paragraph (2), beginning on the effective date, the Commission may not—

(A) hire or assign an employee to an FTC Antitrust Unit;

(B) open a new investigation or matter within an FTC Antitrust Unit or relating to antitrust enforcement;

(C) without the approval of the Assistant Attorney General, enter into a consent decree,

1 enter into a settlement agreement, or otherwise
2 resolve an FTC antitrust action; or

3 (D) initiate a new FTC antitrust action.

4 (2) ENFORCEMENT ON BEHALF OF THE DE-
5 PARTMENT OF JUSTICE.—Notwithstanding para-
6 graph (1), during the transition period, the Assist-
7 ant Attorney General may deputize an FTC Anti-
8 trust Employee to investigate or prosecute an al-
9 leged violation of the antitrust laws on behalf of the
10 Department of Justice before the completion of the
11 transfer of personnel under subsection (a)(3).

12 (3) SAME RIGHTS AND OBLIGATIONS.—

13 (A) IN GENERAL.—Notwithstanding any
14 other provision of law, during the transition pe-
15 riod all Department of Justice employees under
16 the supervision of the Assistant Attorney Gen-
17 eral shall have the same rights and obligations
18 with respect to confidential information sub-
19 mitted to the Commission as FTC antitrust em-
20 ployees on the day before the effective date.

21 (B) RULE OF CONSTRUCTION.—Nothing in
22 this paragraph may be construed as implying
23 any change to the rights and obligations de-
24 scribed in subparagraph (A) as a result of this
25 title.

1 (c) AGREEMENTS.—The Assistant Attorney General,
 2 in consultation with the Chairman of the Commission,
 3 shall—

4 (1) review any agreements between the Com-
 5 mission and any other Federal agency or any foreign
 6 law enforcement agency; and

7 (2) before the end of the transition period, seek
 8 to amend, transfer, or rescind such agreements as
 9 necessary and appropriate to carry out this title, en-
 10 deavoring to complete such amendment, transfer, or
 11 rescindment with all due haste.

12 (d) RULES.—The Attorney General shall, pursuant
 13 to section 7A of the Clayton Act (15 U.S.C. 18a) and in
 14 accordance with section 553 of title 5, United States Code,
 15 prescribe or amend any rules as necessary to carry out
 16 this title.

17 **SEC. 105. REMOVAL OF REVIEW AUTHORITY FROM FED-**
 18 **ERAL COMMUNICATIONS COMMISSION AND**
 19 **STATE ENTITIES.**

20 (a) DEFINITIONS.—In this section—

21 (1) the term “covered transaction” means any
 22 acquisition, assignment, or transfer of control of—

23 (A) any license, authorization, or line sub-
 24 ject to the jurisdiction of the Communications
 25 Act of 1934 (47 U.S.C. 151 et seq.); or

1 (B) any authorization, certificate, fran-
 2 chise, or other instrument issued by a State
 3 commission or franchising authority; and

4 (2) the terms “State commission” and “fran-
 5 chising authority” have the meanings given those
 6 terms in sections 3 and 602, respectively, of the
 7 Communications Act of 1934 (47 U.S.C. 153, 522).

8 (b) REVIEW OF COMMUNICATIONS TRANSACTIONS.—

9 (1) SOLE RESPONSIBILITY OF DEPARTMENT OF
 10 JUSTICE.—Notwithstanding any provision of the
 11 Communications Act of 1934 (47 U.S.C. 151 et
 12 seq.) or any law or regulation of a State or political
 13 subdivision thereof, the review of the competitive im-
 14 pact of any proposed covered transaction shall be
 15 solely the responsibility of the Department of Justice
 16 pursuant to the antitrust laws, and neither the Fed-
 17 eral Communications Commission nor any State
 18 commission or franchising authority shall have any
 19 authority to conduct such review.

20 (2) CONSULTATION.—In reviewing the competi-
 21 tive impact of a proposed covered transaction, the
 22 Attorney General shall solicit and consider the views
 23 of the Federal Communications Commission.

24 (c) APPLICATION OF PUBLIC INTEREST STAND-
 25 ARDS.—

(1) IN GENERAL.—A determination of the Federal Communications Commission described in paragraph (2) with respect to a proposed covered transaction shall be limited to an assessment of whether the acquirer, assignee, or transferee meets the technical, financial, character, and citizenship qualifications that the Commission has prescribed by rule under the Communications Act of 1934 (47 U.S.C. 151 et seq.) to hold that license, authorization, or line.

(2) DETERMINATIONS.—A determination described in this paragraph is a determination pursuant to section 214(a) or 310(d) of the Communications Act of 1934 (47 U.S.C. 214(a), 310(d)) as to whether a proposed covered transaction would serve the public interest, without regard to whether the determination is phrased as whether the present or future public convenience and necessity require or will require the transaction or whether the public interest, convenience, and necessity will be served by the transaction.

SEC. 106. TECHNICAL AND CONFORMING AMENDMENTS.

(a) CLAYTON ACT.—The Clayton Act (15 U.S.C. 12 et seq.) is amended—

(1) in section 2 (15 U.S.C. 13)—

1 (A) in subsection (a), by striking “Federal
2 Trade Commission” and inserting “Attorney
3 General of the United States”; and

4 (B) in subsection (b), by striking “Com-
5 mission” and inserting “Attorney General of
6 the United States”;

7 (2) in section 5(a) (15 U.S.C. 16(a)), in the
8 second sentence, by striking “, except that, in any
9 action or proceeding brought under the antitrust
10 laws, collateral estoppel effect shall not be given to
11 any finding made by the Federal Trade Commission
12 under the antitrust laws or under section 5 of the
13 Federal Trade Commission Act which could give rise
14 to a claim for relief under the antitrust laws”;

15 (3) in section 7 (15 U.S.C. 18)—

16 (A) in the first undesignated paragraph, by
17 striking “and no person subject to the jurisdic-
18 tion of the Federal Trade Commission shall ac-
19 quire the whole or any part of the assets of an-
20 other person engaged also in commerce or in
21 any activity affecting commerce”; and

22 (B) in the second undesignated paragraph,
23 by striking “and no person subject to the juris-
24 diction of the Federal Trade Commission shall
25 acquire the whole or any part of the assets of

- 1 one or more persons engaged in commerce or in
2 any activity affecting commerce”;
- 3 (4) in section 7A (15 U.S.C. 18a)—
- 4 (A) in subsection (b)—
- 5 (i) in paragraph (1)(A), in the matter
6 preceding clause (i), by striking “the Fed-
7 eral Trade Commission and”; and
- 8 (ii) in paragraph (2), by striking
9 “Federal Trade Commission and the”;
- 10 (B) in subsection (c)—
- 11 (i) in paragraph (6), by striking “the
12 Federal Trade Commission and”; and
- 13 (ii) in paragraph (8), by striking “the
14 Federal Trade Commission and”;
- 15 (C) in subsection (d)—
- 16 (i) in the matter preceding paragraph
17 (1), by striking “Federal Trade Commis-
18 sion, with the concurrence of the Assistant
19 Attorney General and” and inserting “At-
20 torney General of the United States”; and
- 21 (ii) in paragraph (1), by striking “the
22 Federal Trade Commission and”;
- 23 (D) in subsection (e)—
- 24 (i) in paragraph (1)—

1 (I) in subparagraph (A), by strik-
 2 ing “Federal Trade Commission or
 3 the”; and

4 (II) in subparagraph (B), by
 5 striking “and the Federal Trade Com-
 6 mission shall each” and inserting
 7 “shall”; and

8 (ii) in paragraph (2)—

9 (I) by striking “Federal Trade
 10 Commission or the”;

11 (II) by striking “its or”;

12 (III) by striking “the Federal
 13 Trade Commission or” each place the
 14 term appears; and

15 (IV) by striking “, as the case
 16 may be,”;

17 (E) in subsection (f)—

18 (i) by striking “the Federal Trade
 19 Commission, alleging that a proposed ac-
 20 quisition violates section 7 of this Act or
 21 section 5 of the Federal Trade Commission
 22 Act, or an action is filed by”; and

23 (ii) by striking “the Federal Trade
 24 Commission or”;

1 (F) in subsection (g)(2), in the matter fol-
 2 lowing subparagraph (C), by striking “the Fed-
 3 eral Trade Commission or”;

4 (G) in subsection (h), by striking “or the
 5 Federal Trade Commission”;

6 (H) in subsection (i)—

7 (i) in paragraph (1), by striking “the
 8 Federal Trade Commission or” each place
 9 the term appears; and

10 (ii) in paragraph (2)—

11 (I) by striking “or the Federal Trade Com-
 12 mission”; and

13 (J) by striking “, the Federal Trade Com-
 14 mission Act,”; and

15 (5) in section 8(a)(5) (15 U.S.C. 19(a)(5)), in
 16 the second sentence, by striking “Federal Trade
 17 Commission” and inserting “Attorney General of the
 18 United States”.

