

96TH CONGRESS
2D SESSION

H. R. 7010

To develop a system of self-governance for large corporations that increases the participation of shareholders and directors in company decisionmaking, that better informs stockholders and affected communities of the economic and social impact of corporate activities, that better protects the rights of employees, that establishes public policy responsibilities of directors, officers, and managing agents of corporations, and that provides penalties for violations of those responsibilities.

IN THE HOUSE OF REPRESENTATIVES

APRIL 2, 1980

By Mr. ROSENTHAL (for himself, Mr. THOMPSON, Mr. WEISS, Mr. KASTENMEIER, Mr. CONYERS, Mr. RANGEL, Mr. LOWRY, Mr. CLAY, and Mr. EDWARDS of California) introduced the following bill; which was referred jointly to the Committees on Interstate and Foreign Commerce, the Judiciary, and Education and Labor

A BILL

To develop a system of self-governance for large corporations that increases the participation of shareholders and directors in company decisionmaking, that better informs stockholders and affected communities of the economic and social impact of corporate activities, that better protects the rights of employees, that establishes public policy responsibilities of directors, officers, and managing agents of corporations, and that provides penalties for violations of those responsibilities.

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(1) the system of State chartering of national and multinational corporations is archaic and totally ineffectual as a mechanism for accomplishing the purpose of effective corporate governance;

14 (3) while the economies of local communities can
15 be severely damaged by the decisions of large corpora-
16 tions to close or relocate major plants or production
17 facilities, these communities are too often denied ade-
18 quate notice of, compensation for and opportunity to
19 affect such decisions;

(5) the traditional criminal and civil law sanctions applicable to corporate misdeeds have not been effective in deterring abuses by large companies or their directors, officers, and managing agents; and

1 (6) the limited nature and extent of information on
2 corporate operations and activities, currently required
3 to be reported to shareholders, employees, government
4 agencies, local communities and the general public,
5 prevent effective consideration, by these entities, of a
6 corporation's impact on our society and its institutions.

7 **TITLE I—DIRECTORS AND SHAREHOLDERS**

8 **COMPOSITION OF BOARDS OF DIRECTORS**

9 **SEC. 101. (a)** For purposes of this Act an independent
10 director is an individual member of a board of directors
11 who—

12 (1) is not, and was not within the five years pre-
13 ceding his election as director an officer or managing
14 agent of the corporation or any of its parents, subsid-
15 iaries, or affiliates;

16 (2) is not the parent, spouse, child, spouse of a
17 child, uncle, aunt, or first cousin of a director, officer,
18 or managing agent of the corporation;

19 (3) is not a lawyer who, or a member of a law
20 firm which, receives or in the past three years has re-
21 ceived a fee from the corporation:

22 (4) is not a director, partner, officer, or employee
23 of an investment or commercial banking company
24 which in the past three years has performed any serv-
25 ices for the corporation; and

1 (5) is not and has not been an officer, director,
2 employee, or more than 1 per centum equity owner of
3 a supplier or customer who received, during any one of
4 the three preceding calendar years, more than 1 per
5 centum of its consolidated gross revenues or more than
6 \$5,000,000, whichever is less, from a corporation sub-
7 ject to this Act.

8 (b) A majority of the board of directors of any corpora-
9 tion subject to this Act shall be independent directors.

10 (c)(1) No individual may serve as a director or officer of
11 more than two corporations subject to this Act.

12 (2) The Clayton Act is amended by inserting immedi-
13 ately after section 8 the following new section:

14 "SEC. 8A. Any person who is a director or officer of
15 any corporation subject to the Corporate Democracy Act of
16 1980 may not at the same time be a director or officer of
17 more than two corporations subject to that Act. Any person
18 who violates this section is liable to the United States for a
19 civil penalty of not more than \$10,000 for each day during
20 which such person is in violation of this section."

21 DIRECTOR'S DUTY OF LOYALTY

22 SEC. 102. (a) Each director of a corporation subject to
23 this Act shall owe that corporation a duty of loyalty equiva-
24 lent to that which a reasonably prudent person would exer-
25 cise under similar conditions in personal business affairs. In

1 every situation in which a director's personal interest con-
2 flicts with the interests of the corporation, the duty of loyalty
3 to the corporation shall prevail over the personal interest.

4 (b) A director of a corporation shall not derive personal
5 profit or advantage by reason of his position which is not
6 enjoyed in common by all stockholders, and shall be jointly
7 and severally liable to the corporation for the benefit of its
8 creditors or shareholders, to the extent of any injury suffered
9 by such persons, respectively, as a result of such action.

10 (c) Whenever a director of a corporation has a personal
11 interest in a contract or transaction involving that corpora-
12 tion, such director shall disclose in writing the extent and
13 nature of such personal interest to the board of directors prior
14 to any board action on that matter.

