

107TH CONGRESS  
1ST SESSION

# S. 526

To amend title 49, United States Code, to provide that rail agreements and transactions subject to approval by the Surface Transportation Board are no longer exempt from the application of the antitrust laws, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 13, 2001

Mr. DORGAN (for himself and Mr. ROCKEFELLER) 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 amend title 49, United States Code, to provide that rail agreements and transactions subject to approval by the Surface Transportation Board are no longer exempt from the application of the antitrust laws, and for other purposes.

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 “Rail Competition En-  
5 forcement Act of 2001”.

1 **SEC. 2. TERMINATION OF EXEMPTION.**

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

4 (1) in subsection (a)—

5 (A) in paragraph (2)(A), by striking “, and  
6 the Sherman Act (15 U.S.C. 1, et seq.),” and  
7 all that follows through “or carrying out the  
8 agreement” in the third sentence;

9 (B) in paragraph (4)—

10 (i) by striking the second sentence;

11 and

12 (ii) by striking “However, the” in the  
13 third sentence and inserting “The”; and

14 (C) in paragraph (5)(A), by striking “, and  
15 the antitrust laws set forth in paragraph (2) of  
16 this subsection do not apply to parties and  
17 other persons with respect to making or car-  
18 rying out the agreement”; and

19 (2) by striking subsection (e) and inserting the  
20 following:

21 “(e) APPLICATION OF ANTITRUST LAWS.—

22 “(1) IN GENERAL.—Nothing in this section ex-  
23 empts a proposed agreement described in subsection  
24 (a) from the application of the Sherman Act (15  
25 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12, 14  
26 et seq.), the Federal Trade Commission Act (15

1 U.S.C. 41 et seq.), section 73 or 74 of the Wilson  
2 Tariff Act (15 U.S.C. 8 and 9), or the Act of June  
3 19, 1936 (15 U.S.C. 13, 13a, 13b, 21a).

4 “(2) ANTITRUST ANALYSIS TO CONSIDER IM-  
5 PACT.—In reviewing any such proposed agreement  
6 for the purpose of any provision of law described in  
7 paragraph (1), the Board and any other reviewing  
8 agency shall take into account, among any other  
9 considerations, the impact of the proposed agree-  
10 ment on shippers and on affected communities.”.

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

13 (1) in subsection (a)—

14 (A) by striking “The authority” in the  
15 first sentence and inserting “Except as pro-  
16 vided in section 11 of the Clayton Act (15  
17 U.S.C. 21(a)), the authority”; and

18 (B) by striking “is exempt from the anti-  
19 trust laws and from all other law,” in the third  
20 sentence and inserting “is exempt from all  
21 other law (except the antitrust laws referred to  
22 in subsection (c)),”; and

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

24 “(c) APPLICATION OF ANTITRUST LAWS.—

1           “(1) IN GENERAL.—Nothing in this section ex-  
2           empts a transaction described in subsection (a) from  
3           the application of the Sherman Act (15 U.S.C. 1 et  
4           seq.), the Clayton Act (15 U.S.C. 12, 14 et seq.),  
5           the Federal Trade Commission Act (15 U.S.C. 41 et  
6           seq.), section 73 or 74 of the Wilson Tariff Act (15  
7           U.S.C. 8 and 9), or the Act of June 19, 1936 (15  
8           U.S.C. 13, 13a, 13b, 21a).

9           “(2) ANTITRUST ANALYSIS TO CONSIDER IM-  
10          PACT.—In reviewing any such transaction for the  
11          purpose of any provision of law described in para-  
12          graph (1), the Board and any other reviewing agen-  
13          cy shall take into account, among any other consid-  
14          erations, the impact of the transaction on shippers  
15          and on affected communities.”.

16          (c) CLAYTON ACT.—

17                 (1) APPLICATION OF ACT.—Section 7 of the  
18                 Clayton Act (15 U.S.C. 18) is amended by striking  
19                 “Surface Transportation Board,” in the last para-  
20                 graph of that section.

21                 (2) FTC ENFORCEMENT.—Section 11(a) of the  
22                 Clayton Act (15 U.S.C. 21(a)) is amended by strik-  
23                 ing “subject to jurisdiction” and all that follows  
24                 through the first semicolon and inserting “subject to  
25                 jurisdiction under subtitle IV of title 49, United

1 States Code (except for agreements described in sec-  
2 tion 10706 of that title and transactions described  
3 in section 11321 of that title);”.

4 (d) CONFORMING AMENDMENTS.—

5 (1) The heading for section 10706 of title 49,  
6 United States Code, is amended to read as follows:

7 **“§ 10706. Rate agreements”.**

8 (2) The item relating to such section in the  
9 chapter analysis at the beginning of chapter 107 of  
10 such title is amended to read as follows:

“10706. Rate agreements.”.

11 **SEC. 3. EFFECTIVE DATE.**

12 The amendments made by section 2 shall apply to  
13 any agreement or transaction referred to in section 10706  
14 or 11321, respectively, of title 49, United States Code,  
15 that is submitted to the Surface Transportation Board  
16 after December 31, 2001.

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