19 (b) CHARITABLE GIFT ANNUITY ANTITRUST RELIEF
 20 ACT OF 1995.—Section 3(1) of the Charitable Gift Annu-
 21 ity Antitrust Relief Act of 1995 (15 U.S.C. 37a(1)) is
 22 amended by striking “, except that such term includes sec-
 23 tion 5 of the Federal Trade Commission Act (15 U.S.C.
 24 45) to the extent that such section 5 applies to unfair
 25 methods of competition”.

1 (c) PENSION FUNDING EQUITY ACT OF 2004.—Sec-
 2 tion 207(b)(1)(A)(i) of the Pension Funding Equity Act
 3 of 2004 (15 U.S.C. 37b(b)(1)(A)(i)) is amended by strik-
 4 ing “, except that such term includes section 5 of the Fed-
 5 eral Trade Commission Act (15 U.S.C. 45) to the extent
 6 such section 5 applies to unfair methods of competition”.

7 (d) FEDERAL TRADE COMMISSION ACT.—The Fed-
 8 eral Trade Commission Act (15 U.S.C. 41 et seq.) is
 9 amended—

10 (1) in section 5 (15 U.S.C. 45)—

11 (A) in subsection (a)—

12 (i) in paragraph (1), by striking
 13 “methods of competition in or affecting
 14 commerce, and unfair”;

15 (ii) by striking paragraph (3); and

16 (iii) by redesignating paragraph (4) as
 17 paragraph (3);

18 (B) in subsection (b)—

19 (i) in the first sentence, by striking
 20 “unfair method of competition or”; and

21 (ii) in the fifth sentence—

22 (I) by striking “the method of
 23 competition or”; and

24 (II) by striking “method of com-
 25 petition or such”;

- 1 (C) in subsection (c)—
- 2 (i) in the first sentence—
- 3 (I) by striking “method of com-
- 4 petition or”; and
- 5 (II) by striking “method of com-
- 6 petition or the”; and
- 7 (ii) in the third sentence, by striking
- 8 “or to competitors”;
- 9 (D) by striking subsection (e);
- 10 (E) in subsection (g), by striking para-
- 11 graph (4); and
- 12 (F) in subsection (n), in the first sentence,
- 13 by striking “or to competition”;
- 14 (2) in section 6 (15 U.S.C. 46)—
- 15 (A) by striking subsections (c) through (e)
- 16 and (i);
- 17 (B) by redesignating—
- 18 (i) subsections (f), (g), and (h) as
- 19 subsections (c) through (e), respectively;
- 20 and
- 21 (ii) subsections (j) through (l) as sub-
- 22 sections (f) through (h), respectively;
- 23 (C) in subsection (f)(1), as so redesign-
- 24 ated, by striking “other than Federal antitrust
- 25 laws (as defined in section 12(5) of the Inter-

1 national Antitrust Enforcement Assistance Act
2 of 1994 (15 U.S.C. 6211(5))),”; and

3 (D) in subsection (h)(2), as so redesign-
4 nated, in the matter preceding subparagraph
5 (A), by striking “or competition”;

6 (3) by repealing section 7 (15 U.S.C. 47);

7 (4) in section 11 (15 U.S.C. 51), by striking
8 “antitrust Acts or the” each place the term appears;

9 (5) in section 18 (15 U.S.C. 57a(a)(2)), by
10 striking the second sentence;

11 (6) in section 20 (15 U.S.C. 57b-1)—

12 (A) in subsection (a)—

13 (i) in paragraph (2), by striking “or
14 in any antitrust violations”;

15 (ii) in paragraph (3), by striking “or
16 any provisions relating to antitrust viola-
17 tions”;

18 (iii) in paragraph (7), by striking “or
19 any antitrust violation”; and

20 (iv) by striking paragraph (8);

21 (B) in subsection (c)(1), by striking “or to
22 antitrust violations,”; and

23 (C) in subsection (j)(1), by striking “, any
24 proceeding under section 11(b) of the Clayton
25 Act (15 U.S.C. 21(b)),”;

1 (7) in section 21(b)(6) (15 U.S.C. 57b–
 2 2(b)(6)), in the matter following subparagraph (D),
 3 by striking “paragraphs (5) and (7)” and inserting
 4 “paragraphs (4) and (6)”; and

5 (8) in section 21A (15 U.S.C. 57b–2a)—

6 (A) by striking subsection (f);

7 (B) by redesignating subsection (g) as sub-
 8 section (f);

9 (C) in subsection (f), as so redesignated,
 10 by striking “subsection (g)” each place the
 11 term appears and inserting “subsection (f)”;
 12 and

13 (D) in section 24 (15 U.S.C. 57b–5(a)), by
 14 striking “for any conduct which, because of the
 15 provisions of the Act entitled ‘An Act to author-
 16 ize association of producers of agricultural
 17 products’, approved February 18, 1922 (7
 18 U.S.C. 291 et seq., commonly known as the
 19 Capper-Volstead Act), is not a violation of any
 20 of the antitrust Acts or this Act”.

21 (e) WEBB-POMERENE ACT.—The Webb-Pomerene
 22 Act (15 U.S.C. 61 et seq.) is amended—

23 (1) by repealing section 4 (15 U.S.C. 64); and

24 (2) in section 5—

25 (A) in the first undesignated paragraph—

1 (i) in the first sentence, by striking
 2 “Federal Trade Commission” and insert-
 3 ing “Attorney General of the United
 4 States”; and

5 (ii) in the second sentence, by striking
 6 “commission” each place the term appears
 7 and inserting “Attorney General of the
 8 United States”;

9 (B) in the second undesignated para-
 10 graph—

11 (i) in the first sentence, by striking
 12 “Federal Trade Commission” and insert-
 13 ing “Attorney General of the United
 14 States”; and

15 (ii) by striking the third sentence; and

16 (C) by striking the third undesignated
 17 paragraph.

18 (f) WOOL PRODUCTS LABELING ACT OF 1939.—The
 19 Wool Products Labeling Act of 1939 (15 U.S.C. 68 et
 20 seq.) is amended—

21 (1) by striking “an unfair method of competi-
 22 tion, and” each place the term appears; and

23 (2) in section 68g(b), by striking “an unfair
 24 method of competition and”.

1 (g) FUR PRODUCTS LABELING ACT.—The Fur Prod-
 2 ucts Labeling Act (15 U.S.C. 69 et seq.) is amended by
 3 striking “an unfair method of competition, and” each
 4 place the term appears.

5 (h) TEXTILE FIBER PRODUCTS IDENTIFICATION
 6 ACT.—The Textile Fiber Products Identification Act (15
 7 U.S.C. 70 et seq.) is amended—

8 (1) by striking “an unfair method of competi-
 9 tion, and” each place the term appears; and

10 (2) in section 3 (15 U.S.C. 70a), by striking
 11 “an unfair method of competition and” each place
 12 the term appears.

13 (i) ANTITRUST CIVIL PROCESS ACT.—Section 4(d) of
 14 the Antitrust Civil Process Act (15 U.S.C. 1313(d)) is
 15 amended—

16 (1) in paragraph (1), by striking “(1) Whoever”
 17 and inserting “Whoever”; and

18 (2) by striking paragraph (2).

19 (j) INTERNATIONAL ANTITRUST ENFORCEMENT AS-
 20 SISTANCE ACT OF 1994.—The International Antitrust
 21 Enforcement Assistance Act of 1994 (15 U.S.C. 6201 et
 22 seq.) is amended—

23 (1) in section 2 (15 U.S.C. 6201), in the matter
 24 preceding paragraph (1), by striking “and the Fed-
 25 eral Trade Commission”;

1 (2) in section 3(b) (15 U.S.C. 6202(b)), by
 2 striking “and the Commission may, using their re-
 3 spective authority to investigate possible violations of
 4 the Federal antitrust laws,” and inserting “may”;

5 (3) in section 5(1) (15 U.S.C. 6204(1)), by
 6 striking “or the Commission” each place the term
 7 appears;

8 (4) in section 6 (15 U.S.C. 6205)—

9 (A) by striking “or the Commission”; and

10 (B) by striking “6(f)” and inserting
 11 “6(c)”;

12 (5) in section 7 (15 U.S.C. 6206)—

13 (A) by striking “, with the concurrence of
 14 the Commission,” each place the term appears;
 15 and

16 (B) in subsection (c)(2)(B), by striking
 17 “and the Commission”;

18 (6) in section 8 (15 U.S.C. 6207)—

19 (A) by striking “Neither the Attorney Gen-
 20 eral nor the Commission may” each place the
 21 term appears and inserting “The Attorney Gen-
 22 eral may not”;

23 (B) in subsection (a), by striking “or the
 24 Commission, as the case may be,”;

1 (C) in subsection (b), by striking “or the
2 Commission”; and

3 (D) in subsection (c)—

4 (i) by striking “or the Commission”;
5 and

6 (ii) by striking “or the Commission,
7 as the case may be,”;

