

duct constituting an offense under section 1033 and, upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than \$50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. If the offense has contributed to the decision of a court of appropriate jurisdiction to issue an order directing the conservation, rehabilitation, or liquidation of an insurer, such penalty shall be remitted to the appropriate regulatory official for the benefit of the policyholders, claimants, and creditors of such insurer. The imposition of a civil penalty under this subsection does not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available by law to the United States or any other person.

(b) If the Attorney General has reason to believe that a person is engaged in conduct constituting an offense under section 1033, the Attorney General may petition an appropriate United States district court for an order prohibiting that person from engaging in such conduct. The court may issue an order prohibiting that person from engaging in such conduct if the court finds that the conduct constitutes such an offense. The filing of a petition under this section does not preclude any other remedy which is available by law to the United States or any other person.

(Added Pub. L. 103-322, title XXXII, § 320603(a), Sept. 13, 1994, 108 Stat. 2118.)

#### **§ 1035. False statements relating to health care matters**

(a) Whoever, in any matter involving a health care benefit program, knowingly and willfully—

- (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; or
- (2) makes any materially false, fictitious, or fraudulent statements or representations, or makes or uses any materially false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry,

in connection with the delivery of or payment for health care benefits, items, or services, shall be fined under this title or imprisoned not more than 5 years, or both.

(b) As used in this section, the term “health care benefit program” has the meaning given such term in section 24(b) of this title.

(Added Pub. L. 104-191, title II, § 244(a), Aug. 21, 1996, 110 Stat. 2017.)

#### **§ 1036. Entry by false pretenses to any real property, vessel, or aircraft of the United States or secure area of any airport or seaport**

(a) Whoever, by any fraud or false pretense, enters or attempts to enter—

- (1) any real property belonging in whole or in part to, or leased by, the United States;
- (2) any vessel or aircraft belonging in whole or in part to, or leased by, the United States;
- (3) any secure or restricted area of any seaport, designated as secure in an approved security plan, as required under section 70103 of

title 46, United States Code, and the rules and regulations promulgated under that section; or

- (4) any secure area of any airport,

shall be punished as provided in subsection (b) of this section.

(b) The punishment for an offense under subsection (a) of this section is—

- (1) a fine under this title or imprisonment for not more than 10 years, or both, if the offense is committed with the intent to commit a felony; or
- (2) a fine under this title or imprisonment for not more than 6 months, or both, in any other case.

(c) As used in this section—

(1) the term “secure area” means an area access to which is restricted by the airport authority, captain of the seaport, or a public agency; and

(2) the term “airport” has the meaning given such term in section 47102 of title 49.

(Added Pub. L. 106-547, § 2(a), Dec. 19, 2000, 114 Stat. 2738; amended Pub. L. 109-177, title III, § 302(a), Mar. 9, 2006, 120 Stat. 233.)

#### **AMENDMENTS**

2006—Pub. L. 109-177, § 302(a)(4), substituted “any airport or seaport” for “any airport” in section catchline. Subsec. (a)(3), (4). Pub. L. 109-177, § 302(a)(1), added par. (3) and redesignated former par. (3) as (4).

Subsec. (b)(1). Pub. L. 109-177, § 302(a)(2), substituted “10 years” for “5 years”.

Subsec. (c)(1). Pub. L. 109-177, § 302(a)(3), inserted “, captain of the seaport,” after “airport authority”.

#### **§ 1037. Fraud and related activity in connection with electronic mail**

(a) IN GENERAL.—Whoever, in or affecting interstate or foreign commerce, knowingly—

- (1) accesses a protected computer without authorization, and intentionally initiates the transmission of multiple commercial electronic mail messages from or through such computer,
- (2) uses a protected computer to relay or retransmit multiple commercial electronic mail messages, with the intent to deceive or mislead recipients, or any Internet access service, as to the origin of such messages,
- (3) materially falsifies header information in multiple commercial electronic mail messages and intentionally initiates the transmission of such messages,
- (4) registers, using information that materially falsifies the identity of the actual registrant, for five or more electronic mail accounts or online user accounts or two or more domain names, and intentionally initiates the transmission of multiple commercial electronic mail messages from any combination of such accounts or domain names, or
- (5) falsely represents oneself to be the registrant or the legitimate successor in interest to the registrant of 5 or more Internet Protocol addresses, and intentionally initiates the transmission of multiple commercial electronic mail messages from such addresses,

or conspires to do so, shall be punished as provided in subsection (b).

