

116TH CONGRESS  
2D SESSION

# S. 4013

To prohibit certain transactions during the coronavirus disease 2019  
(COVID–19) pandemic.

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IN THE SENATE OF THE UNITED STATES

JUNE 18, 2020

Ms. WARREN (for herself and Mr. SANDERS) introduced the following bill;  
which was read twice and referred to the Committee on Commerce,  
Science, and Transportation

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## A BILL

To prohibit certain transactions during the coronavirus  
disease 2019 (COVID–19) pandemic.

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 “Pandemic Anti-Monop-  
5 oly Act”.

6 **SEC. 2. MORATORIUM ON CERTAIN MERGERS AND ACQUISI-**  
7 **TIONS.**

8 (a) IN GENERAL.—Except as provided in subsection  
9 (b), during the period beginning on the date of enactment  
10 of this Act and ending on the date on which the Federal

1 Trade Commission votes unanimously under subsection  
2 (c), the following transactions are prohibited:

3 (1) Acquisitions by firms with over  
4 \$100,000,000 in revenue.

5 (2) Acquisitions by financial institutions or eq-  
6 uity funds with over \$100,000,000 in capitalization.

7 (3) Acquisitions by firms that are registered in-  
8 vestment advisers under section 203 of the Invest-  
9 ment Advisers Act of 1940 (15 U.S.C. 80b-3) or by  
10 firms that are majority-owned by a firm that is a  
11 registered investment adviser under that section.

12 (4) Acquisitions involving firms with exclusive  
13 patent pertaining to coronavirus disease 2019  
14 (COVID-19) pandemic-related production, manufac-  
15 turing, distribution, or infrastructure, medical sup-  
16 plies, equipment, facilities, or services, and drug re-  
17 search, development, production, supply, reserves, or  
18 distribution.

19 (5) Any other acquisition required to be re-  
20 ported under section 7A of the Clayton Act (15  
21 U.S.C. 18a).

22 (6) Does not include an acquisition that is a  
23 transaction described in paragraph (1), (2), (3), (4),  
24 (5), (9), or (10) of section 7A(c) of the Clayton Act  
25 (15 U.S.C. 18a(c)).

1 (b) WAIVER.—

2 (1) IN GENERAL.—Firms participating in any  
3 transaction described in subsection (a) may petition  
4 the Federal Trade Commission for a waiver by pre-  
5 senting clear and convincing evidence that the trans-  
6 action will advance critical national security, eco-  
7 nomic, or public health interests during the emer-  
8 gency.

9 (2) FAILING FIRM.—The acquisition of a failing  
10 firm shall be considered to advance critical economic  
11 interests and shall be deemed to meet the criteria  
12 for a waiver under paragraph (1). A firm shall be  
13 deemed failing if the Commission concludes that—

14 (A) the firm would be unable to meet the  
15 financial obligations of the firm in the near fu-  
16 ture, having established that the resources of  
17 the firm are so depleted and the prospect of re-  
18 habilitation so remote that the firm faces the  
19 grave probability of a business failure;

20 (B) the probability of the firm successfully  
21 reorganizing under chapter 11 of title 11,  
22 United States Code, is dim or nonexistent; and

23 (C) the firm has demonstrated that the  
24 firm made good faith efforts to elicit reasonable  
25 alternative offers that would keep assets of the

1 firm in the market and pose a less severe dan-  
2 ger to competition than does the proposed ac-  
3 quisition.

4 (3) VOTE.—The Federal Trade Commission, by  
5 unanimous Commission vote and with the written  
6 concurrence of the Attorney General, the Secretary  
7 of Defense, the Secretary of Homeland Security, the  
8 Secretary of Labor, the Secretary of Health and  
9 Human Services, and the Administrator of the Small  
10 Business Administration may grant a petition under  
11 paragraph (1) if the Commission determines that  
12 the transaction will advance critical national secu-  
13 rity, economic, or public health interests during the  
14 emergency.

