

Union Calendar No. 304

115TH CONGRESS
1ST SESSION

H. R. 659

[Report No. 115–412]

To amend the Clayton Act and the Federal Trade Commission Act to provide that the Federal Trade Commission shall exercise authority with respect to mergers only under the Clayton Act and only in the same procedural manner as the Attorney General exercises such authority.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 24, 2017

Mr. FARENTHOLD (for himself, Mr. GOODLATTE, Mr. MARINO, Mr. BUCSHON, Mr. COLLINS of Georgia, and Mr. MESSER) introduced the following bill; which was referred to the Committee on the Judiciary

NOVEMBER 15, 2017

Additional sponsors: Mr. PETERSON and Mr. PETERS

NOVEMBER 15, 2017

Committed to the Committee of the Whole House on the State of the Union
and ordered to be printed

A BILL

To amend the Clayton Act and the Federal Trade Commission Act to provide that the Federal Trade Commission shall exercise authority with respect to mergers only under the Clayton Act and only in the same procedural manner as the Attorney General exercises such authority.

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 “Standard Merger and
5 Acquisition Reviews Through Equal Rules Act of 2017”.

6 **SEC. 2. AMENDMENTS TO THE CLAYTON ACT.**

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

8 (1) by striking section 4F and inserting the fol-
9 lowing:

10 **“SEC. 4F. ACTIONS BY ATTORNEY GENERAL OF THE**
11 **UNITED STATES OR THE FEDERAL TRADE**
12 **COMMISSION.**

13 “(a) Whenever the Attorney General of the United
14 States has brought an action under the antitrust laws or
15 the Federal Trade Commission has brought an action
16 under section 7, and the Attorney General or Federal
17 Trade Commission, as applicable, has reason to believe
18 that any State attorney general would be entitled to bring
19 an action under this Act based substantially on the same
20 alleged violation of the antitrust laws or section 7, the At-
21 torney General or Federal Trade Commission, as applica-
22 ble, shall promptly give written notification thereof to such
23 State attorney general.

24 “(b) To assist a State attorney general in evaluating
25 the notice described in subsection (a) or in bringing any

1 action under this Act, the Attorney General of the United
2 States or Federal Trade Commission, as applicable, shall,
3 upon request by such State attorney general, make avail-
4 able to the State attorney general, to the extent permitted
5 by law, any investigative files or other materials which are
6 or may be relevant or material to the actual or potential
7 cause of action under this Act.”;

8 (2) in section 5—

9 (A) in subsection (a) by inserting “(includ-
10 ing a proceeding brought by the Federal Trade
11 Commission with respect to a violation of sec-
12 tion 7)” after “United States under the anti-
13 trust laws”; and

14 (B) in subsection (i) by inserting “(includ-
15 ing a proceeding instituted by the Federal
16 Trade Commission with respect to a violation of
17 section 7)” after “antitrust laws”;

18 (3) in section 11, by adding at the end the fol-
19 lowing:

20 “(m)(1) Except as provided in paragraph (2), in en-
21 forcing compliance with section 7, the Federal Trade Com-
22 mission shall enforce compliance with that section in the
23 same manner as the Attorney General in accordance with
24 section 15.

1 “(2) If the Federal Trade Commission approves an
2 agreement with the parties to the transaction that con-
3 tains a consent order with respect to a violation of section
4 7, the Commission shall enforce compliance with that sec-
5 tion in accordance with this section.”;

6 (4) in section 13, by inserting “(including a
7 suit, action, or proceeding brought by the Federal
8 Trade Commission with respect to a violation of sec-
9 tion 7)” before “subpoenas”; and

10 (5) in section 15, by inserting “and the duty of
11 the Federal Trade Commission with respect to a vio-
12 lation of section 7,” after “General,”.

13 **SEC. 3. AMENDMENTS TO THE FEDERAL TRADE COMMIS-**
14 **SION ACT.**

15 The Federal Trade Commission Act (15 U.S.C. 41)
16 is amended—

17 (1) in section 5(b), by inserting “(excluding the
18 consummation of a proposed merger, acquisition,
19 joint venture, or similar transaction that is subject
20 to section 7 of the Clayton Act (15 U.S.C. 18), ex-
21 cept in cases where the Commission approves an
22 agreement with the parties to the transaction that
23 contains a consent order)” after “unfair method of
24 competition”;

1 (2) in section 9, by inserting after the fourth
2 undesignated paragraph the following:

3 “Upon the application of the commission with respect
4 to any activity related to the consummation of a proposed
5 merger, acquisition, joint venture, or similar transaction
6 that is subject to section 7 of the Clayton Act (15 U.S.C.
7 18) that may result in any unfair method of competition,
8 the district courts of the United States shall have jurisdic-
9 tion to issue writs of mandamus commanding any person
10 or corporation to comply with the provisions of this Act
11 or any order of the commission made in pursuance there-
12 of.”;

13 (3) in section 13(b)(1), by inserting “(excluding
14 section 7 of the Clayton Act (15 U.S.C. 18) and sec-
15 tion 5(a)(1) with respect to the consummation of a
16 proposed merger, acquisition, joint venture, or simi-
17 lar transaction that is subject to section 7 of the
18 Clayton Act (15 U.S.C. 18))” after “Commission”;
19 and

20 (4) in section 20(c)(1), by inserting “or under
21 section 7 of the Clayton Act (15 U.S.C. 18), where
22 applicable,” after “Act,”.

23 **SEC. 4. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

24 (a) **EFFECTIVE DATE.**—Except as provided in sub-
25 section (b), this Act and the amendments made by this

1 Act shall take effect on the date of the enactment of this
2 Act.

3 (b) APPLICATION OF AMENDMENTS.—The amend-
4 ments made by this Act shall not apply to any of the fol-
5 lowing that occurs before the date of enactment of this
6 Act:

7 (1) A violation of section 7 of the Clayton Act
8 (15 U.S.C. 18).

9 (2) A transaction with respect to which there is
10 compliance with section 7A of the Clayton Act (15
11 U.S.C. 18a).

12 (3) A case in which a preliminary injunction
13 has been filed in a district court of the United
14 States.

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