15 (d) Upon being informed of a personal interest under
16 subsection (c), the board of directors of a corporation subject
17 to this Act shall ascertain that the terms of the proposed
18 transaction or contract are as favorable to the corporation as
19 those available from any other party.

20 (e) A board member or officer who has disclosed a per-
21 sonal interest under subsection (c) shall not be counted in any
22 vote of the board of directors or of any committee of the
23 board of directors, pertaining to such matters.

(b) Each director of a corporation subject to this Act who votes for or assents to the declaration of any dividend or other distribution of the assets of a corporation to its shareholders contrary to the provisions of this Act or contrary to any restrictions contained in the articles of incorporation, shall be jointly and severally liable to the corporation for the

1 amount of such dividend which is paid or the value of such
2 assets which are distributed in excess of the amount of such
3 dividend or distribution which could have been paid or dis-
4 tributed without a violation of the provisions of this Act or
5 the restrictions in the articles of incorporation.

6 (c) Each director of a corporation subject to this Act
7 who votes for or assents to any distribution of assets of such
8 corporation to its shareholders during the liquidation of the
9 corporation without the payment and discharge of, or making
10 adequate provision for, all known debts, obligations, and li-
11 abilities of the corporation shall be jointly and severally liable
12 to the corporation for the value of such assets which are dis-
13 tributed, to the extent that such debts, obligations, and liabil-
14 ities of the corporation are not thereafter paid and dis-
15 charged.

16 (d) A director of a corporation subject to this Act who is
17 present at a meeting of its board of directors at which action
18 on any corporate matter is taken shall be presumed to have
19 assented to the action taken unless his dissent shall be en-
20 tered in the minutes of the meeting or unless he shall file his
21 written dissent to such action with the secretary of the meet-
22 ing before the adjournment thereof or shall forward such dis-
23 sent by registered mail to the secretary of the corporation
24 within five business days after the adjournment of the meet-

1 ing. Such right to dissent shall not apply to a director who
2 voted in favor of such action.

3 (e) A director of a corporation subject to this Act shall
4 not be liable under subsection (b) or (c) of this section if he
5 relied and acted in good faith upon financial statements of the
6 corporation represented to him to be correct by the president
7 or the officer of such corporation having charge of its books
8 of account, or stated in a written report by an independent
9 public or certified public accountant or firm of such account-
10 ants fairly to reflect the financial condition of such corpora-
11 tion, nor shall he be so liable if in good faith in determining
12 the amount available for any such dividend or distribution he
13 considered the assets to be of their book value.

14 (f) Any director of a corporation subject to this Act
15 against whom a claim shall be asserted under or pursuant to
16 this section for the payment of a dividend or other distribu-
17 tion of assets of a corporation and who shall be held liable
18 thereon, shall be entitled to contribution from the sharehold-
19 ers who accepted or received any such dividend or assets,
20 knowing such dividend or distribution to have been made in
21 violation of this Act, in proportion to the amounts received by
22 them.

23 (g) Any director of a corporation subject to this Act
24 against whom a claim shall be asserted under or pursuant to
25 this section shall be entitled to contribution from the other

1 directors who voted for or assented to the action upon which
2 the claim is asserted. This paragraph shall not apply to direc-
3 tors who acted in good faith pursuant to subsection (e).

4 **BOARD COMMITTEES**

5 **SEC. 104.** (a) Each corporation subject to this Act shall
6 have a supervisory committee and a public policy committee
7 as follows:

8 (1) The supervisory committee, to be comprised of
9 a majority of independent members, shall have the fol-
10 lowing responsibilities:

11 (A) recommending to the full board profes-
12 sionals to be retained as accountants, lawyers,
13 and auditors;

14 (B) overseeing, investigating, and receiving
15 complaints from employees and shareholders con-
16 cerning policies and practices of the corporation
17 (and the committee shall include in the annual
18 report a summary of complaints received and ac-
19 tions taken);

20 (C) recommending the salary and bonus
21 schedules for officers, directors, and managing
22 agents; and

23 (D) designing internal mechanisms and incen-
24 tives to insure that corporate officers and manag-

1 ing agents comply with corporate policies and rel-
2 evant law.

3 (2) The public policy committee, to be comprised
4 of a majority of independent members, shall have the
5 following responsibilities:

6 (A) overseeing, investigating, and receiving
7 complaints from sources outside the corporation
8 pertinent to corporate policies and practices in the
9 following areas: consumer protection, environmen-
10 tal protection, community relations, and law com-
11 pliance; and

12 (B) recommending to the full board of direc-
13 tors positions and activities of public policy and
14 political issues, including lobbying, campaign con-
15 tributions to candidates for Federal office, and po-
16 litical advertising.

17 (b) The board of directors of each corporation subject to
18 this Act shall assure that the supervisory and public policy
19 committees are provided such staff and resources necessary
20 to fulfill the duties specified in subsection (a).