8 (7) in section 10 (15 U.S.C. 6209)—

9 (A) in subsection (a)—

10 (i) by striking “, the Commission,”;
11 and

12 (ii) by striking “(a) In General.—
13 The” and inserting “The”; and

14 (B) by striking subsection (b);

15 (8) in section 12 (15 U.S.C. 6211)—

16 (A) in paragraph (2)—

17 (i) in the matter preceding subpara-
18 graph (A)—

19 (I) by striking “and the Commis-
20 sion jointly determine” and inserting
21 “determines”;

22 (II) by striking “jointly”; and

23 (III) by striking “and the Com-
24 mission”;

25 (ii) in subparagraph (A)—

1 (I) by striking “and the Commis-
 2 sion” each place the term appears;
 3 and

4 (II) by striking “provide” and in-
 5 serting “provides”;

6 (iii) in subparagraph (E)(ii), in the
 7 matter preceding subclause (I), by striking
 8 “or the Commission, as the case may be,”;

9 (iv) in subparagraph (F)—

10 (I) by striking “or the Commis-
 11 sion”; and

12 (II) by striking “or the Commis-
 13 sion, respectively,”; and

14 (v) in subparagraph (H)—

15 (I) in clause (i)—

16 (aa) by striking “or the
 17 Commission”; and

18 (bb) by striking “or the
 19 Commission, respectively,”; and

20 (II) in clause (ii), by striking “or
 21 the Commission” each place the term
 22 appears;

23 (B) by striking paragraph (4);

1 (C) by redesignating paragraphs (5)
 2 through (9) as paragraphs (4) through (8), re-
 3 spectively; and

4 (D) in paragraph (4), as so redesignated,
 5 by striking “but also includes section 5 of the
 6 Federal Trade Commission Act (15 U.S.C. 45)
 7 to the extent that such section 5 applies to un-
 8 fair methods of competition”; and
 9 (9) in section 13 (15 U.S.C. 6212)—

10 (A) by striking “and the Commission are”
 11 and inserting “is”; and

12 (B) by striking “or the Commission, re-
 13 spectively,”.

14 (k) MEDICARE PRESCRIPTION DRUG, IMPROVEMENT,
 15 AND MODERNIZATION ACT OF 2003.—Subtitle B of title
 16 XI of the Medicare Prescription Drug, Improvement, and
 17 Modernization Act of 2003 (Public Law 108–173; 117
 18 Stat. 2461) is amended—

19 (1) in the subtitle heading, by striking “Federal
 20 Trade Commission” and inserting “Antitrust”;

21 (2) in section 1111 (21 U.S.C. 355 note)—

22 (A) by striking paragraph (8); and

23 (B) by redesignating paragraphs (9)
 24 through (12) as paragraphs (8) through (11),
 25 respectively;

1 (3) in section 1112(c) (21 U.S.C. 355 note), by
 2 striking “and the Commission” each place the term
 3 appears;

4 (4) in section 1113 (21 U.S.C. 355 note), by
 5 striking “and the Commission”;

6 (5) in section 1114 (21 U.S.C. 355 note), by
 7 striking “or the Commission”;

8 (6) in section 1115 (21 U.S.C. 355 note)—

9 (A) in subsection (a), by striking “, or
 10 brought by the Commission in accordance with
 11 the procedures established in section 16(a)(1)
 12 of the Federal Trade Commission Act (15
 13 U.S.C. 56(a))”; and

14 (B) in subsection (b), by striking “or the
 15 Commission”;

16 (7) in section 1116 (21 U.S.C. 355 note), in
 17 the matter preceding paragraph (1), by striking
 18 “Commission, with the concurrence of the Assistant
 19 Attorney General” and inserting “Attorney Gen-
 20 eral”; and

21 (8) in section 1117 (21 U.S.C. 355 note), by
 22 striking “or the Commission” each place the term
 23 appears.

24 (l) OTHER LAWS.—For any other provision of law re-
 25 quiring the Assistant Attorney General or the Attorney

1 General to consult with or seek the concurrence of the
 2 Commission or the Chairman of the Commission, where
 3 such requirement relates to the antitrust laws or unfair
 4 methods of competition under section 5 of the Federal
 5 Trade Commission Act (15 U.S.C. 45), as in effect on the
 6 day before the effective date, that requirement shall be
 7 waived.

8 **SEC. 107. EFFECTIVE DATE.**

9 Except where explicitly provided otherwise, this title
 10 and the amendments made by this title shall take effect
 11 on the start of the first fiscal year that is at least 90 days
 12 after the date of enactment of this title.

13 **TITLE II—MERGERS**

14 **SEC. 201. PREMERGER NOTIFICATION FILING FEES.**

15 Section 605 of Public Law 101–162 (15 U.S.C. 18a
 16 note) is amended—

17 (1) in subsection (b)—

18 (A) in paragraph (1)—

19 (i) by striking “\$45,000” and insert-
 20 ing “\$30,000”;

21 (ii) by striking “\$100,000,000” and
 22 inserting “\$161,500,000”;

23 (iii) by striking “2004” and inserting
 24 “2022”; and

1 (iv) by striking “2003” and inserting
2 “2021”;

3 (B) in paragraph (2)—

4 (i) by striking “\$125,000” and insert-
5 ing “\$100,000”;

6 (ii) by striking “\$100,000,000” and
7 inserting “\$161,500,000”;

8 (iii) by striking “but less” and insert-
9 ing “but is less”; and

10 (iv) by striking “and” at the end;

11 (C) in paragraph (3)—

12 (i) by striking “\$280,000” and insert-
13 ing “\$250,000”; and

14 (ii) by striking the period at the end
15 and inserting “but is less than
16 \$1,000,000,000 (as so adjusted and pub-
17 lished);”; and

18 (D) by adding at the end the following:

19 “(4) \$400,000 if the aggregate total amount
20 determined under section 7A(a)(2) of the Clayton
21 Act (15 U.S.C. 18a(a)(2)) is not less than
22 \$1,000,000,000 (as so adjusted and published) but
23 is less than \$2,000,000,000 (as so adjusted and
24 published);

1 “(5) \$800,000 if the aggregate total amount
 2 determined under section 7A(a)(2) of the Clayton
 3 Act (15 U.S.C. 18a(a)(2)) is not less than
 4 \$2,000,000,000 (as so adjusted and published) but
 5 is less than \$5,000,000,000 (as so adjusted and
 6 published); and

7 “(6) \$1,250,000 if the aggregate total amount
 8 determined under section 7A(a)(2) of the Clayton
 9 Act (15 U.S.C. 18a(a)(2)) is not less than
 10 \$5,000,000,000 (as so adjusted and published).”;
 11 and

12 (2) by adding at the end the following:

13 “(c)(1) For each fiscal year commencing after Sep-
 14 tember 30, 2022, the filing fees in this section shall be
 15 increased each year by an amount equal to the percentage
 16 increase, if any, in the Gross National Product of the
 17 United States, as determined by the Department of Labor
 18 or its successor, for the year then ended over the level
 19 so established for the year ending September 30, 2021.

20 “(2) As soon as practicable, but not later than Janu-
 21 ary 31 of each year, the Attorney General shall publish
 22 the adjusted amounts required by paragraph (1).

23 “(3) The Attorney General shall not adjust amounts
 24 required by paragraph (1) if the percentage increase de-
 25 scribed in paragraph (1) is less than 1 percent.

1 “(4) An amount adjusted under this section shall be
2 rounded to the nearest multiple of \$5,000.”.

3 **SEC. 202. MERGER PRESUMPTIONS.**

4 Section 7 of the Clayton Act (15 U.S.C. 18), as
5 amended by section 106 of this Act, is amended—

6 (1) by striking all that proceeds “person en-
7 gaged in commerce” and inserting the following:

8 **“SEC. 7. ACQUISITION BY ONE CORPORATION OF STOCK OF**
9 **ANOTHER.**

10 “(a) IN GENERAL.—No”;

11 (2) by striking “No person shall acquire,” and
12 inserting the following:

13 “(b) ACQUISITION OF PERSONS ENGAGED IN COM-
14 MERCE.—No person shall acquire”;

15 (3) by striking “This section shall not apply”
16 and inserting the following:

17 “(d) NOT LESSENING COMPETITION.—This section
18 shall not apply”;

19 (4) by striking “Nor shall anything herein” and
20 inserting the following:

21 “(e) COMMON CARRIERS.—Nor shall anything here-
22 in”;

23 (5) by striking “Nothing contained in this sec-
24 tion shall be held” and inserting the following:

1 “(f) HOLD HARMLESS.—Nothing contained in this
2 section shall be held”;

3 (6) by striking “Nothing contained in this sec-
4 tion shall apply to transactions” and inserting the
5 following:

6 “(g) CERTAIN TRANSACTIONS.—Nothing contained
7 in this section shall apply to transactions”; and

8 (7) by inserting after subsection (b), as so des-
9 ignated by this section, the following:

10 “(c) ACTIONS BY UNITED STATES.—

11 “(1) IN GENERAL.—The United States may ini-
12 tiate a proceeding to enjoin a transaction prohibited
13 by this section.

