

S. 167

[Report No. 1090]

IN THE SENATE OF THE UNITED STATES

JANUARY 5 (legislative day, JANUARY 4), 1961

Mr. KEFAUVER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

SEPTEMBER 20, 1961

Reported by Mr. KEFAUVER, with amendments

[Omit the part struck through and insert the part printed in *italic*]

A BILL

To authorize the Attorney General to compel the production of documentary evidence required in civil investigations for the enforcement 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       That this Act may be cited as the "Antitrust Civil Process  
4       Act".

DEFINITIONS

5  
6       SEC. 2. *As used in For the purposes of this Act—*

7               (a) The term "antitrust law" includes:

8                       (1) Each provision of law defined as one of  
9                       the antitrust laws by section 1 of the Act entitled  
10                      "An Act to supplement existing laws against unlaw-

1           ful restraints and monopolies, and for other pur-  
2           poses”, approved October 15, 1914 (38 Stat. 730,  
3           as amended; 15 U.S.C. 12), commonly known as  
4           the Clayton Act;

5           (2) The Federal Trade Commission Act (15  
6           U.S.C. 41 and the following) ;

7           (3) Section 3 of the Act entitled “An Act to  
8           amend section 2 of the Act entitled ‘An Act to sup-  
9           plement existing laws against unlawful restraints  
10          and monopolies, and for other purposes’, approved  
11          October 15, 1914, as amended (U.S.C., title 15,  
12          sec. 13), and for other purposes”, approved June  
13          19, 1936 (49 Stat. 1528; 15 U.S.C. 13a), com-  
14          monly known as the Robinson-Patman Act; and

15          (4) Any statute hereafter enacted by the Con-  
16          gress which prohibits, or makes available to the  
17          United States in any court or antitrust agency of  
18          the United States any civil remedy with respect to

19          (A) any restraint upon or monopolization of in-  
20          terstate or foreign trade or commerce, or (B) any  
21          unfair trade practice in or affecting such commerce;

22          (b) The term “antitrust agency” means any board,  
23          commission, or agency of the United States (other than

1 the Department of Justice) charged by law with the  
2 administration or enforcement of any antitrust law or the  
3 adjudication of proceedings arising under any such law;

4 (c) The term "antitrust order" means any final  
5 order of any antitrust agency, or any final order, decree,  
6 or judgment of any court of the United States, duly  
7 entered in any case or proceeding arising under any anti-  
8 trust law;

9 (d) The term "antitrust investigation" means any  
10 inquiry conducted by any antitrust investigator for the  
11 purpose of ascertaining whether any person is or has  
12 been engaged in any antitrust violation;

13 (e) The term "antitrust violation" means any act  
14 or omission in violation of any antitrust law or any anti-  
15 trust order;

16 (f) The term "antitrust investigator" means any  
17 attorney or investigator employed by the Department  
18 of Justice who is charged with the duty of enforcing or  
19 carrying into effect any antitrust law;

20 (g) The term "person" means any corporation,  
21 association, partnership, or other legal entity not a  
22 natural person;

23 (h) The term "documentary material" includes the

1 original or any copy of any book, record, report, memo-  
2 randum, paper, communication, tabulation, chart, or  
3 other document; and

4 (i) The term "custodian" means the antitrust docu-  
5 ment custodian or any deputy custodian designated under  
6 section 4 (a) of this Act.

7 CIVIL INVESTIGATIVE DEMAND

8 SEC. 3. (a) Whenever the Attorney General, or the  
9 Assistant Attorney General in charge of the Antitrust Divi-  
10 sion of the Department of Justice, has reason to believe that  
11 any person may be in possession, custody, or control of any  
12 documentary material ~~pertinent~~ *relevant to an antitrust in-*  
13 *vestigation, he may, prior to the institution of a civil or crimi-*  
14 *nal proceeding thereon, issue in writing, and cause to be*  
15 *served upon* such person, a civil investigative demand requir-  
16 ing such person to produce such material for examination.

