

111TH CONGRESS
2^D SESSION

H. R. 5330

AN ACT

To amend the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 to extend the operation of such Act, 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,*

1 **SECTION 1. DELAY OF SUNSET.**

2 Section 211(a) of the Antitrust Criminal Penalty En-
3 hancement and Reform Act of 2004 (Public Law 108-
4 237; 15 U.S.C. 1 note) is amended—

5 (1) in subsection (a)—

6 (A) by inserting “of this subtitle” after
7 “214”; and

8 (B) by striking “6 years” and inserting
9 “16 years”; and

10 (2) by amending subsection (b) to read as fol-
11 lows:

12 “(b) EXCEPTIONS.—With respect to—

13 “(1) a person who receives a marker on or be-
14 fore the date on which the provisions of section 211
15 through 214 of this subtitle shall cease to have ef-
16 fect that later results in the execution of an anti-
17 trust leniency agreement; or

18 “(2) an applicant who has entered into an anti-
19 trust leniency agreement on or before the date on
20 which the provisions of sections 211 through 214 of
21 this subtitle shall cease to have effect,

22 the provisions of sections 211 through 214 of this subtitle
23 shall continue in effect.”.

1 **SEC. 2. DEFINITIONS.**

2 Section 212 of the Antitrust Criminal Penalty En-
3 hancement and Reform Act of 2004 (Public Law 108-
4 237; 15 U.S.C. 1 note) is amended—

5 (1) by redesignating paragraph (6) as para-
6 graph (7); and

7 (2) by inserting after paragraph (5) the fol-
8 lowing:

9 “(6) **MARKER.**—The term ‘marker’ means an
10 assurance given by the Antitrust Division to a can-
11 didate for corporate leniency that no other company
12 will be considered for leniency, for some finite period
13 of time, while the candidate is given an opportunity
14 to perfect its leniency application.”.

15 **SEC. 3. TIMELINESS; COOPERATION AFTER TERMINATION**
16 **OF STAY OR PROTECTIVE ORDER.**

17 (a) **TIMELINESS.**—Section 213(c) of the Antitrust
18 Criminal Penalty Enhancement and Reform Act of 2004
19 (Public Law 108–237; 15 U.S.C. 1 note) is amended to
20 read as follows:

21 “(c) **TIMELINESS.**—The court shall consider, in mak-
22 ing the determination concerning satisfactory cooperation
23 described in subsection (b), the timeliness of the appli-
24 cant’s or cooperating individual’s cooperation with the
25 claimant.”.

1 (b) COOPERATION AFTER TERMINATION OF STAY OR
2 PROTECTIVE ORDER.—Section 213 of the Antitrust
3 Criminal Penalty Enhancement and Reform Act of 2004
4 (Public Law 108–237; 15 U.S.C. 1 note) is amended by
5 adding at the end the following—

6 (1) by redesignating subsection (d) as sub-
7 section (e); and

8 (2) by inserting after subsection (c) the fol-
9 lowing:

10 “(d) COOPERATION AFTER EXPIRATION OF STAY OR
11 PROTECTIVE ORDER.—If the Antitrust Division does ob-
12 tain a stay or protective order in a civil action based on
13 conduct covered by an antitrust leniency agreement, once
14 the stay or protective order, or a portion thereof, expires
15 or is terminated, the antitrust leniency applicant and co-
16 operating individuals shall provide without unreasonable
17 delay any cooperation described in paragraphs (1) and (2)
18 of subsection (b) that was prohibited by the expired or
19 terminated stay or protective order, or the expired or ter-
20 minated portion thereof, in order for the cooperation to
21 be deemed satisfactory under such paragraphs.”.

22 **SEC. 4. TECHNICAL CORRECTIONS.**

23 Section 214 of the Antitrust Criminal Penalty En-
24 hancement and Reform Act of 2004 (Public Law 108–
25 237; 15 U.S.C. 1 note) is amended—

1 (1) in paragraph (1) by inserting “of this sub-
2 title” after “213(b)”; and

3 (2) in paragraph (3)—

4 (A) by inserting “of this subtitle” after
5 “213(a)” the 1st place it appears; and

6 (B) by striking “title” and inserting “sub-
7 title”.

8 **SEC. 5. GAO REPORT.**

9 Not later than 1 year after the date of enactment
10 of this Act, the Comptroller General shall submit, to the
11 Committee on the Judiciary of the House of Representa-
12 tives and the Committee on the Judiciary of the Senate,
13 a report on the effectiveness of the Antitrust Criminal
14 Penalty Enhancement and Reform Act of 2004, both in
15 criminal investigation and enforcement by the Department
16 of Justice, and in private civil actions. Such report should
17 include study of, inter alia—

18 (1) the appropriateness of the addition of qui
19 tam proceedings to the antitrust leniency program;
20 and

21 (2) the appropriateness of creating anti-retalia-
22 tory protection for employees who report illegal anti-
23 competitive conduct.

1 **SEC. 6. EFFECTIVE DATE OF AMENDMENTS.**

2 The amendments made by section 1 shall take effect
3 immediately before June 22, 2010.

4 **SEC. 7. BUDGETARY EFFECTS.**

5 The budgetary effects of this Act, for the purpose of
6 complying with the Statutory Pay-As-You-Go Act of 2010,
7 shall be determined by reference to the latest statement
8 titled “Budgetary Effects of PAYGO Legislation” for this
9 Act, submitted for printing in the Congressional Record
10 by the Chairman of the House Budget Committee, pro-
11 vided that such statement has been submitted prior to the
12 vote on passage.

Passed the House of Representatives May 24, 2010.

Attest:

Clerk.

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