

# Calendar No. 1484

91ST CONGRESS }  
2d Session }

SENATE

REPORT  
No. 91-1472

## ARTICLES INTENDED FOR PREVENTING CONCEPTION

DECEMBER 16 (legislative day, DECEMBER 15), 1970.—Ordered to be printed

Mr. LONG, from the Committee on Finance,  
submitted the following

### REPORT

[To accompany H.R. 4605]

The Committee on Finance, to which was referred the bill (H.R. 4605) to amend the Tariff Act of 1930 and the United States Code to remove the prohibitions against importing, transporting, and mailing in the U.S. mails articles for preventing conception, and advertisements with respect to such articles, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

#### EXPLANATION OF COMMITTEE AMENDMENTS

The committee amendments are technical in nature. They would conform the provisions of the House-passed bill to the new provisions of the Postal Reform Act of 1970.

#### PURPOSE

The purpose of H.R. 4605, is to remove the prohibitions against importing, transporting, and mailing in the U.S. mails articles for preventing conception.

#### GENERAL STATEMENT

Existing statutes completely prohibit the importation, interstate transportation, and mailing of contraceptive materials, or the mailing of advertisement or information concerning how or where such contraceptives may be obtained or how conception may be prevented. H.R. 4605 would amend or repeal these prohibitions for the most part by deleting references to articles "for the prevention of conception," or similar language, from provisions of law which cover articles the importation, transportation or mailing of which has been considered not to be in the public interest.

The first section of H. R. 4605 would amend section 305(a) of the Tariff Act of 1930 which prohibits the importation of "obscene or immoral" articles by removing the prohibition against importing articles for the prevention of conception. Section 2 of the bill would amend section 552 of title 18 of the United States Code by removing the prohibition against U.S. officers aiding in the importation of contraceptive devices and articles.

Sections 3 and 4 of the bill would amend sections 1461 and 1462 of title 18 of the United States Code, respectively, by excluding contraceptive materials from the obscene and crime-inciting materials, the importing, transporting, mailing, and advertising of which are subject to criminal penalties. However, as amended by section 5(b) of the bill, section 1461 of title 18 would be amended so that criminal sections would continue to apply to mailings of advertisements of contraceptive matter which would be considered, under the bill, as nonmailable when the advertising is not solicited by the addressee.

Section 5 of H. R. 4605 would amend section 4001 of title 39 of the United States Code so as to limit the unsolicited mailing of articles for preventing conception to unsolicited samples among certain authorized parties (manufacturers, dealers, and licensed physicians, nurses, pharmacists, druggists, hospitals, and clinics). The bill would continue the prohibition against the mailing of advertisement with regard to articles for preventing conception if unsolicited or if not mailed to a licensed person such as those indicated above. Section 6 makes similar amendments to section 3001 of title 39 (as revised and reenacted by the Postal Reorganization Act) to become effective when such section takes effect under the provisions of the Postal Reorganization Act.

Your committee received favorable reports on H. R. 4605 from the Departments of Health, Education, and Welfare, Commerce, State, Labor, Treasury, and Post Office. Informative reports were received from the U.S. Tariff Commission and the Department of Justice.

#### CHANGES IN EXISTING LAW MADE BY THE BILL AS REPORTED

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

#### SECTION 305(a) OF THE TARIFF ACT OF 1930

##### SEC. 305. IMMORAL ARTICLES—IMPORTATION PROHIBITED

(a) PROHIBITION OF IMPORTATION.—All persons are prohibited from importing into the United States from any foreign country any book, pamphlet, paper, writing, advertisement, circular, print, picture, or drawing containing any matter advocating or urging treason or insurrection against the United States, or forcible resistance to any law of the United States, or containing any threat to take the life of or inflict bodily harm upon any person in the United States, or any obscene book, pamphlet, paper, writing, advertisement, circular, print picture, drawing, or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article which is obscene or immoral, or any drug or medicine or any article whatever

[for the prevention of conception or] for causing unlawful abortion, or any lottery ticket, or any printed paper that may be used as a lottery ticket, or any advertisement of any lottery. No such articles, whether imported separately or contained in packages with other goods entitled to entry, shall be admitted to entry; and all such articles and, unless it appears to the satisfaction of the collector that the obscene or other prohibited articles contained in the package were inclosed therein without the knowledge or consent of the importer, owner, agent, or consignee, the entire contents of the package in which such articles are contained, shall be subject to seizure and forfeiture as hereinafter provided: *Provided*, That the drugs hereinbefore mentioned, when imported in bulk and not put up for any of the purposes hereinbefore specified, are excepted from the operation of this subdivision: *Provided further*, That the Secretary of the Treasury may, in his discretion, admit the so-called classics or books of recognized and established literary or scientific merit, but may, in his discretion, admit such classics or books only when imported for noncommercial purposes.

