

Calendar No. 551

110TH CONGRESS
1ST SESSION**S. 772****[Report No. 110-252]**

To amend the Federal antitrust laws to provide expanded coverage and to eliminate exemptions from such laws that are contrary to the public interest with respect to railroads.

IN THE SENATE OF THE UNITED STATES

MARCH 6, 2007

Mr. KOHL (for himself, Mr. COLEMAN, Mr. FEINGOLD, Mr. VITTER, Mr. ROCKEFELLER, Mr. HARKIN, Mr. DORGAN, Mr. LEAHY, Mr. BIDEN, and Mr. SCHUMER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

DECEMBER 19, 2007

Reported by Mr. LEAHY, with amendments

[Omit the part struck through and insert the part printed in *italic*]**A BILL**

To amend the Federal antitrust laws to provide expanded coverage and to eliminate exemptions from such laws that are contrary to the public interest with respect to railroads.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Railroad Antitrust En-
3 forcement Act of 2007”.

4 **SEC. 2. INJUNCTIONS AGAINST RAILROAD COMMON CAR-**
5 **RIERS.**

6 The proviso in section 16 of the Clayton Act (15
7 U.S.C. 26) ending with “Code.” is amended to read as
8 follows: “*Provided*, That nothing herein contained shall be
9 construed to entitle any person, firm, corporation, or asso-
10 ciation, except the United States, to bring suit for injunc-
11 tive relief against any common carrier that is not a rail-
12 road subject to the jurisdiction of the Surface Transpor-
13 tation Board under subtitle IV of title 49, United States
14 Code.”.

15 **SEC. 3. MERGERS AND ACQUISITIONS OF RAILROADS.**

16 The sixth undesignated paragraph of section 7 of the
17 Clayton Act (15 U.S.C. 18) is amended to read as follows:

18 “Nothing contained in this section shall apply to
19 transactions duly consummated pursuant to authority
20 given by the Secretary of Transportation, Federal Power
21 Commission, Surface Transportation Board (except for
22 ~~agreements described in section 10706 of title 49, United~~
23 ~~States Code, and~~ transactions described in section 11321
24 of that title), the Securities and Exchange Commission in
25 the exercise of its jurisdiction under section 10 (of the
26 Public Utility Holding Company Act of 1935), the United

1 States Maritime Commission, or the Secretary of Agri-
 2 culture under any statutory provision vesting such power
 3 in the Commission, Board, or Secretary.”.

4 **SEC. 4. LIMITATION OF PRIMARY JURISDICTION.**

5 The Clayton Act is amended by adding at the end
 6 thereof the following:

7 “SEC. 29. In any civil action against a common car-
 8 rier railroad under section 4, 4C, 15, or 16 of this Act,
 9 the district court shall not be required to defer to the pri-
 10 mary jurisdiction of the Surface Transportation Board.”.

11 **SEC. 5. FEDERAL TRADE COMMISSION ENFORCEMENT.**

12 (a) CLAYTON ACT.—Section 11(a) of the Clayton Act
 13 (15 U.S.C. 21(a)) is amended by striking “subject to juris-
 14 diction” and all that follows through the first semicolon
 15 and inserting “subject to jurisdiction under subtitle IV of
 16 title 49, United States Code (except for agreements de-
 17 scribed in section 10706 of that title and transactions de-
 18 scribed in section 11321 of that title);”.

19 (b) FTC ACT.—Section 5(a)(2) of the Federal Trade
 20 Commission Act (~~15 U.S.C. 44(a)(1)~~ *15 U.S.C. 45(a)(2)*)
 21 is amended by striking “common carriers subject” and in-
 22 serting “common carriers, except for railroads, subject”.

1 **SEC. 6. EXPANSION OF TREBLE DAMAGES TO RAIL COM-**
 2 **MON CARRIERS.**

3 Section 4 of the Clayton Act (15 U.S.C. 15) is
 4 amended by—

5 (1) redesignating subsections (b) and (c) as
 6 subsections (c) and (d), respectively; and

7 (2) inserting after subsection (a) the following:

8 “(b) Subsection (a) shall apply to ~~common carriers~~
 9 ~~by rail~~ *a common carrier by railroad* subject to the juris-
 10 diction of the Surface Transportation Board under sub-
 11 title IV of title 49, United States Code, without regard
 12 to whether such railroads have filed rates or whether a
 13 complaint challenging a rate has been filed.”.

