

86TH CONGRESS
1ST SESSION

H. R. 4792

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 19, 1959

Mr. CELLER introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To authorize the Attorney General to compel the production of documentary material 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 of 1959."

DEFINITIONS

5
6 SEC. 2. As used in this Act—
7 (a) The term "antitrust laws", as used herein, is de-
8 fined in section 1 of "An Act to supplement existing laws
9 against unlawful restraints and monopolies, and for other
10 purposes", approved October 15, 1914 (38 Stat. 730; 15

1 U.S.C. 12), as amended, commonly known as the Clayton
2 Act.

3 (b) The term "antitrust investigator" means any at-
4 torney employed by the Department of Justice who is
5 charged with the duty of enforcing any of the antitrust
6 laws.

7 (c) The term "organization", means any corporation,
8 partnership, firm, association, trust, foundation, company or
9 other legal entity not a natural person.

10 (d) The term "documentary material" includes the
11 original or any copy of any book, record, report, memo-
12 randum, paper communication, tabulation, chart, or other
13 document in the possession, custody, or control of any
14 organization.

15 **CIVIL INVESTIGATIVE DEMAND**

16 **SEC. 3.** (a) Whenever the Attorney General has reason
17 to believe that any organization may be in possession, cus-
18 tody, or control of any documentary material relevant to
19 the subject matter of an investigation of a possible antitrust
20 violation he may, prior to the institution of a civil or criminal
21 proceeding thereon, execute and issue in writing, and cause
22 to be served upon such organization, a civil investigative de-
23 mand requiring such organization to produce such docu-
24 mentary material and permit inspection and copying.

1 (b) Each such demand shall—

2 (1) state the statute and section or sections thereof
3 alleged violation of which is under investigation, and
4 the general subject matter of the investigation;

5 (2) describe the class or classes of documentary
6 material to be produced thereunder with reasonable
7 specificity so as fairly to identify the material demanded;

8 (3) prescribe a return date which will provide a
9 reasonable period of time within which the documentary
10 material is to be produced;

11 (4) identify the antitrust investigator to whom such
12 documentary material is to be made available for inspec-
13 tion and copying.

14 (c) No such demand shall—

15 (1) contain any requirement which would be un-
16 reasonable or improper if contained in a subpoena duces
17 tecum issued by a court of the United States in aid of
18 a grand jury investigation of such alleged violation; or

19 (2) require the production of any documentary
20 material which would be privileged from disclosure, or
21 which for any other reason would not be required to
22 be disclosed if demanded by a subpoena duces tecum
23 issued by a court of the United States in aid of a grand
24 jury investigation of such alleged violation.

1 (d) Any such demand may be served by any antitrust
2 investigator or United States marshal or deputy marshal at
3 any place within the territorial jurisdiction of any court of
4 the United States.

5 (e) Service of any such demand may be made by—

6 (1) delivering a duly executed copy thereof to
7 any executive officer of the organization to be served; or

8 (2) delivering a duly executed copy thereof to the
9 principal office or place of business of the organization
10 to be served; or

11 (3) mailing by registered or certified mail a copy
12 thereof addressed to such organization to be served at
13 its principal office or place of business.

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

19 (g) An organization upon whom a demand is served
20 pursuant to the provisions of this section shall comply with
21 the terms thereof unless otherwise provided by an order of
22 court issued under section 5 hereof.

23 (h) Documentary material demanded pursuant to the
24 provisions of this section shall be produced for inspection
25 and copying during normal business hours at the principal

1 office or place of business of the organization served, or at
2 such other times and places as may be agreed upon by the
3 organization served and any authorized employee of the
4 Department of Justice.

