

Antitrust Laws and Trade Regulation

PRIMARY SOURCE PAMPHLET

2009 Edition



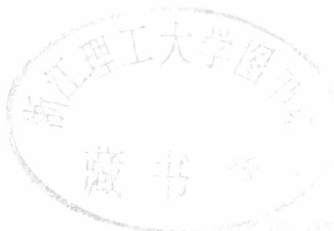
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MATTHEW  BENDER

Table of Contents

ANTITRUST PRIMARY SOURCE PAMPHLET
2009 Edition

308 17:55

FEDERAL STATUTES

Sherman Act	1
Clayton Act	5
Robinson-Patman Act	57
Nonprofit Institutions Act	61
Federal Trade Commission Act	63
National Cooperative Research Act	121
Local Government Antitrust Act of 1984	131
Exon-Florio Act	133

FEDERAL GUIDELINES

U.S. Department of Justice Merger Guidelines (1984)	137
U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines (1992)	171
U.S. Department of Justice and Federal Trade Commission Antitrust Enforcement Guidelines for International Operations (1995)	199
U.S. Department of Justice and Federal Trade Commission Statements of Antitrust Enforcement Policy in Health Care (1996)	233
U.S. Department of Justice and Federal Trade Commission Antitrust Guidelines for the Licensing of Intellectual Property (1995)	301
U.S. Department of Justice and Federal Trade Commission Antitrust Guidelines for Collaborations Among Competitors (2000)	329
U.S. Department of Justice Corporate Leniency Policy	361
U.S. Department of Justice Individual Leniency Policy	365

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

NAAG Vertical Restraints Guidelines (1995)	367
NAAG Horizontal Merger Guidelines (1993)	387
NAAG Voluntary Pre-Merger Disclosure Compact	409

PROTOCOLS

Protocol for Coordination in Merger Investigations Between the Federal Enforcement Agencies and State Attorneys General	413
Protocol for Increased State Prosecution of Criminal Antitrust Offenses	421

Table of Contents

SELECTED STATE STATUTES

California	423
Connecticut	451
Minnesota	461
New York	469
Texas	475

CANADA

Competition Act	493
Competition Tribunal Act	603
Competition Tribunal Rules	611
Notifiable Transactions Regulations	637

EUROPEAN UNION

EC Treaty	649
Council Modernization Regulation	655
Council Merger Regulation	689
Commission Implementing Regulation	725
Commission Merger Notification Form CO	753
Commission Short Form	773

UNITED KINGDOM

Competition Act 1998	787
Schedules to Competition Act 1998	881
Fair Trading Act 1973	975

JAPAN

Merger Guidelines - Effect on Competition	999
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Sherman Act

Section 1 [15 U.S.C. § 1]. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

(July 2, 1890, ch. 647, § 1, 26 Stat. 209; Aug. 17, 1937, ch. 690, title VIII, 50 Stat. 693; July 7, 1955, ch. 281, 69 Stat. 282; Dec. 21, 1974, Pub. L. 93-528, § 3, 88 Stat. 1708; Dec. 12, 1975, Pub. L. 94-145, § 2, 89 Stat. 801; Nov. 16, 1990, Pub. L. 101-588, § 4(a), 104 Stat. 2880, as amended June 22, 2004, Pub. L. 108-237, title II, subtitle A, § 215(a), 118 Stat. 668.)

Section 2 [15 U.S.C. § 2]. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

(July 2, 1890, ch. 647, § 2, 26 Stat. 209; July 7, 1955, ch. 281, 69 Stat. 282; Dec. 21, 1974, Pub. L. 93-528, § 3, 88 Stat. 1708; Nov. 16, 1990, Pub. L. 101-588, § 4(b), 104 Stat. 2880, as amended June 22, 2004, Pub. L. 108-237, title II, subtitle A, § 215(b), 118 Stat. 668.)

Section 3 [15 U.S.C. § 3].

(a) Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

(b) Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce in any Territory of the United States or of the District of Columbia, or between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia, and any State or States or foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment

not exceeding 10 years, or by both said punishments, in the discretion of the court.