(b) **PENALTIES.**—The punishment for an offense under subsection (a) is—

(1) a fine under this title, imprisonment for not more than 5 years, or both, if—

(A) the offense is committed in furtherance of any felony under the laws of the United States or of any State; or

(B) the defendant has previously been convicted under this section or section 1030, or under the law of any State for conduct involving the transmission of multiple commercial electronic mail messages or unauthorized access to a computer system;

(2) a fine under this title, imprisonment for not more than 3 years, or both, if—

(A) the offense is an offense under subsection (a)(1);

(B) the offense is an offense under subsection (a)(4) and involved 20 or more falsified electronic mail or online user account registrations, or 10 or more falsified domain name registrations;

(C) the volume of electronic mail messages transmitted in furtherance of the offense exceeded 2,500 during any 24-hour period, 25,000 during any 30-day period, or 250,000 during any 1-year period;

(D) the offense caused loss to one or more persons aggregating \$5,000 or more in value during any 1-year period;

(E) as a result of the offense any individual committing the offense obtained anything of value aggregating \$5,000 or more during any 1-year period; or

(F) the offense was undertaken by the defendant in concert with three or more other persons with respect to whom the defendant occupied a position of organizer or leader; and

(3) a fine under this title or imprisonment for not more than 1 year, or both, in any other case.

(c) **FORFEITURE.**—

(1) **IN GENERAL.**—The court, in imposing sentence on a person who is convicted of an offense under this section, shall order that the defendant forfeit to the United States—

(A) any property, real or personal, constituting or traceable to gross proceeds obtained from such offense; and

(B) any equipment, software, or other technology used or intended to be used to commit or to facilitate the commission of such offense.

(2) **PROCEDURES.**—The procedures set forth in section 413 of the Controlled Substances Act (21 U.S.C. 853), other than subsection (d) of that section, and in Rule 32.2 of the Federal Rules of Criminal Procedure, shall apply to all stages of a criminal forfeiture proceeding under this section.

(d) **DEFINITIONS.**—In this section:

(1) **LOSS.**—The term “loss” has the meaning given that term in section 1030(e) of this title.

(2) **MATERIALLY.**—For purposes of paragraphs (3) and (4) of subsection (a), header information or registration information is materially falsified if it is altered or concealed in a manner that would impair the ability of a recipi-

ent of the message, an Internet access service processing the message on behalf of a recipient, a person alleging a violation of this section, or a law enforcement agency to identify, locate, or respond to a person who initiated the electronic mail message or to investigate the alleged violation.

(3) **MULTIPLE.**—The term “multiple” means more than 100 electronic mail messages during a 24-hour period, more than 1,000 electronic mail messages during a 30-day period, or more than 10,000 electronic mail messages during a 1-year period.

(4) **OTHER TERMS.**—Any other term has the meaning given that term by section 3 of the CAN-SPAM Act of 2003.

(Added Pub. L. 108-187, §4(a)(1), Dec. 16, 2003, 117 Stat. 2703.)

#### REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (c)(2), are set out in the Appendix to this title.

Section 3 of the CAN-SPAM Act of 2003, referred to in subsec. (d)(4), is classified to section 7702 of Title 15, Commerce and Trade.

#### EFFECTIVE DATE

Section effective Jan. 1, 2004, see section 16 of Pub. L. 108-187, set out as a note under section 7701 of Title 15, Commerce and Trade.

### § 1038. False information and hoaxes

(a) **CRIMINAL VIOLATION.**—

(1) **IN GENERAL.**—Whoever engages in any conduct with intent to convey false or misleading information under circumstances where such information may reasonably be believed and where such information indicates that an activity has taken, is taking, or will take place that would constitute a violation of chapter 2, 10, 11B, 39, 40, 44, 111, or 113B of this title, section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), or section 46502, the second sentence of section 46504, section 46505(b)(3) or (c), section 46506 if homicide or attempted homicide is involved, or section 60123(b) of title 49, shall—

(A) be fined under this title or imprisoned not more than 5 years, or both;

(B) if serious bodily injury results, be fined under this title or imprisoned not more than 20 years, or both; and

(C) if death results, be fined under this title or imprisoned for any number of years up to life, or both.

(2) **ARMED FORCES.**—Any person who makes a false statement, with intent to convey false or misleading information, about the death, injury, capture, or disappearance of a member of the Armed Forces of the United States during a war or armed conflict in which the United States is engaged—

(A) shall be fined under this title, imprisoned not more than 5 years, or both;

(B) if serious bodily injury results, shall be fined under this title, imprisoned not more than 20 years, or both; and

(C) if death results, shall be fined under this title, imprisoned for any number of years or for life, or both.