

“(a) FINDINGS.—Congress finds the following:

“(1) Conspiracies among competitors to fix prices, rig bids, and allocate markets are categorically and irredeemably anticompetitive and contravene the competition policy of the United States.

“(2) Cooperation incentives are important to the efforts of the Antitrust Division of the Department of Justice to prosecute and deter the offenses described in paragraph (1).

“(b) PURPOSE.—The purpose of this Act [probably means title III of div. D (§4301 et seq.) of Pub. L. 116-159, see Tables for classification], and the amendments made by this Act, is to strengthen public and private antitrust enforcement by providing incentives for antitrust violators to cooperate fully with government prosecutors and private litigants through the repeal of the sunset provision of the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 [section 211 of Pub. L. 108-237] ([former] 15 U.S.C. 1 note).”

REVIVAL AND RESTORATION OF SECTIONS FROM PUB. L. 108-237

Pub. L. 116-159, div. D, title III, §4303(b)(1), Oct. 1, 2020, 134 Stat. 742, provided that:

“(A) IN GENERAL.—Sections 212, 213, and 214 of the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 [title II of Pub. L. 108-237] ([former] 15 U.S.C. 1 note [now 15 U.S.C. 7a, 7a-1, 7a-2, respectively]) as in effect on June 21, 2020, and as amended by the laws described in subparagraph (B), are revived and restored.

“(B) LAWS.—The laws described in this subparagraph are:

“(i) Antitrust Criminal Penalty Enhancement and Reform Act of 2004 Extension Act (Public Law 111-30; 123 Stat. 1775) [amending former section 211 of Pub. L. 108-237].

“(ii) The Act entitled ‘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’, approved June 9, 2010 (Public Law 111-90 [sic, probably should be “111-190”]; 124 Stat. 1275) [amending this section, sections 7a-1 and 7a-2 of this title, and former section 211 of Pub. L. 108-237].”

APPLICABILITY OF 2020 AMENDMENT

Pub. L. 116-159, div. D, title III, §4303(c), Oct. 1, 2020, 134 Stat. 742, provided that:

“(1) MARKERS AND AGREEMENTS BEFORE SUNSET.—Notwithstanding the repeal under subsection (a) [repealing section 211 of Pub. L. 108-237], section 211(b) of the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 [Pub. L. 108-237] ([former] 15 U.S.C. 1 note), as in effect on the day before the date of enactment of this Act [Oct. 1, 2020], shall continue to apply to any person who received a marker or entered into an antitrust leniency agreement on or before June 22, 2020.

“(2) MARKERS AND AGREEMENTS AFTER SUNSET.—The repeal under subsection (a) shall apply to any person who received a marker or entered into an antitrust leniency agreement on or after June 23, 2020.”

§ 7a-1. Limitation on recovery

(a) In general

Subject to subsection (d), in any civil action alleging a violation of section 1 or 3 of this title, or alleging a violation of any similar State law, based on conduct covered by a currently effective antitrust leniency agreement, the amount of damages recovered by or on behalf of a claimant from an antitrust leniency applicant who satisfies the requirements of subsection (b), together with the amounts so recovered from cooperating individuals who satisfy such requirements, shall not exceed that portion of the actual damages sustained by such claimant which is attributable to the commerce done by the ap-

plicant in the goods or services affected by the violation.

(b) Requirements

Subject to subsection (c), an antitrust leniency applicant or cooperating individual satisfies the requirements of this subsection with respect to a civil action described in subsection (a) if the court in which the civil action is brought determines, after considering any appropriate pleadings from the claimant, that the applicant or cooperating individual, as the case may be, has provided satisfactory cooperation to the claimant with respect to the civil action, which cooperation shall include—

(1) providing a full account to the claimant of all facts known to the applicant or cooperating individual, as the case may be, that are potentially relevant to the civil action;

(2) furnishing all documents or other items potentially relevant to the civil action that are in the possession, custody, or control of the applicant or cooperating individual, as the case may be, wherever they are located; and

(3)(A) in the case of a cooperating individual—

(i) making himself or herself available for such interviews, depositions, or testimony in connection with the civil action as the claimant may reasonably require; and

(ii) responding completely and truthfully, without making any attempt either falsely to protect or falsely to implicate any person or entity, and without intentionally withholding any potentially relevant information, to all questions asked by the claimant in interviews, depositions, trials, or any other court proceedings in connection with the civil action; or

(B) in the case of an antitrust leniency applicant, using its best efforts to secure and facilitate from cooperating individuals covered by the agreement the cooperation described in clauses (i) and (ii) and subparagraph (A).

(c) Timeliness

The court shall consider, in making the determination concerning satisfactory cooperation described in subsection (b), the timeliness of the applicant's or cooperating individual's cooperation with the claimant.

(d) Cooperation after expiration of stay or protective order

If the Antitrust Division does obtain a stay or protective order in a civil action based on conduct covered by an antitrust leniency agreement, once the stay or protective order, or a portion thereof, expires or is terminated, the antitrust leniency applicant and cooperating individuals shall provide without unreasonable delay any cooperation described in paragraphs (1) and (2) of subsection (b) that was prohibited by the expired or terminated stay or protective order, or the expired or terminated portion thereof, in order for the cooperation to be deemed satisfactory under such paragraphs.

