

119TH CONGRESS
2D SESSION

S. 4434

To amend the Clayton Act to provide for the divestiture of certain transactions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 29, 2026

Mr. BOOKER (for himself, Ms. WARREN, Mr. HEINRICH, Mr. MURPHY, and Ms. HIRONO) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Clayton Act to provide for the divestiture of certain transactions, and for other purposes.

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 “Correcting Lapsed En-
5 forcement in Antitrust Norms for Mergers Act” or the
6 “CLEAN Mergers Act”.

1 **SEC. 2. DIVESTITURE OF THRESHOLD TRANSACTIONS; RE-**
2 **VIEW OF ENFORCEMENT-LAPSE TRANS-**
3 **ACTIONS.**

4 The Clayton Act (15 U.S.C. 12 et seq.) is amended
5 by inserting after section 7A (15 U.S.C. 18a) the fol-
6 lowing:

7 **“SEC. 7B.(a) In this section—**

8 “(1) the term ‘agencies’ means the Department
9 of Justice, the Federal Trade Commission, the Fed-
10 eral Communications Commission, the Department
11 of Transportation, and the Surface Transportation
12 Board;

13 “(2) the term ‘court’ means any district court
14 of the United States having jurisdiction over parties
15 seeking a declaratory judgment or other relief pursu-
16 ant to this Act;

17 “(3) the term ‘covered period’ means the period
18 beginning on January 20, 2025, and ending on Jan-
19 uary 19, 2029;

20 “(4) the term ‘enforcement-lapse transaction’
21 means any transaction consummated during the cov-
22 ered period that is not a threshold transaction;

23 “(5) the term ‘HHI’ means the Herfindahl–
24 Hirschman Index;

25 “(6) the term ‘relevant market’ has the mean-
26 ing given the term in the ‘Merger Guidelines U.S.

1 Department of Justice and the Federal Trade Com-
2 mission’ issued on December 18, 2023;

3 “(7) the term ‘transaction’ means an acquisi-
4 tion subject to section 7A, including any transaction
5 exempt from the requirements of subsection (c) of
6 that section, during the covered period; and

7 “(8) the term ‘threshold transaction’ means a
8 transaction consummated during the covered period
9 with a value of not less than \$10,000,000,000.

10 “(b)(1) Beginning on the date that is 180 days after
11 the date of enactment of this section, the parties to a
12 threshold transaction shall—

13 “(A) if the transaction was consummated before
14 the date of enactment of this section, complete dives-
15 titure of such transaction; and

16 “(B) if the transaction is consummated after
17 the date of enactment of this section, hold separate
18 the assets of the merging entities to ensure such as-
19 sets remain independent, economically viable, and
20 that competition is maintained during the pendency
21 of agency review under subsection (c)(1).

22 “(2) The acquiring person and person whose voting
23 securities or assets were acquired may file an action for
24 a declaratory judgment seeking to exempt the threshold
25 transaction from the divestiture requirements under para-

1 graph (1) by demonstrating that all of the following condi-
2 tions exist:

3 “(A) The threshold transaction did not result
4 in—

5 “(i) a post-acquisition HHI in excess of
6 1,800; or

7 “(ii) a change in the HHI of greater than
8 100 in any relevant market;

9 “(iii) a market share greater than 30 per-
10 cent of any relevant market; or

11 “(iv) an increase in HHI of more than
12 100.

13 “(B) With respect to any line of business, price
14 increases or quality adjustments were materially
15 consistent with representations made during agency
16 review of the transaction.

17 “(C) The threshold transaction was not fol-
18 lowed by any significant reduction in output by the
19 post-acquisition entity, as compared to the highest
20 level of combined output by the acquiring person
21 and person whose voting securities or assets were ac-
22 quired during the 2-year period ending on the date
23 on which the agency began review of the transaction.

24 “(D) The threshold transaction was not fol-
25 lowed by any significant reduction in employment in-

1 consistent with representations made or omitted dur-
2 ing agency review of the transaction.

3 “(E) Any divestiture or other condition imposed
4 in connection with the approval of the transaction
5 achieved full and timely compliance without any ac-
6 cusation of circumvention, malicious compliance, or
7 failure of any assets subject to divestiture.

8 “(F) No lawyer or law firm involved in the
9 transaction offered or provided pro bono legal serv-
10 ices in connection with any settlement or agreement
11 with any reviewing agency or executive branch offi-
12 cial.

13 “(3) In any proceeding initiated pursuant to sub-
14 section (b)(2), the Attorney General of any State shall
15 have an unconditional right of intervention.

16 “(c)(1) Not later than 2 years after the date of enact-
17 ment of this section, the agencies or the Attorney General
18 of any State may conduct a review of any enforcement-
19 lapsed transaction consummated prior to or after the date
20 of enactment of this section to determine whether any of
21 the following conditions existed with respect to the review
22 or clearance of such transaction:

23 “(A) Conduct constituting a violation of section
24 201, 208, or 1001 of title 18, United States Code,
25 or section 7A of this Act.

