

Union Calendar No. 399

111TH CONGRESS
2^D SESSION

H. R. 233

[Report No. 111-669, Part I]

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 HOUSE OF REPRESENTATIVES

JANUARY 7, 2009

Ms. BALDWIN (for herself, Mr. POMEROY, Mr. ALEXANDER, and Mr. WALZ) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

NOVEMBER 30, 2010

Reported from the Committee on the Judiciary with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

NOVEMBER 30, 2010

Additional sponsors: Ms. HERSETH SANDLIN, Mr. KIND, Mr. BERRY, Ms. JACKSON LEE of Texas, Mr. ROSS, Mr. ELLISON, Mr. FLEMING, Mr. SNYDER, Mr. PERLMUTTER, Mr. PETERSON, Mr. DOGGETT, Ms. GIFFORDS, Mr. KAGEN, Mr. MELANCON, Mr. JOHNSON of Georgia, Ms. BEAN, Mr. BOUSTANY, and Ms. MOORE of Wisconsin

NOVEMBER 30, 2010

Committee on Transportation and Infrastructure discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on January 7, 2009]

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 2009”.*

6 **SEC. 2. APPLICATION OF THE ANTITRUST LAWS TO RAIL**
7 **CARRIERS.**

8 *(a) MERGERS AND ACQUISITIONS.—The last undesig-*
9 *nated paragraph of section 7 of the Clayton Act (15 U.S.C.*
10 *18) is amended by inserting “(excluding transactions in-*
11 *volving a rail carrier as defined in section 10102 of title*
12 *49 of the United States Code)” after “Surface Transpor-*
13 *tation Board”.*

14 *(b) VESTING OF AUTHORITY IN ANTITRUST AGEN-*
15 *CIES.—Section 11(a) of the Clayton Act (15 U.S.C. 21(a))*
16 *is amended by inserting “(excluding a rail carrier as de-*
17 *finied in section 10102 of such title)” after “Code”.*

18 *(c) INJUNCTIONS.—The proviso in section 16 of the*
19 *Clayton Act (15 U.S.C. 26) is amended by inserting “, ex-*
20 *cept against a rail carrier (as defined in section 10102 of*
21 *such title)” after “Code”.*

22 *(d) FEDERAL TRADE COMMISSION AUTHORITY.—Sec-*
23 *tion 5(a)(2) of the Federal Trade Commission Act (15*
24 *U.S.C. 45(a)(2)) is amended by adding at the end the fol-*
25 *lowing:*

1 *“For purposes of this paragraph with respect to unfair*
2 *methods of competition, the term ‘common carriers’ excludes*
3 *a rail carrier as defined in section 10102 of title 49 of the*
4 *United States Code.”.*

5 **SEC. 3. TERMINATION OF ANTITRUST EXEMPTIONS IN**
6 **TITLE 49.**

7 (a) *IN GENERAL.*—Section 10706 of title 49, United
8 States Code, is amended—

9 (1) *in subsection (a)—*

10 (A) *beginning in the 3d sentence of para-*
11 *graph (2)(A) by striking “, and the Sherman Act*
12 *(15 U.S.C. 1, et seq.),” and all that follows*
13 *through “However, the” and inserting “. The”,*

14 (B) *in paragraph (3)(B)—*

15 (i) *by striking “(i)”, and*

16 (ii) *by striking clause (ii),*

17 (C) *in paragraph (4)—*

18 (i) *by striking the 2d sentence, and*

19 (ii) *in the 3d sentence by striking*
20 *“However, the” and inserting “The”, and*

21 (D) *in paragraph (5)(A) by striking “, and*
22 *the antitrust laws set forth in paragraph (2) of*
23 *this subsection do not apply to parties and other*
24 *persons with respect to making or carrying out*
25 *the agreement”,*

1 (2) *in subsection (d) by striking the last sen-*
2 *tence, and*

3 (3) *by striking subsection (e) and inserting the*
4 *following:*

5 “(e) *Nothing in this section exempts an agreement ap-*
6 *proved, or submitted for approval, under subsection (a)*
7 *from the application of the antitrust laws (as defined in*
8 *subsection (a) of the 1st section of the Clayton Act, but in-*
9 *cluding section 5 of the Federal Trade Commission Act to*
10 *the extent such section 5 applies to unfair methods of com-*
11 *petition).*

12 “(f) *In reviewing any agreement submitted for ap-*
13 *proval under subsection (a), the Board shall take into ac-*
14 *count, among any other considerations, the impact of such*
15 *agreement on shippers, consumers, and affected commu-*
16 *nities. The Board shall make findings regarding such im-*
17 *pect, which shall be—*

