

H.R. 5645: Standard Merger and Acquisition Reviews Through Equal Rules Act of 2018

Overview Summary Details Text

The text of the bill below is as of **May 10, 2018** (Referred to Senate Committee).

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05/10/18: Referred to Senate Committee

04/27/18: Introduced

115th CONGRESS 2d Session H. R. 5645 IN THE SENATE OF THE UNITED STATES

115th CONGRESS 2d Session H. R. 5645 IN THE HOUSE OF REPRESENTATIVES

May 10, 2018 Received, read twice and referred to the Committee on the Judiciary

April 27, 2018 Mrs. Handel (for herself, Mr. Peters, Mr. Goodlatte, Mr. Peterson, Mr. Collins of Georgia, and Mr. Marino) introduced the following bill; which was referred to the Committee on the Judiciary

AN ACT

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.

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Section 1. Short title

This Act may be cited as the "Standard Merger and Acquisition Reviews Through Equal Rules Act of 2018".

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Sec. 2. Amendments to the Clayton Act

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

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- (1) by striking section 4F and inserting the following:

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Sec. 4F. Actions by Attorney General of the United States or the Federal Trade Commission (a) Whenever the Attorney General of the United States has brought an action under the antitrust laws or the Federal Trade Commission has brought an action under section 15, and the Attorney General or Federal Trade Commission, as applicable, has reason to believe that any State attorney general would be entitled to bring an action under this Act based substantially on the same alleged violation of the antitrust laws or section 7, the Attorney General or Federal Trade Commission, as applicable, shall promptly give written notification thereof to such State attorney general. (b) To assist a State attorney general in evaluating the notice described in subsection (a) or in bringing any action under this Act, the Attorney General of the United States or Federal Trade Commission, as applicable, shall, upon request by such State attorney general, make available to the State attorney general, to the extent permitted by law, any investigative files or other materials which are or may be relevant or material to the actual or potential cause of action under this Act.

Sec. 4F. Actions by Attorney General of the United States or the Federal Trade Commission (a) Whenever the Attorney General of the United States has brought an action under the antitrust laws or the Federal Trade Commission has brought an action under section 7, and the Attorney General or Federal Trade Commission, as applicable, has reason to believe that any State attorney general would be entitled to bring an action under this Act based substantially on the same alleged violation of the antitrust laws or section 7, the Attorney General or Federal Trade Commission, as applicable, shall promptly give written notification thereof to such State attorney general. (b) To assist a State attorney general in evaluating the notice described in subsection (a) or in bringing any action under this Act, the Attorney General of the United States or Federal Trade Commission, as applicable, shall, upon request by such State attorney general, make available to the State attorney general, to the extent permitted by law, any investigative files or other materials which are or may be relevant or material to the actual or potential cause of action under this Act.

- (2) in section 5— (A) in subsection (a) by inserting "a proceeding brought by the Federal Trade Commission under section 15" after "United States under the antitrust laws"; and (B) in subsection (i) by inserting "a proceeding instituted by the Federal Trade Commission under section 15" after "antitrust laws"; (C) section 11 of the Clayton Act (15 U.S.C. 21) is amended— (A) in subsection (b) by striking "Whenever" and inserting "Except as provided in subsection (n), whenever"; and (B) by adding at the end the following:

- (2) in section 5— (A) in subsection (a) by inserting "(including a proceeding brought by the Federal Trade Commission with respect to a violation of section 7)" after "United States under the antitrust laws"; and (B) in subsection (i) by inserting "(including a proceeding instituted by the Federal Trade Commission with respect to a violation of section 7) after "antitrust laws"; (C) in section 11, by adding at the end the following:

(n) The Federal Trade Commission may not use the procedures for administrative adjudication set forth in subsection (b) of this section to prevent the consummation of a proposed merger, acquisition, joint venture, or similar transaction that is subject to section 7, unless the complaint is accompanied by a consent agreement between the Commission and a party to the transaction that resolves all the violations alleged in the complaint. The Federal Trade Commission may institute proceedings in a district court under section 15 to prevent the consummation of such a transaction. In any such proceeding the district court shall apply the same standard for granting injunctive relief as applicable to a proceeding brought by the United States attorneys under section 15. The Federal Trade Commission may issue an administrative complaint under this section if the complaint is accompanied by a consent agreement between the Federal Trade Commission and a party to the transaction settling the alleged violations.

(m) (1) Except as provided in paragraph (2), in enforcing compliance with section 7, the Federal Trade Commission shall enforce compliance with that section in the same manner as the Attorney General in accordance with section 15. (2) If the Federal Trade Commission approves an agreement with the parties to the transaction that contains a consent order with respect to a violation of section 7, the Commission shall enforce compliance with that section in accordance with this section.

- (4) in section 13, by inserting "or a suit, action, or proceeding brought by the Federal Trade Commission under section 15" before "subpoenas"; and (5) in section 15, by inserting "and the duty of the Federal Trade Commission with respect to the consummation of a proposed merger, acquisition, joint venture, or similar transaction that is subject to section 7 and not yet consummated" after "General".

- (4) in section 13, by inserting "(including a suit, action, or proceeding brought by the Federal Trade Commission with respect to a violation of section 7)" before "subpoenas"; and (5) in section 15, by inserting "and the duty of the Federal Trade Commission with respect to a violation of section 7" after "General".

Sec. 3. Amendments to the Federal Trade Commission Act

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

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

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

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

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

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

Upon the application of the commission with respect to any activity related to the consummation of a proposed merger, acquisition, joint venture, or similar transaction that is subject to section 7 of the Clayton Act (15 U.S.C. 18) that may result in any unfair method of competition, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the commission made in pursuance thereof.

;

- (3) in section 13(b)(1), by inserting "(excluding section 7 of the Clayton Act (15 U.S.C. 18) and section 5(a)(1) with respect to the consummation of a proposed merger, acquisition, joint venture, or similar transaction that is subject to section 7 of the Clayton Act (15 U.S.C. 18))" after "Commission"; and

- (3) in section 13(b)(1), by inserting "(excluding section 7 of the Clayton Act (15 U.S.C. 18) and section 5(a)(1) with respect to the consummation of a proposed merger, acquisition, joint venture, or similar transaction that is subject to section 7 of the Clayton Act (15 U.S.C. 18))" after "Commission"; and

- (4) in section 16(a)(2)—

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

- (A) in subparagraph (D) by striking "or" at the end;
- (B) in subparagraph (E) by adding "or" at the end; and
- (C) by adding at the end the following:

(F) under section 15 of the Clayton Act (15 U.S.C. 25);

Sec. 4. Effective date; application of amendments

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- (a) Effective date.—

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Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

- (b) Application of amendments.—

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The amendments made by this Act shall not apply to any of the following that occurs before the date of enactment of this Act:

The amendments made by this Act shall not apply to any of the following that occurs before the date of enactment of this Act:

- (1) A violation of section 7 of the Clayton Act (15 U.S.C. 18).
- (2) A transaction with respect to which there is compliance with section 7A of the Clayton Act (15 U.S.C. 18a).
- (3) A case in which a preliminary injunction has been filed in a district court of the United States.

- (1) A violation of section 7 of the Clayton Act (15 U.S.C. 18).
- (2) A transaction with respect to which there is compliance with section 7A of the Clayton Act (15 U.S.C. 18a).
- (3) A case in which a preliminary injunction has been filed in a district court of the United States.

Passed the House of Representatives May 9, 2018.

ATTEST: KAREN L. HAAS, Clerk.

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May 10, 2018: Referred to Senate Committee

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