(e) Continuation

Nothing in this section shall be construed to modify, impair, or supersede the provisions of sections 15, 15a, and 15c of this title relating to

the recovery of costs of suit, including a reasonable attorney's fee, and interest on damages, to the extent that such recovery is authorized by such sections.

(Pub. L. 108-237, title II, §213, June 22, 2004, 118 Stat. 666; Pub. L. 111-190, §3, June 9, 2010, 124 Stat. 1275.)

CODIFICATION

Section was formerly set out in a note under section 1 of this title, prior to transfer to this section upon repeal of sunset provision.

AMENDMENTS

2010—Subsec. (c). Pub. L. 111-190, §3(a), amended subsec. (c) generally. Prior to amendment, text read as follows: "If the initial contact by the antitrust leniency applicant with the Antitrust Division regarding conduct covered by the antitrust leniency agreement occurs after a State, or subdivision of a State, has issued compulsory process in connection with an investigation of allegations of a violation of section 1 or 3 of this title or any similar State law based on conduct covered by the antitrust leniency agreement or after a civil action described in subsection (a) has been filed, then the court shall consider, in making the determination concerning satisfactory cooperation described in subsection (b), the timeliness of the applicant's initial cooperation with the claimant."

Subsecs. (d), (e). Pub. L. 111-190, §3(b), added subsec. (d) and redesignated former subsec. (d) as (e).

§ 7a-2. Rights, authorities, and liabilities not affected

Nothing in sections 7a to 7a-3 of this title shall be construed to—

(1) affect the rights of the Antitrust Division to seek a stay or protective order in a civil action based on conduct covered by an antitrust leniency agreement to prevent the cooperation described in section 7a-1(b) of this title from impairing or impeding the investigation or prosecution by the Antitrust Division of conduct covered by the agreement;

(2) create any right to challenge any decision by the Antitrust Division with respect to an antitrust leniency agreement; or

(3) affect, in any way, the joint and several liability of any party to a civil action described in section 7a-1(a) of this title, other than that of the antitrust leniency applicant and cooperating individuals as provided in section 7a-1(a) of this title.

(Pub. L. 108-237, title II, §214, June 22, 2004, 118 Stat. 667; Pub. L. 111-190, §4, June 9, 2010, 124 Stat. 1276.)

REFERENCES IN TEXT

Sections 7a to 7a-3 of this title, referred to in text, was in the original "this subtitle", meaning subtitle A (§§211-216) of title II of Pub. L. 108-237, June 22, 2004, 118 Stat. 666, which enacted this section and sections 7a, 7a-1, and 7a-3 of this title, amended sections 1, 2, and 3 of this title, and enacted provisions formerly set out in a note under section 1 of this title. For complete classification of subtitle A to the Code, see Tables.

CODIFICATION

Section was formerly set out in a note under section 1 of this title, prior to transfer to this section upon repeal of sunset provision.

AMENDMENTS

2010—Par. (1). Pub. L. 111-190, §4(1), made technical amendment to reference in original act which appears in text as reference to section 7a-1(b) of this title.

Par. (3). Pub. L. 111-190, §4(2), made technical amendment to references in original act which appear in two places in text as references to section 7a-1(a) of this title.

§ 7a-3. Anti-retaliation protection for whistleblowers

(a) Whistleblower protections for employees, contractors, subcontractors, and agents

(1) In general

No employer may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against a covered individual in the terms and conditions of employment of the covered individual because of any lawful act done by the covered individual—

(A) to provide or cause to be provided to the Federal Government or a person with supervisory authority over the covered individual (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct) information relating to—

(i) any violation of, or any act or omission the covered individual reasonably believes to be a violation of, the antitrust laws; or

(ii) any violation of, or any act or omission the covered individual reasonably believes to be a violation of, another criminal law committed in conjunction with a potential violation of the antitrust laws or in conjunction with an investigation by the Department of Justice of a potential violation of the antitrust laws; or

(B) to cause to be filed, testify in, participate in, or otherwise assist a Federal Government investigation or a Federal Government proceeding filed or about to be filed (with any knowledge of the employer) relating to—

(i) any violation of, or any act or omission the covered individual reasonably believes to be a violation of, the antitrust laws; or

(ii) any violation of, or any act or omission the covered individual reasonably believes to be a violation of, another criminal law committed in conjunction with a potential violation of the antitrust laws or in conjunction with an investigation by the Department of Justice of a potential violation of the antitrust laws.

(2) Limitation on protections

Paragraph (1) shall not apply to any covered individual if—

(A) the covered individual planned and initiated a violation or attempted violation of the antitrust laws;

(B) the covered individual planned and initiated a violation or attempted violation of another criminal law in conjunction with a violation or attempted violation of the antitrust laws; or

(C) the covered individual planned and initiated an obstruction or attempted obstruction of an investigation by the Department of Justice of a violation of the antitrust laws.