

119TH CONGRESS
2^D SESSION

S. 4107

To amend section 5 of the Clayton Act to include proposed voluntary dismissals in the court’s consideration of proposed consent judgments and clarify the public interest, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 17, 2026

Ms. KLOBUCHAR (for herself, Mr. DURBIN, Mr. BOOKER, Ms. HIRONO, Mr. BLUMENTHAL, Mr. WELCH, Ms. WARREN, Mr. MURPHY, and Mr. WHITEHOUSE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend section 5 of the Clayton Act to include proposed voluntary dismissals in the court’s consideration of proposed consent judgments and clarify the public interest, 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 “Antitrust Account-
5 ability and Transparency Act”.

1 **SEC. 2. AMENDMENTS.**

2 Section 5 of the Clayton Act (15 U.S.C. 16) is
3 amended—

4 (1) in subsection (a), by striking “or under sec-
5 tion 5 of the Federal Trade Commission Act which
6 could give rise to a claim for relief under the anti-
7 trust laws”;

8 (2) in subsection (b)—

9 (A) in the matter preceding paragraph
10 (1)—

11 (i) by inserting “or administrative”
12 after “any civil”;

13 (ii) by inserting “, or in the case of an
14 administrative proceeding, a district court
15 in which 1 or more defendants is incor-
16 porated or headquartered,” after “the dis-
17 trict court before which such proceeding is
18 pending”;

19 (iii) by striking “published by the
20 United States” and inserting “published”
21 each place it appears;

22 (iv) by striking “60 days” and insert-
23 ing “45 days”;

24 (v) by inserting “A district court to
25 which a consent judgment is submitted by
26 the Federal Trade Commission in compli-

1 ance with this subsection is invested with
2 jurisdiction under this section.” after
3 “prior to the effective date of such judg-
4 ment.”; and

5 (vi) by striking “sixty-day period” and
6 inserting “45-day period”;

7 (B) in paragraph (3), by inserting “any
8 commitments made by the parties to the United
9 States or Federal Trade Commission not memo-
10 rialized in the proposal related to the pro-
11 ceeding, how the proposal remedies any mate-
12 rial risk that the antitrust laws may be vio-
13 lated,” after “thereby,”; and

14 (C) in paragraph (6), by inserting “or
15 Federal Trade Commission, including any set-
16 tlement offers, divestitures, or other remedies,
17 including the process through which these pro-
18 posals were considered” before the period;

19 (3) in subsection (c) by striking “60 days” and
20 inserting “45 days”;

21 (4) in subsection (d)—

22 (A) by striking “during the 60-day period”
23 and inserting the following: “(1) during the 45-
24 day period”;

25 (B) in paragraph (1), as so designated—

1 (i) by striking “his designee” and in-
2 serting “a designee thereof”;

3 (ii) by striking “such 60-day time pe-
4 riod” and inserting “such 45-day time pe-
5 riod”;

6 (iii) by striking “At the close of” and
7 inserting “Not later than 30 days after the
8 close of”;

9 (iv) by inserting “Parties that sub-
10 mitted comments shall be allowed to sub-
11 mit a reply to the responses published by
12 the United States or Federal Trade Com-
13 mission.” before the last sentence; and

14 (v) by adding at the end “Compliance
15 with this section by the Federal Trade
16 Commission shall satisfy any other notice-
17 and-comment requirements relating to con-
18 sent judgments.”; and

19 (C) by adding at the end the following:

20 “(2)(A) In a proceeding brought under section 7, the
21 parties shall continue to hold all assets related to the
22 transaction separate as if they are subject to a waiting
23 period under section 7A until the date that is 15 days
24 after the United States or Federal Trade Commission files
25 with the district court and causes to be published in the

1 Federal Register a response to comments under this sub-
2 section. The court may extend the period during which the
3 parties are required to hold all assets related to the trans-
4 action separate upon a finding that—

5 “(i) there is a reasonable likelihood that the
6 court will determine that the consent judgment does
7 not meet the requirements in subsection (e)(1); and

8 “(ii) the balance of the equities favors extend-
9 ing the order.

10 “(B) In the event that the court extends the period
11 during which the parties are required to hold all assets
12 separate, the court shall make all reasonable efforts to ex-
13 pedite its determination under subsection (e)(1).

14 “(3) A violation of paragraph (2) shall be treated as
15 a violation of section 7A and parties may be liable for civil
16 penalties pursuant to subsection (g) of that section.

17 “(4) Any order to hold assets separate shall expire
18 upon a finding by the court that the consent judgment
19 satisfies the requirements under subsection (e)(1).”.