5 SEC. 4. (a) No documentary material produced pur-
6 suant to a demand, or copies thereof, shall, unless otherwise
7 ordered by a district court for good cause shown, be produced
8 for inspection or copying by, nor shall the contents thereof
9 be disclosed to, other than an authorized employee of the
10 Department of Justice, without the consent of the organiza-
11 tion who produced such material: *Provided*, That, under
12 such reasonable terms and conditions as the Attorney Gen-
13 eral shall prescribe, the copies of such documentary material
14 shall be available for inspection and copying by the organiza-
15 tion who produced such material or any duly authorized
16 representative of such organization. The Attorney General
17 or any authorized employee of the Department of Justice
18 may use such copies of documentary material as he deter-
19 mines necessary in the performance of his official duties,
20 including presentation of any case or proceeding before any
21 court or grand jury.

22 (b) When documentary material produced pursuant to
23 a demand is no longer required for use in connection with the
24 investigation for which it was demanded, or in any case or

1 proceeding resulting therefrom, or at the end of eighteen
2 months following the date when such material was produced,
3 whichever is the sooner, such organization shall be relieved of
4 the duty to hold such documentary material available for
5 inspection and copying as required by section 3 (a) : *Pro-*
6 *vided, however,* That any district court in which a petition
7 may be filed as set forth in section 5 hereof may, upon good
8 cause shown, extend said period of eighteen months.

9 JURISDICTION OF DISTRICT COURT

10 SEC. 5. (a) The United States district courts are vested
11 with jurisdiction to hear and determine any petition filed
12 under this Act and to issue upon good cause shown any
13 order which justice may require, including, without limiting
14 the generality of the foregoing, the following :

15 (1) an order modifying or setting aside any such
16 demand;

17 (2) an order requiring the Attorney General or
18 any organization or individual to perform any duty
19 imposed upon him by the provisions of this Act;

20 (3) an order extending the time within which any
21 act allowed or required by this Act must be done, pur-
22 suant to a demand issued hereunder, or previous court
23 orders.

24 (b) At any time before the return date specified in the
25 demand, or within twenty days after the demand has been

1 served, whichever period is shorter, a petition to modify or
2 set aside a demand issued pursuant to section 3 may be
3 filed in the United States district court for the district in
4 which the principal office or place of business of the organ-
5 ization upon whom such demand was served is located, or
6 in such other district as the parties may agree.

7 (c) A petition to require the Attorney General or any
8 organization or individual to perform any duty imposed by
9 the provisions of this Act, and all other petitions in connec-
10 tion with a demand, may be filed in the United States dis-
11 trict court for the district in which the principal office or
12 place of business of the organization involved is located, or
13 in such other district as the parties may agree.

14 (d) To the extent that such rules may have applica-
15 tion and are not inconsistent with the provisions of this Act,
16 the Federal Rules of Civil Procedure shall apply to any pe-
17 tition under this Act.

18 PENALTY

19 SEC. 6. Any organization or individual who, with intent
20 to avoid, evade, prevent, or obstruct compliance in whole
21 or in part, by any organization with any civil investigative
22 demand made under this Act, willfully removes from any
23 place, conceals, withholds, destroys, mutilates, alters, or by
24 any other means falsifies any documentary material in the
25 possession, custody, or control of any organization or indi-

1 vidual which is the subject of any demand duly served upon
2 any organization shall be deemed guilty of an offense against
3 the United States, and shall be subject, upon conviction in
4 any court of the United States of competent jurisdiction,
5 to a fine of \$5,000 or to imprisonment for a term of not
6 more than five years, or both.

7

SAVING PROVISION

8 SEC. 7. Nothing contained in this Act shall impair
9 the authority of the Attorney General or any authorized
10 antitrust investigator to (a) lay before any grand jury im-
11 paneled before any district court of the United States any
12 evidence concerning any alleged antitrust violation, (b)
13 invoke the power of any such court to compel the produc-
14 tion of any evidence before any such grand jury, (c) file
15 a civil complaint or criminal information alleging an anti-
16 trust violation which is not described in the demand, or (d)
17 institute any proceeding for the enforcement of any order
18 or process issued in execution of such power, or for the
19 punishment of any organization or individual for disobedience
20 of any such order or process.

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