To improve the antitrust laws, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. Lee (for himself and Mr. Grassley) introduced the following bill; which was read twice and referred to the Committee on ____________

A BILL

To improve the antitrust laws, and for other purposes.

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

SECTION 1. SHORT TITLE.

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

SEC. 2. TABLE OF CONTENTS.

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. 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.

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 laws” means—
(A) the Sherman Act (15 U.S.C. 1 et seq.);
and
(B) the Clayton Act (15 U.S.C. 12 et seq.).

(2) ASSISTANT ATTORNEY GENERAL.—The term “Assistant Attorney General” means the Assistant Attorney General for the Antitrust Division of the Department of Justice.

(3) EXECUTIVE AGENCY.—The term “Executive agency” has the meaning given that term in section 105 of title 5, United States Code.

TITLE I—ONE AGENCY

SEC. 101. SHORT TITLE.
This title may be cited as the “One Agency Act”.

SEC. 102. FINDINGS.
Congress finds the following:

(1) It is the policy of the United States to promote the vigorous, effective, and efficient enforcement of the antitrust laws.

(2) The overlapping antitrust enforcement jurisdiction of the Department of Justice and the Federal Trade Commission has wasted taxpayer resources, hampered enforcement efforts, and caused uncertainty for businesses and consumers in the United States.
(3) It is preferable that primary Federal responsibility for enforcing the antitrust laws of the United States be given to a single agency, and the Department of Justice is best suited to do so.

SEC. 103. DEFINITIONS.

In this title:

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

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

(3) FTC ANTITRUST ACTION.—The term “FTC antitrust action” means any litigation or administrative proceeding initiated by the Commission that—

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

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

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

(A) means all electronic or tangible records and files relating to matters supervised, as well as any physical assets or equipment owned and
used or retained, by an FTC Antitrust Unit; and

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

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

(6) FTC ANTITRUST FUNCTION.—The term “FTC antitrust function” means a function of the Commission 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.

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

(A) all amounts appropriated before the effective date by an Act of Congress to the Federal Trade Commission that are designated, by Congress or the Commission, for an FTC Antitrust Unit; and

(B) all fees collected by the Federal Trade Commission before the effective date under sec-
tion 7A of the Clayton Act (15 U.S.C. 18a) and rules issued under that section.

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

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

(B) each division of the Bureau of Economics of the Commission that is designated to work on FTC antitrust actions.

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

(10) TRANSITION PERIOD.—The term “transition period” means the period beginning on the effective date of this title and ending on the later of—

(A) the date that is 1 year after the effective date of this title; or

(B) the date that is 180 days after the date described in subparagraph (A), which may be extended by the Assistant Attorney General once for an additional 180 days, if the Assistant Attorney General determines that a period longer than the period described in subparagraph (A) is necessary to avoid harm to the in-
terests of the United States or the effective enforce-
ment of the antitrust laws.

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

(a) Transfer of Functions.—

(1) In general.—Except as provided in para-
graph (3)(D), there shall be transferred to the De-
partment of Justice all FTC antitrust functions,
FTC antitrust employees, FTC antitrust assets, and
FTC antitrust funding on the earlier of—

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

(B) the end of the transition period.

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

(A) take all necessary actions to complete
implementation of this title before the end of
the transition period; and
(B) determine the dates certain, which may not be earlier than the effective date nor later than the end of the transition period, on which the transfers under paragraph (1) shall occur.

(3) PERSONNEL.—

(A) ASSIGNMENT.—An FTC antitrust employee transferred to the Department of Justice under this title shall be assigned to the Antitrust Division of the Department of Justice.

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

(C) EXECUTIVE SCHEDULE.—Notwithstanding subparagraph (B), the Assistant Attorney General may appoint an FTC antitrust employee in a Senior Executive Service position, as defined in section 3132 of title 5, United States Code, to a position within the Antitrust Division rate payable for a position at level 15, step 10 of the General Schedule.
(D) Voluntary nontransfer of personnel.—Notwithstanding paragraph (1), an FTC antitrust employee may, with the consent of the Chairman of the Commission, elect to remain an employee of the Commission assigned to a non-FTC Antitrust Unit.

(E) Office space.—Upon request from the Assistant Attorney General, and in consultation as necessary with the General Services Administration, the Commission shall allow the Department of Justice to use any office space or leased facilities previously used by FTC antitrust employees until such time as the Department of Justice may provide its own office space or facilities. After the transfer of FTC antitrust funding to the Department of Justice, the Department of Justice shall compensate the Commission for the costs of the use of such office space or leased facilities.

(F) Restructuring.—Notwithstanding any other provision of law, the Assistant Attorney General is authorized to restructure the Antitrust Division before the expiration of the transition period, as the Assistant Attorney General determines is appropriate, to carry out
the purposes of this title and accomplish the ef-
10 ficient enforcement of the antitrust laws.

(4) ANTITRUST ACTIONS.—

(A) IN GENERAL.—As soon as is reason-
ably 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 as-
sumed by the Department of Justice.

(B) HANDLING OF CERTAIN ADMINIS-
TRATIVE PROCEEDINGS.—Administrative pro-
ceedings that were initiated by the Commission,
were unresolved as of the first day of the tran-
sition period, and relate to enforcement of the
antitrust laws or unfair methods of competition
under section 5 of the Federal Trade Commiss-
ion 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 be-
fore an administrative law judge shall be
dismissed without prejudice and the matter shall be referred to the Assistant Attorney General.

(ii) For any such proceeding pending on appeal before the Commission, the administrative appeal shall cease, the ruling of the administrative law judge shall be treated as the final decision of the Commission, and the Court of Appeals for the District of Columbia Circuit shall have jurisdiction over any appeal therefrom.

(C) INTERVENTION.—

(i) In general.—In any FTC antitrust action before a court of the United States as of the first day of the transition period, the court shall allow the Department of Justice to—

(I) intervene and assume representation of the Federal Government from the Commission; and

(II) amend any complaint originally brought by the Commission for the purpose of alleging violations of statutes other than the Federal Trade
Commission Act as necessary and where appropriate.

