

105TH CONGRESS  
1ST SESSION

# S. 1429

To enhance rail competition and to ensure reasonable rail rates in any case in which there is an absence of effective competition.

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 7, 1997

Mr. ROCKEFELLER (for himself, Mr. BURNS, and Mr. DORGAN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To enhance rail competition and to ensure reasonable rail rates in any case in which there is an absence of effective competition.

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 Shipper Pro-  
5 tection Act of 1997”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds that—

8 (1) the railroad industry has consolidated dra-  
9 matically since passage of the Staggers Rail Act of

1 1980 (94 Stat. 1895 et seq.), leaving the railroad in-  
2 dustry with only a few major carriers and providing  
3 shippers with limited competitive options;

4 (2) the financial health of the railroad industry  
5 has improved substantially since the passage of the  
6 Staggers Rail Act of 1980;

7 (3) due partly to the continued consolidation of  
8 the railroad industry, captive rail shippers—

9 (A) continue to exist; and

10 (B) are increasing in number; and

11 (4) rail shippers, including captive rail shippers,  
12 will benefit from increased competition among rail-  
13 roads and a streamlined process under which the  
14 Surface Transportation Board determines the rea-  
15 sonableness of captive rail shipper rates.

16 **SEC. 3. DEFINITIONS.**

17 In this Act:

18 (1) SECRETARY.—The term “Secretary” means  
19 the Secretary of Transportation.

20 (2) SURFACE TRANSPORTATION BOARD.—The  
21 term “Surface Transportation Board” or “Board”  
22 means the Surface Transportation Board established  
23 under section 701 of title 49, United States Code.

24 **SEC. 4. PURPOSES.**

25 The purposes of this Act are—

1           (1) to clarify the rail transportation policy of  
2 the United States;

3           (2) to ensure rail competition for shippers in  
4 geographic areas in which rail competition is phys-  
5 ically available;

6           (3) to ensure reasonable rates for captive rail  
7 shippers; and

8           (4) to remove unnecessary regulatory burdens  
9 from the rate reasonableness process of the Surface  
10 Transportation Board.

11 **SEC. 5. CLARIFICATION OF RAIL TRANSPORTATION POL-**  
12 **ICY.**

13 Section 10101 of title 49, United States Code, is  
14 amended—

15           (1) by inserting “(a) IN GENERAL.—” before  
16 “In regulating”; and

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

18           “(b) PRIMARY OBJECTIVES.—The primary objectives  
19 of the rail transportation policy of the United States shall  
20 be—

21           “(1) to ensure effective competition among rail  
22 carriers at origin and destination; and

23           “(2) to maintain reasonable rates in the ab-  
24 sence of effective competition.”.

1 **SEC. 6. REQUIREMENT OF RAILROADS TO ESTABLISH**  
2 **RATES TO FACILITATE RAIL TO RAIL COM-**  
3 **PETITION.**

4 (a) ESTABLISHMENT OF RATE.—Section 11101(a) of  
5 title 49, United States Code, is amended by inserting after  
6 the first sentence the following: “Upon the request of a  
7 shipper, a rail carrier shall establish a rate for transpor-  
8 tation requested by the shipper between any 2 points on  
9 the system of that rail carrier where traffic originates, ter-  
10 minates, or may be interchanged. A rate established under  
11 the preceding sentence shall apply to the shipper that  
12 makes the request for the rate without regard to whether  
13 the rate established is for part of a through transportation  
14 route between an origin and a destination or whether the  
15 shipper has made arrangements for transportation over  
16 any other part of that through route.”.

17 (b) REVIEW OF REASONABLENESS OF RATE.—Sec-  
18 tion 10701(d) of title 49, United States Code, is amend-  
19 ed—

20 (1) by redesignating paragraph (3) as para-  
21 graph (4); and

22 (2) by inserting after paragraph (2) the follow-  
23 ing:

24 “(3) If a rail carrier establishes a rate for transpor-  
25 tation between any 2 points on the system of that rail car-  
26 rier where rail traffic originates, terminates, or may be

1 interchanged, the shipper may challenge the reasonable-  
2 ness of—

3           “(A) that rate; or

4           “(B) the aggregate rate between origin and des-  
5 tination (if the rate established is for part of a  
6 through route).”.

7 **SEC. 7. SIMPLIFIED STANDARD FOR MARKET DOMINANCE.**

8           Section 10707(d) of title 49, United States Code, is  
9 amended—

10           (1) by striking paragraph (2);

11           (2) by striking “(1)(A)” and inserting “(3)”;

12           (3) by striking “(B) For purposes” and insert-  
13 ing “(4) For purposes”; and

14           (4) by inserting before paragraph (3), as redes-  
15 igned, the following:

16           “(1) In making a determination under this section,  
17 the Board shall find that the rail carrier establishing the  
18 challenged rate referred to in subsection (b) has market  
19 dominance over the transportation to which the rate ap-  
20 plies if that rail carrier—

21           “(A) is the only rail carrier serving the origin,  
22 destination, or intermediate portion of the route in-  
23 volved; and

1           “(B) does not prove to the Board that the rate  
2           charged results in a revenue-variable cost percentage  
3           for that transportation that is less than 180 percent.

4           “(2) In making a market dominance determination  
5           under this section in any case in which 2 or more rail  
6           carriers provide service at an origin or destination, the  
7           Board shall consider only transportation competition at  
8           that origin or destination.”.

9           **SEC. 8. REVENUE ADEQUACY DETERMINATIONS.**

10          (a)   RAIL   TRANSPORTATION   POLICY.—Section  
11   10101(3) of title 49, United States Code, is amended by  
12   striking “, as determined by the Board;”.

13          (b)   AUTHORITY FOR REVENUE ADEQUACY DETER-  
14   MINATION.—Section 10704(a) of title 49, United States  
15   Code, is amended—

16               (1) by striking “(a)(1)” and inserting “(a)”;

17               and

18               (2) by striking paragraphs (2) and (3).

19           **SEC. 9. REDUCTION OF PROCEDURAL BARRIERS FACED BY**  
20                           **SMALL SHIPPERS.**

21          (a)   ADMINISTRATIVE RELIEF.—Not later than 180  
22   days after the date of enactment of this Act, the Surface  
23   Transportation Board shall—

1           (1) review the rules and procedures applicable  
2           to rate complaints and other complaints filed with  
3           the Board by small shippers;

4           (2) identify any such rules or procedures that  
5           are unduly burdensome to small shippers; and

6           (3) take such action, including rulemaking, as  
7           is appropriate to reduce or eliminate the aspects of  
8           the rules and procedures that the Board determines  
9           under paragraph (2) to be unduly burdensome to  
10          small shippers.

11          (b) **LEGISLATIVE RELIEF.**—The Board shall notify  
12          the Committee on Commerce, Science, and Transportation  
13          of the Senate and the Committee on Transportation and  
14          Infrastructure of the House of Representatives if the  
15          Board determines that additional changes in the rules and  
16          procedures described in subsection (a) are appropriate and  
17          require commensurate changes in statutory law. In mak-  
18          ing that notification, the Board shall make recommenda-  
19          tions concerning those changes.

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