21 (c) The board of directors shall be responsible for insur-
22 ing that all provisions of this section are complied with and
23 for considering the recommendations of the supervisory and
24 public policy committees as provided for by subsection
25 (a)(1)(A) and (C) and (a)(2)(B).

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(e) Every shareholder entitled to vote in any election of directors of any corporation subject to this Act may cumulate such shareholder's votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which the shareholder's shares are entitled. Classification, and the staggered election

1 of directors, or any other method of election which has the
2 effect of undermining the purposes of cumulative voting in
3 protecting the minority representation is prohibited with re-
4 spect to any such corporation. This section shall apply to all
5 corporations chartered on the date of enactment of and sub-
6 ject to this Act.

7 **SHAREHOLDER REVIEW OF BOARD**

8 SEC. 106. Shareholders of a corporation subject to this
9 Act shall be entitled to vote on any transaction involving the
10 purchase, sale, lease, merger, consolidation, financing, refi-
11 nancing, dissolution, or liquidation if such transaction in-
12 volves an amount of funds equal to 5 per centum of the firm's
13 total assets, or the sale or redemption of 5 per centum of the
14 company's outstanding stock, or the authorization of corpo-
15 rate stock or securities in any amount. At least three weeks
16 before a shareholder vote on any such matter, the board shall
17 forward a written statement to all shareholders indicating the
18 vote of directors on the issue, reasons from the majority for
19 their approval, reasons from the minority for their disapprov-
20 al, and the foreseeable benefits and risks of implementing the
21 proposal.

22 **TITLE II—CORPORATE DISCLOSURE**

23 **ANNUAL REPORT**

24 SEC. 201. (a) Each corporation subject to this Act shall
25 publish the following information in its annual report:

1 (1) The distribution of its work force by sex, race,
2 and job classification in the same format as that re-
3 quired to be reported to the equal Employment Oppor-
4 tunity Commission pursuant to section 709(c) of the
5 Civil Rights Act of 1964 (42 U.S.C. 2000e-8(c)). In
6 addition, the category of directors, officers, and manag-
7 ing agents shall be added to the job classifications re-
8 quired for such report and the net increase or decrease
9 over the previous year in the number of employees at
10 year end in each category shall be indicated.

11 (2) For each of the five largest of its facilities
12 which report to the Environmental Protection Agency
13 and to State health authorities on air and water pollu-
14 tion, such facility's actual average daily emissions and
15 effluents for each pollutant required to be reported
16 under section 114(a)(1) of the Clean Air Act of 1972
17 (42 U.S.C. 1714(a)(1)), together with the allowable
18 emissions and effluents thereunder. In addition, each
19 such corporation shall list and briefly describe in its
20 annual report any pending administrative or judicial
21 proceedings involving environmental requirements at
22 each of these facilities.

23 (3) The total of all occupational injuries and ill-
24 nesses incurred during the past year on an annual basis
25 for each plant or facility operated by the corporation.

1 This total shall be based on data recorded on the form
2 required pursuant to section 8(c) of the Occupational
3 Safety and Health Act of 1970 (29 U.S.C. 657(c)), and
4 aggregated for all plants owned and operated by the
5 corporation.

6 (4) The chemical constituents of any chemical
7 product manufactured by the corporation and identified
8 only as a trade named substance, except that nothing
9 in this section shall be construed to require the disclo-
10 sure of any process or technique which is a protected
11 trade secret.

12 (5)(A) The twenty largest shareholders of record
13 and, if known, the twenty largest beneficial holders of
14 voting shares in the corporation excluding any holder
15 with less than one-twentieth of 1 per centum of the
16 outstanding shares. For any such holder, the annual
17 report shall list the name, address, and type of holder
18 (bank, broker, holding company, individual, or other),
19 the number of voting shares held (as of the end of the
20 preceeding calendar year) and the number of shares
21 over which the holder has sole voting power, shared
22 voting power, or no voting power under any circum-
23 stances.

24 (B) In determining the number of shares held for
25 purposes of subparagraph (A), all nominee and other

1 accounts of each shareholder, including the accounts
2 held by any depository trust company, shall be aggre-
3 gated and reported as one account in the name of the
4 bank, broker, holding company, individual, or other
5 identified shareholder.

6 (6) A description of each debt of the corporation
7 and each revolving credit agreement which is not due
8 to be repaid within one year and with a principal in
9 excess of \$1,000,000. Each such corporation shall in-
10 clude the following information pertaining to debts or
11 credit agreements—

12 (A) the name of the creditor;

13 (B) the character of the debt or agreement;

14 (C) the date of origin;

15 (D) the date of maturity;

16 (E) the total amount of the debt; and

17 (F) the rate of interest.

18 In addition, each such corporation shall include a copy
19 of any and all restrictive covenants attached to the in-
20 debtedness and a description of all interest in the cor-
21 poration's property by creditors. For each revolving
22 credit agreement, the corporation shall report the total
23 amount of credit available, the commitment fee, and
24 the average amount outstanding during each month of
25 the previous calendar year.

