

Sherman Anti-Trust Act¹

Approved July 2, 1890, The Sherman Anti-Trust Act was the first Federal act that outlawed monopolistic business practices.

The Sherman Anti- Act of 1890 was the first measure passed by the U.S. Congress to prohibit trusts. It was named for Senator John Sherman of Ohio, who was a chairman of the Senate finance committee and the Secretary of the Treasury under President Hayes.

Several states had passed similar laws, but they were limited to intrastate businesses. The Sherman Antitrust Act was based on the constitutional power of Congress to regulate interstate commerce. (For more background, see previous milestone documents: [the Constitution](#), [Gibbons v. Ogden](#), and [the Interstate Commerce Act](#).)

The Sherman Anti-Trust Act passed the Senate by a vote of 51–1 on April 8, 1890, and the House by a unanimous vote of 242–0 on June 20, 1890. President Benjamin Harrison signed the bill into law on July 2, 1890.

A trust is an arrangement by which stockholders in several companies transfer their shares to a single set of trustees. In exchange, the stockholders receive a certificate entitling them to a specified share of the consolidated earnings of the jointly managed companies.

Toward the end of the 19th century, trusts come to dominate a number of major industries, destroying competition. For example, on January 2, 1882, the Standard Oil Trust was formed. Attorney Samuel Dodd of Standard Oil first had the idea of a trust. A board of trustees was set up, and all the Standard properties were placed in its hands. Every stockholder received 20 trust certificates for each share of Standard Oil stock. All the profits of the component companies were sent to the nine trustees, who determined the dividends. The nine trustees elected the directors and officers of all the component companies. This allowed Standard Oil to function as a monopoly since the nine trustees ran all the component companies.

The Sherman Anti-Trust Act authorized the federal government to institute proceedings against trusts in order to dissolve them. Any combination "in the form of trust or otherwise that was in restraint of trade or commerce among the several states, or with foreign nations" was declared illegal. Persons forming such combinations were subject to fines of \$5,000 and a year in jail. Individuals and companies suffering losses because of trusts were permitted to sue in federal court for triple damages.

The act was designed to restore competition, but it was loosely worded and failed to define such critical terms as "trust," "combination," "conspiracy," and "monopoly." Five years later, the Supreme Court dismantled the act in *United States v. E. C. Knight Company* (1895). The Court ruled that the American Sugar Refining Company, one of the defendants in the case, had not violated the law even though the company controlled about 98% of all sugar refining in the United States. The Supreme Court reasoned that the company's control of manufacture did not constitute a control of trade.

¹ Source: <https://www.archives.gov/milestone-documents/sherman-anti-trust-act>

The *E. C. Knight* ruling seemed to end any government regulation of trusts. In spite of this, during President Theodore Roosevelt's "trust busting" campaigns at the turn of the century, the Sherman Anti-Trust Act was used with considerable success. In 1904, the Supreme Court upheld the government's suit to dissolve the Northern Securities Company in *Northern Securities Co. v. United States*. By 1911, President Taft had used the act against the Standard Oil Company and the American Tobacco Company. In the late 1990s, in another effort to ensure a competitive free market system, the federal government used the Sherman Anti-Trust Act, then over 100 years old, against the giant Microsoft computer software company.

Transcript:

Fifty-first Congress of the United States of America, At the First Session,

Begun and held at the City of Washington on Monday, the second day of December, one thousand eight hundred and eighty-nine.

An act to protect trade and commerce against unlawful restraints and monopolies.

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

Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, at the discretion of the court.

Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof; shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Sec. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Sec. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district

attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

Sec. 5. Whenever it shall appear to the court before which any proceeding under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

Sec. 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

Sec. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover three fold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

Sec. 8. That the word "person," or " persons," wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

Approved, July 2, 1890.

[Endorsements]

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Public No 1903 (157)
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