17 (b) Each such demand shall—

18 (1) state the nature of the conduct constituting the  
19 alleged antitrust violation which is under investigation  
20 and the provision of law applicable thereto;

21 (2) describe the class or classes of documentary  
22 material to be produced thereunder with such definite-  
23 ness and certainty as to permit such material to be fairly  
24 identified;

25 (3) prescribe a return date which will provide a

1 reasonable period of time within which the material so  
2 demanded may be assembled and ~~produced~~ *made avail-*  
3 *able for inspection and copying or reproduction; and*

4 (4) identify the custodian to whom such evidence  
5 ~~is to be delivered; and~~ *material shall be made available.*

6 ~~(5) specify a place at which such delivery is to be~~  
7 ~~made.~~

8 (c) No such demand shall—

9 (1) contain any requirement which would be held  
10 to be unreasonable if contained in a subpoena duces tecum  
11 issued by a court of the United States in aid of a grand  
12 jury investigation of such alleged antitrust violation;  
13 or

14 (2) require the production of any documentary evi-  
15 dence which would be privileged from disclosure if de-  
16 manded by a subpoena duces tecum issued by a court of  
17 the United States in aid of a grand jury investigation of  
18 such alleged antitrust violation.

19 (d) Any such demand may be served by any antitrust  
20 investigator, or by any United States marshal or deputy  
21 marshal, at any place within the territorial jurisdiction of  
22 any court of the United States.

23 (e) Service of any such demand or of any petition filed  
24 under section 5 of this Act may be made upon a partnership,  
25 corporation, association, or other legal entity by—

1 (1) delivering a duly executed copy thereof to any  
2 partner, executive officer, managing agent, or general  
3 agent thereof, or to any agent thereof authorized by  
4 appointment or by law to receive service of process on  
5 behalf of such partnership, corporation, association, or  
6 entity;

7 (2) delivering a duly executed copy thereof to the  
8 principal office or place of business of the partnership,  
9 corporation, association, or entity to be served; or

10 (3) depositing such copy in the United States  
11 mails, by registered or certified mail duly addressed to  
12 such partnership, corporation, association, or entity at  
13 its principal office or place of business.

14 (f) A verified return by the individual serving any such  
15 demand or petition setting forth the manner of such service  
16 shall be proof of such service. In the case of service by  
17 registered or certified mail, such return shall be accompanied  
18 by the return post office receipt of delivery of such demand.

19 ANTTITRUST DOCUMENT CUSTODIAN

20 SEC. 4. (a) The Assistant Attorney General in charge  
21 of the Antitrust Division of the Department of Justice shall  
22 designate an antitrust investigator to serve as antitrust docu-  
23 ment custodian, and such additional antitrust investigators  
24 as he shall determine from time to time to be necessary to  
25 serve as deputies to such officer.

1 (b) Any person upon whom any demand issued under  
2 section 3 has been duly served shall ~~deliver~~ *make* such ma-  
3 terial *available for inspection and copying or reproduction*  
4 to the custodian designated therein at the *principal* place  
5 ~~specified therein~~ *of business of such person* (or at such other  
6 place as such custodian and such person thereafter  
7 may *agree and* prescribe in writing) on the return date  
8 specified in such demand (or on such later date as such  
9 custodian may prescribe in writing). ~~No such demand or~~  
10 ~~custodian may require delivery of any documentary material~~  
11 ~~to be made—~~

12 ~~(1) at any place outside the territorial jurisdiction~~  
13 ~~of the United States without the consent of the person~~  
14 ~~upon whom such demand was served; or~~

15 ~~(2) at any place other than the place at which~~  
16 ~~such documentary material is situated at the time of~~  
17 ~~service of such demand until the custodian has tendered~~  
18 ~~to such person (A) a sum sufficient to defray the cost~~  
19 ~~of transporting such material to the place prescribed for~~  
20 ~~delivery or (B) the transportation thereof to such place~~  
21 ~~at Government expense. Such person may upon written~~  
22 ~~agreement between such person and the custodian substi-~~  
23 ~~tute for copies of all or any part of such material origi-~~  
24 ~~nals thereof.~~

25 (c) The custodian to whom any documentary material

1 is so delivered shall take physical possession thereof, and  
2 shall be responsible for the use made thereof and for the return  
3 thereof pursuant to this Act. The custodian may cause the  
4 preparation of such copies of such documentary material as  
5 may be required for official use ~~by any individual who is~~  
6 ~~entitled,~~ under regulations which shall be promulgated by  
7 the Attorney General, to have access to such material for  
8 examination. While in the possession of the custodian, no  
9 material so produced shall be available for examination,  
10 without the consent of the person who produced such ma-  
11 terial, by any individual other than a duly authorized officer,  
12 member, or employee of the Department of Justice or any  
13 antitrust agency, ~~provided nothing herein shall prevent the~~  
14 ~~Attorney General from making available the material so~~  
15 ~~produced for examination by the Committee on the Judiciary~~  
16 ~~of each House of the Congress.~~ Under such reasonable terms  
17 and conditions as the Attorney General shall prescribe,  
18 documentary material while in the possession of the cus-  
19 todian shall be available for examination by the person who  
20 produced such material or any duly authorized representa-  
21 tive of such person.

