

114TH CONGRESS  
1ST SESSION

# S. 1634

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.

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## IN THE SENATE OF THE UNITED STATES

JUNE 18, 2015

Ms. KLOBUCHAR (for herself, Mr. VITTER, and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Railroad Antitrust En-  
5 forcement Act of 2015”.

1 **SEC. 2. INJUNCTIONS AGAINST RAILROAD COMMON CAR-**  
2 **RIERS.**

3 Section 16 of the Clayton Act (15 U.S.C. 26) is  
4 amended—

5 (1) by striking “That any person” and inserting  
6 the following:

7 “(a) IN GENERAL.—Subject to subsection (c), any  
8 person”;

9 (2) by striking “proceedings,” and inserting  
10 “proceedings.”;

11 (3) by striking “and upon” and inserting the  
12 following:

13 “(b) PRELIMINARY INJUNCTION.—A preliminary in-  
14 junction may be issued upon”;

15 (4) by striking “, a preliminary injunction may  
16 issue: *Provided*, That nothing” and all that follows  
17 through “subtitle IV of title 49, United States  
18 Code.” and inserting the following:

19 “(c) SAVINGS PROVISION.—Nothing in this section  
20 may be construed to entitle any person, firm, corporation,  
21 or association, except the United States, to bring suit for  
22 injunctive relief against any common carrier subject to the  
23 jurisdiction of the Surface Transportation Board under  
24 part B or C of subtitle IV of title 49.”; and

25 (5) by striking “In any action” and inserting  
26 the following:

1       “(d) COSTS AND ATTORNEY’S FEES.—In any ac-  
2 tion”.

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

4       Section 7 of the Clayton Act (15 U.S.C. 18) is  
5 amended—

6           (1) in the first undesignated paragraph, by  
7 striking “That no person” and inserting the fol-  
8 lowing:

9           “(a) No person”;

10          (2) in the second undesignated paragraph, by  
11 striking “No person shall” and inserting the fol-  
12 lowing:

13          “(b) No person shall”;

14          (3) in the third undesignated paragraph, by  
15 striking “This section” and inserting the following:

16          “(c) This section”;

17          (4) in the fourth undesignated paragraph, by  
18 striking “Nor shall anything herein contained be  
19 construed” and inserting the following:

20          “(d) Nothing in this section may be construed”;

21          (5) in the fifth undesignated paragraph—

22            (A) by striking “Nothing contained in this  
23 section shall be held” and inserting the fol-  
24 lowing:

25          “(e) Nothing in this section—

1 “(1) shall be held”; and

2 (B) by striking “acquired: Provided, That  
3 nothing in this section shall be held or con-  
4 strued” and inserting the following: “acquired;  
5 or

6 “(2) shall be held or construed”; and

7 (6) by amending the sixth undesignated para-  
8 graph to read as follows:

9 “(f) Nothing in this section shall apply to trans-  
10 actions duly consummated pursuant to authority given by  
11 the Secretary of Transportation, the Secretary of Agri-  
12 culture, the Surface Transportation Board (except for  
13 transactions described in section 11321 of title 49, United  
14 States Code), the Federal Energy Regulatory Commission  
15 in the exercise of its jurisdiction under the Public Utility  
16 Holding Company Act of 2005 (subtitle F of title XII of  
17 Public Law 109–58), or the United States Maritime Com-  
18 mission under any law vesting such power in such Sec-  
19 retary, Board, or Commission.”.

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

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

22 (1) by redesignating sections 26, 27, and 28 as  
23 sections 17, 18, and 19, respectively; and

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

1       “SEC. 21. In any civil action against a common car-  
2 rier railroad under section 4, 4C, 15, or 16, the district  
3 court shall not be required to defer to the primary jurisdic-  
4 tion of the Surface Transportation Board.”.

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

6       (a) CLAYTON ACT.—Section 11(a) of the Clayton Act  
7 (15 U.S.C. 21(a)) is amended by inserting “(except for  
8 agreements described in section 10706 of that title and  
9 transactions described in section 11321 of that title)”  
10 after “United States Code”.

11       (b) FTC ACT.—Section 5(a)(2) of the Federal Trade  
12 Commission Act (15 U.S.C. 45(a)(2)) is amended by strik-  
13 ing “common carriers subject” and inserting “common  
14 carriers, except for railroads, subject”.

15 **SEC. 6. EXPANSION OF TREBLE DAMAGES TO RAIL COM-**  
16 **MON CARRIERS.**

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

19           (1) in subsection (a), by striking “Except as  
20 provided in subsection (b)” and inserting “Except as  
21 provided in subsection (c)”;

22           (2) by redesignating subsections (b) and (c) as  
23 subsections (c) and (d), respectively; and

24           (3) by inserting after subsection (a) the fol-  
25 lowing:

1       “(b) Subsection (a) shall apply to any common car-  
2 rier railroad subject to the jurisdiction of the Surface  
3 Transportation Board under subtitle IV of title 49, United  
4 States Code, without regard to whether such railroad has  
5 filed rates or whether a complaint challenging a rate has  
6 been filed.”.

