

Union Calendar No. 49

103D CONGRESS
1ST SESSION

H. R. 1313

[Report No. 103-94]

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.

May 18, 1993

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 1993

Mr. BROOKS (for himself, Mr. FISH, Mr. EDWARDS of California, and Mr. BOUCHER) introduced the following bill; which was referred to the Committee on the Judiciary

MAY 18, 1993

Additional sponsors: Mr. MOORHEAD, Mr. MAZZOLI, Mr. BERMAN, Mr. MANN, Mr. SCOTT, Mr. GLICKMAN, Mr. FRANK of Massachusetts, Mr. REED, Mr. NADLER, and Mr. SENSENBRENNER

MAY 18, 1993

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on March 11, 1993]

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 of 1993”.*

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

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

8 *(1) technological innovation and its profitable*
9 *commercialization are critical components of the abil-*
10 *ity of the United States to raise the living standards*
11 *of Americans and to compete in world markets;*

12 *(2) cooperative arrangements among*
13 *nonaffiliated businesses in the private sector are often*
14 *essential for successful technological innovation; and*

15 *(3) the antitrust laws may have been mistakenly*
16 *perceived to inhibit procompetitive cooperative inno-*
17 *vation arrangements, and so clarification serves a*
18 *useful purpose in helping to promote such arrange-*
19 *ments.*

20 *(b) PURPOSE.—It is the purpose of this Act to promote*
21 *innovation, facilitate trade, and strengthen the competitive-*
22 *ness of the United States in world markets by clarifying*
23 *the applicability of the rule of reason standard and estab-*
24 *lishing a procedure under which businesses may notify the*
25 *Department of Justice and Federal Trade Commission of*

1 *their cooperative ventures and thereby qualify for a single-*
2 *damage limitation on civil antitrust liability.*

3 **SEC. 3. AMENDMENTS.**

4 (a) *SHORT TITLE.*—Section 1 of the National Coopera-
5 *tive Research Act of 1984 (15 U.S.C. 4301 note) is amended*
6 *by striking “National Cooperative Research Act of 1984”*
7 *and inserting “National Cooperative Research and Produc-*
8 *tion Act of 1993”.*

9 (b) *DEFINITION.*—Section 2(a)(6) of the National Co-
10 *operative Research Act of 1984 (15 U.S.C. 4301(a)(6)) is*
11 *amended—*

12 (1) *in the matter preceding subparagraph (A) by*
13 *striking “research and development”;*

14 (2) *in subparagraph (D) by inserting “or pro-*
15 *duction” after “research”;*

16 (3) *in subparagraph (E) by striking “and (D)”*
17 *and inserting “(D), (E), and (F)”;*

18 (4) *by redesignating subparagraphs (D) and (E)*
19 *as subparagraphs (F) and (G), respectively;*

20 (5) *by inserting after subparagraph (C) the*
21 *following:*

22 “(D) *the production of a product, process,*
23 *or service,*

1 “(E) the testing in connection with the pro-
2 duction of a product, process, or service by such
3 venture,”; and

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

6 (c) *EXCLUSIONS.*—Section 2(b) of the National Coop-
7 erative Research Act of 1984 (15 U.S.C. 4301(b)) is amend-
8 ed—

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

11 (2) in paragraph (1) by striking “that is not
12 reasonably required to conduct the research and devel-
13 opment that is” and inserting “if such information is
14 not reasonably required to carry out”;

15 (3) by amending paragraph (2) to read as
16 follows:

17 “(2) entering into any agreement or engaging in
18 any other conduct restricting, requiring, or otherwise
19 involving the marketing, distribution, or provision by
20 any person who is a party to such venture of any
21 product, process, or service, other than—

22 “(A) the distribution among the parties to
23 such venture, in accordance with such venture, of
24 a product, process, or service produced by such
25 venture,

1 “(B) the marketing of proprietary informa-
2 tion, such as patents and trade secrets, developed
3 through such venture formed under a written
4 agreement entered into before the date of the en-
5 actment of the National Cooperative Production
6 Amendments of 1993, or

7 “(C) the licensing, conveying, or transfer-
8 ring of intellectual property, such as patents and
9 trade secrets, developed through such venture
10 formed under a written agreement entered into
11 on or after the date of the enactment of the Na-
12 tional Cooperative Production Amendments of
13 1993.”;

14 (4) in paragraph (3)—

15 (A) in subparagraph (A) by striking “or de-
16 velopments not developed through” and inserting
17 “; developments, products, processes, or services
18 not developed through, or produced by.”;

19 (B) in subparagraph (B) by striking “such
20 party” and inserting “any person who is a
21 party to such venture”; and

22 (C) by striking the period at the end and
23 inserting a comma, and

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

1 “(4) entering into any agreement or engaging in
2 any other conduct allocating a market with a com-
3 petitor,

4 “(5) exchanging information among competitors
5 relating to production (other than production by such
6 venture) of a product, process, or service if such infor-
7 mation is not reasonably required to carry out the
8 purpose of such venture,

9 “(6) entering into any agreement or engaging in
10 any other conduct restricting, requiring, or otherwise
11 involving the production (other than the production
12 by such venture) of a product, process, or service,

13 “(7) using existing facilities in connection with
14 the production of a product, process, or service by
15 such venture unless such use is for the production of
16 a new product or technology, and

17 “(8) except as provided in paragraphs (2), (3),
18 and (6), entering into any agreement or engaging in
19 any other conduct to restrict or require participation
20 by any person who is a party to such venture, in any
21 unilateral or joint activity that is not reasonably re-
22 quired to carry out the purpose of such venture.”.

