

108<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1086

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IN THE SENATE OF THE UNITED STATES

JUNE 11, 2003

Received; read twice and referred to the Committee on the Judiciary

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## AN ACT

To encourage the development and promulgation of voluntary consensus standards by providing relief under the anti-trust laws to standards development organizations with respect to conduct engaged in for the purpose of developing voluntary consensus standards, 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 “Standards Develop-  
5 ment Organization Advancement Act of 2003”.

6 **SEC. 2. FINDINGS.**

7       The Congress finds the following:

8           (1) In 1993, the Congress amended and re-  
9 named the National Cooperative Research Act of  
10 1984 (now known as the National Cooperative Re-  
11 search and Production Act of 1993 (15 U.S.C. 4301  
12 et seq.)) by enacting the National Cooperative Pro-  
13 duction Amendments of 1993 (Public Law 103–42)  
14 to encourage the use of collaborative, procompetitive  
15 activity in the form of research and production joint  
16 ventures that provide adequate disclosure to the  
17 antitrust enforcement agencies about the nature and  
18 scope of the activity involved.

19           (2) Subsequently, in 1995, the Congress in en-  
20 acting the National Technology Transfer and Ad-  
21 vancement Act of 1995 (15 U.S.C. 272 note) recog-  
22 nized the importance of technical standards devel-  
23 oped by voluntary consensus standards bodies to our  
24 national economy by requiring the use of such stand-  
25 ards to the extent practicable by Federal agencies

1 and by encouraging Federal agency representatives  
2 to participate in ongoing standards development ac-  
3 tivities. The Office of Management and Budget on  
4 February 18, 1998, revised Circular A-119 to re-  
5 flect these changes made in law.

6 (3) Following enactment of the National Tech-  
7 nology Transfer and Advancement Act of 1995,  
8 technical standards developed or adopted by vol-  
9 untary consensus standards bodies have replaced  
10 thousands of unique Government standards and  
11 specifications allowing the national economy to oper-  
12 ate in a more unified fashion.

13 (4) Having the same technical standards used  
14 by Federal agencies and by the private sector per-  
15 mits the Government to avoid the cost of developing  
16 duplicative Government standards and to more read-  
17 ily use products and components designed for the  
18 commercial marketplace, thereby enhancing quality  
19 and safety and reducing costs.

20 (5) Technical standards are written by hun-  
21 dreds of nonprofit voluntary consensus standards  
22 bodies in a nonexclusionary fashion, using thousands  
23 of volunteers from the private and public sectors,  
24 and are developed under the standards development  
25 principles set out in Circular Number A-119, as re-

1       vised February 18, 1998, of the Office of Manage-  
2       ment and Budget, including principles that require  
3       openness, balance, transparency, consensus, and due  
4       process. Such principles provide for—

5               (A) notice to all parties known to be af-  
6               fected by the particular standards development  
7               activity,

8               (B) the opportunity to participate in  
9               standards development or modification,

10              (C) balancing interests so that standards  
11              development activities are not dominated by any  
12              single group of interested persons,

13              (D) readily available access to essential in-  
14              formation regarding proposed and final stand-  
15              ards,

16              (E) the requirement that substantial  
17              agreement be reached on all material points  
18              after the consideration of all views and objec-  
19              tions, and

20              (F) the right to express a position, to have  
21              it considered, and to appeal an adverse decision.

22              (6) There are tens of thousands of voluntary  
23              consensus standards available for government use.  
24              Most of these standards are kept current through in-  
25              terim amendments and interpretations, issuance of

1       addenda, and periodic reaffirmation, revision, or  
2       reissuance every 3 to 5 years.

3               (7) Standards developed by government entities  
4       generally are not subject to challenge under the anti-  
5       trust laws.

6               (8) Private developers of the technical stand-  
7       ards that are used as Government standards are  
8       often not similarly protected, leaving such developers  
9       vulnerable to being named as codefendants in law-  
10      suits even though the likelihood of their being held  
11      liable is remote in most cases, and they generally  
12      have limited resources to defend themselves in such  
13      lawsuits.