(ii) Scheduling Order upon Request.—Upon the request of the Commission or the Department of Justice, and in consultation with all parties to the matter, the court shall issue an order making such scheduling adjustments as necessary to facilitate the transfer of prosecutorial responsibilities under this subparagraph.

(D) Consent Decrees.—At the end of the transition period, the Department of Justice shall have sole authority to enforce violations of, approve modifications to, or rescind any consent decree entered into by the Commission before the effective date that concerns conduct alleged to violate 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.

(5) Authority to Conduct Investigative Studies.—

(A) Reports of Persons, Partnerships, and Corporations.—
(i) IN GENERAL.—The Department of Justice may require, by general or special orders, persons, partnerships, and corporations, engaged in or whose business affects commerce to file with the Department in such form as the Department may prescribe annual or special reports or answers in writing to specific questions, furnishing to the Department such information as the Department may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective persons, partnerships, and corporations filing such reports or answers in writing.

(ii) OATH.—Reports and answers required under clause (i) shall—

(I) be made under oath or otherwise as the Department may prescribe;

(II) pertain solely to competition or the application of the antitrust laws; and
(III) be filed with the Department within such reasonable period as the Department may prescribe, unless additional time be granted in any case by the Department.

(B) Publication of information or reports.—

(i) In general.—Except as provided in clause (ii), the Department of Justice—

(I) shall make public from time to time such portions of the information obtained by the Department under this paragraph as are in the public interest;

(II) may make annual and special reports to Congress that include recommendations for additional legislation; and

(III) shall provide for the publication of reports and decisions of the Department in such form and manner as may be best adapted for public information and use.
(ii) Prohibition against publication of privileged or confidential information.—

(I) In general.—Except as provided in subclause (II), the Department of Justice shall not make public any trade secret or any commercial or financial information that is obtained from any person and that is privileged or confidential.

(II) Exception.—The Department may disclose information described in subclause (I) to—

(aa) officers and employees of appropriate Federal law enforcement agencies or to any officer or employee of any State law enforcement agency upon the prior certification of an officer of any such Federal or State law enforcement agency that such information will be maintained in confidence and will be used only for official law enforcement purposes; 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,
enter into a settlement agreement, or otherwise resolve an FTC antitrust action; or

(D) initiate a new FTC antitrust action.

(2) Enforcement on behalf of the Department of Justice.—Notwithstanding paragraph (1), during the transition period, the Assistant Attorney General may deputize an FTC Antitrust Employee to investigate or prosecute an alleged violation of the antitrust laws on behalf of the Department of Justice before the completion of the transfer of personnel under subsection (a)(3).

(3) Same rights and obligations.—

(A) In general.—Notwithstanding any other provision of law, during the transition period all Department of Justice employees under the supervision of the Assistant Attorney General shall have the same rights and obligations with respect to confidential information submitted to the Commission as FTC antitrust employees on the day before the effective date.

(B) Rule of construction.—Nothing in this paragraph may be construed as implying any change to the rights and obligations described in subparagraph (A) as a result of this title.
(c) AGREEMENTS.—The Assistant Attorney General, in consultation with the Chairman of the Commission, shall—

(1) review any agreements between the Commission and any other Federal agency or any foreign law enforcement agency; and

(2) before the end of the transition period, seek to amend, transfer, or rescind such agreements as necessary and appropriate to carry out this title, endeavoring to complete such amendment, transfer, or rescindment with all due haste.

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

SEC. 105. REMOVAL OF REVIEW AUTHORITY FROM FEDERAL COMMUNICATIONS COMMISSION AND STATE ENTITIES.

(a) DEFINITIONS.—In this section—

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

(A) any license, authorization, or line subject to the jurisdiction of the Communications Act of 1934 (47 U.S.C. 151 et seq.); or
(B) any authorization, certificate, franchise, or other instrument issued by a State commission or franchising authority; and

(2) the terms "State commission" and "franchising authority" have the meanings given those terms in sections 3 and 602, respectively, of the Communications Act of 1934 (47 U.S.C. 153, 522).

(b) Review of Communications Transactions.—

(1) Sole responsibility of Department of Justice.—Notwithstanding any provision of the Communications Act of 1934 (47 U.S.C. 151 et seq.) or any law or regulation of a State or political subdivision thereof, the review of the competitive impact of any proposed covered transaction shall be solely the responsibility of the Department of Justice pursuant to the antitrust laws, and neither the Federal Communications Commission nor any State commission or franchising authority shall have any authority to conduct such review.

(2) Consultation.—In reviewing the competitive impact of a proposed covered transaction, the Attorney General shall solicit and consider the views of the Federal Communications Commission.

(c) Application of Public Interest Standards.—
(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)—
(A) in subsection (a), by striking “Federal Trade Commission” and inserting “Attorney General of the United States”; and

(B) in subsection (b), by striking “Commission” and inserting “Attorney General of the United States”;

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

(3) in section 7 (15 U.S.C. 18)—

(A) in the first undesignated paragraph, by striking “and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another person engaged also in commerce or in any activity affecting commerce”; and

(B) in the second undesignated paragraph, by striking “and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of
one or more persons engaged in commerce or in any activity affecting commerce’’;

(4) in section 7A (15 U.S.C. 18a)—

(A) in subsection (b)—

(i) in paragraph (1)(A), in the matter preceding clause (i), by striking “the Federal Trade Commission and’’; and

(ii) in paragraph (2), by striking “Federal Trade Commission and the’’;

(B) in subsection (c)—

(i) in paragraph (6), by striking “the Federal Trade Commission and’’; and

(ii) in paragraph (8), by striking “the Federal Trade Commission and’’;

(C) in subsection (d)—

(i) in the matter preceding paragraph (1), by striking “Federal Trade Commission, with the concurrence of the Assistant Attorney General and’’ and inserting “Attorney General of the United States’’; and

