

75TH CONGRESS  
1ST SESSION

# S. 721

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IN THE SENATE OF THE UNITED STATES

JANUARY 12, 1937

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

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## A BILL

To provide for the licensing of corporations engaged in interstate or foreign commerce, 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 Corporation Licensing  
4 Act of 1937.

5 LICENSE REQUIRED FOR INTERSTATE OR FOREIGN  
6 BUSINESS

7 SEC. 2. On and after days from the date of enact-  
8 ment of this Act, it shall be unlawful for any corporation  
9 (except a bank, a common carrier subject to the Interstate  
10 Commerce Act, as amended, a common carrier or, insofar  
11 as engaged in radio broadcasting, a licensee, subject to the

1 Communications Act of 1934, a China Trade Act corpo-  
2 ration, or a corporation the majority of the stock of which  
3 is held by the United States or any agency or instrumen-  
4 tality thereof or corporations engaged in publishing news-  
5 papers, magazines, or books) organized under the laws of  
6 the United States or the District of Columbia, or of any  
7 State, Territory, or possession of the United States, or of  
8 any foreign country, to engage directly or indirectly in  
9 interstate or foreign commerce, without first having obtained  
10 a license therefor from the Federal Trade Commission  
11 (hereinafter referred to as the Commission); and for the  
12 purposes of this Act, a corporation shall be deemed to be  
13 engaged in interstate or foreign commerce, if it holds con-  
14 trol (through stock ownership, a voting trust or trusts, a  
15 holding company or companies, or any other direct or indi-  
16 rect means) of a corporation engaged in interstate or for-  
17 eign commerce, or of two or more corporations, any one of  
18 which is engaged in interstate or foreign commerce. As  
19 used in this Act, the term "interstate or foreign commerce"  
20 means commerce between any place in a State, Territory,  
21 or possession of the United States, or the District of Colum-  
22 bia, and any place outside thereof; or between points within  
23 the same State or within the District of Columbia, but  
24 through any place outside thereof.

## ISSUANCE OF LICENSES

1  
2 SEC. 3. (a) Before any license shall be issued under  
3 this Act the applicant corporation shall file with the Com-  
4 mission a sworn statement with respect to its operations,  
5 which shall include information concerning its organization  
6 and financial structure, the character of its transactions in  
7 interstate or foreign commerce, the terms, position, rights,  
8 and privileges of the different classes of its securities out-  
9 standing, the terms on which its securities have been offered  
10 to the public or otherwise, the property taken by the corpora-  
11 tion at the time of its organization and the consideration  
12 paid therefor in money or otherwise, its bonded indebtedness  
13 and the interests of the promoters therein, the personnel and  
14 salaries of its management, its charter and bylaws, the  
15 number and local distribution of its stockholders, contracts  
16 made with promoters and with financial interests with  
17 respect to the organization of the corporation, management,  
18 and service contracts, special legislation relating to the  
19 corporation, its profits and losses for not more than the  
20 preceding fiscal years, and such further information with  
21 respect to the operations of the corporation as the Com-  
22 mission may, by regulation, require as necessary or appro-  
23 priate in the public interest or for the protection of investors.  
24 (b) Application for such licenses shall be made, and  
25 the licenses shall be issued, in such manner as the Commis-

1 sion shall, by regulation, prescribe. Each such license shall  
2 contain such terms and conditions as the Commission shall  
3 prescribe as necessary or appropriate to carry out the pur-  
4 poses of this Act, shall be effective from the date specified  
5 therein, and shall continue in effect until suspended or  
6 revoked.

7 (c) The Commission shall by order deny the applica-  
8 tion for a license of any applicant corporation which fails  
9 to comply with the provisions of subsection (a) of this  
10 section, or if the Commission finds that the applicant corpo-  
11 ration is an unlawful trust or combination in violation of  
12 the antitrust laws as designated in section 1 of the Act entitled  
13 "An Act to supplement existing laws against unlawful  
14 restraints and monopolies, and for other purposes"; approved  
15 October 15, 1914, that it is a party to any contract, combina-  
16 tion in the form of trust, or otherwise, or conspiracy in  
17 restraint of trade or commerce in violation of such laws, or  
18 that it is monopolizing, or attempting to monopolize, or com-  
19 bining or conspiring with any other person to monopolize,  
20 any part of such trade or commerce.