1 “(B) The transaction was cleared, approved, or
2 subject to dismissal, entry of a consent decree, or
3 other final disposition notwithstanding a written rec-
4 ommendation to the contrary by any civil servant in
5 the agency conducting the review, including—

6 “(i) to open an investigation into a trans-
7 action;

8 “(ii) to request additional information and
9 documentary materials;

10 “(iii) that a party withdraw a premerger
11 notification and submit a new filing for a trans-
12 action;

13 “(iv) to challenge a transaction; or

14 “(v) to further modify or condition the
15 transaction.

16 “(C) The transaction was approved, cleared, or
17 otherwise disposed of without the completion of an
18 investigation following a request for additional infor-
19 mation or documentary material under section
20 7A(e).

21 “(D) Any political appointee, registered lob-
22 byist, person acting at the direction or on behalf of
23 the acquiring person and person whose voting securi-
24 ties or assets were acquired, or person with a direct
25 or indirect financial interest in the outcome of such

1 transaction, communicated with any official or em-
2 ployee of the agencies, the Executive Office of the
3 President, or any other Federal agency regarding
4 the review or disposition of such transaction outside
5 of procedures established for public comment or for-
6 mal party submissions.

7 “(E) A material misrepresentation or omission
8 related to the transaction was made to the agency
9 at any point prior to or during the completion of any
10 review of a transaction.

11 “(F) The President, or any member of the Cab-
12 inet, or head of a Federal agency, made state-
13 ments—

14 “(i) indicating a preference for a particular
15 acquiring person and person whose voting secu-
16 rities or assets were acquired, or outcome in
17 such transaction;

18 “(ii) suggesting that commitments, conces-
19 sions, or promises were sought or obtained from
20 any acquiring person and person whose voting
21 securities or assets were acquired in connection
22 with the review or clearance thereof; or

23 “(iii) suggesting that the disposition of
24 such transaction was influenced by consider-

1 ations unrelated to the competitive effects of
2 such transaction under the antitrust laws.

3 “(G) The approval of the transaction was mate-
4 rially influenced by a conflict of interest, improper
5 ex parte communication, or other ethical violation or
6 professional misconduct by any official involved in
7 the review.

8 “(H) The acquiring person and person whose
9 voting securities or assets were acquired were rep-
10 resented by any law firm, lobbying firm, or other
11 person that had previously employed a political ap-
12 pointee at a reviewing agency during the 1-year pe-
13 riod ending on the date of the appointment.

14 “(I) Any foreign government, foreign state-
15 owned enterprise, sovereign wealth fund, or agent of
16 a foreign principal, as defined in section 1(b) of the
17 Foreign Agents Registration Act of 1938, as amend-
18 ed (22 U.S.C. 611(b)), directly or indirectly sought
19 to influence the review, clearance, or disposition of
20 the transaction through any communication with any
21 official or employee of the agencies, the Executive
22 Office of the President, or any other Federal agency.

23 “(2)(A) If the reviewing agency determines that there
24 is a reasonable basis to conclude that 1 or more of the
25 conditions described in subparagraphs (A) through (I) of

1 paragraph (1) are met, the agency shall provide written
2 notice to the acquiring person and person whose voting
3 securities or assets were acquired requiring divestiture of
4 any and all transaction assets, including the dissolution
5 of any agreement or venture incidental to the transaction,
6 not later than 30 days after such determination.

7 “(B) The divestiture required under subparagraph
8 (A) shall be completed not later than 180 days after the
9 date on which the acquiring person and person whose vot-
10 ing securities or assets were acquired receive the notice
11 under that subparagraph, unless the acquiring person and
12 person whose voting securities or assets were acquired file
13 an action for a declaratory judgment under paragraph (3).

14 “(3) The acquiring person and person whose voting
15 securities or assets were acquired may file for an action
16 for a declaratory judgment seeking to exempt the enforce-
17 ment-lapsed transaction from the divestiture requirements
18 under paragraph (2) by demonstrating to the court by
19 clear and convincing evidence that, as to any condition
20 forming the basis of a notice to divest under paragraph
21 (2), such condition—

22 “(A) did not occur; or

23 “(B) was so immaterial to any agency action
24 related to the transaction that no reasonable person

1 might consider the condition and agency action re-
2 lated in any way.

3 “(4) In any proceeding initiated pursuant to para-
4 graph (3), the Attorney General of any State shall have
5 an unconditional right of intervention.

6 “(d) In any action under this section, the identifica-
7 tion of the relevant market—

8 “(1) shall not require direct evidence or expert
9 witness testimony regarding prices, output, or sub-
10stitutability; and

11 “(2) shall defer to any plausible submarket,
12 which may be adequately defined based on indirect
13 evidence of the boundaries of the relevant market,
14 including practical indicia of market boundaries rec-
15 ognized by the industry, customers or the public, or
16 any potential submarket considered by any agency at
17 the time the transaction was reviewed.