23 (d) *RULE OF REASON STANDARD.*—Section 3 of the
24 National Cooperative Research Act of 1984 (15 U.S.C.
25 4302) is amended—

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

3 (2) by striking “and development” the last place
4 it appears and inserting “; development, product,
5 process, and service”; and

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

7 “For the purpose of determining a properly defined, rel-
8 evant market, worldwide capacity shall be considered to the
9 extent that it may be appropriate in the circumstances.”.

10 (e) *TECHNICAL AND CONFORMING AMENDMENTS.*—The
11 National Cooperative Research Act of 1984 (15 U.S.C. 4301
12 et seq.) is amended—

13 (1) in section 4—

14 (A) in subsections (a)(1), (b)(1), (c)(1), and
15 (e) by striking “research and development” each
16 place it appears; and

17 (B) in subsection (b) by inserting “of this
18 section” after “subsection (d)”; and

19 (2) in section 5(a) in the matter preceding para-
20 graph (1) by striking “research and development”.

21 (f) *DISCLOSURE.*—Section 6 of the National Coopera-
22 tive Research Act of 1984 (15 U.S.C. 4305) is amended—

23 (1) in the heading by striking “RESEARCH AND
24 DEVELOPMENT”;

25 (2) in subsection (a)—

1 (A) in paragraph (1) by striking “and” at
2 the end,

3 (B) in paragraph (2) by striking the period
4 at the end and inserting “, and”, and

5 (C) by inserting the following after para-
6 graph (2):

7 “(3) if a purpose of such venture is the produc-
8 tion of a product, process, or service, as referred to in
9 section 2(a)(6)(D), the identity and nationality of
10 any person who is a party to such venture, or who
11 controls any party to such venture whether separately
12 or with one or more other persons acting as a group
13 for the purpose of controlling such party.”; and

14 (3) in subsections (a), (d)(2), and (e) by striking
15 “research and development” each place it appears.

16 (g) *LIMITATION.*—The National Cooperative Research
17 Act of 1984 (15 U.S.C. 4301 et seq.) is amended by adding
18 at the end the following:

19 “APPLICATION OF SECTION 4 PROTECTIONS TO
20 PRODUCTION OF PRODUCTS, PROCESSES, AND SERVICES

21 “SEC. 7. Notwithstanding sections 4 and 6, the protec-
22 tions of section 4 shall not apply with respect to a joint
23 venture’s production of a product, process, or service, as re-
24 ferred to in section 2(a)(6)(D), unless—

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

1 “(2) each person who controls any party to such
2 venture (including such party itself) is a United
3 States person, or a foreign person from a country
4 whose law accords antitrust treatment no less favor-
5 able to United States persons than to such country’s
6 domestic persons with respect to participation in
7 joint ventures for production.”.

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

10 (a) *PURPOSE.*—The purpose of the reports required by
11 this section is to inform Congress and the American people
12 of the effect of the National Cooperative Research and Pro-
13 duction Act of 1993 on the competitiveness of the United
14 States in key technological areas of research, development,
15 and production.

16 (b) *ANNUAL REPORT BY THE ATTORNEY GENERAL.*—
17 In the 30-day period beginning at each 1-year interval after
18 the date of the enactment of this Act, the Attorney General
19 shall submit to the Committee on the Judiciary of the House
20 of Representatives and the Committee on the Judiciary of
21 the Senate—

22 (1) a list of joint ventures for which notice was
23 filed under section 6(a) of the National Cooperative
24 Research and Production Act of 1993 during the 12-

1 *month period for which such report is made, includ-*
2 *ing—*

3 *(A) the purpose of each joint venture;*

4 *(B) the identity of each party described in*
5 *section 6(a)(1) of such Act, and*

6 *(C) the identity and nationality of each*
7 *person described in section 6(a)(3) of such Act;*
8 *and*

9 *(2) a list of cases and proceedings, if any,*
10 *brought during such period under the antitrust laws*
11 *by the Department of Justice, and by the Federal*
12 *Trade Commission, with respect to joint ventures for*
13 *which notice was filed under such section at any*
14 *time.*

15 *(c) TRIENNIAL REPORT BY THE ATTORNEY GEN-*
16 *ERAL.—In the 30-day period beginning at each 3-year in-*
17 *terval after the date of the enactment of this Act, the Attor-*
18 *ney General, after consultation with such other agencies as*
19 *may be appropriate, shall submit to the Committee on the*
20 *Judiciary of the House of Representatives and the Commit-*
21 *tee on the Judiciary of the Senate—*

22 *(1) a description of the technological areas of re-*
23 *search, development, and production most commonly*
24 *pursued by joint ventures for which notice was filed*
25 *under section 6(a) of the National Cooperative Re-*

1 *search and Production Act of 1993 during the 3-year*
2 *period for which such report is made, and an analy-*
3 *sis of the trends in the competitiveness of United*
4 *States industry in such areas; and*

5 *(2) an update of the report submitted by the At-*
6 *torney General under subsection (d) to reflect changes*
7 *in foreign law's antitrust treatment of joint ventures.*

8 *(d) REVIEW OF ANTITRUST TREATMENT UNDER FOR-*
9 *EIGN LAWS.—Not later than 1 year after the date of enact-*
10 *ment of this Act, the Attorney General, after consultation*
11 *with such other agencies as may be appropriate, shall sub-*
12 *mit to the Committee on the Judiciary of the House of Rep-*
13 *resentatives and the Committee on the Judiciary of the Sen-*
14 *ate a report on the antitrust treatment of United States*
15 *businesses that are parties to joint ventures under the law*
16 *of each foreign nation whose domestic businesses filed notice*
17 *under section 6(a) of the National Cooperative Research*
18 *and Production Act of 1993 at any time.*