14 “(2) REBUTTABLE PRESUMPTIONS.—

15 “(A) IN GENERAL.—In a proceeding initi-
16 ated by the United States to enjoin a trans-
17 action prohibited by this section, it shall be pre-
18 sumed that the effect of a transaction may be
19 substantially to lessen competition, or to tend to
20 create a monopoly, if—

21 “(i) the United States shows by a pre-
22 ponderance of the evidence that, as a re-
23 sult of the transaction, the combined firm
24 would be able meaningfully to increase

1 prices or reduce output, innovation, or
2 quality in a market; or

3 “(ii)(I) the transaction would combine
4 persons that compete, would compete, or
5 would attempt to compete against each
6 other, absent the transaction; and

7 “(II) the combined firm would have a
8 post-transaction share of the market
9 that—

10 “(aa) is greater than 33 percent;

11 or

12 “(bb) if the acquiring person is
13 owned or controlled by a foreign gov-
14 ernment, is greater than 5 percent.

15 “(B) REBUTTAL.—A defendant may rebut
16 a presumption under clause (i) or (ii) of sub-
17 paragraph (A) only if the defendant dem-
18 onstrates by a preponderance of the evidence
19 that—

20 “(i) the combined parties post-trans-
21 action would not be able to exercise market
22 power; or

23 “(ii) the anticompetitive effects of the
24 transaction—

25 “(I) are insubstantial; or

1 “(II) are clearly outweighed by
2 the procompetitive benefits of the
3 transaction in the relevant market.

4 “(C) RULE OF CONSTRUCTION.—The pre-
5 sumptions under clauses (i) and (ii) of subpara-
6 graph (A) shall not limit any other presumption
7 courts have created or used or may create or
8 use in resolving cases under this section.

9 “(3) IRREBUTTABLE PRESUMPTION.—In a pro-
10 ceeding initiated by the United States to enjoin a
11 transaction prohibited by this section, except to the
12 extent the transaction is necessary to prevent serious
13 harm to the national economy, the effect of a trans-
14 action shall be deemed to substantially to lessen
15 competition, or to tend to create a monopoly, if—

16 “(A) the transaction would combine per-
17 sons that compete, would compete, or would at-
18 tempt to compete against each other absent the
19 transaction; and

20 “(B) the combined firm would have a post-
21 transaction share of the market that is greater
22 than 66 percent.”.

23 **SEC. 203. MERGER NOTIFICATION REQUIREMENTS.**

24 (a) IN GENERAL.—Section 7A(a)(2) of the Clayton
25 Act (15 U.S.C. 18a(a)(2)) is amended—

1 (1) by redesignating subclause (III) of subpara-
2 graph (B)(ii) as item (bb);

3 (2) by striking “(ii)(I) any voting” and all that
4 follows through “(II) any voting securities or assets
5 of a person not engaged in manufacturing” and in-
6 serting “(II)(aa) any voting securities or assets of a
7 person”;

8 (3) by striking “(B)(i) in excess” and inserting
9 “(ii)(I) in excess”;

10 (4) by striking “(A) in excess” and inserting
11 “(i) in excess”;

12 (5) by inserting “(A)” after “(2)”;

13 (6) by striking “published) or more.” and in-
14 serting “published) or more; or”; and

15 (7) by inserting after subparagraph (A), as so
16 redesignated, the following:

17 “(B) except with respect to an acquisition made
18 solely for the purpose of investment, the acquiring
19 person—

20 “(i) has assets in excess of
21 \$500,000,000,000; or

22 “(ii) is owned or controlled by a foreign
23 government.”.

24 (b) REPEAL OF LIMITED NEXUS TO COMMERCE IN
25 THE UNITED STATES EXCEPTION.—

(1) IN GENERAL.—The Assistant Attorney General shall amend sections 802.50 and 802.51 of title 16, Code of Federal Regulations, and any other rule or regulation, to repeal any exception from filing a notification under subsection (a) of section 7A of the Clayton Act (15 U.S.C. 18a) or from the waiting period described in subsection (b)(1) of such section with respect to an acquisition on the basis that the acquisition has a limited nexus with the United States.

(2) LIMITATION.—The Assistant Attorney General may not promulgate or enforce any rule that excludes from the requirements under section 7A of the Clayton Act (15 U.S.C. 18a) any acquisition by or of a person engaged in commerce or in any activity affecting commerce on the basis that the acquisition has a limited nexus with the United States.

TITLE III—COMPETITION POLICY

SEC. 301. COMPETITIVE IMPACT STATEMENT.

(a) DEFINITIONS.—In this section:

(1) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget.

(b) REQUIREMENT.—In reviewing a significant regulatory action of an agency in accordance with the Executive Order, the Administrator shall prepare and submit to the agency a competitive impact statement that—

(1) identifies any way in which the significant regulatory action may impact or harm competition in the market to which the significant regulatory action applies; and

(2) provides guidance on how the significant regulatory could be revised to minimize the impact or harm to competition in that market.

(a) IN GENERAL.—The Assistant Attorney General shall prepare and preserve a written explanation of any decision by the Federal Government not to file a civil action under the antitrust laws after the use of compulsory process by the Federal Government.

1 (b) AVAILABILITY TO CONGRESS.—Upon request by
2 any Member of Congress, the Assistant Attorney General
3 shall make available an unredacted version of a written
4 explanation described in subsection (a). A Member of Con-
5 gress shall not disclose an unredacted version of a written
6 explanation received under this subsection.

7 (c) PUBLIC AVAILABILITY.—

8 (1) IN GENERAL.—The Assistant Attorney Gen-
9 eral shall make a written explanation described in
10 subsection (a) publicly available if all subjects of the
11 investigation have acknowledged the existence of the
12 investigation.

13 (2) OTHER AVAILABILITY.—A written expla-
14 nation described in subsection (a) may be disclosed
15 in accordance with the procedures and limitations
16 under section 552 of title 5, United States Code
17 (commonly known as the “Freedom of Information
18 Act”), or any other applicable provision of law.

19 (3) REDACTION.—Information in a written ex-
20 planation described in subsection (a) that is made
21 publicly available shall be redacted to protect con-
22 fidential or competitively sensitive information,
23 which may include the identities of the subjects of
24 the investigation when appropriate.

1 **SEC. 303. STUDIES.**

2 (a) INSTITUTIONAL INVESTORS.—Not later than 2
 3 years after the date of enactment of this Act, the Assistant
 4 Attorney General, in consultation with the Securities and
 5 Exchange Commission, shall conduct and publish a study,
 6 using any compulsory process reasonably necessary, rely-
 7 ing on public data and information if available and suffi-
 8 cient, and incorporating public comment, on—

9 (1) the extent to which an institutional investor
 10 or related institutional investors have ownership or
 11 control interests in competitors in moderately con-
 12 centrated or concentrated markets;

13 (2) the economic impacts of such overlapping
 14 ownership or control; and

15 (3) the mechanisms by which an institutional
 16 investor could affect competition among the compa-
 17 nies in which it invests and whether such mecha-
 18 nisms are prevalent.

19 (b) SELF-PREFERENCING BY DIGITAL PLAT-
 20 FORMS.—Not later than 2 years after the date of enact-
 21 ment of this Act, the Assistant Attorney General shall con-
 22 duct and publish a study, using any compulsory process
 23 reasonably necessary, relying on public data and informa-
 24 tion if available and sufficient, and incorporating public
 25 comment, on self-preferencing by digital platforms.

1 (c) TECHNOLOGY MERGER RETROSPECTIVE.—Not
 2 later than 2 years after the date of enactment of this Act,
 3 the Assistant Attorney General shall—

4 (1) conduct a retrospective analysis of mergers
 5 involving technology companies completed during the
 6 15-year period ending on the date of enactment of
 7 this Act; and

8 (2) publish a report of the findings of the anal-
 9 ysis, which shall include an analysis of the adequacy
 10 of any enforcement actions or settlement agreements
 11 regarding such mergers.

12 **SEC. 304. MONOPSONY GUIDELINES.**

13 The Assistant Attorney General shall publicly issue
 14 guidelines regarding how the Antitrust Division of the De-
 15 partment of Justice analyzes and approaches a matter in-
 16 volving a monopsony under the antitrust laws.

17 **TITLE IV—RESTORING BOARD**
 18 **IMMUNITY**

19 **SEC. 401. SHORT TITLE.**

20 This title may be cited as the “Restoring Board Im-
 21 munity Act of 2021” or the “RBI Act”.

22 **SEC. 402. STATEMENT OF FINDINGS AND PURPOSE.**

23 Congress finds the following:

24 (1) The prevalence of occupational licensing has
 25 increased dramatically in recent decades, in part be-

1 cause private interests have sought licensing in order
2 to limit competition.