18 “(1) *made part of the administrative record;*

19 “(2) *submitted to any other reviewing agency for*
20 *consideration in making its determination; and*

21 “(3) *available in any judicial review of the*
22 *Board’s decision regarding such agreement.”.*

23 (b) *COMBINATIONS.—Section 11321 of title 49, United*
24 *States Code, is amended—*

25 (1) *in subsection (a)—*

1 (A) by striking “The authority” and insert-
2 ing “Subject to subsection (c), the authority”,
3 and

4 (B) in the 3d sentence by striking “is ex-
5 empt from the antitrust laws and from all other
6 law,” and inserting “is exempt from all other
7 law (except the laws referred to in subsection
8 (c)),”, and

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

10 “(c) Nothing in this subchapter exempts a transaction
11 described in subsection (a) from the application of the anti-
12 trust laws (as defined in subsection (a) of the 1st section
13 of the Clayton Act, but including section 5 of the Federal
14 Trade Commission Act to the extent such section 5 applies
15 to unfair methods of competition). The preceding sentence
16 shall not apply to any transaction relating to the pooling
17 of railroad cars approved by the Surface Transportation
18 Board or its predecessor agency pursuant to section 11322.

19 “(d) In reviewing any transaction described in sub-
20 section (a), the Board shall take into account, among any
21 other considerations, the impact of the transaction on ship-
22 pers and affected communities.”.

23 (c) CONFORMING AMENDMENTS.—

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

4 (2) *ANALYSIS OF SECTIONS.*—*The analysis of*
5 *sections of chapter 107 of such title is amended by*
6 *striking the item relating to section 10706 and insert*
7 *the following:*

 “10706. *Rate agreements.*”.

8 **SEC. 4. CLARIFICATIONS REGARDING APPLICABILITY OF**
9 **REGULATORY DOCTRINES.**

10 (a) *FILED RATE DOCTRINE.*—*The antitrust laws shall*
11 *apply to a rail carrier (as defined in section 10102 of title*
12 *49 of the United States Code), without regard to whether*
13 *such rail carrier filed a rate or whether a complaint chal-*
14 *lenging a rate is filed.*

15 (b) *DOCTRINE OF PRIMARY JURISDICTION.*—*In any*
16 *civil action under the antitrust laws against a rail carrier*
17 *(as defined in section 10102 of title 49 of the United States*
18 *Code), the district court shall retain the discretion to defer*
19 *to the jurisdiction of the Surface Transportation Board.*

20 (c) *DEFINITION.*—*For purposes of subsections (a) and*
21 *(b), the term “antitrust laws” has the meaning given it in*
22 *subsection (a) of the 1st section of the Clayton Act (15*
23 *U.S.C. 12(a)), but includes section 5 of the Federal Trade*
24 *Commission Act to the extent such section 5 applies to un-*
25 *fair methods of competition.*

1 **SEC. 5. EFFECTIVE DATE.**

2 (a) *IN GENERAL.*—*Except as provided in subsections*
3 *(b) and (c), this Act and the amendments made by this Act*
4 *shall take effect on the date of enactment of this Act.*

5 (b) *LIMITATION.*—*No civil action under the antitrust*
6 *laws may be filed with respect to any conduct or activity,*
7 *including any agreement or provision thereof, that—*

8 (1) *concluded or terminated before the expiration*
9 *of the 180-day period beginning on the date of the en-*
10 *actment of this Act, and*

11 (2) *was exempted by statute from the antitrust*
12 *laws as the result of an order of the Interstate Com-*
13 *merce Commission or the Surface Transportation*
14 *Board issued before the date of the enactment of this*
15 *Act.*

16 (c) *EXCLUSION.*—*No civil action under the antitrust*
17 *laws may be filed for the purpose of dissolving or otherwise*
18 *undoing any merger, acquisition, or transfer of control con-*
19 *summated before the date of the enactment of this Act that*
20 *was exempted by statute from the antitrust laws as the re-*
21 *sult of an order described in subsection (b)(2).*

22 (d) *DEFINITION.*—*For purposes of subsections (b) and*
23 *(c), the term “antitrust laws” has the meaning given it in*
24 *subsection (a) of the 1st section of the Clayton Act (15*
25 *U.S.C. 12(a)), but includes section 5 of the Federal Trade*

- 1 *Commission Act (15 U.S.C. 45) to the extent such section*
- 2 *5 applies to unfair methods of competition.*

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