

title 28 on such actual damages as specified in subsection (d) of this section, and the cost of suit attributable to such claim, including a reasonable attorney's fee pursuant to section 4304 of this title if such claim—

(1) results from conduct that is within the scope of a notification that has been filed under section 4305(a) of this title for a joint venture, or for a standards development activity engaged in by a standards development organization against which such claim is made, and

(2) is filed after such notification becomes effective pursuant to section 4305(c) of this title.

**(b) Recovery by States**

Notwithstanding section 15c of this title, and in lieu of the relief specified in such section, any State that is entitled to monetary relief on a claim under such section shall recover the total damage sustained as described in subsection (a)(1) of such section, interest calculated at the rate specified in section 1961 of title 28 on such total damage as specified in subsection (d) of this section, and the cost of suit attributable to such claim, including a reasonable attorney's fee pursuant to section 15c of this title if such claim—

(1) results from conduct that is within the scope of a notification that has been filed under section 4305(a) of this title for a joint venture, or for a standards development activity engaged in by a standards development organization against which such claim is made, and

(2) is filed after such notification becomes effective pursuant to section 4305(c) of this title.

**(c) Conduct similar under State law**

Notwithstanding any provision of any State law providing damages for conduct similar to that forbidden by the antitrust laws, any person who is entitled to recovery on a claim under such provision shall not recover in excess of the actual damages sustained by such person, interest calculated at the rate specified in section 1961 of title 28 on such actual damages as specified in subsection (d) of this section, and the cost of suit attributable to such claim, including a reasonable attorney's fee pursuant to section 4304 of this title if such claim—

(1) results from conduct that is within the scope of a notification that has been filed under section 4305(a) of this title for a joint venture, or for a standards development activity engaged in by a standards development organization against which such claim is made, and

(2) is filed after notification has become effective pursuant to section 4305(c) of this title.

**(d) Interest**

Interest shall be awarded on the damages involved for the period beginning on the earliest date for which injury can be established and ending on the date of judgment, unless the court finds that the award of all or part of such interest is unjust in the circumstances.

**(e) Rule of construction**

Subsections (a), (b), and (c) shall not be construed to modify the liability under the anti-

trust laws of any person (other than a standards development organization) who—

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

(2) is not a fulltime employee of the standards development organization that engaged in such activity, and

(3) is, or is an employee or agent of a person who is, engaged in a line of commerce that is likely to benefit directly from the operation of the standards development activity with respect to which such violation is found.

**(f) Applicability**

This section shall be applicable only if the challenged conduct of a person defending against a claim is not in violation of any decree or order, entered or issued after October 11, 1984, in any case or proceeding under the antitrust laws or any State law similar to the antitrust laws challenging such conduct as part of a joint venture, or of a standards development activity engaged in by a standards development organization.

(Pub. L. 98-462, §4, Oct. 11, 1984, 98 Stat. 1816; Pub. L. 103-42, §3(e)(1), June 10, 1993, 107 Stat. 119; Pub. L. 108-237, title I, §105, June 22, 2004, 118 Stat. 663.)

AMENDMENTS

2004—Subsecs. (a)(1), (b)(1), (c)(1). Pub. L. 108-237, §105(1), inserted “, or for a standards development activity engaged in by a standards development organization against which such claim is made” after “joint venture”.

Subsec. (e). Pub. L. 108-237, §105(3), added subsec. (e). Former subsec. (e) redesignated (f).

Pub. L. 108-237, §105(2)(A), inserted “, or of a standards development activity engaged in by a standards development organization” before period at end.

Subsec. (f). Pub. L. 108-237, §105(2)(B), redesignated subsec. (e) as (f).

1993—Subsecs. (a) to (c). Pub. L. 103-42, §3(e)(1)(A), (B), in introductory provisions inserted “of this section” after “subsection (d)” and in par. (1) substituted “joint venture” for “joint research and development venture”.

Subsec. (e). Pub. L. 103-42, §3(e)(1)(A), (C), substituted “October 11, 1984,” for “the effective date of this Act” and substituted “joint venture” for “joint research and development venture”.

**§ 4304. Award of costs, including attorney's fees, to substantially prevailing party; offset**

(a) Notwithstanding sections 15 and 26 of this title, in any claim under the antitrust laws, or any State law similar to the antitrust laws, based on the conducting of a joint venture, or of a standards development activity engaged in by a standards development organization, the court shall, at the conclusion of the action—

(1) award to a substantially prevailing claimant the cost of suit attributable to such claim, including a reasonable attorney's fee, or

(2) award to a substantially prevailing party defending against any such claim the cost of suit attributable to such claim, including a reasonable attorney's fee, if the claim, or the claimant's conduct during the litigation of the claim, was frivolous, unreasonable, without foundation, or in bad faith.