1 (7) The names and addresses of each member of
2 the board of directors and a description of their busi-
3 ness activities in the calendar year to which the annual
4 report applies including—

5 (A) the primary employment affiliation of
6 each board member;

7 (B) the nature and extent of all business con-
8 ducted between the corporation and any organiza-
9 tion with which a board member is affiliated (ex-
10 cluding nonprofit organizations);

11 (C) the committees on which the board
12 member serves;

13 (D) the number of full board meetings at-
14 tended by the member and the number of such
15 meetings held;

16 (E) the number of committee meetings at-
17 tended by the member and the number of such
18 meetings held;

19 (F) the number of years that the member has
20 served on the corporation's board of directors; and

21 (G) the total number and names of corporate
22 boards on which the board member serves.

23 (8) The corporation's assets, gross revenues, total
24 expenses, income tax paid, net income, and number of
25 employees at the end of the calendar year to which the

1 annual report applies, allocated in each case to the fol-
2 lowing geographic regions:

3 (A) United States;

4 (B) North America (excluding United States);

5 (C) Asia-Australia;

6 (D) Europe;

7 (E) Middle East;

8 (F) Latin America/Caribbean;

9 (G) Africa; and

10 (H) South America.

11 (9) The same information as required by para-
12 graph (8) of this subsection for the four countries (ex-
13 cluding the United States) in which the corporation
14 and its subsidiaries had the largest sales and assets
15 during the calendar year to which the annual report
16 applies.

17 (10) The total annual cost of legal and auditing
18 services, classified according to the portion of such fees
19 which are paid to outside firms and the portion which
20 are paid to employees of the corporation, and the four
21 law firms and four accounting firms that received the
22 largest fees, and the amounts of those fees.

23 (11) The corporation's effective annual tax rate,
24 defined as current Federal tax liability, divided by net
25 income before Federal taxes, broken down by the

1 United States tax rate on domestic income and the
2 United States tax rate on foreign income.

3 (12) The total value for the annual report year of
4 all (A) Federal contracts, (B) Federal grants, (C) Fed-
5 eral subsidies, (D) Federal patent grants, and (E) Fed-
6 eral tax expenditures annually.

7 (13) The amount of money that the corporation
8 has spent, in the calendar year to which the annual
9 report applies, on—

10 (A) political activities as defined in section
11 162 of the Internal Revenue Code, including a
12 description of each such activity;

13 (B) contributions to candidates for Federal
14 office, including the names of each candidate re-
15 ceiving contributions and the sum given; and

16 (C) paid political or advocacy advertisements,
17 including any and all payments to media consult-
18 ing firms for this purpose.

19 (b) The corporation shall furnish a copy of its annual
20 report to any member of the public upon request. The corpo-
21 ration may charge a reasonable fee to any member of the
22 public, not a stockholder, who requests an annual report.
23 Such fee shall not exceed the cost of reproduction of the
24 report.

1 FURTHER DISCLOSURE

2 SEC. 202. The Securities and Exchange Commission
3 may require further disclosure to enable stockholders to make
4 judgments on a corporation's performance and its impact on
5 the community and on the natural environment, including but
6 not limited to, subject matters specified in this Act.

7 TITLE III—EMPLOYMENT MAINTENANCE

8 NOTICE OF INTENT TO CHANGE OPERATIONS

9 SEC. 301. (a) Whenever a corporation subject to this
10 Act intends to undertake a change of operations at an estab-
11 lishment that, within six months after such change, would
12 result in a loss or reduction in employment to five hundred or
13 more individuals, then such corporation shall, not less than
14 twenty-four months prior to such change, furnish the Secre-
15 tary of Labor, affected employees, and community repre-
16 sentatives written notice of the timing and the extent of any
17 closing, transfer, or reduction resulting from such change.

18 (b) If the Secretary finds that the corporation could not
19 reasonably have predicted its intention to undertake a change
20 of operations described in subsection (a), the Secretary may
21 allow such shorter notice as may be reasonable under the
22 circumstances.

23 (c) No later than thirty days after the Secretary receives
24 the notice required in subsection (a), the Secretary shall
25 inform each employee at the establishment with respect to

1 which such notice is given, of all rights, protections, services,
2 and assistance available to such employee under this title.

3 INVESTIGATION OF INTENDED CHANGE OF OPERATIONS

4 SEC. 302. (a) In the case of any change of operations at
5 an establishment with respect to which notice is required in
6 section 301(a) the Secretary shall conduct an investigation
7 into, and shall hold public hearings on, the matters described
8 in subsection (b) if the Secretary receives, not later than sixty
9 days after such notice is given, a written request for such
10 investigation from any authorized representative of any af-
11 fected labor organization, or from not less than 10 per
12 centum of the employees, at such establishment.