22 (d) Whenever any attorney has been designated to  
23 appear on behalf of the United States before any court,  
24 grand jury, or antitrust agency in any case or proceeding  
25 involving any alleged antitrust violation, the custodian may



1 deliver to such attorney such documentary material in the  
2 possession of the custodian as such attorney determines to  
3 be required for use in the presentation of such case or pro-  
4 ceeding on behalf of the United States. Upon the conclu-  
5 sion of any such case or proceeding, such attorney shall  
6 return to the custodian any documentary material so with-  
7 drawn which has not passed into the control of such court,  
8 grand jury, or antitrust agency through the introduction  
9 thereof into the record of such case or proceeding.

10 (e) Upon the completion of (1) the antitrust investi-  
11 gation for which any documentary material was produced  
12 under this Act, and (2) any case or proceeding arising from  
13 such investigation, the custodian shall return to the person  
14 who produced such material all such material (other than  
15 copies thereof made by the Department of ~~Justice~~, *Justice*  
16 ~~or any antitrust agency or any committee of the Congress~~;  
17 pursuant to subsection (c) ) which has not passed into the  
18 control of any court, grand jury, or antitrust agency through  
19 the introduction thereof into the record of such case or  
20 proceeding.

21 (f) When any documentary material has been produced  
22 by any person under this Act for use in any antitrust investi-  
23 gation, and no such case or proceeding arising therefrom has  
24 been instituted within a reasonable time after completion of

1 the examination and analysis of all evidence assembled in the  
2 course of such investigation, such person shall be entitled,  
3 upon written demand made upon the Attorney General or  
4 upon the Assistant Attorney General in charge of the Anti-  
5 trust Division, to the return of all documentary material  
6 (other than copies thereof made by the Department of  
7 Justice or any antitrust agency pursuant to subsection (c))  
8 so produced by such person.

9 (g) In the event of the death, disability, or separation  
10 from service in the Department of Justice of the custodian  
11 of any documentary material produced under any demand  
12 issued under this Act, or the official relief of such custodian  
13 from responsibility for the custody and control of such mate-  
14 rial, the Assistant Attorney General in charge of the Anti-  
15 trust Division shall promptly (1) designate another antitrust  
16 investigator to serve as custodian thereof, and (2) transmit  
17 notice in writing to the person who produced such material  
18 as to the identity and address of the successor so designated.  
19 Any successor so designated shall have with regard to such  
20 materials all duties and responsibilities imposed by this Act  
21 upon his predecessor in office with regard thereto, except  
22 that he shall not be held responsible for any default or  
23 dereliction which occurred before his designation as  
24 custodian.

## 1 JUDICIAL PROCEEDINGS

2 SEC. 5. (a) Whenever any person fails to comply with  
3 any civil investigative demand duly served upon him under  
4 section 3; *or whenever satisfactory copying or reproduction*  
5 *of any such material cannot be done and such person refuses*  
6 *to surrender such material*, the Attorney General, through  
7 such officers or attorneys as he may designate, may file, in  
8 the district court of the United States for any judicial district  
9 in which such person resides, is found, or transacts business,  
10 and serve upon such person a petition for an order of such  
11 court for the enforcement of ~~such demand~~ *this Act*, except  
12 that if such person transacts business in more than one such  
13 district such petition shall be filed in the district in which  
14 such person maintains his principal place of business, or in  
15 such other district in which such person transacts business  
16 as may be agreed upon by the parties to such petition.

17 (b) Within twenty days after the service of any such  
18 demand upon any person, or at any time before the return  
19 date specified in the demand, whichever period is shorter,  
20 such person may file, in the district court of the United States  
21 for the judicial district within which ~~the office of the cus-~~  
22 ~~todian designated therein is situated~~ *such person resides, is*  
23 *found, or transacts business*, and serve upon such custodian  
24 a petition for an order of such court modifying or setting

1 aside such demand. *The time allowed for compliance with*  
2 *the demand in whole or in part as deemed proper and ordered*  
3 *by the court shall not run during the pendency of such petition*  
4 *in the court.* Such petition shall specify each ground upon  
5 which the petitioner relies in seeking such relief, and may  
6 be based upon any failure of such demand to comply with  
7 the provisions of this Act, or upon any constitutional *or other*  
8 *legal right or privilege of such person.*

9 (c) At any time during which any custodian is in  
10 custody or control of any documentary material delivered  
11 by any person in compliance with any such demand, such  
12 person may file, in the district court of the United States  
13 for the judicial district within which the office of such cus-  
14 todian is situated, and serve upon such custodian a petition  
15 for an order of such court requiring the performance by such  
16 custodian of any duty imposed upon him by this Act.