(July 2, 1890, ch. 647, § 3, 26 Stat. 209; July 7, 1955, ch. 281, 69 Stat. 282; Dec. 21, 1974, Pub. L. 93-528, § 3, 88 Stat. 1708; Nov. 16, 1990, Pub. L. 101-588, § 4(c), 104 Stat. 2880, as amended Nov. 2, 2002, Pub. L. 107-273, Div C, Title IV, § 14102(b), 116 Stat. 1921, as amended June 22, 2004, Pub. L. 108-237, title II, subtitle A, § 215(c), 118 Stat. 668.)

Section 4 [15 U.S.C. § 4]. The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of sections 1 to 7 of this title; and it shall be the duty of the several United States attorneys, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

(July 2, 1890, ch. 647, § 4, 26 Stat. 209; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 25, 1948, ch. 646, § 1, 62 Stat. 909.)

Section 5 [15 U.S.C. § 5]. Whenever it shall appear to the court before which any proceeding under section four of this Act [15 USCS § 4] may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

(July 2, 1890, ch. 647, § 5, 26 Stat. 210.)

Section 6 [15 U.S.C. § 6]. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section 1 of this Act [15 USCS § 1], and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

(July 2, 1890, ch. 647, § 6, 26 Stat. 210.)

Section 6A [15 U.S.C. § 6a; added by Foreign Trade Antitrust Improvements Act of 1982, Pub. L. No. 97-290, § 402]. This Act [15 USCS §§ 1 et seq.] shall not apply to conduct involving trade or commerce (other than import trade or import commerce) with foreign nations unless—

(1) such conduct has a direct, substantial, and reasonably foreseeable effect—

(A) on trade or commerce which is not trade or commerce with foreign nations, or on import trade or import commerce with foreign nations; or

(B) on export trade or export commerce with foreign nations, of a person engaged in such trade or commerce in the United States; and

SHERMAN ACT

(2) such effect gives rise to a claim under the provisions of this Act [15 USCS §§ 1 et seq.], other than this section.

If this Act [15 USCS §§ 1 et seq.] applies to such conduct only because of the operation of paragraph (1)(B), then this Act [15 USCS §§ 1 et seq.] shall apply to such conduct only for injury to export business in the United States.

(July 2, 1890, ch. 647, § 7, as added Oct. 8, 1982, Pub. L. 97-290, title IV, § 402, 96 Stat. 1246.)

Section 7 [15 U.S.C. § 7]. The word “person,” or “persons,” wherever used in this Act [15 USCS §§ 1 et seq.] shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

(July 2, 1890, ch. 647, § 8, 26 Stat. 210.)

Clayton Act

§ 1. Trusts, etc., in restraint of trade illegal; penalty

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

HISTORY:

(July 2, 1890, ch 647, § 1, 26 Stat. 209; Aug. 17, 1937, ch 690, Title VIII, § 1, 50 Stat. 693; July 7, 1955, ch 281, 69 Stat. 282; Dec. 21, 1974, P.L. 93-528, § 3, 88 Stat. 1708; Dec. 12, 1975, P.L. 94-145, § 2, 89 Stat. 801; Nov. 16, 1990, P.L. 101-588, § 4(a), 104 Stat. 2880.)

(As amended June 22, 2004, P.L. 108-237, Title II, Subtitle A, § 215(a), 118 Stat. 668.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

“Hereby”, referred to in this section, is a reference to Act July 2, 1890, ch 647, 26 Stat. 209, which appears generally as 15 USCS §§ 1 et seq., and is popularly known as the Sherman Anti-Trust Act. For full classification of such Act, consult USCS Tables volumes.

Amendments:

1937. Act Aug. 17, 1937, in the first sentence, added”: *Provided*, That nothing herein contained shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 5, as amended and supplemented, of the act entitled ‘An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,’ approved September 26, 1914: *Provided further*, That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other,” in the second sentence, deleted “such” following “who

shall make any” and following “or engage in any”, and substituted “hereby declared to be illegal” for a comma following “combination or conspiracy”.

1955. Act July 7, 1955 substituted “fifty thousand dollars” for “\$5,000”.

1974. Act Dec. 21, 1974, in the second sentence, substituted “felony” for “misdemeanor”, “one million dollars if a corporation, or, if any other person, one hundred thousand dollars” for “fifty thousand dollars”, and “three years” for “one year”.

1975. Act Dec. 12, 1975 (effective as provided by § 4 of such Act, which appears as a note to this section), in the first sentence, substituted a period for two provisos beginningw *Provided*, That nothing herein contained” and “*Provided further*, That the preceding proviso”.

1990. Act Nov. 16, 1990 substituted “\$10,000,000” for “one million dollars” and “\$350,000” for “one hundred thousand dollars”.

2004. Act June 22, 2004, substituted “\$100,000,000” for “\$10,000,000”, substituted “\$1,000,000” for “\$350,000”, and substituted “10” for “three”.

Short titles:

Act July 2, 1890, § 1, as amended Sept. 30, 1976, P.L. 94-435, Title III, § 305(a), 90 Stat. 1397, provides: “This Act [15 USCS §§ 1 et seq.] may be cited as the ‘Sherman Act’.”.

Act Dec. 21, 1974, P.L. 93-528, § 1, 88 Stat. 1706, provided: “This Act may be cited as the ‘Antitrust Procedures and Penalties Act’.”. For full classification of such Act, consult USCS Tables volumes.

Act Dec. 12, 1975, P.L. 94-145, § 1, 89 Stat. 801, provided: “This Act may be cited as the ‘Consumer Goods Pricing Act of 1975’.”. For full classification of such Act, consult USCS Tables volumes.

Act Sept. 30, 1976, P.L. 94-435, Title III, § 1, 90 Stat. 1383, provided: “This Act may be cited as the ‘Hart-Scott-Rodino Antitrust Improvements Act of 1976’.”. For full classification of such Act, consult USCS Tables volumes.

Act Dec. 2, 1980, P.L. 96-493, § 1, 94 Stat. 2568, provided: “This Act may be cited as the ‘Gasohol Competition Act of 1980’.”. For full classification of such Act, consult USCS Tables volumes.

Act Oct. 8, 1982, P.L. 97-290, Title IV, § 401, 96 Stat. 1246, provides: “This title [amending 15 USCS §§ 6a, 45] may be cited as the ‘Foreign Trade Antitrust Improvements Act of 1982’.”.

Act Oct. 24, 1984, P.L. 98-544, § 1, 98 Stat. 2750, provides: “This Act may be cited as the ‘Local Government Antitrust Act of 1984’.”. For full classification of such Act, consult USCS Tables volumes.

Act Nov. 16, 1990, P.L. 101-588, § 1, 104 Stat. 2879, provides: “This Act may be cited as the ‘Antitrust Amendments Act of 1990’.”. For full classification of such Act, consult USCS Tables volumes.

Act Dec. 8, 1995, P.L. 104-63, § 1, 109 Stat. 687, provides: “This Act [15 USCS §§ 37, 37 note, and 37a] may be cited as the ‘Charitable Gift Annuity Antitrust Relief Act of 1995’.”

Act July 3, 1997, P.L. 105-26, § 1, 111 Stat. 241, provides: “This Act [amending 15 USCS §§ 37 and 37a and classified in part as notes to 15 USCS § 37] may be cited as the ‘Charitable Donation Antitrust Immunity Act of 1997’.”

Act Sept. 17, 1997, P.L. 105-43, § 1, 111 Stat. 1140, provides: “This Act [classified as notes to this section] may be cited as the ‘Need-Based Educational Aid Antitrust Protection Act of 1997’.”

Act Oct. 27, 1998, P.L. 105-297, § 1, 112 Stat. 2824, provides: “This Act [adding 15 USCS § 27a and appearing in part as a note to such section] may be cited as the ‘Curt Flood Act of 1998’.”

Act Nov. 20, 2001, P.L. 107-72, § 1, 115 Stat. 648, provides: “This Act [amending a note to this section and appearing in part as a note to this section] may be cited as the ‘Need-Based Educational Aid Act of 2001’.”

Act Nov. 2, 2002, P.L. 107-273, Div C, Title IV, § 14101, 116 Stat. 1921, provides: “This title may be cited as the ‘Antitrust Technical Corrections Act of 2002’.” For full classification of such Title, consult USCS Tables volumes.

Act June 22, 2004, P.L. 108-237, Title II, § 201, 118 Stat. 665, provides: “This title [amending 15 USCS §§ 1–3 and 16 and appearing in part as notes to 15 USCS §§ 1 and 16] may be cited as the ‘Antitrust Criminal Penalty Enhancement and Reform Act of 2004’.”

Act Feb. 26, 2007, P.L. 110-6, § 1, 121 Stat. 61, provides: “This Act [amending a note to this section] may be cited as the ‘Antitrust Modernization Commission Extension Act of 2007’.”

Act Sept. 30, 2008, P.L. 110-327, § 1, 122 Stat. 3566, provides: “This Act [amending a note to this section] may be cited as the ‘Need-Based Educational Aid Act of 2008’.”

Other provisions:

Effective date of Dec. 12, 1975 amendment. Act Dec. 12, 1975, P.L. 94-145, § 4, 89 Stat. 801, provided: “The amendments made by sections 2 and 3 of this Act [amending this section and 15 USCS § 45] shall take effect upon the expiration of the ninety-day period which begins on the date of enactment of this Act.”

Ex. Or. No. 12022 revoked. Ex. Or. No. 12022 of Dec. 1, 1977, 42 Fed. Reg. 61441, formerly classified as a note to this section, was revoked by Ex. Or. No. 12258 of Dec. 31, 1980, 45 Fed. Reg. 1251, which appears as 5 USCS Appx. § 14 note. It provided for National Commission for the Review of Antitrust Laws and Procedures.

Application of the antitrust laws to award of need-based educational aid. Act Oct. 20, 1994, P.L. 103-382, Title V, Part F, § 568(a)-(d), 108 Stat. 4060; Sept. 17, 1997, P.L. 105-43, § 2(a), 111 Stat. 1140 (effective immediately before Sept. 30, 1997, as provided by § 2(b) of such Act); Oct. 7, 1998, P.L. 105-244, Title I, § 102(a)(3), 112

Stat. 1618 (effective on 10/1/98, as provided by § 3 of such Act, which appears as 20 USCS § 1001 note); Nov. 20, 2001, P.L. 107-72, § 2, 115 Stat. 648 (effective 9/30/2001, as provided by § 4 of such Act); Sept. 30, 2008, P.L. 110-327, § 2, 122 Stat. 3566, provides:

“(a) Exemption. It shall not be unlawful under the antitrust laws for 2 or more institutions of higher education at which all students admitted are admitted on a need-blind basis, to agree or attempt to agree—

“(1) to award such students financial aid only on the basis of demonstrated financial need for such aid;

“(2) to use common principles of analysis for determining the need of such students for financial aid if the agreement to use such principles does not restrict financial aid officers at such institutions in their exercising independent professional judgment with respect to individual applicants for such financial aid;

“(3) to use a common aid application form for need-based financial aid for such students if the agreement to use such form does not restrict such institutions in their requesting from such students, or in their using, data in addition to the data requested on such form; or

“(4) to exchange through an independent third party, before awarding need-based financial aid to any of such students who is commonly admitted to the institutions of higher education involved, data submitted by the student so admitted, the student’s family, or a financial institution on behalf of the student or the student’s family relating to assets, liabilities, income, expenses, the number of family members, and the number of the student’s siblings in college, if each of such institutions of higher education is permitted to retrieve such data only once with respect to the student.

“(b) Limitations. Subsection (a) shall not apply with respect to—

“(1) any financial aid or assistance authorized by the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.); or

“(2) any contract, combination, or conspiracy with respect to the amount or terms of any prospective financial aid award to a specific individual.

“(c) Definitions. For purposes of this section—

“(1) the term ‘alien’ has the meaning given such term in section 101(3) of the Immigration and Nationality Act (8 U.S.C. 1101(3));

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

“(3) the term ‘institution of higher education’ has the meaning given such term in section 101 of the Higher Education Act of 1965 [20 USCS § 1001];

“(4) the term ‘lawfully admitted for permanent residence’ has the meaning given such term in section 101(20) of the Immigration and Nationality Act (8 U.S.C. 1101(20));

“(5) the term ‘national of the United States’ has the meaning given such term in section 101(22) of the Immigration and Nationality Act (8 U.S.C. 1101(22));

“(6) the term ‘on a need-blind basis’ means without regard to the financial circumstances of the student involved or the student’s family; and

“(7) the term ‘student’ means, with respect to an institution of higher education, a national of the United States or an alien admitted for permanent residence who is admitted to attend an undergraduate program at such institution on a full-time basis.

“(d) Expiration. Subsection (a) shall expire on September 30, 2015.”.

Year 2000 Information and Readiness Disclosure Act. Act Oct. 19, 1998, P.L. 105-271, 112 Stat. 2386; Nov. 2, 2002, P.L. 107-273, Div C, Title IV, § 14102(e), 116 Stat. 1922 (effective on enactment, as provided by § 14103 of such Act, which appears as 15 USCS § 3 note), provides:

“Section 1. Short title.

“This Act may be cited as the ‘Year 2000 Information and Readiness Disclosure Act’.

“Sec. 2. Findings and purposes.

“(a) Findings. Congress finds the following:

“(1) (A) At least thousands but possibly millions of information technology computer systems, software programs, and semiconductors are not capable of recognizing certain dates in 1999 and after December 31, 1999, and will read dates in the year 2000 and thereafter as if those dates represent the year 1900 or thereafter or will fail to process those dates.

“(B) The problem described in subparagraph (A) and resulting failures could incapacitate systems that are essential to the functioning of markets, commerce, consumer products, utilities, government, and safety and defense systems, in the United States and throughout the world.

“(C) Reprogramming or replacing affected systems before the problem incapacitates essential systems is a matter of national and global interest.

“(2) The prompt, candid, and thorough disclosure and exchange of information related to year 2000 readiness of entities, products, and services—

“(A) would greatly enhance the ability of public and private entities to improve their year 2000 readiness; and

“(B) is therefore a matter of national importance and a vital factor in minimizing any potential year 2000 related disruption to the Nation’s economic well-being and security.

“(3) Concern about the potential for legal liability associated with the disclosure and exchange of year 2000 readiness information is impeding the disclosure and exchange of such information.

“(4) The capability to freely disseminate and exchange information relating to year 2000 readiness, solutions, test practices and test results, with the public and other entities without undue concern about litigation is critical to the ability of public and private entities to address year 2000 needs in a timely manner.

“(5) The national interest will be served by uniform legal standards in connection with the disclosure and exchange of year 2000 readiness information that will promote disclosures and exchanges of such information in a timely fashion.

“(b) Purposes. Based upon the powers contained in article I, section 8, clause 3 of the Constitution of the United States, the purposes of this Act are—

“(1) to promote the free disclosure and exchange of information related to year 2000 readiness;

“(2) to assist consumers, small businesses, and local governments in effectively and rapidly responding to year 2000 problems; and

“(3) to lessen burdens on interstate commerce by establishing certain uniform legal principles in connection with the disclosure and exchange of information related to year 2000 readiness.

“Sec. 3. Definitions.

“In this Act:

“(1) Antitrust laws. The term ‘antitrust laws’—

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

“(B) includes any State law similar to the laws referred to in subparagraph (A).

“(2) Consumer. The term ‘consumer’ means an individual who acquires a consumer product for purposes other than resale.

“(3) Consumer product. The term ‘consumer product’ means any personal property or service which is normally used for personal, family, or household purposes.

“(4) Covered action. The term ‘covered action’ means a civil action of any kind, whether arising under Federal or State law, except for an action brought by a Federal, State, or other public entity, agency, or authority acting in a regulatory, supervisory, or enforcement capacity.