13 (b) An investigation conducted by the Secretary under
14 subsection (a) shall be directed to the following: The econom-
15 ic reasons for the intended change of operations; the estimat-
16 ed extent of any economic or social loss to the employees
17 affected by such change of operations; the estimated extent of
18 any economic or social loss to any affected unit of general
19 local government and to any affected group of residents in
20 the geographical area in which such establishment is located;
21 and the feasibility of preventing or minimizing such employ-
22 ment loss by the modification of product lines and production
23 techniques at such establishment.

24 (c) For the purpose of conducting any investigation
25 under subsection (a), the Secretary may issue subpoenas re-

1 quiring the attendance and testimony of witnesses and requir-
2 ing the production of any evidence.

3 REPORT OF INVESTIGATION

4 SEC. 303. After any investigation conducted under sec-
5 tion 302(a) is concluded, the Secretary shall prepare and pub-
6 lish a report containing his findings with respect to the mat-
7 ters described in section 302(b) and his recommendations re-
8 garding actions required to be taken in order to prevent or
9 minimize the harmful economic and social effects which will
10 result from the change of operations at the establishment
11 with respect to which such investigation is conducted.

12 TRANSITIONAL ASSISTANCE BY BUSINESS CONCERNS

13 SEC. 304. (a) Any corporation required to give notice
14 under section 301(a) shall, for a period not to exceed one
15 year—

16 (1) pay to each employee who suffers an employ-
17 ment loss at such establishment a weekly income main-
18 tenance payment—

19 (A) equal to 85 per centum of the employee's
20 prior average weekly pay, or

21 (B) equal to 100 per centum of such pay if
22 such employee is participating in any training pro-
23 gram provided by the Secretary, and

24 (2) make payments with respect to such employee
25 as if such employee had not suffered such employment

1 loss, to any employee benefit plan in effect at such es-
2 tablishment to which such corporation is obligated to
3 contribute with respect to such employee.

4 (b) A payment payable under subsection (a)(1) shall be
5 reduced by an amount equal to any wages or compensation
6 from other sources.

7 (c) No corporation shall be required to make total pay-
8 ments under subsection (a)(1) to an employee exceeding
9 \$25,000 for any fifty-two-week period, or to an employee for
10 any week beginning after such employee refuses to accept
11 employment offered under section 305(a), located within a
12 reasonable commuting distance of the regular residence of
13 such employee, or to an employee for any week during which
14 such employee refuses to participate, or fails to make satis-
15 factory progress, without good cause, in any training or
16 placement program made available by the Secretary.

17 TRANSFER OF EMPLOYEES

18 SEC. 305. (a)(1) In accordance with rules promulgated
19 by the Secretary, a corporation required to give notice
20 under section 301(a) shall offer to any employee who suffers
21 an employment loss at an establishment with respect to
22 which such notice is required any employment which be-
23 comes available at any establishment of such corporation in
24 the three-year period beginning on the date such employment
25 loss occurs and which such employee is qualified to perform,

1 to the extent that such corporation can provide such employ-
2 ment under this paragraph without violating any provision of
3 any collective bargaining agreement in effect with respect to
4 such employment, such establishment, or such corporation.

5 (2) Such employment shall provide equivalent wages
6 and benefits as the prior employment.

7 (b) Any employee who is aggrieved by any failure of a
8 corporation to comply with subsection (a) may seek relief in
9 accordance with section 311.

10 **EMPLOYEE BENEFIT PLANS**

11 SEC. 306. (a) An employee who participates in any em-
12 ployee benefit plan of an establishment and with respect to
13 whom payments to such plan are required under section
14 304(a)(2) shall be eligible to participate in such plan during
15 any period for which such payments are required.

16 (b) If an employee participates under subsection (a) in
17 any employee pension benefit plan and has participated in
18 such plan for not less than five years prior to the loss of
19 employment, then such employee's rights in such plan shall
20 vest completely and nonforfeitably on the date such loss
21 occurs.

22 **LIABILITY FOR LOSS OR REVENUE**

23 SEC. 307. (a)(1) Any corporation is required to give
24 notice under section 301(a) shall be liable as provided in
25 paragraph (2) to each unit of general local government to

1 which such corporation was liable for any revenue payable
2 with respect to real or personal property at the establishment
3 involved, in any of the three preceding fiscal years.

4 (2) The amount for which such corporation shall be
5 liable under paragraph (1) to such unit of general local gov-
6 ernment shall be determined by the Secretary of Labor and
7 shall be an amount equal to 85 per centum of the projected
8 loss of revenue for a one-year period to such unit. Payments
9 under this paragraph shall be for a period not to exceed one
10 year.

11 (b)(1) Any corporation required to give notice under sec-
12 tion 301(a) with respect to an establishment that undertakes
13 a change of operations from such establishment to an estab-
14 lishment outside the United States when an economically
15 viable alternative to such transfer exists, then such corpora-
16 tion shall be liable to the United States as provided in para-
17 graph (2).