(ii) in paragraph (1), by striking “the Federal Trade Commission and’’;

(D) in subsection (e)—

(i) in paragraph (1)—
(I) in subparagraph (A), by striking “Federal Trade Commission or the”; and

(II) in subparagraph (B), by striking “and the Federal Trade Commission shall each” and inserting “shall”; and

(ii) in paragraph (2)—

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

(II) by striking “its or’’;

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

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

(E) in subsection (f)—

(i) by striking “the Federal Trade Commission, alleging that a proposed acquisition violates section 7 of this Act or section 5 of the Federal Trade Commission Act, or an action is filed by”; and

(ii) by striking “the Federal Trade Commission or’’;
(F) in subsection (g)(2), in the matter following subparagraph (C), by striking “the Federal Trade Commission or”; 

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

(H) in subsection (i)—

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

(ii) in paragraph (2)—

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

(J) by striking “, the Federal Trade Commission Act,”; and 


(b) Charitable Gift Annuity Antitrust Relief Act of 1995.—Section 3(1) of the Charitable Gift Annuity Antitrust Relief Act of 1995 (15 U.S.C. 37a(1)) is amended by striking “, except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that such section 5 applies to unfair methods of competition”.
(c) PENSION FUNDING EQUITY ACT OF 2004.—Section 207(b)(1)(A)(i) of the Pension Funding Equity Act of 2004 (15 U.S.C. 37b(b)(1)(A)(i)) is amended by striking “, 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”.

(d) FEDERAL TRADE COMMISSION ACT.—The Federal Trade Commission Act (15 U.S.C. 41 et seq.) is amended—

(1) in section 5 (15 U.S.C. 45)—

(A) in subsection (a)—

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

(ii) by striking paragraph (3); and

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

(B) in subsection (b)—

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

(ii) in the fifth sentence—

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

(II) by striking “method of competition or such”;
(C) in subsection (e)—

(i) in the first sentence—

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

(II) by striking “method of competition or the”; and

(ii) in the third sentence, by striking “or to competitors”;

(D) by striking subsection (e);

(E) in subsection (g), by striking paragraph (4); and

(F) in subsection (n), in the first sentence, by striking “or to competition”;

(2) in section 6 (15 U.S.C. 46)—

(A) by striking subsections (c) through (e) and (i);

(B) by redesignating—

(i) subsections (f), (g), and (h) as subsections (c) through (e), respectively; and

(ii) subsections (j) through (l) as subsections (f) through (h), respectively;

(C) in subsection (f)(1), as so redesignated, by striking “other than Federal antitrust laws (as defined in section 12(5) of the Inter-
national Antitrust Enforcement Assistance Act
of 1994 (15 U.S.C. 6211(5))),”; and

(D) in subsection (h)(2), as so redesignated, in the matter preceding subparagraph
(A), by striking “or competition”;
(3) by repealing section 7 (15 U.S.C. 47);
(4) in section 11 (15 U.S.C. 51), by striking
“antitrust Acts or the” each place the term appears;
(5) in section 18 (15 U.S.C. 57a(a)(2)), by
striking the second sentence;
(6) in section 20 (15 U.S.C. 57b–1)—
(A) in subsection (a)—
(i) in paragraph (2), by striking “or
in any antitrust violations”;
(ii) in paragraph (3), by striking “or
any provisions relating to antitrust viola-
tions”;
(iii) in paragraph (7), by striking “or
any antitrust violation”; and
(iv) by striking paragraph (8);
(B) in subsection (c)(1), by striking “or to
antitrust violations,”; and
(C) in subsection (j)(1), by striking “, any
proceeding under section 11(b) of the Clayton
Act (15 U.S.C. 21(b)),”;
(7) in section 21(b)(6) (15 U.S.C. 57b–2(b)(6)), in the matter following subparagraph (D), by striking “paragraphs (5) and (7)” and inserting “paragraphs (4) and (6)”;

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

(A) by striking subsection (f);

(B) by redesignating subsection (g) as subsection (f);

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

and

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

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

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

(2) in section 5—

(A) in the first undesignated paragraph—
(i) in the first sentence, by striking “Federal Trade Commission” and inserting “Attorney General of the United States”; and

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

(B) in the second undesignated paragraph—

(i) in the first sentence, by striking “Federal Trade Commission” and inserting “Attorney General of the United States”; and

(ii) by striking the third sentence; and

(C) by striking the third undesignated paragraph.

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

(1) by striking “an unfair method of competition, and” each place the term appears; and

(2) in section 68g(b), by striking “an unfair method of competition and”. 
(g) Fur Products Labeling Act.—The Fur Products Labeling Act (15 U.S.C. 69 et seq.) is amended by striking “an unfair method of competition, and” each place the term appears.

(h) Textile Fiber Products Identification Act.—The Textile Fiber Products Identification Act (15 U.S.C. 70 et seq.) is amended—

(1) by striking “an unfair method of competition, and” each place the term appears; and

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

(i) Antitrust Civil Process Act.—Section 4(d) of the Antitrust Civil Process Act (15 U.S.C. 1313(d)) is amended—

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

(2) by striking paragraph (2).