7 **SEC. 7. TERMINATION OF EXEMPTIONS IN TITLE 49,**  
8 **UNITED STATES CODE.**

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

11           (1) in subsection (a)—

12                   (A) in paragraph (2)(A), by striking “, and  
13 the Sherman Act” and all that follows through  
14 “carrying out the agreement”;

15                   (B) in paragraph (4), by striking “The  
16 Sherman Act” and all that follows through  
17 “such agreement. However the Board” and in-  
18 serting “The Board”; and

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

24           (2) by amending subsection (e) to read as fol-  
25 lows:

1       “(e)(1) Nothing in this section may be construed to  
2 exempt a proposed agreement described in subsection (a)  
3 from the application of the Sherman Act (15 U.S.C. 1 et  
4 seq.), the Clayton Act (15 U.S.C. 12 et seq.), the Federal  
5 Trade Commission Act (15 U.S.C. 41 et seq.), section 73  
6 or 74 of the Wilson Tariff Act (15 U.S.C. 8 and 9), or  
7 the Act of June 19, 1936 (15 U.S.C. 13 et seq.).

8       “(2) In reviewing any such proposed agreement for  
9 the purpose of any provision of law described in paragraph  
10 (1), the Board shall take into account, among other con-  
11 siderations, the impact of the proposed agreement on ship-  
12 pers, consumers, and affected communities.”.

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

15               (1) in subsection (a)—

16                       (A) by striking “The authority” and in-  
17                       serting “Except as provided in sections 4, 4C,  
18                       15, and 16 of the Clayton Act (15 U.S.C. 15,  
19                       15c, 25, and 26), the authority”; and

20                       (B) by striking “is exempt from the anti-  
21                       trust laws and from all other law,” and insert-  
22                       ing “is exempt from any other law (except the  
23                       antitrust laws referred to in subsection (c)),”;  
24                       and

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

1       “(c)(1) Nothing in this section may be construed to  
2 exempt a transaction described in subsection (a) from the  
3 application of the Sherman Act (15 U.S.C. 1 et seq.), the  
4 Clayton Act (15 U.S.C. 12 et seq.), the Federal Trade  
5 Commission Act (15 U.S.C. 41 et seq.), section 73 or 74  
6 of the Wilson Tariff Act (15 U.S.C. 8 and 9), or the Act  
7 of June 19, 1936 (15 U.S.C. 13 et seq.).

8       “(2) Paragraph (1) shall not apply to any transaction  
9 relating to the pooling of railroad cars approved by the  
10 Surface Transportation Board or its predecessor agency  
11 pursuant to section 11322.

12       “(3) In reviewing any such transaction for the pur-  
13 pose of any provision of law described in paragraph (1),  
14 the Board shall take into account, among other consider-  
15 ations, the impact of the transaction on shippers and on  
16 affected communities.”.

17       (c) CONFORMING AMENDMENTS.—Chapter 107 of  
18 title 49, United States Code, is amended—

19             (1) in the table of sections, by striking the item  
20 relating to section 10706 and inserting the fol-  
21 lowing:

“10706. Rate agreements.”.

22             (2) in section 10706, by amending the section  
23 heading to read as follows: “**Rate agreements**”.



1 **SEC. 8. EFFECTIVE DATE.**

2 (a) IN GENERAL.—Except as provided in subsection  
3 (b), this Act shall take effect on the date of the enactment  
4 of this Act.

5 (b) CONDITIONS.—

6 (1) PREVIOUS CONDUCT.—A civil action under  
7 section 4, 15, or 16 of the Clayton Act (15 U.S.C.  
8 15, 25, and 26) or a complaint under section 5 of  
9 the Federal Trade Commission Act (15 U.S.C. 45)  
10 may not be filed with respect to any conduct or ac-  
11 tivity that occurred before the date of the enactment  
12 of this Act that was previously exempted from the  
13 antitrust laws (as defined in the first section of the  
14 Clayton Act (15 U.S.C. 12)) by orders of the Inter-  
15 state Commerce Commission or the Surface Trans-  
16 portation Board issued pursuant to law.

17 (2) GRACE PERIOD.—A civil action or complaint  
18 described in paragraph (1) may not be filed before  
19 the date that is 180 days after the date of the enact-  
20 ment of this Act with respect to—

21 (A) any previously exempted conduct or ac-  
22 tivity; or

23 (B) any previously exempted agreement  
24 that is continued subsequent to such date of en-  
25 actment.