



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); *and*

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) (3) Any statute hereafter enacted by the~~  
 16           ~~Congress 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 ~~(e)~~ (b) 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)~~ (c) The term "antitrust investigation" means  
10 any inquiry conducted by any antitrust investigator for  
11 the purpose of ascertaining whether any person is or has  
12 been engaged in any antitrust violation;

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

16 ~~(f)~~ (e) The term "antitrust investigator" means  
17 any attorney or investigator employed by the Depart-  
18 ment of Justice who is charged with the duty of enforc-  
19 ing or carrying into effect any antitrust law;

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

23 ~~(h)~~ (g) The term "documentary material" includes

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

4 ~~(i)~~ (h) The term "custodian" means the antitrust  
5 document custodian or any deputy custodian designated  
6 under 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 relevant to ~~an~~ a civil antitrust investi-  
13 gation, he may, prior to the institution of a civil or criminal  
14 proceeding thereon, issue in writing, and cause to be served  
15 upon such person, a civil investigative demand requiring such  
16 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 made available for in-  
3 spection and copying or reproduction; and

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

6 (c) No such demand shall—

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

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

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

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

24 (1) delivering a duly executed copy thereof to any  
25 partner, executive officer, managing agent, or general

1 agent thereof, or to any agent thereof authorized by  
2 appointment or by law to receive service of process on  
3 behalf of such partnership, corporation, association, or  
4 entity;

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

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

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

17 **ANTITRUST DOCUMENT CUSTODIAN**

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

24 (b) Any person upon whom any demand issued under  
25 section 3 has been duly served shall make such material

1 available for inspection and copying or reproduction to the  
2 custodian designated therein at the principal place of busi-  
3 ness of such person (or at such other place as such custodian  
4 and such person thereafter may agree and prescribe in  
5 writing *or as the court may direct, pursuant to section 5(d)*  
6 *of this Act*) on the return date specified in such demand (or  
7 on such later date as such custodian may prescribe in writ-  
8 ing). Such person may upon written agreement between  
9 such person and the custodian substitute for copies of all or  
10 any part of such material originals thereof.

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

1 be available for examination by the person who produced  
2 such material or any duly authorized representative of such  
3 person.

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

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



1 ~~agency court or grand jury~~ through the introduction thereof  
2 into the record of such case or proceeding.

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

15 (g) In the event of the death, disability, or separation  
16 from service in the Department of Justice of the custodian  
17 of any documentary material produced under any demand  
18 issued under this Act, or the official relief of such custodian  
19 from responsibility for the custody and control of such mate-  
20 rial, the Assistant Attorney General in charge of the Anti-  
21 trust Division shall promptly (1) designate another antitrust  
22 investigator to serve as custodian thereof, and (2) transmit  
23 notice in writing to the person who produced such material  
24 as to the identity and address of the successor so designated.  
25 Any successor so designated shall have with regard to such

1 materials all duties and responsibilities imposed by this Act  
2 upon his predecessor in office with regard thereto, except  
3 that he shall not be held responsible for any default or  
4 dereliction which occurred before his designation as  
5 custodian.

#### 6 JUDICIAL PROCEEDINGS

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

22 (b) Within twenty days after the service of any such  
23 demand upon any person, or at any time before the return  
24 date specified in the demand, whichever period is shorter,  
25 such person may file, in the district court of the United States

1 for the judicial district within which such person resides, is  
2 found, or transacts business, and serve upon such custodian  
3 a petition for an order of such court modifying or setting  
4 aside such demand. The time allowed for compliance with  
5 the demand in whole or in part as deemed proper and ordered  
6 by the court shall not run during the pendency of such peti-  
7 tion in the court. Such petition shall specify each ground  
8 upon which the petitioner relies in seeking such relief, and  
9 may be based upon any failure of such demand to comply  
10 with the provisions of this Act, or upon any constitutional or  
11 other legal right or privilege of such person.

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

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

1 1291 of title 28 of the United States Code. Any dis-  
2 obedience of any final order entered under this section by  
3 any court shall be punished as a contempt thereof.

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

8 CRIMINAL PENALTY

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

11 **“§ 1505. Obstruction of proceedings before departments,**  
12 **agencies, and committees**

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

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

25 “Whoever, with intent to avoid, evade, prevent, or ob-

1 struct compliance in whole or in part with any civil investiga-  
2 tive demand duly and properly made under the Antitrust  
3 Civil Process Act willfully removes from any place, conceals,  
4 destroys, mutilates, alters, or by other means falsifies any  
5 documentary material which is the subject of such demand;  
6 or

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

16 “Shall be fined not more than \$5,000 or imprisoned not  
17 more than five years, or both.”

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

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

21

#### SAVING PROVISION

22

SEC. 7. Nothing contained in this Act shall impair the  
23 authority of the Attorney General, the Assistant Attorney

1 General in charge of the Antitrust Division of the Depart-  
2 ment of Justice, or any antitrust investigator to (a) lay  
3 before any grand jury impaneled before any district court of  
4 the United States any evidence concerning any alleged  
5 antitrust violation, (b) invoke the power of any such court  
6 to compel the production of any evidence before any such  
7 grand jury, or (c) institute any proceeding for the enforce-  
8 ment of any order or process issued in execution of such  
9 power, or to punish disobedience of any such order or process  
10 by any person, *including a natural person*.

Passed the Senate September 21, 1961.

Attest:

FELTON M. JOHNSTON,

*Secretary.*

Union Calendar No. 574

87TH CONGRESS  
2D SESSION

**S. 167**

[Report No. 1386]

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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.

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SEPTEMBER 22, 1961

Referred to the Committee on the Judiciary

FEBRUARY 26, 1962

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed