

103D CONGRESS  
1ST SESSION

# S. 574

To amend the National Cooperative Research Act of 1984 with respect to joint ventures entered into for the purpose of producing a product, process, or service.

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## IN THE SENATE OF THE UNITED STATES

MARCH 11 (legislative day, MARCH 3), 1993

Mr. LEAHY (for himself, Mr. THURMOND, Mr. BIDEN, Mr. BROWN, Mr. DECONCINI, Mr. HEFLIN, Mr. KOHL, Mr. GRASSLEY, Mr. JEFFORDS, Mr. WOFFORD, Mr. BUMPERS, and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend the National Cooperative Research Act of 1984 with respect to joint ventures entered into for the purpose of producing a product, process, or service.

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 “National Cooperative  
5 Production Amendments Act of 1993”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—The Congress finds that—

1           (1) technological innovation and its profitable  
2           commercialization are critical components of the  
3           ability of the United States to raise the living stand-  
4           ards of Americans and to compete in world markets;

5           (2) cooperative arrangements among  
6           nonaffiliated businesses in the private sector are  
7           often essential for successful technological innova-  
8           tion; and

9           (3) the antitrust laws may have been mistak-  
10          enly perceived as inhibiting cooperative innovation  
11          arrangements that promote competition, and accord-  
12          ingly, clarification of the law would serve a useful  
13          purpose in helping to promote such arrangements.

14          (b) PURPOSE.—It is the purpose of this Act to pro-  
15          mote innovation, facilitate trade, and strengthen the com-  
16          petitiveness of the United States in world markets by  
17          clarifying the applicability of the rule of reason standard  
18          and establishing a procedure under which businesses may  
19          notify the Department of Justice and Federal Trade Com-  
20          mission of their cooperative ventures and thereby qualify  
21          for a single-damage limitation on civil antitrust liability.

22          **SEC. 3. AMENDMENTS.**

23          (a) SHORT TITLE.—Section 1 of the National Coop-  
24          erative Research Act of 1984 (15 U.S.C. 4301 note) is  
25          amended by striking “National Cooperative Research Act

1 of 1984” and inserting “National Cooperative Research  
2 and Production Act of 1993”.

3 (b) DEFINITION.—Section 2(a)(6) of the National  
4 Cooperative Research Act of 1984 (15 U.S.C. 4301(a)(6))  
5 is amended—

6 (1) in the matter preceding subparagraph (A)  
7 by striking “research and development”;

8 (2) in subparagraph (D) by inserting “or pro-  
9 duction” after “research”;

10 (3) in subparagraph (E) by striking “and (D)”  
11 and inserting “(D), (E), and (F)”;

12 (4) by redesignating subparagraphs (D) and  
13 (E) as subparagraphs (F) and (G), respectively;

14 (5) by inserting after subparagraph (C) the fol-  
15 lowing:

16 “(D) the production of a product, process,  
17 or service,

18 “(E) the testing in connection with the  
19 production of a product, process, or service by  
20 such venture,”; and

21 (6) by striking “research” the last place it ap-  
22 pears and inserting “such venture”.

23 (c) EXCLUSIONS.—Section 2(b) of the National Co-  
24 operative Research Act of 1984 (15 U.S.C. 4301(b)) is  
25 amended—

1 (1) in the matter preceding paragraph (1) by  
2 striking “research and development”;

3 (2) in paragraph (1) by striking “that is not  
4 reasonably required to conduct the research and de-  
5 velopment that is” and inserting “if such informa-  
6 tion is not reasonably required to carry out”;

7 (3) by amending paragraph (2) to read as fol-  
8 lows:

9 “(2) entering into any agreement or engaging  
10 in any other conduct restricting, requiring, or other-  
11 wise involving the marketing, distribution, or provi-  
12 sion by any person who is a party to such venture  
13 of any product, process, or service, other than—

14 “(A) the distribution among the parties to  
15 such venture, in accordance with such venture,  
16 of a product, process, or service produced by  
17 such a venture,

18 “(B) the marketing of proprietary informa-  
19 tion, such as patents and trade secrets, devel-  
20 oped through such venture formed under a  
21 written agreement entered into before the date  
22 of enactment of the National Cooperative Pro-  
23 duction Amendments Act of 1993, or

24 “(C) the licensing, conveying, or transfer-  
25 ring of intellectual property, such as patents

1 and trade secrets, developed through such ven-  
2 ture formed under a written agreement entered  
3 into on or after the date of enactment of the  
4 National Cooperative Production Amendments  
5 Act of 1993,”;

6 (4) in paragraph (3)—

7 (A) in subparagraph (A) by striking “or  
8 developments not developed through” and in-  
9 serting “, developments, products, processes, or  
10 services not developed through or produced by”;

11 (B) in subparagraph (B) by striking “such  
12 party” and inserting “any person who is a  
13 party to such a venture”; and

14 (C) by striking the period at the end and  
15 inserting a comma; and

16 (5) by adding at the end the following new  
17 paragraphs:

18 “(4) entering into any agreement or engaging  
19 in any other conduct allocating a market with a  
20 competitor,

21 “(5) exchanging information among competitors  
22 relating to production (other than production by  
23 such venture) of a product, process, or service if  
24 such information is not reasonably required to carry  
25 out the purpose of the venture,

1           “(6) entering into any agreement or engaging  
2           in any other conduct restricting, requiring, or other-  
3           wise involving the production (other than the pro-  
4           duction by such venture) of a product, process, or  
5           service,

6           “(7) using existing facilities in connection with  
7           the production of a product, process, or service by  
8           the venture unless the use is for the production of  
9           a new product or technology, and

10           “(8) except as provided in paragraphs (2), (3),  
11           and (6), entering into any agreement or engaging in  
12           any other conduct to restrict or require participation  
13           by any person who is a party to the venture, in any  
14           unilateral or joint activity that is not reasonably re-  
15           quired to carry out the purpose of the venture.”.

16           (d) RULE OF REASON STANDARD.—Section 3 of the  
17           National Cooperative Research Act of 1984 (15 U.S.C.  
18           4302) is amended—

19           (1) by striking “research and development” the  
20           first place it appears;

21           (2) by striking “and development” the last  
22           place it appears and inserting “, development, prod-  
23           uct, process, and service”; and

24           (3) by adding at the end the following:

1 “For the purpose of determining a properly defined, rel-  
2 evant market, worldwide capacity shall be considered to  
3 the extent that it is appropriate in the circumstances.”.

4 (e) TECHNICAL AMENDMENTS.—The National Coop-  
5 erative Research Act of 1984 (15 U.S.C. 4301 et seq.)  
6 is amended—

7 (1) in section 4 (a)(1), (b)(1), (c)(1), and (e) by  
8 striking “research and development” each place it  
9 appears; and

10 (2) in section 5(a) in the matter preceding  
11 paragraph (1) by striking “research and develop-  
12 ment”.

13 (f) DISCLOSURE.—Section 6 of the National Cooper-  
14 ative Research Act of 1984 (15 U.S.C. 4305) is amend-  
15 ed—

16 (1) in the heading by striking “RESEARCH AND  
17 DEVELOPMENT”;

18 (2) in subsection (a)—

19 (A) by striking “and” at the end of para-  
20 graph (1);

21 (B) by striking the period at the end of  
22 paragraph (2) and inserting “, and”; and

23 (C) by inserting after paragraph (2) the  
24 following new paragraph:

1           “(3) if a purpose of the venture is the produc-  
2           tion of a product, process, or service described in  
3           section 2(a)(6)(D), the identity and nationality of  
4           any person who is a party to the venture or who  
5           controls any party to the venture, whether separately  
6           or with 1 or more other persons acting as a group  
7           for the purpose of controlling that person.”; and

8           (3) in subsections (a), (d)(2), and (e) by strik-  
9           ing “research and development” each place it ap-  
10          pears.