18 (2) The amount for which such corporation shall be
19 liable under paragraph (1) shall be determined by the Secre-
20 tary of Labor and shall be an amount equal to 300 per
21 centum of the projected loss of revenue to the United States
22 for a one-year period.

23 **FEDERAL ASSISTANCE TO EMPLOYEES**

24 **SEC. 308.** The Secretary, in consultation with the Na-
25 tional Employment Priorities Advisory Council, shall imple-

1 ment a comprehensive program to provide assistance to em-
2 ployees who suffer or may suffer an employment loss at an
3 establishment with respect to which notice is required under
4 section 301(a). Such program shall include (1) training pro-
5 grams, and (2) job placement services.

6 ASSISTANCE TO CERTAIN EMPLOYERS AND TO
7 COOPERATIVE ASSOCIATIONS OF EMPLOYEES

8 SEC. 309. The Secretary may provide, on such terms
9 and conditions as the Secretary deems to be appropriate, to
10 any employer or cooperative association of employees which
11 is deemed eligible, loans, loan guarantees, and technical as-
12 sistance for the purpose of—

13 (1) expanding operations at, or acquiring owner-
14 ship of, an establishment with respect to which notice
15 is required under section 301(a);

16 (2) constructing new establishments in the same
17 vicinity; or

18 (3) undertaking research and development projects
19 designed to identify new markets and additional em-
20 ployment opportunities related to entry into such mar-
21 kets, and new production and marketing techniques.

22 CIVIL VIOLATIONS AND PENALTIES

23 SEC. 310. (a) It shall be unlawful for any corporation to
24 fail—

25 (1) to give notice required in section 302(a),

1 (2) to provide assistance with respect to employ-
2 ees under section 304.

3 (3) To offer employment with respect to employ-
4 ees under section 305.

5 (b) If, after a hearing conducted by the Secretary, the
6 Secretary finds that a corporation has violated subsection (a),
7 then the Secretary shall assess against such corporation an
8 appropriate civil penalty, but not in excess of \$5,000 per day,
9 determined in accordance with regulations prescribed by the
10 Secretary.

11 EQUITABLE RELIEF TO EMPLOYEES

12 SEC. 311. (a) It shall be unlawful for any corporation
13 required to give notice under section 302(a) to fail to comply
14 with section 304(a) in the case of any employee who suffers
15 an employment loss at any establishment with respect to
16 which such notice is required.

17 (b) It shall be unlawful for any corporation to discrimi-
18 nate against any employee because such employee participat-
19 ed in, assisted in any manner, or requested any investigation,
20 hearing, or other proceeding under this title.

21 (c) If the Secretary finds that a violation of subsection
22 (a) or subsection (b) has occurred, then the corporation which
23 committed such violation shall take such action with respect
24 to such employee as the Secretary finds equitable and orders,

1 including the transfer or reinstatement of such employee, and
2 the payment of lost wages.

3 **TITLE IV—RIGHTS OF EMPLOYEES**

4 **AMENDMENTS TO THE NATIONAL LABOR RELATIONS ACT**

5 **SEC. 401.** (a) Section 1 of the National Labor Relations
6 Act is amended by adding at the end thereof the following
7 new paragraph:

8 “It is further declared to be the policy of the United
9 States to protect employees in the security of their employ-
10 ment by ensuring that they are not deprived of such employ-
11 ment on the basis of their having exercised their constitution-
12 al, civil, or other legal rights, or because of their refusal to
13 engage in unlawful conduct as a condition of employment.”.

14 (b) Section 2 of the National Labor Relations Act is
15 amended by adding at the end thereof the following new
16 paragraph:

17 “(15) The term ‘just cause’ shall be defined in accord-
18 ance with the common law of labor contracts established pur-
19 suant to section 301 of the National Labor Relations Act,
20 except that such term shall not include (A) the exercise of
21 constitutional, civil, or legal rights; (B) the refusal to engage
22 in unlawful conduct as a condition of employment; (C) the
23 refusal to submit to polygraph or other similar tests; or (D)
24 the refusal to submit to a search of someone’s person or prop-

1 erty, other than routine inspections, conducted by an em-
2 ployer without legal process.”.

3 (c) Section 7 of the National Labor Relations Act is
4 amended by adding at the end thereof the following: “Em-
5 ployees shall have the further right to be secure in their em-
6 ployment from discharge or adverse action with respect to
7 the terms or conditions of their employment except for just
8 cause.”.

9 (d) Section 8(a) of the National Labor Relations Act is
10 amended by striking out the period at the end of paragraph
11 (5) and inserting in lieu thereof a semicolon and by adding
12 after such paragraph the following:

13 “(6) to discharge or otherwise discriminate against
14 an employee except for just cause.”.