(b) The award made under subsection (a) may be offset in whole or in part by an award in favor of any other party for any part of the cost of suit, including a reasonable attorney's fee, attributable to conduct during the litigation by any prevailing party that the court finds to be frivolous, unreasonable, without foundation, or in bad faith.

(c) Subsections (a) and (b) shall not apply with respect to any person who—

(1) directly participates in a standards development activity with respect to which a violation of any of the antitrust laws is found,

(2) is not a fulltime employee of a standards development organization that engaged in such activity, and

(3) is, or is an employee or agent of a person who is, engaged in a line of commerce that is likely to benefit directly from the operation of the standards development activity with respect to which such violation is found.

(Pub. L. 98-462, §5, Oct. 11, 1984, 98 Stat. 1817; Pub. L. 103-42, §3(e)(2), June 10, 1993, 107 Stat. 119; Pub. L. 108-237, title I, §106, June 22, 2004, 118 Stat. 664.)

#### AMENDMENTS

2004—Subsec. (a). Pub. L. 108-237, §106(1), inserted “, or of a standards development activity engaged in by a standards development organization” after “joint venture” in introductory provisions.

Subsec. (c). Pub. L. 108-237, §106(2), added subsec. (c).

1993—Subsec. (a). Pub. L. 103-42 substituted “joint venture” for “joint research and development venture” in introductory provisions.

### § 4305. Disclosure of joint venture

#### (a) Written notifications; filing

(1) Any party to a joint venture, acting on such venture's behalf, may, not later than 90 days after entering into a written agreement to form such venture or not later than 90 days after October 11, 1984, whichever is later, file simultaneously with the Attorney General and the Commission a written notification disclosing—

(A) the identities of the parties to such venture,

(B) the nature and objectives of such venture, and

(C) if a purpose of such venture is the production of a product, process, or service, as referred to in section 4301(a)(6)(D) of this title, the identity and nationality of any person who is a party to such venture, or who controls any party to such venture whether separately or with one or more other persons acting as a group for the purpose of controlling such party.

Any party to such venture, acting on such venture's behalf, may file additional disclosure notifications pursuant to this section as are appropriate to extend the protections of section 4303 of this title. In order to maintain the protections of section 4303 of this title, such venture shall, not later than 90 days after a change in its membership, file simultaneously with the Attorney General and the Commission a written notification disclosing such change.

(2) A standards development organization may, not later than 90 days after commencing a

standards development activity engaged in for the purpose of developing or promulgating a<sup>1</sup> voluntary consensus standards or not later than 90 days after June 22, 2004, whichever is later, file simultaneously with the Attorney General and the Commission, a written notification disclosing—

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

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

Any standards development organization may file additional disclosure notifications pursuant to this section as are appropriate to extend the protections of section 4303 of this title to standards development activities that are not covered by the initial filing or that have changed significantly since the initial filing.

#### (b) Publication; Federal Register; notice

Except as provided in subsection (e), not later than 30 days after receiving a notification filed under subsection (a), the Attorney General or the Commission shall publish in the Federal Register a notice with respect to such venture that identifies the parties to such venture and that describes in general terms the area of planned activity of such venture, or a notice with respect to such standards development activity that identifies the standards development organization engaged in such activity and that describes such activity in general terms. Prior to its publication, the contents of such notice shall be made available to the parties to such venture or available to such organization, as the case may be.

#### (c) Effect of notice

If with respect to a notification filed under subsection (a), notice is published in the Federal Register, then such notification shall operate to convey the protections of section 4303 of this title as of the earlier of—

(1) the date of publication of notice under subsection (b), or

(2) if such notice is not so published within the time required by subsection (b), after the expiration of the 30-day period beginning on the date the Attorney General or the Commission receives the applicable information described in subsection (a).

#### (d) Exemption; disclosure; information

Except with respect to the information published pursuant to subsection (b)—

(1) all information and documentary material submitted as part of a notification filed pursuant to this section, and

(2) all other information obtained by the Attorney General or the Commission in the course of any investigation, administrative proceeding, or case, with respect to a potential violation of the antitrust laws by the joint venture, or the standards development activity, with respect to which such notification was filed,

shall be exempt from disclosure under section 552 of title 5, and shall not be made publicly

<sup>1</sup> So in original.