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

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

(4) in section 6 (15 U.S.C. 6205)—

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

(B) by striking “6(f)” and inserting “6(e)”;

(5) in section 7 (15 U.S.C. 6206)—

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

and

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

(6) in section 8 (15 U.S.C. 6207)—

(A) by striking “Neither the Attorney General nor the Commission may’’ each place the term appears and inserting “The Attorney General may not’’;

(B) in subsection (a), by striking “or the Commission, as the case may be,”;
(C) in subsection (b), by striking “or the Commission”; and

(D) in subsection (c)—

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

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

(7) in section 10 (15 U.S.C. 6209)—

(A) in subsection (a)—

(i) by striking “, the Commission,”;

and

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

(B) by striking subsection (b);

(8) in section 12 (15 U.S.C. 6211)—

(A) in paragraph (2)—

(i) in the matter preceding subpara-

graph (A)—

(I) by striking “and the Commis-

sion jointly determine” and inserting

“determines”; 

(II) by striking “jointly”; and 

(III) by striking “and the Com-

mission”;

(ii) in subparagraph (A)—
(I) by striking “and the Commission” each place the term appears; and

(II) by striking “provide” and inserting “provides”;

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

(iv) in subparagraph (F)—

(I) by striking “or the Commission”; and

(II) by striking “or the Commission, respectively,”; and

(v) in subparagraph (H)—

(I) in clause (i)—

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

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

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

(B) by striking paragraph (4);
(C) by redesignating paragraphs (5) through (9) as paragraphs (4) through (8), respectively; and

(D) in paragraph (4), as so redesignated, by striking “but also includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that such section 5 applies to unfair methods of competition”; and

(9) in section 13 (15 U.S.C. 6212)—

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

(B) by striking “or the Commission, respectively.”.


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

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

(A) by striking paragraph (8); and

(B) by redesignating paragraphs (9) through (12) as paragraphs (8) through (11), respectively;
(3) in section 1112(c) (21 U.S.C. 355 note), by striking “and the Commission” each place the term appears;

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

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

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

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

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

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

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

(1) OTHER LAWS.—For any other provision of law requiring the Assistant Attorney General or the Attorney
General to consult with or seek the concurrence of the Commission or the Chairman of the Commission, where such requirement relates 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, that requirement shall be waived.

SEC. 107. EFFECTIVE DATE.

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

TITLE II—MERGERS

SEC. 201. PREMERGER NOTIFICATION FILING FEES.

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

(1) in subsection (b)—

(A) in paragraph (1)—

(i) by striking “$45,000” and inserting “$30,000”;

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

(iii) by striking “2004” and inserting “2022”; and
(iv) by striking “2003” and inserting “2021”;

(B) in paragraph (2)—

(i) by striking “$125,000” and inserting “$100,000”;

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

(iii) by striking “but less” and inserting “but is less”; and

(iv) by striking “and” at the end;

(C) in paragraph (3)—

(i) by striking “$280,000” and inserting “$250,000”; and

(ii) by striking the period at the end and inserting “but is less than $1,000,000,000 (as so adjusted and published);”;

(D) by adding at the end the following:

“(4) $400,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is not less than $1,000,000,000 (as so adjusted and published) but is less than $2,000,000,000 (as so adjusted and published);
“(5) $800,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is not less than $2,000,000,000 (as so adjusted and published) but is less than $5,000,000,000 (as so adjusted and published); and

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

(2) by adding at the end the following:

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

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

“(3) The Attorney General shall not adjust amounts required by paragraph (1) if the percentage increase described in paragraph (1) is less than 1 percent.
“(4) An amount adjusted under this section shall be rounded to the nearest multiple of $5,000.”.

SEC. 202. MERGER PRESUMPTIONS.

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

(1) by striking all that proceeds “person engaged in commerce” and inserting the following:

“(a) IN GENERAL.—No”;

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

“(b) ACQUISITION OF PERSONS ENGAGED IN COMMERCE.—No person shall acquire”;

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

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

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

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

(5) by striking “Nothing contained in this sec- tion shall be held” and inserting the following:
“(f) HOLD HARMLESS.—Nothing contained in this section shall be held”;

(6) by striking “Nothing contained in this section shall apply to transactions” and inserting the following:

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

(7) by inserting after subsection (b), as so designated by this section, the following:

“(c) ACTIONS BY UNITED STATES.—

“(1) IN GENERAL.—The United States may initiate a proceeding to enjoin a transaction prohibited by this section.

“(2) REBUTTABLE PRESUMPTIONS.—

“(A) IN GENERAL.—In a proceeding initiated by the United States to enjoin a transaction prohibited by this section, it shall be presumed that the effect of a transaction may be substantially to lessen competition, or to tend to create a monopoly, if—

“(i) the United States shows by a preponderance of the evidence that, as a result of the transaction, the combined firm would be able meaningfully to increase
prices or reduce output, innovation, or quality in a market; or

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

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

“(aa) is greater than 33 percent;

or

“(bb) if the acquiring person is owned or controlled by a foreign government, is greater than 5 percent.

“(B) REBUTTAL.—A defendant may rebut a presumption under clause (i) or (ii) of subparagraph (A) only if the defendant demonstrates by a preponderance of the evidence that—

“(i) the combined parties post-transaction would not be able to exercise market power; or

“(ii) the anticompetitive effects of the transaction—

“(I) are insubstantial; or
“(II) are clearly outweighed by the procompetitive benefits of the transaction in the relevant market.

“(C) Rule of Construction.—The presumptions under clauses (i) and (ii) of subparagraph (A) shall not limit any other presumption courts have created or used or may create or use in resolving cases under this section.

“(3) Irrebuttable Presumption.—In a proceeding initiated by the United States to enjoin a transaction prohibited by this section, except to the extent the transaction is necessary to prevent serious harm to the national economy, the effect of a transaction shall be deemed to substantially to lessen competition, or to tend to create a monopoly, if—

“(A) the transaction would combine persons that compete, would compete, or would attempt to compete against each other absent the transaction; and

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

SEC. 203. MERGER NOTIFICATION REQUIREMENTS.

(a) In General.—Section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is amended—
(1) by redesignating subclause (III) of subpara-
graph (B)(ii) as item (bb);

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

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

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

(5) by inserting “(A)” after “(2)”;

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

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

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

“(i) has assets in excess of

$500,000,000,000; or

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

(b) Repeal of Limited Nexus to Commerce in

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.
(2) AGENCY; SIGNIFICANT REGULATORY ACTION.—The terms “agency” and “significant regulatory action” have the meanings given those terms in section 3 of the Executive Order.

(3) EXECUTIVE ORDER.—The term “Executive Order” means Executive Order 12866 (5 U.S.C. 601 note; relating to regulatory planning and review).

