

# S. 167

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 22, 1961

Referred to the Committee on the Judiciary

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## AN ACT

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. 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  
24          the Department of Justice) charged by law with the  
25          administration or enforcement of any antitrust law or the

1 adjudication of proceedings arising under any such law;

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

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

11 (e) The term “antitrust violation” means any act  
12 or omission in violation of any antitrust law or any anti-  
13 trust order;

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

18 (g) The term “person” means any corporation,  
19 association, partnership, or other legal entity not a  
20 natural person;

21 (h) The term “documentary material” includes the  
22 original or any copy of any book, record, report, memo-  
23 randum, paper, communication, tabulation, chart, or  
24 other document; and

25 (i) The term “custodian” means the antitrust docu-

1       ment custodian or any deputy custodian designated under  
2       section 4 (a) of this Act.

3                               **CIVIL INVESTIGATIVE DEMAND**

4       SEC. 3. (a) Whenever the Attorney General, or the  
5       Assistant Attorney General in charge of the Antitrust Divi-  
6       sion of the Department of Justice, has reason to believe that  
7       any person may be in possession, custody, or control of any  
8       documentary material relevant to an antitrust investigation,  
9       he may, prior to the institution of a civil or criminal proceed-  
10      ing thereon, issue in writing, and cause to be served upon  
11      such person, a civil investigative demand requiring such  
12      person to produce such material for examination.

13           (b) Each such demand shall—

14               (1) state the nature of the conduct constituting the  
15               alleged antitrust violation which is under investigation  
16               and the provision of law applicable thereto;

17               (2) describe the class or classes of documentary  
18               material to be produced thereunder with such definite-  
19               ness and certainty as to permit such material to be fairly  
20               identified;

21               (3) prescribe a return date which will provide a  
22               reasonable period of time within which the material so  
23               demanded may be assembled and made available for in-  
24               spection and copying or reproduction; and

1           (4) identify the custodian to whom such material  
2 shall be made available.

3           (c) No such demand shall—

4           (1) contain any requirement which would be held  
5 to be unreasonable if contained in a subpoena duces tecum  
6 issued by a court of the United States in aid of a grand  
7 jury investigation of such alleged antitrust violation;  
8 or

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

14           (d) Any such demand may be served by any antitrust  
15 investigator, or by any United States marshal or deputy  
16 marshal, at any place within the territorial jurisdiction of  
17 any court of the United States.

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

21           (1) delivering a duly executed copy thereof to any  
22 partner, executive officer, managing agent, or general  
23 agent thereof, or to any agent thereof authorized by  
24 appointment or by law to receive service of process on

1       behalf of such partnership, corporation, association, or  
2       entity;

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

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

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

15                           ANTITRUST DOCUMENT CUSTODIAN

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

22       (b) Any person upon whom any demand issued under  
23       section 3 has been duly served shall make such material  
24       available for inspection and copying or reproduction to the  
25       custodian designated therein at the principal place of busi-

1 ness of such person (or at such other place as such custodian  
2 and such person thereafter may agree and prescribe in  
3 writing) on the return date specified in such demand (or on  
4 such later date as such custodian may prescribe in writing).  
5 Such person may upon written agreement between such  
6 person and the custodian substitute for copies of all or any  
7 part of such material originals thereof.

8 (c) The custodian to whom any documentary material  
9 is so delivered shall take physical possession thereof, and  
10 shall be responsible for the use made thereof and for the return  
11 thereof pursuant to this Act. The custodian may cause the  
12 preparation of such copies of such documentary material as  
13 may be required for official use under regulations which shall  
14 be promulgated by the Attorney General, to have access to  
15 such material for examination. While in the possession of  
16 the custodian, no material so produced shall be available for  
17 examination, without the consent of the person who produced  
18 such material, by any individual other than a duly authorized  
19 officer, member, or employee of the Department of Justice or  
20 any antitrust agency. Under such reasonable terms and  
21 conditions as the Attorney General shall prescribe, documen-  
22 tary material while in the possession of the custodian shall  
23 be available for examination by the person who produced  
24 such material or any duly authorized representative of such  
25 person.