Upon the appearance of any such book or matter at any customs office, the same shall be seized and held by the collector to await the judgment of the district court as hereinafter provided; and no protest shall be taken to the United States Customs Court from the decision of the collector. Upon the seizure of such book or matter the collector shall transmit information thereof to the district attorney of the district in which is situated the office at which such seizure has taken place, who shall institute proceedings in the district court for the forfeiture, confiscation, and destruction of the book or matter seized. Upon the adjudication that such book or matter thus seized is of the character the entry of which is by this section prohibited, it shall be ordered destroyed and shall be destroyed. Upon adjudication that such book or matter thus seized is not of the character the entry of which is by this section prohibited, it shall not be excluded from entry under the provisions of this section.

In any such proceeding any party in interest may upon demand have the facts at issue determined by a jury and any party may have an appeal or the right of review as in the case of ordinary actions or suits.

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#### TITLE 18 OF THE UNITED STATES CODE

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§ 552. Officers aiding importation of obscene or treasonous books and articles.

Whoever, being an officer, agent, or employee of the United States, knowingly aids or abets any person engaged in any violation of any of the provisions of law prohibiting importing, advertising, dealing in, exhibiting, or sending or receiving by mail obscene or indecent publications or representations, or books, pamphlets, papers, writings, advertisements, circulars, prints, pictures, or drawings containing any matter advocating or urging treason or insurrection against the United States or forcible resistance to any laws of the United States, or containing any threat to take the life of or inflict bodily harm upon any person in the United States, or means for [preventing conception or]

procuring abortion, or other articles of indecent or immoral use or tendency, shall be fined not more than \$5,000 or imprisoned not more than ten years, or both.

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**§ 1461. Mailing obscene or crime-inciting matter.**

Every obscene, lewd, lascivious, indecent, filthy or vile article, matter, thing, device, or substance; and—

Every article or thing designed, adapted, or intended for [preventing conception or] producing abortion, or for any indecent or immoral use; and

Every article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for [preventing conception or] producing abortion, or for any indecent or immoral purpose; and

Every written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information, directly or indirectly, where, or how, or from whom, or by what means any of such mentioned matters, articles, or things may be obtained or made, or where or by whom any act or operation of any kind for the procuring or producing of abortion will be done or performed, or how or by what means [conception may be prevented or] abortion *may be* produced, whether sealed or unsealed; and

Every paper, writing, advertisement, or representation that any article, instrument, substance, drug, medicine, or thing may, or can, be used or applied for [preventing conception or] producing abortion, or for any indecent or immoral purpose; and

Every description calculated to induce or incite a person to so use or apply any such article, instrument, substance, drug, medicine, or thing—

Is declared to be nonmailable matter and shall not be conveyed in the mails or delivered from any post office or by any letter carrier.

Whoever knowingly uses the mails for the mailing, carriage in the mails, or delivery of anything declared by this section or section 4001 (d) of title 39 to be nonmailable, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, or knowingly takes any such thing from the mails for the purpose of circulating or disposing thereof, or of aiding in the circulation or disposition thereof, shall be fined not more than \$5,000 or imprisoned not more than five years, or both, for the first such offense, and shall be fined not more than \$10,000 or imprisoned not more than ten years, or both, for each offense thereafter.

The term "indecent", as used in this section includes matter of a character tending to incite arson, murder, or assassination.

**§ 1462. Importation or transportation of obscene matters.**

Whoever brings into the United States, or any place subject to the jurisdiction thereof, or knowingly uses any express company or other common carrier, for carriage in interstate or foreign commerce—

(a) any obscene, lewd, lascivious, or filthy book, pamphlet, picture, motion-picture film, paper, letter, writing, print, or other matter of indecent character; or

(b) any obscene lewd, lascivious, or filthy phonograph recording, electrical transcription, or other article or thing capable of producing sound; or

(c) any drug, medicine, article, or thing designed, adapted, or intended for [preventing conception, or] producing abortion, or for any indecent or immoral use; or any written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information, directly or indirectly, where, how, or of whom, or by what means any of such mentioned articles, matters, or things may be obtained or made; or

Whoever knowingly takes from such express company or other common carrier any matter or thing the carriage of which is herein made unlawful—

Shall be fined not more than \$5,000 or imprisoned not more than five years, or both, for the first such offense and shall be fined not more than \$10,000 or imprisoned not more than ten years, or both, for each such offense thereafter.

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TITLE 39 OF THE UNITED STATES CODE

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CHAPTER 51—NONMAILABLE MATTER

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§ 4001. Nonmailable matter

(a) Matter, the deposit of which in the mails is punishable under sections 1302, 1341, 1342, 1461, 1463, 1714, 1715, 1716, 1717, or 1718 of title 18, is nonmailable.

(b) Except as provided in section 4002 of this title, nonmailable matter which reaches the office of delivery, or which may be seized or detained for violation of law, shall be disposed of as the Postmaster General directs.