(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.

SEC. 302. WRITTEN EXPLANATIONS OF ENFORCEMENT AND NON-ENFORCEMENT ACTIONS.

(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.
(b) Availability to Congress.—Upon request by any Member of Congress, the Assistant Attorney General shall make available an unredacted version of a written explanation described in subsection (a). A Member of Congress shall not disclose an unredacted version of a written explanation received under this subsection.

(e) Public Availability.—

(1) In general.—The Assistant Attorney General shall make a written explanation described in subsection (a) publicly available if all subjects of the investigation have acknowledged the existence of the investigation.

(2) Other availability.—A written explanation described in subsection (a) may be disclosed in accordance with the procedures and limitations under section 552 of title 5, United States Code (commonly known as the “Freedom of Information Act”), or any other applicable provision of law.

(3) Redaction.—Information in a written explanation described in subsection (a) that is made publicly available shall be redacted to protect confidential or competitively sensitive information, which may include the identities of the subjects of the investigation when appropriate.
SEC. 303. STUDIES.

(a) INSTITUTIONAL INVESTORS.—Not later than 2 years after the date of enactment of this Act, the Assistant Attorney General, in consultation with the Securities and Exchange Commission, shall conduct and publish a study, using any compulsory process reasonably necessary, relying on public data and information if available and sufficient, and incorporating public comment, on—

(1) the extent to which an institutional investor or related institutional investors have ownership or control interests in competitors in moderately concentrated or concentrated markets;

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

(3) the mechanisms by which an institutional investor could affect competition among the companies in which it invests and whether such mechanisms are prevalent.

(b) SELF-PREFERENCING BY DIGITAL PLATFORMS.—Not later than 2 years after the date of enactment of this Act, the Assistant Attorney General shall conduct and publish a study, using any compulsory process reasonably necessary, relying on public data and information if available and sufficient, and incorporating public comment, on self-preferencing by digital platforms.
(c) **Technology Merger Retrospective.**—Not later than 2 years after the date of enactment of this Act, the Assistant Attorney General shall—

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

(2) publish a report of the findings of the analysis, which shall include an analysis of the adequacy of any enforcement actions or settlement agreements regarding such mergers.

**SEC. 304. MONOPSONY GUIDELINES.**

The Assistant Attorney General shall publicly issue guidelines regarding how the Antitrust Division of the Department of Justice analyzes and approaches a matter involving a monopsony under the antitrust laws.

**TITLE IV—RESTORING BOARD IMMUNITY**

**SEC. 401. SHORT TITLE.**

This title may be cited as the “Restoring Board Immunity Act of 2021” or the “RBI Act”.

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

Congress finds the following:

(1) The prevalence of occupational licensing has increased dramatically in recent decades, in part be-
cause private interests have sought licensing in order
to limit competition.

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

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

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

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

(6) The failure of State governments to adopt
less restrictive alternatives to licensing, and less bur-
densome requirements in those areas where licensing
is deemed necessary, has resulted in significant costs to consumers and the broader economy.

(7) The United States Supreme Court responded to these concerns in North Carolina Board of Dental Examiners v. FTC, 135 S. Ct. 1101 (2015), holding that self-interested licensing boards may be subject to liability under the antitrust laws, but that decision has also created significant uncertainty for the States and their licensing boards.

(8) Some States have responded to the decision in North Carolina Board of Dental Examiners by establishing a layer of bureaucratic oversight that merely monitors board actions for consistency with State licensing laws. This response is a missed opportunity for reform, as it does not address the specific competition concern raised in North Carolina Board of Dental Examiners or the underlying problems with over-reliance on occupational licensure as a regulatory approach and with overly broad enforcement of licensing laws as a means to regulate commercial activities outside an occupation’s scope of practice.

(9) Legislation is necessary to clarify the requirements of active supervision, both to offer States a clear and certain mechanism to immunize their oc-
ocupational boards and to make clear that mere bureaureaucratic oversight to ensure consistency with State licensing laws does not suffice to confer immunity.

(10) This title is intended to offer States a choice between two alternative routes to achieve immunity for their occupational licensing boards—either establishing a mechanism for meaningful active supervision of licensing boards by State officials or establishing a mechanism for meaningful judicial review of board actions in the State courts.

SEC. 403. DEFINITIONS.

In this title:

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

(A) a private organization (in the case of private certification) or the government of a State (in the case of government certification) authorizes an individual who meets certain personal qualifications to use “certified” as a designated title with respect to the performance of a lawful occupation; and

(B) a non-certified individual may perform the lawful occupation for compensation but may not use the title “certified”.
(2) **GOOD FAITH.**—The term “good faith”, with respect to performance—

(A) means diligent performance that is directed towards achieving the policies set forth in this title;

(B) does not include performance that is—

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

(ii) carried out in a manner that has the systematic effect of subverting or evading the policies set forth in this title; and

(C) refers to an objective, rather than subjective, standard.

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

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

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

(i) Market competition.
(ii) Industry or consumer-related ratings and reviews.

(iii) Private certification.

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

(v) A deceptive trade practice act.

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

(vii) Inspections.

(viii) Bonding or insurance.

(ix) Registration.

(x) Government certification.

(B) Specialty occupational license for medical reimbursement.

(C) Occupational license.

(5) LESS RESTRICTIVE ALTERNATIVES TO OCCUPATIONAL LICENSING.—The term "less restrictive alternatives to occupational licensing"—

(A) means regulations that achieve the public health or safety goals asserted by the government to justify licensing while imposing a less onerous restriction on entry into the marketplace; and
(B) includes the alternative forms of regulation described in paragraph (4)(A).

(6) **Member, Officer, or Employee.**—The term “member, officer, or employee”, with respect to an occupational licensing board, means an individual appointed by a State to the board.

(7) **Occupational License.**—The term “occupational license” means a nontransferable authorization under law for an individual to perform a lawful occupation for compensation based on meeting personal qualifications established by the State government.