3 (2) Occupational licensing often limits opportu-
4 nities for workers, frustrates entrepreneurs seeking
5 to introduce new business models, and raises prices
6 paid by consumers.

7 (3) Licensing should be imposed only to combat
8 real, substantial threats to public health, safety, or
9 welfare and only where other less restrictive regu-
10 latory alternatives are insufficient to protect con-
11 sumers and serve the public interest.

12 (4) Regulators should consider a range of less
13 restrictive alternatives before enacting an occupa-
14 tional licensing regime, which may include inspec-
15 tions, bonding or insurance requirements, registra-
16 tion, and voluntary certification.

17 (5) Voluntary certification provides a particu-
18 larly significant alternative to licensure, as it allows
19 market participants to signal to consumers the at-
20 tainment of personal qualifications without limiting
21 entry into the marketplace.

22 (6) The failure of State governments to adopt
23 less restrictive alternatives to licensing, and less bur-
24 densome requirements in those areas where licensing

1 is deemed necessary, has resulted in significant costs
2 to consumers and the broader economy.

3 (7) The United States Supreme Court re-
4 sponded to these concerns in *North Carolina Board*
5 *of Dental Examiners v. FTC*, 135 S. Ct. 1101
6 (2015), holding that self-interested licensing boards
7 may be subject to liability under the antitrust laws,
8 but that decision has also created significant uncer-
9 tainty for the States and their licensing boards.

10 (8) Some States have responded to the decision
11 in *North Carolina Board of Dental Examiners* by es-
12 tablishing a layer of bureaucratic oversight that
13 merely monitors board actions for consistency with
14 State licensing laws. This response is a missed op-
15 portunity for reform, as it does not address the spe-
16 cific competition concern raised in *North Carolina*
17 *Board of Dental Examiners* or the underlying prob-
18 lems with over-reliance on occupational licensure as
19 a regulatory approach and with overly broad enforce-
20 ment of licensing laws as a means to regulate com-
21 mercial activities outside an occupation's scope of
22 practice.

23 (9) Legislation is necessary to clarify the re-
24 quirements of active supervision, both to offer States
25 a clear and certain mechanism to immunize their oc-

1 cupational boards and to make clear that mere bu-
 2 reaucratic oversight to ensure consistency with State
 3 licensing laws does not suffice to confer immunity.

4 (10) This title is intended to offer States a
 5 choice between two alternative routes to achieve im-
 6 munity for their occupational licensing boards—ei-
 7 ther establishing a mechanism for meaningful active
 8 supervision of licensing boards by State officials or
 9 establishing a mechanism for meaningful judicial re-
 10 view of board actions in the State courts.

11 **SEC. 403. DEFINITIONS.**

12 In this title:

13 (1) CERTIFICATION.—The term “certification”
 14 means a voluntary program under which—

15 (A) a private organization (in the case of
 16 private certification) or the government of a
 17 State (in the case of government certification)
 18 authorizes an individual who meets certain per-
 19 sonal qualifications to use “certified” as a des-
 20 ignated title with respect to the performance of
 21 a lawful occupation; and

22 (B) a non-certified individual may perform
 23 the lawful occupation for compensation but may
 24 not use the title “certified”.

1 (2) GOOD FAITH.—The term “good faith”, with
2 respect to performance—

3 (A) means diligent performance that is di-
4 rected towards achieving the policies set forth
5 in this title;

6 (B) does not include performance that is—

7 (i) designed to subvert or evade the
8 policies set forth in this title; or

9 (ii) carried out in a manner that has
10 the systematic effect of subverting or evad-
11 ing the policies set forth in this title; and

12 (C) refers to an objective, rather than sub-
13 jective, standard.

14 (3) LAWFUL OCCUPATION.—The term “lawful
15 occupation” means a course of conduct, pursuit, or
16 profession that includes the sale of goods or services
17 that are not themselves illegal to sell irrespective of
18 whether the individual selling the goods or services
19 is subject to occupational licensing laws.

20 (4) LEAST RESTRICTIVE REGULATION.—The
21 term “least restrictive regulation” means, from least
22 to most restrictive:

23 (A) One or more of the following, each of
24 which shall be considered equally restrictive:

25 (i) Market competition.

1 (ii) Industry or consumer-related rat-
 2 ings and reviews.

3 (iii) Private certification.

4 (iv) A specific private civil cause of
 5 action to remedy consumer harm.

6 (v) A deceptive trade practice act.

7 (vi) A regulation of the process of
 8 providing the specific goods or services to
 9 consumers.

10 (vii) Inspections.

11 (viii) Bonding or insurance.

12 (ix) Registration.

13 (x) Government certification.

14 (B) Specialty occupational license for med-
 15 ical reimbursement.

16 (C) Occupational license.

17 (5) LESS RESTRICTIVE ALTERNATIVES TO OC-
 18 CUPATIONAL LICENSING.—The term “less restrictive
 19 alternatives to occupational licensing”—

20 (A) means regulations that achieve the
 21 public health or safety goals asserted by the
 22 government to justify licensing while imposing a
 23 less onerous restriction on entry into the mar-
 24 ketplace; and

1 (B) includes the alternative forms of regu-
2 lation described in paragraph (4)(A).

3 (6) MEMBER, OFFICER, OR EMPLOYEE.—The
4 term “member, officer, or employee”, with respect to
5 an occupational licensing board, means an individual
6 appointed by a State to the board.

7 (7) OCCUPATIONAL LICENSE.—The term “occu-
8 pational license” means a nontransferable authoriza-
9 tion under law for an individual to perform a lawful
10 occupation for compensation based on meeting per-
11 sonal qualifications established by the State govern-
12 ment.

13 (8) OCCUPATIONAL LICENSING BOARD.—The
14 term “occupational licensing board” or “board”
15 means an entity established under State law—

16 (A) the express purpose of which is to reg-
17 ulate the personal qualifications required to en-
18 gage in or practice a particular lawful occupa-
19 tion;

20 (B) that has authority conferred by State
21 law to interpret or enforce the occupational li-
22 censing laws of the State; and

23 (C) not less than $\frac{2}{3}$ of the members of
24 which are appointed by an elected official of the
25 State.

1 (9) OCCUPATIONAL LICENSING LAW.—The term
2 “occupational licensing law”—

3 (A) means a State statute that allows an
4 individual to work in a lawful occupation and
5 use an occupational title; and

6 (B) does not include a business license, fa-
7 cility license, building permit, or zoning and
8 land use regulation, except to the extent that
9 the law regulates an individual’s personal quali-
10 fications to engage in or practice a lawful occu-
11 pation.

12 (10) OCCUPATIONAL REGULATION.—The term
13 “occupational regulation”—

14 (A) means a statute, rule, practice, policy,
15 or other law that substantially burdens an indi-
16 vidual’s ability to work in a lawful occupation;

17 (B) includes a regulation requiring reg-
18 istration, certification, or an occupational li-
19 cense; and

20 (C) does not include a business license, fa-
21 cility license, building permit, or zoning and
22 land use regulation except to the extent that
23 such a requirement or restriction substantially
24 burdens an individual’s ability to work in a law-
25 ful occupation.

1 (11) PERSONAL QUALIFICATIONS.—The term
 2 “personal qualifications” means criteria related to
 3 an individual’s personal background and characteris-
 4 tics, including completion of an approved educational
 5 program, satisfactory performance on an examina-
 6 tion, work experience, other evidence of attainment
 7 of requisite skills or knowledge, moral standing,
 8 criminal history, and completion of continuing edu-
 9 cation.

10 (12) REGISTRATION.—The term “registration”
 11 means a requirement that an individual give notice
 12 to the government of a State that may include—

13 (A) the individual’s name and address;

14 (B) the individual’s agent for service of
 15 process;

16 (C) the location of the activity to be per-
 17 formed; and

18 (D) a description of the service the indi-
 19 vidual provides.

20 (13) SPECIALTY OCCUPATIONAL LICENSE FOR
 21 MEDICAL REIMBURSEMENT.—The term “specialty
 22 occupational license for medical reimbursement”
 23 means a nontransferable authorization in law for an
 24 individual to qualify for payment or reimbursement
 25 from a government agency for the non-exclusive pro-

1 vision of medical services based on meeting personal
 2 qualifications established by the State legislature.

3 (14) STATE.—The term “State” means—

4 (A) each of the several States; and

5 (B) the District of Columbia.

6 **SEC. 404. ANTITRUST IMMUNITY.**

7 (a) IN GENERAL.—Subject to subsection (b), the
 8 Sherman Act (15 U.S.C. 1 et seq.) shall not apply to any
 9 action of an occupational licensing board of a State, or
 10 any action of a member, officer, or employee of the board
 11 acting in the official capacity of that member, officer, or
 12 employee, if—

13 (1) the requirements under section 405 of this
 14 title are satisfied; or

15 (2) the requirements under section 406 of this
 16 title are satisfied.

