

111TH CONGRESS
1ST SESSION

H. R. 233

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

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”.

1 **SEC. 2. APPLICATION OF THE ANTITRUST LAWS TO RAIL**
2 **COMMON CARRIERS.**

3 (a) APPLICATION OF THE ANTITRUST LAWS.—The
4 antitrust laws shall apply to a common carrier by railroad
5 that is subject to the jurisdiction of the Surface Transpor-
6 tation Board under subtitle IV of title 49, United States
7 Code, without regard to whether such common carrier
8 filed a rate or whether a complaint challenging a rate is
9 filed.

10 (b) DEFINITION.—The term “antitrust laws” has the
11 meaning given it in subsection (a) of the 1st section of
12 the Clayton Act (15 U.S.C. 12(a)), but includes section
13 5 of the Federal Trade Commission Act to the extent such
14 section 5 applies to unfair methods of competition.

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

16 The last undesignated paragraph of section 7 of the
17 Clayton Act (15 U.S.C. 18) is amended by inserting “(ex-
18 cluding transactions described in section 11321 of title 49
19 of the United States Code)” after “Surface Transpor-
20 tation Board”.

21 **SEC. 4. ANTITRUST ENFORCEMENT AUTHORITY.**

22 Section 11(a) of the Clayton Act (15 U.S.C. 21(a))
23 is amended by inserting “(excluding agreements described
24 in section 10706 of such title and transactions described
25 in section 11321 of such title)” after “Code”.

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

3 The proviso in section 16 of the Clayton Act (15
4 U.S.C. 26) is amended by inserting “(excluding a common
5 carrier by railroad)” after “Board”.

6 **SEC. 6. REMOVAL OF PRIMARY JURISDICTION AS LIMITA-**
7 **TION.**

8 The Clayton Act (15 U.S.C. 12 et seq.) is amended
9 by adding at the end thereof the following:

10 “SEC. 29. In any civil action against a common car-
11 rier railroad under section 4, 4A, 4C, 15, or 16, the dis-
12 trict court shall not be required to defer to the jurisdiction
13 of the Surface Transportation Board.”.

14 **SEC. 7. UNFAIR METHODS OF COMPETITION.**

15 Section 5(a)(2) of the Federal Trade Commission Act
16 (15 U.S.C. 45(a)(2)) is amended by adding at the end the
17 following:

18 “For purposes of this paragraph with respect to unfair
19 methods of competition, the term ‘common carrier’ ex-
20 cludes a common carrier by railroad that is subject to ju-
21 risdiction of the Surface Transportation Board under sub-
22 title IV of title 49 of the United States Code.”.

23 **SEC. 8. TERMINATION OF EXEMPTIONS IN TITLE 49.**

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

26 (1) in subsection (a)—

1 (A) in the 3d sentence of paragraph (2)(A)
2 by striking “, and the Sherman Act (15 U.S.C.
3 1 et seq.),” and all that follows through “or
4 carrying out the agreement”,

5 (B) in paragraph (4)—

6 (i) by striking the 2d sentence, and

7 (ii) in the 3d sentence by striking
8 “However, the” and inserting “The”, and

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

14 (2) in subsection (d) by striking the last sen-
15 tence, and

16 (3) by striking subsection (e) and inserting the
17 following:

18 “(e) Nothing in this section exempts a proposed
19 agreement described in subsection (a) from the application
20 of the antitrust laws (as defined in subsection (a) of the
21 1st section of the Clayton Act, but including section 5 of
22 the Federal Trade Commission Act to the extent such sec-
23 tion 5 applies to unfair methods of competition).

24 “(f) In reviewing any proposed agreement described
25 in subsection (a), the Board shall take into account,

1 among any other considerations, the impact of the pro-
2 posed agreement on shippers, consumers, and affected
3 communities. The Board shall make findings regarding
4 such impact, which shall be—

5 “(1) made part of the administrative record;

6 “(2) submitted to any other reviewing agency
7 for consideration in making its determination; and

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

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

12 (1) in subsection (a)—

13 (A) by striking “The authority” and in-
14 serting “Except as provided in sections 4, 4A,
15 4C, 15, and 16 of the Clayton Act, the author-
16 ity”; and

17 (B) in the 3d sentence by striking “is ex-
18 empt from the antitrust laws and from all other
19 law,” and inserting “is exempt from all other
20 law (except the laws referred to in subsection
21 (c)),”, and

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

23 “(c) Nothing in this subchapter exempts a trans-
24 action described in subsection (a) from the application of
25 the antitrust laws (as defined in subsection (a) of the 1st

1 section of the Clayton Act, but including section 5 of the
2 Federal Trade Commission Act to the extent such section
3 5 applies to unfair methods of competition). The preceding
4 sentence shall not apply to any transaction relating to the
5 pooling of railroad cars approved by the Surface Transpor-
6 tation Board or its predecessor agency pursuant to section
7 11322.

8 “(d) In reviewing any transaction described in sub-
9 section (a), the Board shall take into account, among any
10 other considerations, the impact of the transaction on
11 shippers and affected communities.”.

12 (c) CONFORMING AMENDMENTS.—

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

16 (2) ANALYSIS OF SECTIONS.—The analysis of
17 sections of chapter 107 of such title is amended by
18 striking the item relating to section 10706 and in-
19 sert the following:

“10706. Rate agreements.”.

20 **SEC. 9. EFFECTIVE DATE.**

21 (a) IN GENERAL.—Except as provided in subsection
22 (b), this Act and the amendments made by this Act shall
23 take effect on the date of enactment of this Act.

24 (b) LIMITATION.—A civil action under section 4, 4A,
25 4C, 15, or 16 of the Clayton Act, or a complaint under

1 section 5 of the Federal Trade Commission Act (15 U.S.C.
2 45) to the extent such section 5 applies to unfair methods
3 of competition, may not be filed with respect to any con-
4 duct or activity that—

5 (1) occurs before the expiration of the 180-day
6 period beginning on the date of enactment of this
7 Act; and

8 (2) was exempted from the antitrust laws (as
9 defined in subsection (a) of the 1st section of the
10 Clayton Act (15 U.S.C. 12(a)), but including section
11 5 of the Federal Trade Commission Act (15 U.S.C.
12 45) to the extent such section 5 applies to unfair
13 methods of competition) by an order of the Inter-
14 state Commerce Commission or the Surface Trans-
15 portation Board issued before the date of the enact-
16 ment of this Act and pursuant to law.

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