#### 21 REVOCATION OF LICENSES

22 SEC. 4. After appropriate opportunity for notice and  
23 hearing, the Commission is authorized by order to suspend  
24 or revoke any such license if it finds that the corporation  
25 to which the license was issued has violated any provision

1 of this Act or any rule, regulation, or order of the Commis-  
2 sion made thereunder; and the Commission shall revoke  
3 the license of any corporation which has been finally adjudged  
4 guilty by a Federal court in any proceeding, civil or criminal,  
5 of a violation of the antitrust laws.

6                   REPORTS AND EXAMINATIONS

7       SEC. 5. (a) Each corporation which obtains a license  
8 under this Act shall make an annual report to the Com-  
9 mission, certified as required by the rules and regulations of  
10 the Commission by independent public accountants, which  
11 shall contain such information with respect to the organiza-  
12 tion, capitalization, properties, earnings, profits, dividends,  
13 and business methods of the corporation, as the Commission  
14 may prescribe as necessary or appropriate in the public  
15 interest or for the protection of investors. Each such  
16 corporation shall also make such special reports, similarly  
17 certified, as the Commission shall from time to time require  
18 for the purpose of keeping itself informed with respect to  
19 the operations of the corporation, and in the event that  
20 any such corporation shall increase its capital or issue any  
21 bonds, notes, debentures, or similar obligations it shall sub-  
22 mit a statement with respect thereto to the Commission.  
23 The Commission may prescribe, in regard to reports and  
24 statements made pursuant to this section, the form or forms  
25 in which the required information shall be set forth, the

1 items or details to be shown in the balance sheet and the  
2 earning statement, and the methods to be followed in the  
3 preparation of reports, in the appraisal or valuation of  
4 assets and liabilities, in the determination of depreciation  
5 and depletion, in the differentiation of recurring and non-  
6 recurring income, in the differentiation of investment and  
7 operating income, and in the preparation, where the Com-  
8 mission deems it necessary or desirable, of separate and/or  
9 consolidated balance sheets or income accounts of any per-  
10 son directly or indirectly controlling or controlled by the  
11 corporation, or any person under direct or indirect com-  
12 mon control with the corporation; but in the case of the  
13 reports and statements of any corporation whose methods  
14 of accounting are prescribed, or whose securities are reg-  
15 istered, under the provisions of any law of the United  
16 States, or any rule or regulation thereunder, the rules and  
17 regulations of the Commission with respect to such reports  
18 and statements shall not be inconsistent with the require-  
19 ments imposed by such law or rule or regulation in respect  
20 of the same subject matter.

21 (b) The Commission is further authorized to provide  
22 for periodical or special examinations of the corporations  
23 which obtain licenses under this Act and to establish a  
24 schedule of reasonable fees for such examinations and for  
25 the issuance of licenses under this Act. All such fees shall

1 be collected by the Commission in such manner as it may  
 2 direct, and the amount of all fees so collected shall be covered  
 3 into the Treasury as miscellaneous receipts.

4 INVESTIGATIONS

5 SEC. 6. (a) The Commission may, in its discretion,  
 6 make such investigations as it deems necessary to determine  
 7 whether any person has violated or is about to violate  
 8 any provision of this Act or any rule or regulation there-  
 9 under, and may require or permit any person to file with  
 10 it a statement in writing, under oath or otherwise as the  
 11 Commission shall determine, as to all the facts and circum-  
 12 stances concerning the matter to be investigated. The  
 13 Commission is authorized, in its discretion, to publish in-  
 14 formation concerning any such violations; and to investigate  
 15 any facts, conditions, practices, or matters which it may  
 16 deem necessary or proper to aid in the enforcement of the  
 17 provisions of this Act, in the prescribing of rules and regula-  
 18 tions thereunder, or in securing information to serve as a basis  
 19 for recommending further legislation concerning the matters  
 20 to which this Act relates.

21 (b) For the purpose of any such investigation, or any  
 22 other proceeding under this Act, any member of the Com-  
 23 mission or any officer designated by it is empowered to  
 24 administer oaths and affirmations, subpoena witnesses, compel  
 25 their attendance, take evidence, and require the production

1 of any books, papers, correspondence, memoranda, or other  
2 records which the Commission deems relevant or material to  
3 the inquiry. Such attendance of witnesses and the produc-  
4 tion of any such records may be required from any place in  
5 the United States or any State at any designated place of  
6 hearing.

