

114TH CONGRESS
1ST SESSION

S. 2102

To amend the Clayton Act and the Federal Trade Commission Act to provide that the Federal Trade Commission shall exercise authority with respect to mergers only under the Clayton Act and only in the same procedural manner as the Attorney General exercises such authority.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 30, 2015

Mr. LEE (for himself, Mr. GRASSLEY, and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Clayton Act and the Federal Trade Commission Act to provide that the Federal Trade Commission shall exercise authority with respect to mergers only under the Clayton Act and only in the same procedural manner as the Attorney General exercises such authority.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Standard Merger and
5 Acquisition Reviews Through Equal Rules Act of 2015”.

6 **SEC. 2. AMENDMENTS TO THE CLAYTON ACT.**

7 The Clayton Act (15 U.S.C. 12 et seq.) is amended—

1 (1) by striking section 4F and inserting the fol-
2 lowing—

3 **“SEC. 4F. ACTIONS BY ATTORNEY GENERAL OF THE**
4 **UNITED STATES OR THE FEDERAL TRADE**
5 **COMMISSION.**

6 “(a) Whenever the Attorney General of the United
7 States has brought an action under the antitrust laws or
8 the Federal Trade Commission has brought an action
9 under section 7, and the Attorney General or Federal
10 Trade Commission, as applicable, has reason to believe
11 that any State attorney general would be entitled to bring
12 an action under this Act based substantially on the same
13 alleged violation of the antitrust laws or section 7, the At-
14 torney General or Federal Trade Commission, as applica-
15 ble, shall promptly give written notification thereof to such
16 State attorney general.

17 “(b) To assist a State attorney general in evaluating
18 the notice described in subsection (a) or in bringing any
19 action under this Act, the Attorney General of the United
20 States or Federal Trade Commission, as applicable, shall,
21 upon request by such State attorney general, make avail-
22 able to the State attorney general, to the extent permitted
23 by law, any investigative files or other materials which are
24 or may be relevant or material to the actual or potential
25 cause of action under this Act.”;

1 (2) in section 5—

2 (A) in subsection (a) by inserting “(includ-
3 ing a proceeding brought by the Federal Trade
4 Commission with respect to a violation of sec-
5 tion 7)” after “United States under the anti-
6 trust laws”; and

7 (B) in subsection (i) by inserting “(includ-
8 ing a proceeding instituted by the Federal
9 Trade Commission with respect to a violation of
10 section 7)” after “antitrust laws”;

11 (3) in section 11, by adding at the end the fol-
12 lowing:

13 “(m)(1) Except as provided in paragraph (2), in en-
14 forcing compliance with section 7, the Federal Trade Com-
15 mission shall enforce compliance with that section in the
16 same manner as the Attorney General in accordance with
17 section 15.

18 “(2) If the Federal Trade Commission approves an
19 agreement with the parties to the transaction that con-
20 tains a consent order with respect to a violation of section
21 7, the Commission shall enforce compliance with that sec-
22 tion in accordance with this section.”;

23 (4) in section 13, by inserting “(including a
24 suit, action, or proceeding brought by the Federal

1 Trade Commission with respect to a violation of sec-
2 tion 7)” before “subpoenas”; and

3 (5) in section 15, by inserting “and the duty of
4 the Federal Trade Commission with respect to a vio-
5 lation of section 7,” after “General,”.

6 **SEC. 3. AMENDMENTS TO THE FEDERAL TRADE COMMIS-**
7 **SION ACT.**

8 The Federal Trade Commission Act (15 U.S.C. 41)
9 is amended—

10 (1) in section 5(b), by inserting “(excluding the
11 consummation of a proposed merger, acquisition,
12 joint venture, or similar transaction that is subject
13 to section 7 of the Clayton Act (15 U.S.C. 18), ex-
14 cept in cases where the Commission approves an
15 agreement with the parties to the transaction that
16 contains a consent order)” after “unfair method of
17 competition”;

18 (2) in section 9, by inserting after the fourth
19 undesignated paragraph the following:

20 “Upon the application of the commission with respect
21 to any activity related to the consummation of a proposed
22 merger, acquisition, joint venture, or similar transaction
23 that is subject to section 7 of the Clayton Act (15 U.S.C.
24 18) that may result in any unfair method of competition,
25 the district courts of the United States shall have jurisdic-

1 tion to issue writs of mandamus commanding any person
2 or corporation to comply with the provisions of this Act
3 or any order of the commission made in pursuance there-
4 of.”;

5 (3) in section 13(b)(1), by inserting “(excluding
6 section 7 of the Clayton Act (15 U.S.C. 18) and sec-
7 tion 5(a)(1) with respect to the consummation of a
8 proposed merger, acquisition, joint venture, or simi-
9 lar transaction that is subject to section 7 of the
10 Clayton Act (15 U.S.C. 18))” after “Commission”;
11 and

12 (4) in section 20(c)(1), by inserting “or under
13 section 7 of the Clayton Act (15 U.S.C. 18), where
14 applicable,” after “Act,”.

15 **SEC. 4. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

16 (a) **EFFECTIVE DATE.**—Except as provided in sub-
17 section (b), this Act and the amendments made by this
18 Act shall take effect on the date of the enactment of this
19 Act.

20 (b) **APPLICATION OF AMENDMENTS.**—The amend-
21 ments made by this Act shall not apply to any of the fol-
22 lowing that occurs before the date of enactment of this
23 Act:

24 (1) A violation of section 7 of the Clayton Act
25 (15 U.S.C. 18).

1 (2) A transaction with respect to which there is
2 compliance with section 7A of the Clayton Act (15
3 U.S.C. 18a).

4 (3) A case in which a preliminary injunction
5 has been filed in a district court of the United
6 States.

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