15 TITLE V—CRIMINAL AND CIVIL SANCTIONS

16 NOTICE

17 SEC. 501. A Federal court, in imposing a sentence on a
18 corporation which has been found guilty or has plead guilty
19 or nolo contendere to a violation of any Act for which crimi-
20 nal penalties can be imposed, may order, in addition to any
21 other sentence imposed, that the corporation give notice and
22 explanation of the conviction, by mail, or by other appropri-
23 ate means, in such form as the court may approve, to share-
24 holders and the class of persons injured by the violation.

1

ORDER OF RESTITUTION

2 SEC. 502. A Federal district court, in imposing a sen-
3 tence on a corporation which has been found guilty of an
4 offense causing bodily injury or property damage or other
5 loss, may order, in addition to any other sentence imposed,
6 that the defendant make restitution in an amount and manner
7 set by the court.

8

DOUBLE DAMAGES

9 SEC. 503. A corporation which has been found guilty of
10 an offense through which pecuniary gain was derived, or of
11 an offense resulting in bodily injury or damage to the natural
12 environment, shall be sentenced to pay a fine that does not
13 exceed twice the gross gain derived or twice the gross loss
14 caused, whichever is greater.

15

DISQUALIFICATION

16 SEC. 504. When a director, officer, or managing agent
17 of a corporation is convicted of a violation of law arising out
18 of his or her employment, a court of equity may disqualify
19 such director, officer, or managing agent from exercising sim-
20 ilar functions in the same or other corporations subject to this
21 Act, for a period not to exceed the maximum sentence for
22 which an individual may be imprisoned for such a violation.

23

JUDICIAL OVERSIGHT

24 SEC. 505. In its discretion, and in light of a pattern of
25 abuses of Federal law, a court of equity may appoint a Spe-

1 cial Master to oversee relevant corporate operations, and
2 may order such other relief as may be necessary to assure
3 corporate compliance with Federal laws.

4 OMISSION TO PERFORM A DUTY ON BEHALF OF A
5 CORPORATION

6 SEC. 506. Except as otherwise expressly provided,
7 whenever a duty to act is imposed by a Federal statute, regu-
8 lation, rule or court order upon a corporation subject to this
9 Act, a director, officer, or managing agent having direct and
10 significant responsibility for the subject matter to which the
11 duty relates shall be liable for a violation thereof if such
12 agent knew or reasonably should have known that the omis-
13 sion would lead to the violation.

14 RECKLESSS FAILURE TO SUPERVISE CONDUCT OF A
15 CORPORATION

16 SEC. 507. Except as otherwise expressly provided, a
17 director, officer, or managing agent responsible for supervising
18 particular activities on behalf of a corporation subject to this
19 Act who, by a reckless failure to supervise adequately those
20 activities, permits or contributes to the commission of a viola-
21 tion of Federal statute, regulation, or rule by such corpora-
22 tion shall be criminally liable for the offense.

23 DUTY TO REPORT RISK

24 SEC. 508. (a) Whenever a director, officer, or managing
25 agent of a corporation knows or reasonably should know,

1 that a product, business process, or service of such corpora-
2 tion may cause death or serious injury to any employee, cus-
3 tomer, or other person, such director, officer, or managing
4 agent shall report such risk to a Federal or State authority
5 which such director, officer, or managing agent believes has
6 jurisdiction over the subject matter. Any violation of this sec-
7 tion may be punished by a fine of not more than \$50,000 or
8 imprisonment for not more than two years, or both.

9 (b) Each corporation subject to this Act shall post
10 prominently in their various workplaces notice of subsection
11 (a) of this section and a list of those State and Federal agen-
12 cies charged with regulating their products, services, oper-
13 ations and working conditions.

14 TITLE VII—JURISDICTION, ENFORCEMENT, AND 15 RIGHT OF ACTION

16 APPLICATION OF ACT

17 SEC. 601. (a) This Act shall, with respect to any calen-
18 dar year beginning on or after the effective date of this Act,
19 apply to any manufacturing, mining, retailing, and utility cor-
20 porations, organized and doing business in the United States
21 which has more than \$250,000,000 in total assets or annual
22 sales, or more than five thousand employees, in any of the
23 three calendar years preceding such calendar year, except
24 that title I shall not apply to a corporation with fewer than
25 twenty-five stockholders. American subsidiaries of foreign

1 corporations which have assets, sales, or employees in excess
2 of such amounts in the United States are subject to this Act
3 as if they were domestic corporations, except that title I does
4 not apply unless such subsidiaries are listed on a stock ex-
5 change in the United States.

6 (b) Unless otherwise provided by Act of Congress, num-
7 bers specified in subsection (a) shall be increased by 10 per
8 centum each calendar year following the first such year for
9 which this Act is effective.