7 (c) In case of contumacy by, or refusal to obey a  
8 subpoena issued to, any person, the Commission may invoke  
9 the aid of any court of the United States within the juris-  
10 diction of which such investigation or proceeding is carried  
11 on, or where such person resides or carries on business, in  
12 requiring the attendance and testimony of witnesses and the  
13 production of books, papers, correspondence, memoranda,  
14 and other records. And such court may issue an order re-  
15 quiring such person to appear before the Commission or  
16 member or officer designated by the Commission, there to  
17 produce records, if so ordered, or to give testimony touching  
18 the matter under investigation or in question; and any  
19 failure to obey such order of the court may be punished by  
20 such court as a contempt thereof. All process in any such  
21 case may be served in the judicial district whereof such  
22 person is an inhabitant or wherever he may be found. Any  
23 person who shall, without just cause, fail or refuse to attend  
24 and testify, or to answer any lawful inquiry, or to produce  
25 books, papers, correspondence, memoranda, and other rec-



1 ords, if in his power so to do, in obedience to the subpoena  
2 of the Commission, shall be guilty of a misdemeanor and,  
3 upon conviction, shall be subject to a fine of not more than  
4 \$1,000 or to imprisonment for a term of not more than one  
5 year, or both.

6 (d) No person shall be excused from attending and  
7 testifying or from producing books, papers, contracts, agree-  
8 ments, and other records and documents before the Com-  
9 mission, or in obedience of the subpoena of the Commission  
10 or any member thereof or any officer designated by it, or  
11 in any cause or proceeding instituted by the Commission  
12 under this Act, on the ground that the testimony or evi-  
13 dence, documentary or otherwise, required of him may  
14 tend to incriminate him or subject him to a penalty or  
15 forfeiture; but no individual shall be prosecuted or subject  
16 to any penalty or forfeiture for or on account of any trans-  
17 action, matter, or thing concerning which he is compelled,  
18 after having claimed his privilege against self-incrimination,  
19 to testify or produce evidence, documentary or otherwise,  
20 except that such individual so testifying shall not be exempt  
21 from prosecution and punishment for perjury committed in  
22 so testifying.

23 INJUNCTIONS AND PROSECUTION OF OFFENSES

24 SEC. 7. (a) Whenever it shall appear to the Commis-  
25 sion that any person is engaged or about to engage in any

1 acts or practices which constitute or will constitute a violation  
2 of the provisions of this Act, or of any rule or regulation  
3 thereunder, it may in its discretion bring an action in the  
4 proper district court of the United States, the District  
5 Court of the United States for the District of Columbia, or  
6 the United States courts of any Territory or other place sub-  
7 ject to the jurisdiction of the United States, to enjoin such  
8 acts or practices, and upon a proper showing a permanent  
9 or temporary injunction or restraining order shall be granted  
10 without bond. The Commission may transmit such evidence  
11 as may be available concerning such acts or practices to the  
12 Attorney General, who may, in his discretion, institute the  
13 necessary criminal proceedings under this Act.

14 (b) Upon application of the Commission the district  
15 courts of the United States, the District Court of the United  
16 States for the District of Columbia, and the United States  
17 courts of any Territory or other place subject to the juris-  
18 diction of the United States, shall also have jurisdiction to  
19 issue writs of mandamus commanding any person to comply  
20 with the provisions of this Act or any order of the Commis-  
21 sion made in pursuance thereof.