15 (4) EXPLANATION.—Upon granting a petition  
16 under this subsection, the Federal Trade Commis-  
17 sion shall publish in the Federal Register and on the  
18 website of the Commission the rationale for granting  
19 the petition.

20 (c) TERMINATION OF MORATORIUM.—

21 (1) IN GENERAL.—The prohibition in sub-  
22 section (a) shall not apply only if the Federal Trade  
23 Commission unanimously determines, with the writ-  
24 ten consent of the Attorney General, the Secretary  
25 of Labor, and the Administrator of the Small Busi-

1       ness Administration, that the prohibition should no  
2       longer apply.

3               (2) INITIAL DETERMINATION.—The Federal  
4       Trade Commission may only hold a vote under para-  
5       graph (1) after—

6               (A) the national emergency under the Na-  
7       tional Emergencies Act (50 U.S.C. 1601 et  
8       seq.) with respect to the coronavirus disease  
9       2019 (COVID–19) has terminated;

10              (B) each State of the United States, the  
11       District of Columbia, any territory of the  
12       United States, Puerto Rico, Guam, American  
13       Samoa, the Virgin Islands, and the Northern  
14       Mariana Islands have reopened their economies;

15              (C) the 100-day period ending on the later  
16       of the date on which subparagraph (A) or (B)  
17       has been satisfied expires; and

18              (D) the Commission determines that small  
19       businesses and workers are no longer under se-  
20       vere financial distress.

21       (d) TOLLING.—During the period beginning on the  
22       date of enactment of this Act and ending on the date on  
23       which the Federal Trade Commission votes under sub-  
24       section (c)(1) to remove the prohibition under subsection  
25       (a), any waiting period or deadline required under section

1 7A of the Clayton Act (15 U.S.C. 18a) shall be automati-  
2 cally tolled.

3 (e) PENALTIES.—Any firm attempting a prohibited  
4 transaction under this section shall be subject to an order  
5 blocking or reversing the transaction and a penalty of not  
6 less than 10 percent of the revenue of the firm for fiscal  
7 year 2019.

8 (f) RESILIENCY RULEMAKING.—

9 (1) IN GENERAL.—There shall be a legal pre-  
10 sumption against a transaction that may pose a risk  
11 to the Government’s ability to respond to a national  
12 emergency, including—

13 (A) a transaction that may reduce, restrict,  
14 curtail, or otherwise undermine the ability of  
15 the Government to invent, develop, improve,  
16 produce, procure, stockpile, or otherwise make  
17 available goods and services that are life-saving  
18 or otherwise essential to the Government’s abil-  
19 ity to address the coronavirus disease 2019  
20 (COVID–19) pandemic or other potential public  
21 health, safety, or other emergencies;

22 (B) a transaction that may reduce, limit,  
23 curtail, or otherwise create a disincentive for re-  
24 search, development, or production of goods or  
25 services described in subparagraph (A); and

1           (C) a transaction by a firm under contract  
2           within the last 5 years with the Federal Gov-  
3           ernment regarding any goods or services de-  
4           scribed in subparagraph (A).

5           (2) BURDEN.—If a firm seeks to complete a  
6           transaction described in paragraph (1), that firm  
7           shall have the burden of showing by clear and con-  
8           vincing evidence that the transaction does not pose  
9           a risk to the Government’s ability to respond to a  
10          national emergency.

11          (3) RULEMAKING.—Not later than 1 year after  
12          the date of enactment of this Act, the Federal Trade  
13          Commission shall promulgate regulations to further  
14          define—

15                 (A) transactions that fall under paragraph  
16                 (1)(A);

17                 (B) transactions that fall under paragraph  
18                 (1)(B);

19                 (C) companies that fall under paragraph  
20                 (1)(C); and

21                 (D) specific goods and services that are  
22                 life-saving or otherwise essential to the Govern-  
23                 ment’s ability to address the coronavirus dis-  
24                 ease 2019 (COVID–19) pandemic or other po-

1            tential public health, safety, or other emer-  
2            gencies.

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