17 (b) REQUIREMENT OF GOOD FAITH.—The immunity
 18 provided under subsection (a) shall not apply to any action
 19 of an occupational licensing board of a State, or any action
 20 of a member, officer, or employee of the board acting in
 21 the official capacity of that member, officer, or employee,
 22 unless the State acts in good faith to perform the applica-
 23 ble requirements under section 405 or 406 of this title.

24 (c) EXISTING ENTITIES OR PROCEDURES.—The fact
 25 that a State governmental entity or procedure was estab-

1 lished before the date of enactment of this Act shall not
 2 prevent an occupational licensing board of the State, or
 3 a member, officer, or employee of that board, from quali-
 4 fying for immunity under subsection (a) if the State gov-
 5 ernmental entity or procedure satisfies the applicable re-
 6 quirements under section 405 or 406 of this title.

7 (d) SAVINGS CLAUSE.—The immunity provided
 8 under subsection (a) shall not apply to an action unrelated
 9 to regulating the personal qualifications required to en-
 10 gage in or practice a lawful occupation, such as rules of
 11 an occupational licensing board governing minimum prices
 12 or residency requirements.

13 **SEC. 405. ACTIVE SUPERVISION.**

14 (a) IN GENERAL.—The immunity under section
 15 404(a) shall apply to any action of an occupational licens-
 16 ing board of a State, or any action of a member, officer,
 17 or employee of that board acting in the official capacity
 18 of that member, officer, or employee, if—

19 (1) the actions of the occupational licensing
 20 board or member, officer, or employee are author-
 21 ized by a non-frivolous interpretation of the occupa-
 22 tional licensing laws of the State;

23 (2) the State adopts a policy of using less re-
 24 strictive alternatives to occupational licensing to ad-
 25 dress real, substantial threats to public health, safe-

1 ty, or welfare, in accordance with subsection (b) of
2 this section; and

3 (3) the State enacts legislation providing for ac-
4 tive supervision of the actions of an occupational li-
5 censing board and any member, officer, or employee
6 of such a board, in accordance with subsection (c)
7 of this section.

8 (b) POLICY.—The State shall adopt a policy pro-
9 viding that—

10 (1) occupational licensing laws should be con-
11 strued and applied to—

12 (A) protect public health, safety, and wel-
13 fare; and

14 (B) increase economic opportunity, pro-
15 mote competition, and encourage innovation;

16 (2) regulators should displace competition
17 through occupational licensing laws only if less re-
18 strictive alternatives to occupational licensing will
19 not suffice to protect consumers from real, substan-
20 tial threats to public health, safety, or welfare; and

21 (3) an occupational licensing law should be en-
22 forced against an individual only to the extent the
23 individual sells goods or services that are included
24 explicitly in the statute or regulation that defines
25 the occupation's scope of practice.

1 (c) ACTIVE SUPERVISION.—

2 (1) IN GENERAL.—The legislation enacted
3 under subsection (a)(3) shall satisfy each of the re-
4 quirements under this subsection.

5 (2) DAY-TO-DAY SUPERVISION.—

6 (A) ESTABLISHMENT OF OFFICE OF SU-
7 PERVISION OF OCCUPATIONAL BOARDS.—The
8 State shall establish an Office of Supervision of
9 Occupational Boards (referred to in this sub-
10 section as the “Office”) to review the actions of
11 occupational licensing boards to ensure compli-
12 ance with the policy adopted under subsection
13 (b).

14 (B) DUTIES.—The Office shall—

15 (i) review and explicitly approve or re-
16 ject in writing any occupational regulation
17 proposed by an occupational licensing
18 board before the board may adopt or im-
19 plement the occupational regulation;

20 (ii) play a substantial role in the de-
21 velopment of a board’s rules and policies to
22 ensure they benefit consumers and do not
23 serve the private interests of providers of
24 goods and services regulated by the board;

1 (iii) disapprove in writing the use of
2 any board rule or policy relating to an oc-
3 cupational regulation and terminate any
4 enforcement action, including any such ac-
5 tion pending on the date of enactment of
6 this Act, that is inconsistent with the pol-
7 icy adopted under subsection (b);

8 (iv) exercise control over each board
9 by reviewing and affirmatively approving in
10 writing only occupational regulations that
11 are consistent with the policy adopted
12 under subsection (b);

13 (v) use the analysis conducted under
14 paragraph (5) and conduct reasonable in-
15 vestigations to gain additional information,
16 including about less restrictive regulatory
17 approaches, to promote compliance with
18 subsection (b);

19 (vi)(I) be staffed by not less than 1
20 attorney; and

21 (II) prohibit attorneys working in the
22 Office from providing general counsel to
23 any board; and

24 (vii)(I) approve board actions explic-
25 itly in writing, rather than implicitly; and

1 (II) clearly establish that silence or
2 inaction does not constitute approval.

3 (3) INTERNAL REVIEW.—

4 (A) COMPLAINT.—The State shall estab-
5 lish a mechanism under which a person who is
6 a resident of or has a license to operate a busi-
7 ness in the State may file a complaint with the
8 Office about an occupational regulation of an
9 occupational licensing board in the State that
10 the person believes is inconsistent with the pol-
11 icy adopted under subsection (b).

12 (B) OFFICE RESPONSE.—Not later than
13 90 days after the date on which a person files
14 a complaint under subparagraph (A), the Office
15 shall—

- 16 (i) investigate the complaint;
17 (ii) identify remedies and instruct the
18 board to take action, where appropriate;
19 and
20 (iii) respond in writing to the com-
21 plainant.

22 (C) REVIEW.—The State shall establish a
23 mechanism for review of a determination made
24 by the Office under subparagraph (B), under
25 which a complainant may appeal the determina-

tion to the general division of the trial court of the State if the challenged occupational regulation would substantially burden the complainant's ability to—

(i) engage in a lawful occupation; or

(ii) employ or contract other individuals for the performance of a lawful occupation.

(4) RIGHT TO RAISE DEFENSE.—

(A) IN GENERAL.—The State shall authorize an individual to assert as a defense, in any administrative or judicial proceeding to enforce an occupational regulation, that the regulation does not comply with the policy adopted under subsection (b).

(B) PROCEDURES.—In a proceeding described in subparagraph (A)—

(i) an individual who asserts a defense under this paragraph has the initial burden of proof that the occupational regulation being enforced substantially burdens the individual's ability to engage in a lawful occupation;

(ii) if an individual meets the burden of proof under clause (i), the State shall be

1 required to demonstrate by clear and con-
2 vincing evidence that the occupational reg-
3 ulation—

4 (I) advances an important gov-
5 ernment interest in protecting against
6 real, substantial threats to public
7 health, safety, or welfare; and

8 (II) is substantially related to
9 achievement of the important govern-
10 ment interest described in subclause
11 (I), in light of the availability of less
12 restrictive alternatives to occupational
13 licensing; and

14 (iii) in reviewing an alleged violation
15 of the policy adopted under subsection (b),
16 an administrative agency or a court—

17 (I) shall make its own findings of
18 fact and conclusions of law;

19 (II) may not rely on a legislative
20 finding of fact presented in admissible
21 form to the agency or court; and

22 (III) may not grant any pre-
23 sumption to a legislative determina-
24 tion—

- 1 (aa) of harm to public
 2 health, safety, or welfare; or
 3 (bb) that the occupational
 4 regulation is substantially related
 5 to achievement of the important
 6 government interest described in
 7 clause (ii)(I).

8 (5) PERIODIC ADVISORY REVIEW.—

9 (A) IN GENERAL.—The State shall estab-
 10 lish a mechanism for periodic non-binding re-
 11 view of existing occupational regulations, and
 12 non-binding review of new proposed occupa-
 13 tional regulations, to ensure that the occupa-
 14 tional regulations comply with the policy adopt-
 15 ed under subsection (b).

16 (B) SCOPE OF REVIEW.—The entity con-
 17 ducting the review under subparagraph (A)—

18 (i) shall publish an annual written re-
 19 port encompassing approximately 20 per-
 20 cent of the occupations subject to occupa-
 21 tional regulations within the State, such
 22 that the entity will review all occupational
 23 regulations within the State during each 5-
 24 year period; and

1 (ii) shall publish a written report as-
2 sessing any proposed occupational licensing
3 law, or other proposed law that would ex-
4 pand the authority of an occupational li-
5 censing board to impose occupational regu-
6 lations, before the proposed law is sub-
7 mitted to a vote by the State legislature.