17 (d) Whenever any petition is filed in any district court  
18 of the United States under this section, such court shall have  
19 jurisdiction to hear and determine the matter so presented,  
20 and to enter such order or orders as may be required to  
21 carry into effect the provisions of this Act. Any final order  
22 so entered shall be subject to appeal pursuant to section  
23 1291 of title 28 of the United States Code. Any dis-

1 obedience of any final order entered under this section by  
2 any court shall be punished as a contempt thereof.

3 *(e) To the extent that such rules may have application*  
4 *and are not inconsistent with the provisions of this Act, the*  
5 *Federal Rules of Civil Procedure shall apply to any petition*  
6 *under this Act.*

7 CRIMINAL PENALTY

8 SEC. 6. (a) Chapter 73 of title 18 of the United States  
9 Code (relating to obstruction of justice) is amended by  
10 adding at the end thereof the following new section:

11 **“§ 1509. Obstruction of antitrust civil process**

12 **“Whoever, with the intent to avoid, evade, prevent, or**  
13 **obstruct compliance in whole or in part, by any person with**  
14 **any civil investigative demand made under the Antitrust Civil**  
15 **Process Act, willfully removes from any place, conceals,**  
16 **withholds, destroys, mutilates, alters, or by any other means**  
17 **falsifies any documentary material in the possession, custody**  
18 **or control of any person which is the subject of any such**  
19 **demand duly served upon any person shall be fined not more**  
20 **than \$5,000 or imprisoned not more than five years, or**  
21 **both.”**

22 **(b) The analysis to such chapter is amended by insert-**  
23 **ing at the end thereof the following new item:**

**“1509. Obstruction of antitrust civil process.”**

1     *SEC. 6. (a) Section 1505, title 18, United States Code,*  
2     *is amended to read as follows:*

3     “§ 1505. *Obstruction of proceedings before departments, agencies,*  
4             *and committees*

5             “*Whoever corruptly, or by threats or force, or by any*  
6     *threatening letter or communication, endeavors to influence,*  
7     *intimidate, or impede any witness in any proceeding pending*  
8     *before any department or agency of the United States, or in*  
9     *connection with any inquiry or investigation being had by*  
10    *either House, or any committee of either House, or any joint*  
11    *committee of the Congress; or*

12            “*Whoever injures any party or witness in his person or*  
13    *property on account of his attending or having attended such*  
14    *proceeding, inquiry, or investigation, or on account of his*  
15    *testifying or having testified to any matter pending therein;*  
16    *or*

17            “*Whoever, with intent to avoid, evade, prevent, or ob-*  
18    *struct compliance in whole or in part with any civil investiga-*  
19    *tive demand duly and properly made under the Antitrust*  
20    *Civil Process Act willfully removes from any place, conceals,*  
21    *destroys, mutilates, alters, or by other means falsifies any*  
22    *documentary material which is the subject of such demand;*  
23    *or*

24            “*Whoever corruptly, or by threats or force, or by any*

1 *threatening letter or communication influences, obstructs, or*  
2 *impedes or endeavors to influence, obstruct, or impede the*  
3 *due and proper administration of the law under which such*  
4 *proceeding is being had before such department or agency*  
5 *of the United States, or the due and proper exercise*  
6 *of the power of inquiry under which such inquiry or investi-*  
7 *gation is being had by either House, or any committee of*  
8 *either House or any joint committee of the Congress—*

9       *“Shall be fined not more than \$5,000 or imprisoned not*  
10 *more than five years, or both.”*

11       *(b) The analysis of chapter 73 of title 18 of United*  
12 *States Code is amended so that the title of section 1505 shall*  
13 *read therein as follows:*

*“1505. Obstruction of proceedings before departments, agencies, and*  
      *committees.”*

14

#### SAVING PROVISION

15       SEC. 7. Nothing contained in this Act shall impair the  
16 authority of the Attorney General, the Assistant Attorney  
17 General in charge of the Antitrust Division of the Depart-  
18 ment of Justice, or any antitrust investigator to (a) lay  
19 before any grand jury impaneled before any district court of  
20 the United States any evidence concerning any alleged  
21 antitrust violation, (b) invoke the power of any such court  
22 to compel the production of any evidence before any such

1 grand jury, or (c) institute any proceeding for the enforce-  
2 ment of any order or process issued in execution of such  
3 power, or to punish disobedience of any such order or process  
4 by any person.

Calendar No. 1071

87<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

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