(8) **Occupational Licensing Board.**—The term “occupational licensing board” or “board” means an entity established under State law—

(A) the express purpose of which is to regulate the personal qualifications required to engage in or practice a particular lawful occupation;

(B) that has authority conferred by State law to interpret or enforce the occupational licensing laws of the State; and

(C) not less than \( \frac{2}{3} \) of the members of which are appointed by an elected official of the State.
(9) OCCUPATIONAL LICENSING LAW.—The term “occupational licensing law”—

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

(B) does not include a business license, facility license, building permit, or zoning and land use regulation, except to the extent that the law regulates an individual’s personal qualifications to engage in or practice a lawful occupation.

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

(A) means a statute, rule, practice, policy, or other law that substantially burdens an individual’s ability to work in a lawful occupation;

(B) includes a regulation requiring registration, certification, or an occupational license; and

(C) does not include a business license, facility license, building permit, or zoning and land use regulation except to the extent that such a requirement or restriction substantially burdens an individual’s ability to work in a lawful occupation.
(11) **PERSONAL QUALIFICATIONS.**—The term “personal qualifications” means criteria related to an individual’s personal background and characteristics, including completion of an approved educational program, satisfactory performance on an examination, work experience, other evidence of attainment of requisite skills or knowledge, moral standing, criminal history, and completion of continuing education.

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

(A) the individual’s name and address;

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

(C) the location of the activity to be performed; and

(D) a description of the service the individual provides.

(13) **SPECIALTY OCCUPATIONAL LICENSE FOR MEDICAL REIMBURSEMENT.**—The term “specialty occupational license for medical reimbursement” means a nontransferable authorization in law for an individual to qualify for payment or reimbursement from a government agency for the non-exclusive pro-
vision of medical services based on meeting personal
qualifications established by the State legislature.

(14) STATE.—The term “State” means—
(A) each of the several States; and
(B) the District of Columbia.

SEC. 404. ANTITRUST IMMUNITY.
(a) IN GENERAL.—Subject to subsection (b), the
Sherman Act (15 U.S.C. 1 et seq.) shall not apply to any
action of an occupational licensing board of a State, or
any action of a member, officer, or employee of the board
acting in the official capacity of that member, officer, or
employee, if—
(1) the requirements under section 405 of this
title are satisfied; or
(2) the requirements under section 406 of this
title are satisfied.
(b) REQUIREMENT OF GOOD FAITH.—The immunity
provided under subsection (a) shall not apply to any action
of an occupational licensing board of a State, or any action
of a member, officer, or employee of the board acting in
the official capacity of that member, officer, or employee,
unless the State acts in good faith to perform the applica-
ble requirements under section 405 or 406 of this title.
(c) EXISTING ENTITIES OR PROCEDURES.—The fact
that a State governmental entity or procedure was estab-
lished before the date of enactment of this Act shall not
prevent an occupational licensing board of the State, or
a member, officer, or employee of that board, from quali-
fying for immunity under subsection (a) if the State gov-
ernmental entity or procedure satisfies the applicable re-
quirements under section 405 or 406 of this title.

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

SEC. 405. ACTIVE SUPERVISION.

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

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

(2) the State adopts a policy of using less re-
strictive alternatives to occupational licensing to ad-
dress real, substantial threats to public health, safe-
ty, or welfare, in accordance with subsection (b) of this section; and

(3) the State enacts legislation providing for active supervision of the actions of an occupational licensing board and any member, officer, or employee of such a board, in accordance with subsection (c) of this section.

(b) POLICY.—The State shall adopt a policy providing that—

(1) occupational licensing laws should be construed and applied to—

(A) protect public health, safety, and welfare; and

(B) increase economic opportunity, promote competition, and encourage innovation;

(2) regulators should displace competition through occupational licensing laws only if less restrictive alternatives to occupational licensing will not suffice to protect consumers from real, substantial threats to public health, safety, or welfare; and

(3) an occupational licensing law should be enforced against an individual only to the extent the individual sells goods or services that are included explicitly in the statute or regulation that defines the occupation’s scope of practice.
(c) **Active Supervision.**—

(1) **In general.**—The legislation enacted under subsection (a)(3) shall satisfy each of the requirements under this subsection.

(2) **Day-to-day supervision.**—

(A) **Establishment of Office of Supervision of Occupational Boards.**—The State shall establish an Office of Supervision of Occupational Boards (referred to in this subsection as the “Office”) to review the actions of occupational licensing boards to ensure compliance with the policy adopted under subsection (b).

(B) **Duties.**—The Office shall—

(i) review and explicitly approve or reject in writing any occupational regulation proposed by an occupational licensing board before the board may adopt or implement the occupational regulation;

(ii) play a substantial role in the development of a board’s rules and policies to ensure they benefit consumers and do not serve the private interests of providers of goods and services regulated by the board;
(iii) disapprove in writing the use of any board rule or policy relating to an occupational regulation and terminate any enforcement action, including any such action pending on the date of enactment of this Act, that is inconsistent with the policy adopted under subsection (b);

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

(v) use the analysis conducted under paragraph (5) and conduct reasonable investigations to gain additional information, including about less restrictive regulatory approaches, to promote compliance with subsection (b);

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

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

(vii)(I) approve board actions explicitly in writing, rather than implicitly; and
(II) clearly establish that silence or inaction does not constitute approval.

(3) INTERNAL REVIEW.—

(A) COMPLAINT.—The State shall establish a mechanism under which a person who is a resident of or has a license to operate a business in the State may file a complaint with the Office about an occupational regulation of an occupational licensing board in the State that the person believes is inconsistent with the policy adopted under subsection (b).

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

(i) investigate the complaint;

(ii) identify remedies and instruct the board to take action, where appropriate; and

(iii) respond in writing to the complainant.