8 (C) REQUIREMENTS FOR ANALYSIS.—In
9 conducting the review required under subpara-
10 graph (A), the entity shall—

11 (i) determine whether the law or other
12 regulation satisfies the policy adopted
13 under subsection (b) of using the least re-
14 strictive regulation necessary to protect
15 consumers from real, substantial threats to
16 public health, safety, or welfare;

17 (ii) evaluate the effects of the law or
18 other regulation on opportunities for work-
19 ers, consumer choices and costs, general
20 unemployment, market competition, gov-
21 ernmental costs, and other effects;

22 (iii) compare the law or other regula-
23 tion to whether and how other States regu-
24 late the applicable occupation; and

1 (iv) if the applicable occupation is
2 subject to an occupational licensing law,
3 evaluate—

4 (I) the feasibility of entering into
5 reciprocity compacts with one or more
6 other States to improve worker mobil-
7 ity and labor market flexibility; and

8 (II) the advisability of endorsing
9 occupational licenses granted by other
10 States to spouses of active service
11 military members as if those occupa-
12 tional licenses were granted by the
13 State conducting the review.

14 **SEC. 406. JUDICIAL REVIEW.**

15 (a) IN GENERAL.—The immunity under section
16 404(a) shall apply to any action of an occupational licens-
17 ing board of a State, or any action of a member, officer,
18 or employee of that board acting in the official capacity
19 of that member, officer, or employee, if—

20 (1) the actions of the occupational licensing
21 board or member, officer, or employee are author-
22 ized by a non-frivolous interpretation of the occupa-
23 tional licensing laws of the State;

24 (2) the State adopts a policy of using less re-
25 strictive alternatives to occupational licensing to ad-

1 dress real, substantial threats to public health, safe-
 2 ty, or welfare, in accordance with section 405(b);
 3 and

4 (3) the State enacts legislation providing for ju-
 5 dicial review of occupational licensing laws, in ac-
 6 cordance with subsection (b) of this section.

7 (b) JUDICIAL REVIEW LEGISLATION.—Legislation
 8 enacted by a State under subsection (a)(3)—

9 (1) shall—

10 (A) prohibit the State and any occupa-
 11 tional licensing board from imposing an occupa-
 12 tional licensing law unless the State—

13 (i) identifies an important government
 14 interest in protecting against real, substan-
 15 tial threats to public health, safety, or wel-
 16 fare; and

17 (ii) demonstrates that the occupa-
 18 tional licensing law is substantially related
 19 to achievement of the important govern-
 20 ment interest described in clause (i), in
 21 light of the availability of less restrictive
 22 alternatives to occupational licensing;

23 (B) provide an affirmative defense against
 24 enforcement of any occupational licensing law
 25 of the State under which the State shall be re-

1 quired to demonstrate that the standard under
2 subparagraph (A) has been met;

3 (C) establish a cause of action under
4 which—

5 (i) a person may bring an action for
6 injunctive relief against enforcement of an
7 occupational licensing law of the State;

8 (ii) the plaintiff bears the initial bur-
9 den to prove that the challenged occupa-
10 tional licensing law substantially burdens
11 the plaintiff's ability to engage in a lawful
12 occupation; and

13 (iii) once the plaintiff makes the ini-
14 tial showing under clause (ii), the State is
15 required to demonstrate that the standard
16 under subparagraph (A) has been met;

17 (D) provide for an award of reasonable
18 costs and attorney fees to a person who success-
19 fully challenges the application of an occupa-
20 tional licensing law of the State by—

21 (i) raising an affirmative defense
22 under subparagraph (B); or

23 (ii) bringing an action under subpara-
24 graph (C); and

1 (E) provide for independent judicial review
2 of the occupational licensing laws of the State
3 to ensure that the standard set forth in sub-
4 paragraph (A) has been met; and
5 (2) may not authorize a court to—

6 (A) uphold enforcement of an occupational
7 licensing law of the State simply because the
8 court believes the law is rationally related to a
9 legitimate governmental purpose;

10 (B) rely on hypothetical risks to public
11 safety, not substantiated by evidence in the
12 record, to uphold enforcement of an occupa-
13 tional licensing law of the State;

14 (C) defer to factual or legal conclusions of
15 another person or entity, rather than exercising
16 independent review; or

17 (D) rely on a post hoc justification for the
18 action of an occupational licensing board that
19 was not put forward by the board at the time
20 of the challenged action.

21 (c) RULE OF CONSTRUCTION.—Nothing in sub-
22 section (b) shall be construed to require legislation enacted
23 by a State under subsection (a)(3) to provide a right to
24 recover monetary damages, other than reasonable costs
25 and attorney fees as provided under subsection (b)(1)(D).

1 **TITLE V—OTHER IMPROVE-**
 2 **MENTS TO ANTITRUST LAWS**

3 **SEC. 501. OVERTURNING ILLINOIS BRICK AND HANOVER**
 4 **SHOE.**

5 Section 4 of the Clayton Act (15 U.S.C. 15) is
 6 amended—

7 (1) in subsection (a), in the first sentence—

8 (A) by striking “subsection (b)” and in-
 9 serting “subsections (b) and (c)”; and

10 (B) by inserting “, including an indirect
 11 purchaser,” after “business or property”;

12 (2) by redesignating subsection (c) as sub-
 13 section (f); and

14 (3) by inserting after subsection (b) the fol-
 15 lowing:

16 “(c)(1) In the case of a person who was injured by
 17 a violation of the antitrust laws and who resold any prop-
 18 erty or service that was the subject of the violation, the
 19 amount of the damages sustained by the person shall not
 20 include the amount of any overcharge by the defendant
 21 (or portion thereof) that the person passed on to a subse-
 22 quent purchaser of the property or service that was the
 23 subject of the violation.

1 “(2) The defendant shall bear the burden of proving
 2 the amount of any overcharge passed on to a subsequent
 3 purchaser.”.

4 **SEC. 502. LIMITATIONS ON IMPLIED IMMUNITY FROM THE**
 5 **ANTITRUST LAWS.**

6 (a) IN GENERAL.—In any action or proceeding to en-
 7 force the antitrust laws with respect to conduct that is
 8 regulated under Federal statute, no court or adjudicatory
 9 body may find that the Federal statute, or any rule or
 10 regulation promulgated in accordance with the Federal
 11 statute, implicitly precludes application of the antitrust
 12 laws to the conduct unless—

13 (1) a Federal agency or department actively
 14 regulates the conduct under the Federal statute;

15 (2) the Federal statute does not include any
 16 provision preserving the rights, claims, or remedies
 17 under the applicable antitrust laws or under any
 18 area of law that includes the antitrust laws; and

19 (3) the Federal agency or department rules or
 20 regulations, adopted by rulemaking or adjudication,
 21 explicitly require or authorize the defendant to un-
 22 dertake the conduct.

23 (b) EXISTING FEDERAL REGULATION.—In any ac-
 24 tion or proceeding described in subsection (a), the anti-
 25 trust laws shall be applied fully and without qualification

1 or limitation, and the scope of the antitrust laws shall not
2 be defined more narrowly on account of the existence of
3 Federal rules, regulations, or regulatory agencies or de-
4 partments, unless application of the antitrust laws is pre-
5 cluded or limited by—

6 (1) an explicit exemption from the antitrust
7 laws under a Federal statute; or

8 (2) an implied immunity that satisfies the re-
9 quirements under subsection (a).

10 **SEC. 503. PREJUDGMENT INTEREST.**

11 Section 4(a) of the Clayton Act (15 U.S.C. 15), as
12 amended by section 502 of this Act, is amended by strik-
13 ing “may sue therefor” and all that follows and inserting
14 “may sue therefor in any district court of the United
15 States in the district in which the defendant resides or
16 is found or has an agent, without respect to the amount
17 in controversy, and shall recover threefold the damages by
18 him sustained, the cost of suit, including a reasonable at-
19 torney’s fee, and simple interest on threefold the damages
20 by him sustained for the period beginning on the date of
21 service of such person’s pleading setting forth a claim
22 under the antitrust laws and ending on the date of judg-
23 ment.”.

1 **SEC. 504. SAFE HARBOR FOR EFFORTS TO FACILITATE**
2 **DATA PORTABILITY AND INTEROPERABILITY.**

3 (a) IN GENERAL.—Except as provided in subsection
4 (b), it shall not constitute a violation of the antitrust laws
5 for 2 or more persons providing comparable interactive
6 computer services (as defined in section 230(f) of the
7 Communications Act of 1934 (47 U.S.C. 230(f))) to enter
8 into a joint venture or similar partnership to create stand-
9 ard protocols for data portability or interoperability be-
10 tween the interactive computer services if—

11 (1) the joint venture or similar partnership does
12 not exclude from the joint venture or similar part-
13 nership any person that offers comparable inter-
14 active computer services; and

15 (2) the standard protocols do not restrict com-
16 petition in any market.

17 (b) EXCEPTION FOR PER SE VIOLATIONS.—Sub-
18 section (a) shall not apply to conduct constituting a per
19 se violation of section 1 of the Sherman Act (15 U.S.C.
20 1).