11          (g) LIMITATION.—The National Cooperative Re-  
12          search Act of 1984 (15 U.S.C. 4301 et seq.) is amended  
13          by adding at the end the following new section:

14          “APPLICATION OF SECTION 4 PROTECTIONS TO  
15          PRODUCTION OF PRODUCTS, PROCESSES, AND SERVICES

16          “SEC. 7. Notwithstanding sections 4 and 6, the pro-  
17          tections of section 4 shall not apply with respect to a joint  
18          venture’s production of a product, process, or service de-  
19          scribed in section 2(a)(6)(D) unless—

20                 “(1) the principal facilities for such production  
21                 are located in the United States or its territories,  
22                 and

23                 “(2) each person who controls any party to the  
24                 venture (including the party itself) is a United  
25                 States person, or a foreign person from a country  
26                 the law of whom accords antitrust treatment no less

1 favorable to United States persons than to that  
2 country's domestic persons with respect to participa-  
3 tion in joint ventures for production.''.

4 **SEC. 4. REPORTS ON JOINT VENTURES AND UNITED**  
5 **STATES COMPETITIVENESS.**

6 (a) PURPOSE.—The purpose of the reports required  
7 by this section is to inform Congress and the American  
8 people of the effect of the National Cooperative Research  
9 and Production Act of 1993 on the competitiveness of the  
10 United States in key technological areas of research, devel-  
11 opment, and production.

12 (b) ANNUAL REPORT BY THE ATTORNEY GEN-  
13 ERAL.—In the 30-day period beginning at each 1-year in-  
14 terval after the date of enactment of this Act, the Attorney  
15 General shall submit to the Committee on the Judiciary  
16 of the House of Representatives and the Committee on  
17 the Judiciary of the Senate—

18 (1) a list of joint ventures for which notice was  
19 filed under section 6(a) of the National Cooperative  
20 Research and Production Act of 1993 during the 12-  
21 month period for which the report is made, including  
22 the purpose of each joint venture and the identity  
23 and nationality of each party to the joint venture as  
24 described in that section; and

1           (2) a list of cases and proceedings brought dur-  
2           ing that period under the antitrust laws by the De-  
3           partment of Justice and the Federal Trade Commis-  
4           sion with respect to joint ventures for which notice  
5           was filed under that section at any time.

6           (c) TRIENNIAL REPORT BY THE ATTORNEY GEN-  
7           ERAL.—In the 30-day period beginning at each 3-year in-  
8           terval after the date of enactment of this Act, the Attorney  
9           General, after consultation with such other agencies as the  
10          Attorney General considers to be appropriate, shall submit  
11          to the Committee on the Judiciary of the House of Rep-  
12          resentatives and the Committee on the Judiciary of the  
13          Senate—

14                 (1)(A) a description of the technological areas  
15                 of research, development, and production most com-  
16                 monly pursued by joint ventures for which notice  
17                 was filed under section 6(a) of the National Cooper-  
18                 ative Research and Production Act of 1993 during  
19                 the 3-year period for which the report is made; and

20                 (B) an analysis of the trends in the competitive-  
21                 ness of United States industry in those areas; and

22                 (2) a supplement to the report submitted by the  
23                 Attorney General under subsection (d) reflecting  
24                 changes in antitrust treatment of joint ventures  
25                 under the laws of other nations.

1       (d) REVIEW OF ANTITRUST TREATMENT UNDER  
2 FOREIGN LAWS.—Not later than 1 year after the date of  
3 enactment of this Act, the Attorney General, after con-  
4 sultation with such other agencies as the Attorney General  
5 considers to be appropriate, shall submit to the Committee  
6 on the Judiciary of the House of Representatives and the  
7 Committee on the Judiciary of the Senate a report on the  
8 antitrust treatment of United States businesses that are  
9 parties to joint ventures under the law of each foreign na-  
10 tion in which there is operating a business that filed notice  
11 under section 6(a) of the National Cooperative Research  
12 and Production Act of 1993.

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