(C) REVIEW.—The State shall establish a mechanism for review of a determination made by the Office under subparagraph (B), under which a complainant may appeal the determina-
tion to the general division of the trial court of
the State if the challenged occupational regula-
tion would substantially burden the complain-
ant’s ability to—

(i) engage in a lawful occupation; or

(ii) employ or contract other individ-
uals for the performance of a lawful occu-
pation.

(4) Right to raise defense.—

(A) In general.—The State shall author-
ize 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 de-
scribed in subparagraph (A)—

(i) an individual who asserts a defense
under this paragraph has the initial bur-
den of proof that the occupational regula-
tion being enforced substantially burdens
the individual’s ability to engage in a law-
ful occupation;

(ii) if an individual meets the burden
of proof under clause (i), the State shall be
required to demonstrate by clear and convincing evidence that the occupational regulation—

(I) advances an important government interest in protecting against real, substantial threats to public health, safety, or welfare; and

(II) is substantially related to achievement of the important government interest described in subclause (I), in light of the availability of less restrictive alternatives to occupational licensing; and

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

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

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

(III) may not grant any presumption to a legislative determination—
(aa) of harm to public health, safety, or welfare; or

(bb) that the occupational regulation is substantially related to achievement of the important government interest described in clause (ii)(I).

(5) Periodic Advisory Review.—

(A) In General.—The State shall establish a mechanism for periodic non-binding review of existing occupational regulations, and non-binding review of new proposed occupational regulations, to ensure that the occupational regulations comply with the policy adopted under subsection (b).

(B) Scope of Review.—The entity conducting the review under subparagraph (A)—

(i) shall publish an annual written report encompassing approximately 20 percent of the occupations subject to occupational regulations within the State, such that the entity will review all occupational regulations within the State during each 5-year period; and
(ii) shall publish a written report assessing any proposed occupational licensing law, or other proposed law that would expand the authority of an occupational licensing board to impose occupational regulations, before the proposed law is submitted to a vote by the State legislature.

(C) REQUIREMENTS FOR ANALYSIS.—In conducting the review required under subparagraph (A), the entity shall—

(i) determine whether the law or other regulation satisfies the policy adopted under subsection (b) of using the least restrictive regulation necessary to protect consumers from real, substantial threats to public health, safety, or welfare;

(ii) evaluate the effects of the law or other regulation on opportunities for workers, consumer choices and costs, general unemployment, market competition, governmental costs, and other effects;

(iii) compare the law or other regulation to whether and how other States regulate the applicable occupation; and
(iv) if the applicable occupation is subject to an occupational licensing law, evaluate—

(I) the feasibility of entering into reciprocity compacts with one or more other States to improve worker mobility and labor market flexibility; and

(II) the advisability of endorsing occupational licenses granted by other States to spouses of active service military members as if those occupational licenses were granted by the State conducting the review.

SEC. 406. JUDICIAL REVIEW.

(a) IN GENERAL.—The immunity under section 404(a) shall apply to any action of an occupational licensing board of a State, or any action of a member, officer, or employee of that board acting in the official capacity of that member, officer, or employee, if—

(1) the actions of the occupational licensing board or member, officer, or employee are authorized by a non-frivolous interpretation of the occupational licensing laws of the State;

(2) the State adopts a policy of using less restrictive alternatives to occupational licensing to ad-
dress real, substantial threats to public health, safety, or welfare, in accordance with section 405(b); and

(3) the State enacts legislation providing for judicial review of occupational licensing laws, in accordance with subsection (b) of this section.

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

(1) shall—

(A) prohibit the State and any occupational licensing board from imposing an occupational licensing law unless the State—

(i) identifies an important government interest in protecting against real, substantial threats to public health, safety, or welfare; and

(ii) demonstrates that the occupational licensing law is substantially related to achievement of the important government interest described in clause (i), in light of the availability of less restrictive alternatives to occupational licensing;

(B) provide an affirmative defense against enforcement of any occupational licensing law of the State under which the State shall be re-
quired to demonstrate that the standard under
subparagraph (A) has been met;

(C) establish a cause of action under
which—

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

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

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

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

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

(ii) bringing an action under subpara-
graph (C); and
(E) provide for independent judicial review of the occupational licensing laws of the State to ensure that the standard set forth in subparagraph (A) has been met; and

(2) may not authorize a court to—

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

(B) rely on hypothetical risks to public safety, not substantiated by evidence in the record, to uphold enforcement of an occupational licensing law of the State;

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

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

(c) Rule of Construction.—Nothing in subsection (b) shall be construed to require legislation enacted by a State under subsection (a)(3) to provide a right to recover monetary damages, other than reasonable costs and attorney fees as provided under subsection (b)(1)(D).
TITLE V—OTHER IMPROVEMENTS TO ANTITRUST LAWS

SEC. 501. OVERTURNING ILLINOIS BRICK AND HANOVER SHOE.

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

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

(A) by striking “subsection (b)” and inserting “subsections (b) and (c)”;

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

(2) by redesignating subsection (c) as subsection (f); and

(3) by inserting after subsection (b) the following:

“(c)(1) In the case of a person who was injured by a violation of the antitrust laws and who resold any property or service that was the subject of the violation, the amount of the damages sustained by the person shall not include the amount of any overcharge by the defendant (or portion thereof) that the person passed on to a subsequent purchaser of the property or service that was the subject of the violation.
“(2) The defendant shall bear the burden of proving the amount of any overcharge passed on to a subsequent purchaser.”.

SEC. 502. LIMITATIONS ON IMPLIED IMMUNITY FROM THE ANTITRUST LAWS.

(a) IN GENERAL.—In any action or proceeding to enforce the antitrust laws with respect to conduct that is regulated under Federal statute, no court or adjudicatory body may find that the Federal statute, or any rule or regulation promulgated in accordance with the Federal statute, implicitly precludes application of the antitrust laws to the conduct unless—

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

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

(3) the Federal agency or department rules or regulations, adopted by rulemaking or adjudication, explicitly require or authorize the defendant to undertake the conduct.