21 **SEC. 505. STUDY OF ASSIGNING ALL ANTITRUST CASES TO**
22 **CERTAIN DISTRICT COURTS OF THE UNITED**
23 **STATES.**

24 Not later than 1 year after the date of enactment
25 of this Act, the Director of the Administrative Office of
26 the United States Courts shall submit to Congress a re-

1 port reviewing the feasibility, possible benefits, and poten-
 2 tial harms of establishing a program to designate certain
 3 district courts of the United States that will hear cases
 4 raising 1 or more claims under the antitrust laws.

5 **SEC. 506. BALANCING HARM AND BENEFITS.**

6 The Clayton Act (15 U.S.C. 12 et seq.) is amended—

7 (1) by redesignating section 28 (15 U.S.C. 27)
 8 as section 31; and

9 (2) by inserting after section 27 the following:

10 **“SEC. 28. BALANCING HARM AND BENEFITS.**

11 “(a) IN GENERAL.—In any civil action brought under
 12 this Act or the Sherman Act (15 U.S.C. 1 et seq.), a court
 13 may consider a benefit, efficiency, or other mitigating fac-
 14 tor only to the degree that it—

15 “(1) is tied to the market in which competition
 16 or consumers are harmed;

17 “(2) can reasonably be achieved only through
 18 the conduct or transaction at issue;

19 “(3) is reasonably quantifiable;

20 “(4) will accrue to the consumer; and

21 “(5) has a high likelihood of being achieved.

22 “(b) EXAMINATION OF COMPETITIVE EFFECTS.—In
 23 examining the competitive effects of conduct or a trans-
 24 action challenged under any of the antitrust laws, a court
 25 shall consider exclusively the effects of the challenged con-

1 duct or transaction on consumer welfare, including price,
 2 output, quality, innovation, and consumer choice.

3 “(c) RULE OF CONSTRUCTION.—Nothing in this sec-
 4 tion shall be construed to require that, in the aggregate,
 5 in-market benefits, efficiencies, or mitigating factors out-
 6 number or outweigh any out-of-market benefits, effi-
 7 ciencies, or mitigating factors.

8 “(d) DEFINITION OF CONSUMER.—In this section,
 9 the term ‘consumer’ includes buyers and sellers.”.

10 **SEC. 507. ACTIONS ON BEHALF OF CONSUMERS UNDER**
 11 **SHERMAN ACT.**

12 Section 4 of the Clayton Act (15 U.S.C. 15), is
 13 amended—

14 (1) by inserting after subsection (c), as added
 15 by section 501 of this Act, the following:

16 “(d)(1) The Assistant Attorney General may bring an
 17 action on behalf of persons in the United States injured
 18 in their business or property by reason of anything forbid-
 19 den under the Sherman Act (15 U.S.C. 1 et seq.) in any
 20 district court of the United States in the district in which
 21 the defendant resides or is found or has an agent, without
 22 respect to the amount in controversy, and shall recover
 23 threefold the damages sustained by such persons, and the
 24 cost of suit, including a reasonable attorney’s fee.

1 “(2)(A) The court may award under this subsection,
2 pursuant to a motion by the Assistant Attorney General
3 promptly made, simple interest on actual damages in ac-
4 cordance with the requirements under subsection (a).

5 “(B) A court may not award any damages under this
6 subsection that are duplicative of damages awarded before
7 the date of the award under this subsection in a separate
8 civil action pertaining to the same conduct and injured
9 party.

10 “(C) A court awarding damages to a person in a civil
11 action after the date of an award of damages under this
12 subsection that would be duplicative of damages awarded
13 to the Assistant Attorney General on behalf of the person
14 shall direct that such damages shall first be paid by the
15 Assistant Attorney General from amounts in the Fund
16 and, to the extent such damages are not fully paid from
17 amounts in the Fund, shall be paid by the defendant.

18 “(3)(A) There is established in the Treasury of the
19 United States a fund to be known as the ‘Antitrust Con-
20 sumer Damages Fund’ (in this subsection referred to as
21 the ‘Fund’), which shall consist of amounts deposited
22 under subparagraph (B).

23 “(B) Notwithstanding section 3302 of title 31,
24 United States Code, any amounts received by the Assist-

1 ant Attorney General under an award under this sub-
 2 section—

3 “(i) shall be deposited in the Fund; and

4 “(ii) shall be available to the Assistant Attorney
 5 General, without further appropriation, for distribu-
 6 tion to persons in the United States harmed by the
 7 applicable violation of the Sherman Act (15 U.S.C.
 8 1 et seq.).

9 “(4) Effective on the day after the date that is 10
 10 years after the date on which an award is received under
 11 this subsection, the unobligated balances in the Fund of
 12 amounts that were received under the award are rescinded
 13 and shall be deposited in the general fund of the Treas-
 14 ury.”; and

15 (2) in subsection (f), as so redesignated by sec-
 16 tion 501 of this Act—

17 (A) by redesignating paragraphs (1) and
 18 (2) as paragraphs (2) and (3), respectively; and

19 (B) by inserting before paragraph (1) the
 20 following:

21 “(1) the term ‘Assistant Attorney General’
 22 means the Assistant Attorney General in charge of
 23 the Antitrust Division of the Department of Jus-
 24 tice;”.

1 **SEC. 508. CIVIL FINES FOR KNOWING VIOLATIONS OF THE**
2 **ANTITRUST LAWS.**

3 Section 4 of the Clayton Act (15 U.S.C. 15), is
4 amended by inserting after subsection (d), as added by
5 section 507 of this Act, the following:

6 “(e)(1) In this subsection, the term ‘covered antitrust
7 laws’ means any provision of the antitrust laws, other than
8 section 7 of this Act.

9 “(2)(A) In an action brought by the Assistant Attor-
10 ney General in an appropriate district court of the United
11 States, the court may impose a civil fine against any per-
12 son who engaged in a knowing violation of any provision
13 of the covered antitrust laws.

14 “(B) The maximum amount of a civil fine imposed
15 on a person under subparagraph (A) shall be 15 percent
16 of the total of the gross income of the person from the
17 line of business at issue during each year during which
18 the person engaged in the violation.

19 “(3) A civil fine under paragraph (2) shall be in addi-
20 tion to any damages awarded or other remedy imposed
21 in connection with the violation of the provision of the cov-
22 ered antitrust laws.”.

1 **SEC. 509. DIRECT EVIDENCE OF INTENT TO AVOID OR RE-**
2 **STRICT COMPETITION.**

3 The Clayton Act (15 U.S.C. 12 et seq.) is amended
4 by inserting after section 28, as added by section 506 of
5 this Act, the following:

6 **“SEC. 29. DIRECT EVIDENCE OF INTENT TO AVOID OR RE-**
7 **STRICT COMPETITION.**

8 “In any civil action brought under this Act or the
9 Sherman Act (15 U.S.C. 1 et seq.), if there is direct evi-
10 dence that the conduct or transaction at issue was under-
11 taken with the clear intent to harm or prevent competi-
12 tion, which shall not require proof that the person know-
13 ingly violated the antitrust laws, the court shall deem the
14 conduct or transaction to be anticompetitive.”.

15 **SEC. 510. LIMIT ON CONTRACTING.**

16 The head of an Executive agency may not award a
17 contract for the procurement of goods or services to any
18 person that has been found by a trier of fact in a court
19 of competent jurisdiction to have violated any of the anti-
20 trust laws, except for section 7 of the Clayton Act (15
21 U.S.C. 18), on or after the date that is 5 years before
22 the date on which the procurement process for the goods
23 or services begins.

1 **SEC. 511. PROHIBITING DISCRIMINATION IN DISTRIBUTION.**
 2

3 The Clayton Act (15 U.S.C. 12 et seq.) is amended
 4 by inserting after section 29, as added by section 509 of
 5 this Act, the following:

6 **“SEC. 30. PROHIBITING DISCRIMINATION IN DISTRIBUTION.**

7 “(a) DEFINITIONS.—In this section:

8 “(1) DISTRIBUTED PRODUCT.—The term ‘dis-
 9 tributed product’ means a good or service that is
 10 distributed by a person other than the person which
 11 manufactures or provides the good or service.

12 “(2) DISTRIBUTION MARKET.—The term ‘dis-
 13 tribution market’ means the geographic and product
 14 markets for the distribution of a distributed product.

15 “(b) DISCRIMINATION BY PERSONS WITH MONOP-
 16 OLY POWER.—A person with monopoly power in a dis-
 17 tribution market, that also offers a product or service that
 18 competes with a distributed product in the distribution
 19 market in which it has monopoly power, may not engage
 20 in discrimination in that distribution market that harms
 21 competition in the market for the distributed product.”.

22 **SEC. 512. AUTHORIZATIONS OF APPROPRIATIONS.**

23 There is authorized to be appropriated for the Anti-
 24 trust Division of the Department of Justice \$600,000,000
 25 for fiscal year 2022.