10 EFFECTIVE DATE

11 SEC. 602. This Act shall become effective for the first
12 calendar year commencing more than six months after the
13 date of its enactment. Within six months of the date of enact-
14 ment, the Securities and Exchange Commission, the Depart-
15 ment of Labor, and the National Labor Relations Board shall
16 propose and promulgate, in accordance with the requirements
17 of chapter 5 of title 5, United States Code, all rules and
18 regulations necessary to effect the provisions of this Act.

19 PRIVATE RIGHT OF ACTION

20 SEC. 603. Any person aggrieved by a violation of this
21 Act may commence a civil action in Federal district court for
22 money damages or injunctive relief against any corporation
23 subject to this Act or director, officer, or managing agent
24 thereof alleged to have violated this Act, or against the Sec-
25 retary of Labor, the National Labor Relations Board, or the

1 Securities and Exchange Commission for failure to enforce
2 the standards and requirements set forth in this Act.

3 STOCKHOLDERS' DERIVATIVE SUITS

4 SEC. 604. (a) An action may be brought in the right of a
5 corporation subject to this Act to procure a judgment in its
6 favor, by the holder of shares or of voting trust certificates of
7 the corporation or of a beneficial interest in such shares or
8 certificates, or by the holder of a debt security convertible
9 into such shares or certificates.

10 (b) In any such action, it shall be made to appear that
11 the plaintiff is such a holder at the time of bringing the action
12 and either (1) that he was such a holder at the time of the
13 transaction of which he complains, or (2) that his shares or
14 his interest therein devolved upon him by operation of law, or
15 (3) that he did not have actual knowledge of the transaction
16 of which he complains and that the corporation had not made
17 the facts of such transaction known in a public manner at or
18 prior to the time that he acquired his interest.

19 (c) Suit may be brought under this section to recover
20 any losses or damages suffered by a corporation subject to
21 this Act in connection with a breach of a legal or equitable
22 obligation to the corporation or to recover any expenses in-
23 curred by the corporation in connection with a violation of
24 law by the corporation. In computing the amount recoverable
25 under this section, the court may disregard any benefit that

1 resulted to the corporation if such offset would frustrate
2 public policy under this or any other provision of law.

3 (d) No action under this section against any present or
4 former directors or employees of a corporation subject to this
5 Act, in which it is alleged that any such person personally
6 benefited from his conduct or that such person failed to exer-
7 cise his duty of due care, may be dismissed on motion of any
8 defendant on grounds that the board of directors or any com-
9 mittee thereof exercised its business judgment not to bring
10 such suit, or that it is in the best interest of the corporation
11 that such suit not be brought, except as otherwise provided in
12 subsection (e).

13 (e) In the discretion of the court, a suit brought under
14 this section may be dismissed if all of the following conditions
15 are satisfied:

16 (1) It is established by the moving party that a
17 majority of the board of directors is composed of per-
18 sons who are both independent and not interested in
19 the transaction that is subject to the suit.

20 (2) The board of directors approved the discon-
21 tinuance of the suit by an affirmative vote of a major-
22 ity of the full board of directors, and that such majority
23 did not include the vote of any person who disclosed an
24 interest in the transaction pursuant to section 102(c) of
25 this Act or who was not independent.

1 (3) It is established by the moving party that the
2 board of directors investigated and considered the
3 merits of the suit with due care commensurate with
4 the gravity of the claim.

5 (4) The transaction did not involve any personal
6 dealings, directly or indirectly, between the corporation
7 or a subsidiary and any present executive officer of the
8 corporation.

9 (5) The court determines that the action of the
10 board is fair, reasonable, and in good faith.

11 COMPLIANCE REVIEW

12 SEC. 605. (a) Any shareholder of a corporation subject
13 to this Act may request the Securities and Exchange Com-
14 mission to investigate such corporation's compliance with the
15 provisions of this Act. In conducting an investigation the Se-
16 curities and Exchange Commission shall be permitted to sub-
17 pena witnesses and documents from the corporation.

18 (b) The Securities and Exchange Commission shall have
19 authority to take civil action against corporations and their
20 directors, officers, and managing agents when it has reason-
21 able cause to believe them to have violated provisions of this
22 Act.

23 COSTS OF LITIGATION

24 SEC. 606. Any party, other than the Government, shall
25 be entitled in action under section 603 to recover reasonable

1 attorneys' fees and other reasonable costs of litigation against
2 a corporation subject to this Act if (1) the party substantially
3 prevails in a court of final jurisdiction, (2) the court deter-
4 mines that such action served an important public purpose,
5 and (3) either the party can demonstrate that its economic
6 interest is small in comparison to its costs of effective partici-
7 pation or that it lacks sufficient resources to participate effec-
8 tively in the action absent an award.

9 SUPPLEMENTARY NATURE OF ACT

10 . SEC. 607. The rights and remedies provided for in this
11 Act shall be in addition to and not in lieu of any other rights
12 and remedies provided by common law or under other Feder-
13 al or State law.