14              (9) Standards development organizations do not  
15      stand to benefit from any antitrust violations that  
16      might occur in the voluntary consensus standards  
17      development process.

18              (10) As was the case with respect to research  
19      and production joint ventures before the passage of  
20      the National Cooperative Research and Production  
21      Act of 1993, if relief from the threat of liability  
22      under the antitrust laws is not granted to voluntary  
23      consensus standards bodies, both regarding the de-  
24      velopment of new standards and efforts to keep ex-  
25      isting standards current, such bodies could be forced

1 to cut back on standards development activities at  
2 great financial cost both to the Government and to  
3 the national economy.

4 **SEC. 3. DEFINITIONS.**

5 Section 2 of the National Cooperative Research and  
6 Production Act of 1993 (15 U.S.C. 4301) is amended—

7 (1) in subsection (a) by adding at the end the  
8 following:

9 “(7) The term ‘standards development activity’  
10 means any action taken by a standards development  
11 organization for the purpose of developing, promul-  
12 gating, revising, amending, reissuing, interpreting,  
13 or otherwise maintaining a voluntary consensus  
14 standard, or using such standard in conformity as-  
15 sessment activities, including actions relating to the  
16 intellectual property policies of the standards devel-  
17 opment organization.

18 “(8) The term ‘standards development organi-  
19 zation’ means a domestic or international organiza-  
20 tion that plans, develops, establishes, or coordinates  
21 voluntary consensus standards using procedures that  
22 incorporate the attributes of openness, balance of in-  
23 terests, due process, an appeals process, and con-  
24 sensus in a manner consistent with the Office of

1 Management and Budget Circular Number A-119,  
2 as revised February 10, 1998.

3 “(9) The term ‘technical standard’ has the  
4 meaning given such term in section 12(d)(4) of the  
5 National Technology Transfer and Advancement Act  
6 of 1995.

7 “(10) The term ‘voluntary consensus standard’  
8 has the meaning given such term in Office of Man-  
9 agement and Budget Circular Number A-119, as re-  
10 vised February 10, 1998.”; and

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

12 “(c) The term ‘standards development activity’ ex-  
13 cludes the following activities:

14 “(1) Exchanging information among competi-  
15 tors relating to cost, sales, profitability, prices, mar-  
16 keting, or distribution of any product, process, or  
17 service that is not reasonably required for the pur-  
18 pose of developing or promulgating a voluntary con-  
19 sensus standard, or using such standard in con-  
20 formity assessment activities.

21 “(2) Entering into any agreement or engaging  
22 in any other conduct that would allocate a market  
23 with a competitor.

1           “(3) Entering into any agreement or conspiracy  
2           that would set or restrain prices of any good or serv-  
3           ice.”.

4 **SEC. 4. RULE OF REASON STANDARD.**

5           Section 3 of the National Cooperative Research and  
6           Production Act of 1993 (15 U.S.C. 4302) is amended by  
7           striking “of any person in making or performing a con-  
8           tract to carry out a joint venture shall” and inserting the  
9           following: “of—

10           “(1) any person in making or performing a con-  
11           tract to carry out a joint venture, or

12           “(2) a standards development organization  
13           while engaged in a standards development activity,  
14           shall”.

15 **SEC. 5. LIMITATION ON RECOVERY.**

16           Section 4 of the National Cooperative Research and  
17           Production Act of 1993 (15 U.S.C. 4303) is amended—

18           (1) in subsections (a)(1), (b)(1), and (c)(1) by  
19           inserting “, or for a standards development activity  
20           engaged in by a standards development organization  
21           against which such claim is made” after “joint ven-  
22           ture”, and

23           (2) in subsection (e)—

24           (A) by inserting “, or of a standards devel-  
25           opment activity engaged in by a standards de-

1           velopment organization” before the period at  
2           the end, and

3                   (B) by redesignating such subsection as  
4           subsection (f), and

5           (3) by inserting after subsection (d) the fol-  
6           lowing:

7           “(e) Subsections (a), (b), and (c) shall not be con-  
8           strued to modify the liability under the antitrust laws of  
9           any person (other than a standards development organiza-  
10          tion) who—

11                   “(1) directly (or through an employee or agent)  
12           participates in a standards development activity with  
13           respect to which a violation of any of the antitrust  
14           laws is found,

15                   “(2) is not a fulltime employee of the standards  
16           development organization that engaged in such ac-  
17           tivity, and

18                   “(3) is, or is an employee or agent of a person  
19           who is, engaged in a line of commerce that is likely  
20           to benefit directly from the operation of the stand-  
21           ards development activity with respect to which such  
22           violation is found.”.

23 **SEC. 6. ATTORNEY FEES.**

24           Section 5 of the National Cooperative Research and  
25           Production Act of 1993 (15 U.S.C. 4304) is amended—

1           (1) in subsection (a) by inserting “, or of a  
2 standards development activity engaged in by a  
3 standards development organization” after “joint  
4 venture”, and

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

6           “(c) Subsections (a) and (b) shall not apply with re-  
7 spect to any person who—

8           “(1) directly participates in a standards devel-  
9 opment activity with respect to which a violation of  
10 any of the antitrust laws is found,

11           “(2) is not a fulltime employee of a standards  
12 development organization that engaged in such ac-  
13 tivity, and

14           “(3) is, or is an employee or agent of a person  
15 who is, engaged in a line of commerce that is likely  
16 to benefit directly from the operation of the stand-  
17 ards development activity with respect to which such  
18 violation is found.”.

19 **SEC. 7. DISCLOSURE OF STANDARDS DEVELOPMENT AC-**  
20 **TIVITY.**

21           Section 6 of the National Cooperative Research and  
22 Production Act of 1993 (15 U.S.C. 4305) is amended—

23           (1) in subsection (a)—

1 (A) by redesignating paragraphs (1), (2),  
2 and (3) as subparagraphs (A), (B), and (C), re-  
3 spectively,

4 (B) by inserting “(1)” after “(a)”, and

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

6 “(2) A standards development organization may, not  
7 later than 90 days after commencing a standards develop-  
8 ment activity engaged in for the purpose of developing or  
9 promulgating a voluntary consensus standards or not later  
10 than 90 days after the date of the enactment of the Stand-  
11 ards Development Organization Advancement Act of  
12 2003, whichever is later, file simultaneously with the At-  
13 torney General and the Commission, a written notification  
14 disclosing—

15 “(A) the name and principal place of business  
16 of the standards development organization, and

17 “(B) documents showing the nature and scope  
18 of such activity.

19 Any standards development organization may file addi-  
20 tional disclosure notifications pursuant to this section as  
21 are appropriate to extend the protections of section 4 to  
22 standards development activities that are not covered by  
23 the initial filing or that have changed significantly since  
24 the initial filing.”,

25 (2) in subsection (b)—

1 (A) in the 1st sentence by inserting “, or  
2 a notice with respect to such standards develop-  
3 ment activity that identifies the standards de-  
4 velopment organization engaged in such activity  
5 and that describes such activity in general  
6 terms” before the period at the end, and

7 (B) in the last sentence by inserting “or  
8 available to such organization, as the case may  
9 be” before the period,

10 (3) in subsection (d)(2) by inserting “, or the  
11 standards development activity,” after “venture”,

12 (4) in subsection (e)—

13 (A) by striking “person who” and inserting  
14 “person or standards development organization  
15 that”, and

16 (B) by inserting “or any standards devel-  
17 opment organization” after “person” the last  
18 place it appears, and

19 (5) in subsection (g)(1) by inserting “or stand-  
20 ards development organization” after “person”.

21 **SEC. 8. RULE OF CONSTRUCTION.**

22 Nothing in this Act shall be construed to alter or  
23 modify the antitrust treatment under existing law of—

1           (1) parties participating in standards develop-  
2           ment activity of standards development organiza-  
3           tions within the scope of this Act, or

4           (2) other organizations and parties engaged in  
5           standard-setting processes not within the scope of  
6           this amendment to the Act.

Passed the House of Representatives June 10, 2003.

Attest:

JEFF TRANDAHL,

*Clerk.*