14 **SEC. 7. TERMINATION OF EXEMPTIONS IN TITLE 49.**

15 (a) IN GENERAL.—Section 10706 of title 49, United
 16 States Code, is amended—

17 (1) in subsection (a)—

18 (A) in paragraph (2)(A), by striking “, and
 19 the Sherman Act (15 U.S.C. 1 et seq.),” and all
 20 that follows through “or carrying out the agree-
 21 ment” in the third sentence;

22 (B) in paragraph (4)—

23 (i) by striking the second sentence;

24 and

25 (ii) by striking “However, the” in the
 26 third sentence and inserting “The”; and

1 (C) in paragraph (5)(A), by striking “, and
 2 the antitrust laws set forth in paragraph (2) of
 3 this subsection do not apply to parties and
 4 other persons with respect to making or car-
 5 rying out the agreement”; and

6 (2) by striking subsection (e) and inserting the
 7 following:

8 “(e) APPLICATION OF ANTITRUST LAWS.—

9 “(1) IN GENERAL.—Nothing in this section ex-
 10 empts a proposed agreement described in subsection
 11 (a) from the application of the Sherman Act (15
 12 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12, 14
 13 et seq.), the Federal Trade Commission Act (15
 14 U.S.C. 41 et seq.), section 73 or 74 of the Wilson
 15 Tariff Act (15 U.S.C. 8 and 9), or the Act of June
 16 19, 1936 (15 U.S.C. 13, 13a, 13b, 21a).

17 “(2) ANTITRUST ANALYSIS TO CONSIDER IM-
 18 PACT.—In reviewing any such proposed agreement
 19 for the purpose of any provision of law described in
 20 paragraph (1), the Board ~~and any other reviewing~~
 21 ~~agency~~ shall take into account, among any other
 22 considerations, the impact of the proposed agree-
 23 ment on shippers, on consumers, and on affected
 24 communities.”.

1 (b) COMBINATIONS.—Section 11321 of title 49,
 2 United States Code, is amended—

3 (1) in subsection (a)—

4 (A) by striking “The authority” in the
 5 first sentence and inserting “Except as pro-
 6 vided in sections 4 (15 U.S.C. 15), 4C (15
 7 U.S.C. 15c), section 15 (15 U.S.C. 25), and
 8 section 16 (15 U.S.C. 26) of the Clayton Act
 9 (15 U.S.C. 21(a)), the authority”; and

10 (B) by striking “is exempt from the anti-
 11 trust laws and from all other law,” in the third
 12 sentence and inserting “is exempt from all
 13 other law (except the antitrust laws referred to
 14 in subsection (c)),”; and

15 (2) by adding at the end the following:

16 “(c) APPLICATION OF ANTITRUST LAWS.—

17 “(1) IN GENERAL.—Nothing in this section ex-
 18 empts a transaction described in subsection (a) from
 19 the application of the Sherman Act (15 U.S.C. 1 et
 20 seq.), the Clayton Act (15 U.S.C. 12, 14 et seq.),
 21 the Federal Trade Commission Act (15 U.S.C. 41 et
 22 seq.), section 73 or 74 of the Wilson Tariff Act (15
 23 U.S.C. 8–9), or the Act of June 19, 1936 (15
 24 U.S.C. 13, 13a, 13b, 21a). *The preceding sentence*
 25 *shall not apply to any transaction relating to the*

pooling of railroad cars approved by the Surface Transportation Board or its predecessor agency pursuant to section 11322 of title 49, United States Code.

“(2) ANTITRUST ANALYSIS TO CONSIDER IMPACT.—In reviewing any such transaction for the purpose of any provision of law described in paragraph (1), the Board ~~and any other reviewing agency~~ shall take into account, among any other considerations, the impact of the transaction on shippers and on affected communities.”.

(c) CONFORMING AMENDMENTS.—

(1) The heading for section 10706 of title 49, United States Code, is amended to read as follows:
“Rate agreements”.

(2) The item relating to such section in the chapter analysis at the beginning of chapter 107 of such title is amended to read as follows:

“10706. Rate agreements.”.

SEC. 8. EFFECTIVE DATE.

(a) IN GENERAL.—Subject to the provisions of subsection (b), this Act shall take effect on the date of enactment of this Act.

(b) CONDITIONS.—

(1) PREVIOUS CONDUCT.—A civil action under section 4, 15, or 16 of the Clayton Act (15 U.S.C. 15, 25, 26) or complaint under section 5 of the Fed-

1 eral Trade Commission Act (15 U.S.C. 45) may not
2 be filed with respect to any conduct or activity that
3 occurred prior to the date of enactment of this Act
4 that was previously exempted from the antitrust
5 laws as defined in section 1 of the Clayton Act (15
6 U.S.C. 12) by orders of the Interstate Commerce
7 Commission or the Surface Transportation Board
8 issued pursuant to law.

9 (2) GRACE PERIOD.—A civil action or complaint
10 described in paragraph (1) may not be filed earlier
11 than 180 days after the date of enactment of this
12 Act with respect to any previously exempted conduct
13 or activity or previously exempted agreement that is
14 continued subsequent to the date of enactment of
15 this Act.

Calendar No. 551

110TH CONGRESS
1ST Session

S. 772

[Report No. 110-252]

A BILL

To amend the Federal antitrust laws to provide expanded coverage and to eliminate exemptions from such laws that are contrary to the public interest with respect to railroads.

DECEMBER 19, 2007

Reported with amendments