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 SENATE OF THE UNITED STATES

SEPTEMBER 30, 2015

Mr. Lee (for himself, Mr. Grassley, and Mr. Hatch) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Standard Merger and Acquisition Reviews Through Equal Rules Act of 2015”.

SEC. 2. AMENDMENTS TO THE CLAYTON ACT.

The Clayton Act (15 U.S.C. 12 et seq.) is amended—
(1) by striking section 4F and inserting the following—

"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 At-
torney General or Federal Trade Commission, as applica-
ble, 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 avail-
able 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 “(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”;

(3) in section 11, by adding at the end the following:

“(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 “(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.

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”; 

(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 jurisdic-
tion 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 there-
of.”;

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

(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,”.

SEC. 4. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) Effective Date.—Except as provided in sub-
section (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.—The amend-
ments made by this Act shall not apply to any of the fol-
lowing that occurs before the date of enactment of this
Act:

(1) A violation of section 7 of the Clayton Act
(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.