20 (5) in subsection (e)—

21 (A) in paragraph (1)—

22 (i) in the matter preceding subpara-
23 graph (A), by inserting “there is a reason-
24 able belief, based on evidence and reasoned

1 analysis, that” after “the court shall deter-
2 mine that”; and

3 (ii) in subparagraph (A), by inserting
4 “, does not permit any transaction, merg-
5 er, agreement, business practice, or other
6 course of conduct that creates a material
7 risk of violating the antitrust laws, and
8 that the provisions of the consent judg-
9 ment are reasonably tailored to the viola-
10 tions of the antitrust laws alleged in the
11 complaint” after “whether the consent
12 judgment is in the public interest”;

13 (B) in paragraph (2), by striking “or to re-
14 quire the court to permit anyone to intervene”
15 and inserting “, but the court shall take into
16 account any written request for a hearing by
17 any Federal or State agency, including any
18 State attorney general, when determining
19 whether to conduct an evidentiary hearing”;
20 and

21 (C) by adding at the end the following:

22 “(3) If the court determines that an evidentiary
23 hearing is appropriate, any Federal or State agency,
24 including any State attorney general that made a
25 written request under paragraph (2), shall be al-

1 lowed to intervene. Nothing shall require the court
2 to permit any other party to intervene.

3 “(4) A consent judgment filed under this sec-
4 tion shall take effect only upon entry by the court.
5 The decision to enter a consent judgment under this
6 section is within the discretion of the court, which
7 need not defer to the United States’s predictions
8 about the efficacy of its remedies.”;

9 (6) in subsection (f)—

10 (A) by inserting “current or former” be-
11 fore “Government officials”;

12 (B) in paragraph (4), by striking “and” at
13 the end;

14 (C) by redesignating paragraph (5) as
15 paragraph (7); and

16 (D) by inserting after paragraph (4) the
17 following:

18 “(5) order the production of the communica-
19 tions that were disclosed or should have been dis-
20 closed pursuant to subsection (g), including all re-
21 lated documents and testimony relating to the com-
22 munications;

23 “(6) order the production of information or tes-
24 timony regarding the provision of, or offer to pro-
25 vide, a benefit or concession by any party in the pro-

1 ceeding to the Government or an employee or officer
2 thereof, including payments, donations, or alter-
3 ations in policy or business practices that the court
4 finds may have a reasonable connection to the pro-
5 ceeding or decision to enter the proposed judgment;
6 and”;

7 (7) in subsection (g)—

8 (A) by inserting “, including the Executive
9 Office of the President,” after “any officer or
10 employee of the United States”; and

11 (B) by striking “except that any” and in-
12 serting “, and shall include the date of each
13 written or oral communication and each author
14 of, recipient of, and participant to each written
15 or oral communication. Any”;

16 (8) in subsection (h), by inserting “, or by the
17 Federal Trade Commission under section 5 of the
18 Federal Trade Commission Act (15 U.S.C. 45),”
19 after “under section 4A of this Act”; and

20 (9) by adding at the end the following:

21 “(j) VOLUNTARY DISMISSALS.—

22 “(1) IN GENERAL.—Any proposal to file a mo-
23 tion to voluntarily dismiss any civil proceeding
24 brought by the United States or Federal Trade
25 Commission under the antitrust laws shall be filed

1 with the district court before which such proceeding
2 is pending, and published in the Federal Register
3 not less than 45 days prior to the effective date of
4 such voluntary dismissal. The case shall be stayed
5 during this 45-day period.

6 “(2) SUBSTITUTION.—During the 45-day pe-
7 riod under paragraph (1), any State attorney gen-
8 eral may file a motion for substitution in the pro-
9 ceeding. A court shall grant the motion for substi-
10 tution unless presented with clear and convincing
11 evidence by the parties that there are no genuine
12 issues of material fact that could support any claim
13 in the proceeding or that the defendant would be en-
14 titled to judgment as a matter of law. If the motion
15 for substitution is granted, the action does not
16 abate, but proceeds in favor of or against the re-
17 maining parties.

18 “(3) TRANSFER.—Upon a grant of a motion for
19 substitution under paragraph (2), the United States
20 or the Federal Trade Commission shall promptly
21 transfer all materials relevant to the litigation that
22 are not subject to the deliberative process privilege
23 to the applicable State attorneys general and the
24 case shall continue on a schedule that will not cause
25 undue delay, as determined appropriate by the court.

1 “(k) REFERENCES.—In this section, all references
2 to—

3 “(1) the United States or the Attorney General
4 shall be deemed to include the Federal Trade Com-
5 mission, as applicable; and

6 “(2) the antitrust laws shall be deemed to in-
7 clude an unfair method of competition under section
8 5 of the Federal Trade Commission Act (15 U.S.C.
9 45).”.

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