(c) Matter otherwise legally acceptable in the mails which—

(1) is in the form of, and reasonably could be interpreted or construed as, a bill, invoice, or statement of account due; but

(2) constitutes, in fact, a solicitation for the order by the addressee of goods or services, or both;

is nonmailable matter, shall not be carried or delivered by mail, and shall be disposed of as the Postmaster General directs, unless such matter bears on its face, in conspicuous and legible type in contrast by typography, layout, or color with other printing on its face, in accordance with regulations which the Postmaster General shall prescribe—

(A) the following notice: "This is a solicitation for the order of goods and/or services and not a bill, invoice, or statement of account due. You are not under obligation to make any payments on account of this offer unless you accept this offer."; or

(B) in lieu thereof, a notice to the same effect in words which the Postmaster General may prescribe.

(d)(1) Any matter which is unsolicited by the addressee and which is designed, adopted, or intended for preventing conception (except unsolicited samples thereof mailed to a manufacturer thereof, a dealer therein,

*a licensed physician or surgeon, or a nurse, pharmacist, druggist, hospital, or clinic) is nonmailable matter, shall not be carried or delivered by mail, and shall be disposed of as the Postmaster General directs.*

*(2) Any unsolicited advertisement of matter which is designed, adapted, or intended for preventing conception is nonmailable matter, shall not be carried or delivered by mail, and shall be disposed of as the Postmaster General directs unless the advertisement—*

*(A) is mailed to a manufacturer of such matter, a dealer therein, a licensed physician or surgeon, or a nurse, pharmacist, druggist, hospital, or clinic; or*

*(B) accompanies in the same parcel any unsolicited sample excepted by paragraph (1) of this subsection.*

*An advertisement shall not be deemed to be unsolicited for the purposes of this paragraph if it is contained in a publication for which the addressee has paid or promised to pay a consideration or which he has otherwise indicated he desires to receive.*

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TITLE 39, UNITED STATES CODE (AS REVISED AND  
REENACTED BY THE POSTAL REORGANIZATION ACT)

CHAPTER 30—NONMAILABLE MATTER

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§ 3001. Nonmailable matter

(a) Matter the deposit of which in the mails is punishable under section 1302, 1341, 1342, 1461, 1463, 1714, 1715, 1716, 1717 or 1718 of title 18 is nonmailable.

(b) Except as provided in subsection (c) of this section, nonmailable matter which reaches the office of delivery, or which may be seized or detained for violation of law, shall be disposed of as the Postal Service shall direct.

(c)(1) Matter which—

(A) exceeds the size and weight limits prescribed for the particular class of mail; or

(B) is of a character perishable within the period required for transportation and delivery;

is nonmailable.

(2) Matter made nonmailable by this subsection which reaches the office of destination may be delivered in accordance with its address, if the party addressed furnishes the name and address of the sender.

(d) Matter otherwise legally acceptable in the mails which—

(1) is in the form of, and reasonably could be interpreted or construed as, a bill, invoice, or statement of account due; but

(2) constitutes, in fact, a solicitation for the order by the addressee of goods or services, or both;

is nonmailable matter, shall not be carried or delivered by mail, and shall be disposed of as the Postal Service directs, unless such matter bears on its face, in conspicuous and legible type in contrast by typography, layout, or color with other printing on its face, in accordance with regulations which the Postal Service shall prescribe—

(A) the following notice: 'This is a solicitation for the order of goods or services, or both, and not a bill, invoice, or statement of account due. You are under no obligation to make any payments on account of this offer unless you accept this offer.'; or

(B) in lieu thereof, a notice to the same effect in words which the Postal Service may prescribe.

(e)(1) *Any matter which is unsolicited by the addressee and which is designed, adapted, or intended for preventing conception (except unsolicited samples thereof mailed to a manufacturer thereof, a dealer therein, a licensed physician or surgeon, or a nurse, pharmacist, druggist, hospital, or clinic) is nonmailable matter, shall not be carried or delivered by mail, and shall be disposed of as the Postal Service directs.*

(2) *Any unsolicited advertisement of matter which is designed, adapted, or intended for preventing conception is nonmailable matter, shall not be carried or delivered by mail, and shall be disposed of as the Postal Service directs unless the advertisement—*

(A) *is mailed to a manufacturer of such matter, a dealer therein, a licensed physician or surgeon, or a nurse, pharmacist, druggist, hospital, or clinic; or*

(B) *accompanies in the same parcel any unsolicited sample excepted by paragraph (1) of this subsection. An advertisement shall not be deemed to be unsolicited for the purposes of this paragraph if it is contained in a publication for which the addressee has paid or promised to pay a consideration on which he has otherwise indicated he desires to receive.*

[(e)] (f) Except as otherwise provided by law, proceedings concerning the mailability of matter under this chapter and chapters 71 and 83 of title 18 shall be conducted in accordance with chapters 5 and 7 of title 5.

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