“(5) Maker. The term ‘maker’ means each person or entity, including the United States or a State or political subdivision thereof, that—

“(A) issues or publishes any year 2000 statement;

“(B) develops or prepares any year 2000 statement; or

“(C) assists in, contributes to, or reviews, reports or comments on during, or approves, or otherwise takes part in the preparing, developing, issuing, approving, or publishing of any year 2000 statement.

“(6) Republication. The term ‘republication’ means any repetition, in whole or in part, of a year 2000 statement originally made by another.

“(7) Year 2000 internet website. The term ‘year 2000 Internet website’ means an Internet website or other similar electronically accessible service, clearly designated on the website or service by the person or entity creating or controlling the content of the website or service as an area where year 2000 statements concerning that person or entity are posted or otherwise made accessible to the general public.

“(8) Year 2000 processing. The term ‘year 2000 processing’ means the processing (including calculating, comparing, sequencing, displaying, or storing), transmitting, or receiving of date data from, into, and between the 20th and 21st centuries, and during the years 1999 and 2000, and leap year calculations.

“(9) Year 2000 readiness disclosure. The term ‘year 2000 readiness disclosure’ means any written year 2000 statement—

“(A) clearly identified on its face as a year 2000 readiness disclosure;

“(B) inscribed on a tangible medium or stored in an electronic or other medium and retrievable in perceivable form; and

“(C) issued or published by or with the approval of a person or entity with respect to year 2000 processing of that person or entity or of products or services offered by that person or entity.

“(10) Year 2000 remediation product or service. The term ‘year 2000 remediation product or service’ means a software program or service licensed, sold, or rendered by a person or entity and specifically designed to detect or correct year 2000 processing problems with respect to systems, products, or services manufactured or rendered by another person or entity.

“(11) Year 2000 statement.

(A) In general. The term ‘year 2000 statement’ means any communication or other conveyance of information by a party to another or to the public, in any form or medium—

“(i) concerning an assessment, projection, or estimate concerning year 2000 processing capabilities of an entity, product, service, or set of products and services;

“(ii) concerning plans, objectives, or timetables for implementing or verifying the year 2000 processing capabilities of an entity, product, service, or

set of products and services;

“(iii) concerning test plans, test dates, test results, or operational problems or solutions related to year 2000 processing by—

“(I) products; or

“(II) services that incorporate or utilize products; or

“(iv) reviewing, commenting on, or otherwise directly or indirectly relating to year 2000 processing capabilities.

“(B) Not included. For the purposes of any action brought under the securities laws, as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), the term ‘year 2000 statement’ does not include statements contained in any documents or materials filed with the Securities and Exchange Commission, or with Federal banking regulators, pursuant to section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 781(i)), or disclosures or writing that when made accompanied the solicitation of an offer or sale of securities.

“Sec. 4. Protection for year 2000 statements.

“(a) Evidence exclusion. No year 2000 readiness disclosure, in whole or in part, shall be admissible against the maker of that disclosure to prove the accuracy or truth of any year 2000 statement set forth in that disclosure, in any covered action brought by another party except that—

“(1) a year 2000 readiness disclosure may be admissible to serve as the basis for a claim for anticipatory breach, or repudiation of a contract, or a similar claim against the maker, to the extent provided by applicable law; and

“(2) the court in any covered action shall have discretion to limit application of this subsection in any case in which the court determines that the maker’s use of the year 2000 readiness disclosure amounts to bad faith or fraud, or is otherwise beyond what is reasonable to achieve the purposes of this Act.

“(b) False, misleading and inaccurate year 2000 statements. Except as provided in subsection (c), in any covered action, to the extent that such action is based on an allegedly false, inaccurate, or misleading year 2000 statement, the maker of that year 2000 statement shall not be liable under Federal or State law with respect to that year 2000 statement unless the claimant establishes, in addition to all other requisite elements of the applicable action, by clear and convincing evidence, that—

“(1) the year 2000 statement was material; and

“(2) (A) to the extent the year 2000 statement was not a republication, that the maker made the year 2000 statement—

“(i) with actual knowledge that the year 2000 statement was false, inaccurate, or misleading;