#### 22 COURT REVIEW OF ORDERS

23 SEC. 8. (a) Any person aggrieved by an order is-  
24 sued by the Commission in a proceeding under this Act  
25 to which such person is a party (except an order under

1 section 4 revoking a license for violation of the antitrust  
2 laws) may obtain a review of such order in the Circuit  
3 Court of Appeals of the United States, within any circuit  
4 wherein such person resides or has his principal place of  
5 business, or in the United States Court of Appeals for the  
6 District of Columbia, by filing in such court, within sixty  
7 days after the entry of such order, a written petition pray-  
8 ing that the order of the Commission be modified or set  
9 aside in whole or in part. A copy of such petition shall  
10 be forthwith served upon any member of the Commission,  
11 and thereupon the Commission shall certify and file in the  
12 court a transcript of the record upon which the order com-  
13 plained of was entered. Upon the filing of such transcript  
14 such court shall have exclusive jurisdiction to affirm, modify,  
15 and enforce or set aside such order, in whole or in part.  
16 No objection to the order of the Commission shall be con-  
17 sidered by the court unless such objection shall have been  
18 urged before the Commission. The finding of the Com-  
19 mission as to the facts, if supported by substantial evi-  
20 dence, shall be conclusive. If either party shall apply to  
21 the court for leave to adduce additional evidence, and shall  
22 show to the satisfaction of the court that such additional  
23 evidence is material and that there were reasonable grounds  
24 for failure to adduce such evidence in the hearing before  
25 the Commission, the court may order such additional evi-

1 dence to be taken before the Commission and to be adduced  
2 upon the hearing in such manner and upon such terms and  
3 conditions as to the court may seem proper. The Com-  
4 mission may modify its findings as to the facts, by reason  
5 of the additional evidence so taken, and it shall file such  
6 modified or new findings, which, if supported by substantial  
7 evidence, shall be conclusive, and its recommendation, if any,  
8 for the modification or setting aside of the original order.  
9 The judgment and decree of the court, affirming, modify-  
10 ing, and enforcing or setting aside, in whole or in part,  
11 any such order of the Commission, shall be final, subject  
12 to review by the Supreme Court of the United States upon  
13 certiorari or certification as provided in sections 239 and  
14 240 of the Judicial Code, as amended (U. S. C., title 28,  
15 secs. 346 and 347).

16 (b) The commencement of proceedings under sub-  
17 section (a) shall not, unless specifically ordered by the  
18 court, operate as a stay of the Commission's order.

19 JURISDICTION OF OFFENSES AND SUITS

20 SEC. 9. The district courts of the United States, the  
21 District Court of the United States for the District of Colum-  
22 bia, and the United States courts of any Territory or other  
23 place subject to the jurisdiction of the United States shall  
24 have exclusive jurisdiction of violations of this Act or the  
25 rules and regulations thereunder, and of all suits in equity

1 and actions at law brought to enforce any liability or duty  
2 created by this Act or the rules and regulations thereunder.  
3 Any criminal proceeding may be brought in the district  
4 wherein any act or transaction constituting the violation  
5 occurred. Any suit or action to enforce any liability or  
6 duty created by this Act or rules and regulations thereunder,  
7 or to enjoin any violation of such Act or rules and regula-  
8 tions, may be brought in any such district or in the district  
9 wherein the defendant is found or is an inhabitant or trans-  
10 acts business, and process in such cases may be served in  
11 any other district of which the defendant is an inhabitant  
12 or wherever the defendant may be found. Judgments and  
13 decrees so rendered shall be subject to review as provided  
14 in sections 128 and 240 of the Judicial Code, as amended  
15 (U. S. C., title 28, secs. 225 and 347). No costs shall be  
16 assessed for or against the Commission in any proceeding  
17 under this title brought by or against it in any such court.

#### 18 RULES AND REGULATIONS

19 SEC. 10. The Commission is authorized to prescribe  
20 such rules and regulations and to issue such orders as may be  
21 necessary to carry out the provisions of this Act.

#### 22 PENALTIES

23 SEC. 11. Any corporation subject to this Act, or any  
24 officer, director, agent, or employee thereof, that willfully  
25 violates any provision of this Act shall, upon conviction

1 thereof, be fined not more than \$ , or imprisoned not  
2 more than years, or both, and each day that any such  
3 violation continues shall be deemed a separate offense.

4 SEPARABILITY OF PROVISIONS

5 SEC. 12. If any provision of this Act, or the applica-  
6 tion thereof to any person or circumstances, is held invalid,  
7 the remainder of the Act, and the application of such pro-  
8 visions to other persons or circumstances, shall not be effected  
9 thereby.

10 RESERVATION OF RIGHT TO ALTER, AMEND, OR REPEAL

11 SEC. 13. The right to alter, amend, or repeal this Act  
12 is hereby expressly reserved.