(b) EXISTING FEDERAL REGULATION.—In any action or proceeding described in subsection (a), the antitrust laws shall be applied fully and without qualification
or limitation, and the scope of the antitrust laws shall not be defined more narrowly on account of the existence of Federal rules, regulations, or regulatory agencies or departments, unless application of the antitrust laws is precluded or limited by—

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

(2) an implied immunity that satisfies the requirements under subsection (a).

SEC. 503. PREJUDGMENT INTEREST.

Section 4(a) of the Clayton Act (15 U.S.C. 15), as amended by section 502 of this Act, is amended by striking “may sue therefor” and all that follows and inserting “may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, the cost of suit, including a reasonable attorney’s fee, and simple interest on threefold the damages by him sustained for the period beginning on the date of service of such person’s pleading setting forth a claim under the antitrust laws and ending on the date of judgment.”.
SEC. 504. SAFE HARBOR FOR EFFORTS TO FACILITATE DATA PORTABILITY AND INTEROPERABILITY.

(a) In General.—Except as provided in subsection (b), it shall not constitute a violation of the antitrust laws for 2 or more persons providing comparable interactive computer services (as defined in section 230(f) of the Communications Act of 1934 (47 U.S.C. 230(f))) to enter into a joint venture or similar partnership to create standard protocols for data portability or interoperability between the interactive computer services if—

(1) the joint venture or similar partnership does not exclude from the joint venture or similar partnership any person that offers comparable interactive computer services; and

(2) the standard protocols do not restrict competition in any market.

(b) Exception for Per Se Violations.—Subsection (a) shall not apply to conduct constituting a per se violation of section 1 of the Sherman Act (15 U.S.C. 1).

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

Not later than 1 year after the date of enactment of this Act, the Director of the Administrative Office of the United States Courts shall submit to Congress a re-
port reviewing the feasibility, possible benefits, and potential harms of establishing a program to designate certain district courts of the United States that will hear cases raising 1 or more claims under the antitrust laws.

SEC. 506. BALANCING HARM AND BENEFITS.

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

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

(2) by inserting after section 27 the following:

"SEC. 28. BALANCING HARM AND BENEFITS.

“(a) In General.—In any civil action brought under this Act or the Sherman Act (15 U.S.C. 1 et seq.), a court may consider a benefit, efficiency, or other mitigating factor only to the degree that it—

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

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

“(3) is reasonably quantifiable;

“(4) will accrue to the consumer; and

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

“(b) Examination of Competitive Effects.—In examining the competitive effects of conduct or a transaction challenged under any of the antitrust laws, a court shall consider exclusively the effects of the challenged con-
duct or transaction on consumer welfare, including price, output, quality, innovation, and consumer choice.

“(c) Rule of Construction.—Nothing in this section shall be construed to require that, in the aggregate, in-market benefits, efficiencies, or mitigating factors outweigh any out-of-market benefits, efficiencies, or mitigating factors.

“(d) Definition of Consumer.—In this section, the term ‘consumer’ includes buyers and sellers.”

SEC. 507. ACTIONS ON BEHALF OF CONSUMERS UNDER SHERMAN ACT.

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

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

“(d)(1) The Assistant Attorney General may bring an action on behalf of persons in the United States injured in their business or property by reason of anything forbidden under the Sherman Act (15 U.S.C. 1 et seq.) in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages sustained by such persons, and the cost of suit, including a reasonable attorney’s fee.
“(2)(A) The court may award under this subsection, pursuant to a motion by the Assistant Attorney General promptly made, simple interest on actual damages in accord- 
cordance with the requirements under subsection (a).

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

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

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

“(B) Notwithstanding section 3302 of title 31, 
United States Code, any amounts received by the Assist-
ant Attorney General under an award under this sub-
section—

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

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

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

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

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

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

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

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

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

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

“(2)(A) In an action brought by the Assistant Attorney General in an appropriate district court of the United States, the court may impose a civil fine against any person who engaged in a knowing violation of any provision of the covered antitrust laws.

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

“(3) A civil fine under paragraph (2) shall be in addition to any damages awarded or other remedy imposed in connection with the violation of the provision of the covered antitrust laws.”.
SEC. 509. DIRECT EVIDENCE OF INTENT TO AVOID OR RESTRICT COMPETITION.

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

"SEC. 29. DIRECT EVIDENCE OF INTENT TO AVOID OR RESTRICT COMPETITION.

“In any civil action brought under this Act or the Sherman Act (15 U.S.C. 1 et seq.), if there is direct evidence that the conduct or transaction at issue was undertaken with the clear intent to harm or prevent competition, which shall not require proof that the person knowingly violated the antitrust laws, the court shall deem the conduct or transaction to be anticompetitive.”.

SEC. 510. LIMIT ON CONTRACTING.

The head of an Executive agency may not award a contract for the procurement of goods or services to any person that has been found by a trier of fact in a court of competent jurisdiction to have violated any of the antitrust laws, except for section 7 of the Clayton Act (15 U.S.C. 18), on or after the date that is 5 years before the date on which the procurement process for the goods or services begins.
SEC. 511. PROHIBITING DISCRIMINATION IN DISTRIBUTION.

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

"SEC. 30. PROHIBITING DISCRIMINATION IN DISTRIBUTION.

"(a) Definitions.—In this section:

"(1) Distributed product.—The term ‘distributed product’ means a good or service that is distributed by a person other than the person which manufactures or provides the good or service.

"(2) Distribution market.—The term ‘distribution market’ means the geographic and product markets for the distribution of a distributed product.

"(b) Discrimination by persons with monopoly power.—A person with monopoly power in a distribution market, that also offers a product or service that competes with a distributed product in the distribution market in which it has monopoly power, may not engage in discrimination in that distribution market that harms competition in the market for the distributed product."

SEC. 512. AUTHORIZATIONS OF APPROPRIATIONS.

There is authorized to be appropriated for the Antitrust Division of the Department of Justice $600,000,000 for fiscal year 2022.