18 “(e)(1) All acquiring persons and persons whose vot-
19 ing securities or assets were acquired during the covered
20 period and any counsel, lobbyist, or other agent of the ac-
21 quiring person and person whose voting securities or as-
22 sets were acquired shall—

23 “(A) preserve any written or oral communica-
24 tion by or on behalf of such acquiring person and
25 person whose voting securities or assets were ac-

1 quired, including any ephemeral message, by any of-
2 ficer, director, employee, or agent of such acquiring
3 person and person whose voting securities or assets
4 were acquired, or other person, with any officer or
5 employee of the United States related to the trans-
6 action;

7 “(B) preserve any document and electronically
8 stored information described in rule 34(a)(1)(A) of
9 the Federal Rules of Civil Procedure related to the
10 transaction; and

11 “(C) take all steps necessary to prevent the de-
12 struction, loss, or alteration of any such document,
13 electronically stored information, communication,
14 and other data or information generated by or
15 stored on the a computer, mobile device, or storage
16 media of an acquiring person and person whose vot-
17 ing securities or assets were acquired.

18 “(2) If a party fails to comply with paragraph (1),
19 in any proceeding before a court relating to the trans-
20 action, the court shall—

21 “(A) instruct the factfinder to draw an adverse
22 inference that the evidence that was not preserved
23 would have been unfavorable to the party that failed
24 to preserve such evidence;

1 “(B) sanction counsel and executives to the ex-
2 tent they knew or should have known their actions
3 or inactions would cause such failure; and

4 “(C) make criminal referrals to the extent such
5 failure is a violation of section 1512(c) of title 18,
6 United States Code.

7 “(3) Any records preserved pursuant to this sub-
8 section shall be made available to the attorney general of
9 any State upon request.

10 “(f)(1) If the acquiring person and person whose vot-
11 ing securities or assets were acquired fail to complete di-
12 vestiture pursuant to subsection (b)(1) or (c)(2) before the
13 date that is 90 days after the date on which the divestiture
14 is required to be completed, the court shall appoint, or
15 a reviewing agency shall move a court to appoint, an inde-
16 pendent divestiture trustee with the authority to effect the
17 sale of assets on such terms as the trustee determines are
18 reasonable, subject to court approval.

19 “(2) If a court finds that any person knowingly vio-
20 lated the requirements of subsection (b)(1) or (c)(2), the
21 court may—

22 “(A) impose a civil penalty not to exceed the
23 greater of—

24 “(i) \$100,000 each day during which such
25 violation persists; or

1 “(ii) 5 percent of the total value of the
2 transaction;

3 “(B) impose against the chief executive officer
4 and board members of any entity resulting from the
5 transaction, a civil penalty not more than \$100,000
6 each day during which such violation persists; and

7 “(C) impose any other monetary or equitable
8 relief, or initiate a contempt proceeding or criminal
9 referral that the court, in its discretion, determines
10 is necessary to effectuate compliance with the re-
11 quirements of this Act.

12 “(3) If the court finds that the failure to divest pur-
13 suant to subsection (b)(1) or (c)(2) was knowing, the
14 court may award damages in an amount equal to 3 times
15 the value of the commercial benefit derived by the parties
16 from the continued operation of the assets subject to di-
17 vestiture during the period of noncompliance.

18 “(4) If the agencies have probable cause to believe
19 that any person has violated section 201, section 208, or
20 section 1001 of title 18, United States Code, in connection
21 with the review or approval of a transaction, the Attorney
22 General shall appoint a special counsel to investigate and,
23 if warranted, prosecute such violations.

24 “(g)(1) Except as provided in paragraph (2), in any
25 action by an acquiring person and person whose voting

1 securities or assets were acquired for declaratory judg-
 2 ment, as to any threshold or enforcement-lapse trans-
 3 action, structural relief, including divestiture, dissolution,
 4 or rescission, shall be the presumptive remedy for restor-
 5 ing competition in any relevant market.

6 “(2) The court may order additional remedies, includ-
 7 ing the disgorgement of any gain attributable to the trans-
 8 action, only upon a finding supported by clear evidence
 9 that—

10 “(A) a divestiture is physically or techno-
 11 logically impossible; or

12 “(B) any other remedy would not fully and ef-
 13 fectively restore competition.”.

14 **SEC. 3. LIMITATIONS FOR ANTITRUST ACTIONS.**

15 Section 4B of the Clayton Act (15 U.S.C. 15b) is
 16 amended, in the first sentence, by striking “four years”
 17 and inserting “10 years”.

18 **SEC. 4. SEVERABILITY.**

19 If any provision of this Act, an amendment made by
 20 this Act, or the application of such provision or amend-
 21 ment to any person or circumstance is held to be unconsti-
 22 tutional, the remainder of this Act, the amendments made
 23 by this Act, and the application of the provisions of such

1 to any person or circumstance shall not be affected there-
2 by.