1 (d) Whenever any attorney has been designated to  
2 appear on behalf of the United States before any court,  
3 grand jury, or antitrust agency in any case or proceeding  
4 involving any alleged antitrust violation, the custodian may  
5 deliver to such attorney such documentary material in the  
6 possession of the custodian as such attorney determines to  
7 be required for use in the presentation of such case or pro-  
8 ceeding on behalf of the United States. Upon the conclu-  
9 sion of any such case or proceeding, such attorney shall  
10 return to the custodian any documentary material so with-  
11 drawn which has not passed into the control of such court,  
12 grand jury, or antitrust agency through the introduction  
13 thereof into the record of such case or proceeding.

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

24 (f) When any documentary material has been produced  
25 by any person under this Act for use in any antitrust investi-

1 gation, and no such case or proceeding arising therefrom has  
2 been instituted within a reasonable time after completion of  
3 the examination and analysis of all evidence assembled in the  
4 course of such investigation, such person shall be entitled,  
5 upon written demand made upon the Attorney General or  
6 upon the Assistant Attorney General in charge of the Anti-  
7 trust Division, to the return of all documentary material  
8 (other than copies thereof made by the Department of  
9 Justice or any antitrust agency pursuant to subsection (c) )  
10 so produced by such person.

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

1 dereliction which occurred before his designation as  
2 custodian.

3

#### JUDICIAL PROCEEDINGS

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

19       (b) Within twenty days after the service of any such  
20 demand upon any person, or at any time before the return  
21 date specified in the demand, whichever period is shorter,  
22 such person may file, in the district court of the United States  
23 for the judicial district within which such person resides, is  
24 found, or transacts business, and serve upon such custodian  
25 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 peti-  
4 tion in the court. Such petition shall specify each ground  
5 upon which the petitioner relies in seeking such relief, and  
6 may be based upon any failure of such demand to comply  
7 with the provisions of this Act, or upon any constitutional or  
8 other 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-  
24 obedience of any final order entered under this section by  
25 any court shall be punished as a contempt thereof.

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

5 CRIMINAL PENALTY

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

8 **“§ 1505. Obstruction of proceedings before departments,**  
9 **agencies, and committees**

10 “Whoever corruptly, or by threats or force, or by any  
11 threatening letter or communication, endeavors to influence,  
12 intimidate, or impede any witness in any proceeding pending  
13 before any department or agency of the United States, or in  
14 connection with any inquiry or investigation being had by  
15 either House, or any committee of either House, or any joint  
16 committee of the Congress; or

17 “Whoever injures any party or witness in his person or  
18 property on account of his attending or having attended such  
19 proceeding, inquiry, or investigation, or on account of his  
20 testifying or having testified to any matter pending therein;  
21 or

22 “Whoever, with intent to avoid, evade, prevent, or ob-  
23 struct compliance in whole or in part with any civil investiga-  
24 tive demand duly and properly made under the Antitrust  
25 Civil Process Act willfully removes from any place, conceals,

1 destroys, mutilates, alters, or by other means falsifies any  
2 documentary material which is the subject of such demand;  
3 or

4 "Whoever corruptly, or by threats or force, or by any  
5 threatening letter or communication influences, obstructs, or  
6 impedes or endeavors to influence, obstruct, or impede the  
7 due and proper administration of the law under which such  
8 proceeding is being had before such department or agency  
9 of the United States, or the due and proper exercise of the  
10 power of inquiry under which such inquiry or investigation  
11 is being had by either House, or any committee of either  
12 House or any joint committee of the Congress—

13 "Shall be fined not more than \$5,000 or imprisoned not  
14 more than five years, or both."

15 (b) The analysis of chapter 73 of title 18 of United  
16 State Code is amended so that the title of section 1505 shall  
17 read therein as follows:

"1505. Obstruction of proceedings before departments, agencies, and  
committees."

18

#### SAVING PROVISION

19 SEC. 7. Nothing contained in this Act shall impair the  
20 authority of the Attorney General, the Assistant Attorney  
21 General in charge of the Antitrust Division of the Depart-  
22 ment of Justice, or any antitrust investigator to (a) lay  
23 before any grand jury impaneled before any district court of

1 the United States any evidence concerning any alleged  
2 antitrust violation, (b) invoke the power of any such court  
3 to compel the production of any evidence before any such  
4 grand jury, or (c) institute any proceeding for the enforce-  
5 ment of any order or process issued in execution of such  
6 power, or to punish disobedience of any such order or process  
7 by any person.

Passed the Senate September 21, 1961.

Attest:

FELTON M. JOHNSTON,

*Secretary.*

87TH CONGRESS  
1ST SESSION

**S. 167**

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