

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 334 (Mar. 4, 1909, ch. 321, § 211, 35 Stat. 1429 [1129]; Mar. 4, 1911, ch. 241, § 2, 36 Stat. 1339).

The attention of Congress is invited to the following decisions of the Federal courts construing this section and section 1462 of this title.

In *Youngs Rubber Corporation, Inc. v. C. I. Lee & Co., Inc.*, C.C.A. 1930, 45 F. 2d 103, it was said that the word "adapted" as used in this section and in section 1462 of this title, the latter relating to importation and transportation of obscene matter, is not to be construed literally, the more reasonable interpretation being to construe the whole phrase "designed, adapted or intended" as requiring "an intent on the part of the sender that the article mailed or shipped by common carrier be used for illegal contraception or abortion or for indecent or immoral purposes." The court pointed out that, taken literally, the language of these sections would seem to forbid the transportation by mail or common carrier of anything "adapted," in the sense of being suitable or fitted, for preventing conception or for any indecent or immoral purpose, "even though the article might also be capable of legitimate uses and the sender in good faith supposed that it would be used only legitimately. Such a construction would prevent mailing to or by a physician of any drug or mechanical device 'adapted' for contraceptive or abortifacient uses, although the physician desired to use or to prescribe it for proper medical purposes. The intention to prevent a proper medical use of drugs or other articles merely because they are capable of illegal uses is not lightly to be ascribed to Congress. Section 334 [this section] forbids also the mailing of obscene books and writings; yet it has never been thought to bar from the mails medical writings sent to or by physicians for proper purposes, though of a character which would render them highly indecent if sent broadcast to all classes of persons." In *United States v. Nicholas*, C.C.A. 1938, 97 F. 2d 510, ruling directly on this point, it was held that the importation or sending through the mails of contraceptive articles or publications is not forbidden absolutely, but only when such articles or publications are unlawfully employed. The same rule was followed in *Davis v. United States*, C.C.A. 1933, 62 F. 2d 473, quoting the obiter opinion from *Youngs Rubber Corporation v. C. I. Lee & Co.*, *supra*, and holding that the intent of the person mailing a circular conveying information for preventing conception that the article described therein should be used for condemned purposes was necessary for a conviction; also that this section must be given a reasonable construction. (See also *United States v. One Package*, C.C.A. 1936, 86 F. 2d 737.)

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Minor changes in phraseology were made.

AMENDMENTS

1994—Pub. L. 103-322, in eighth par., substituted "fined under this title" for "fined not more than \$5,000" after "thereof, shall be" and for "fined not more than \$10,000" after "offense, and shall be".

1971—Pub. L. 91-662, § 3(1), in second par., struck out "preventing conception or" before "producing abortion".

Pub. L. 91-662, § 3(1), in third par., struck out "preventing conception or" after "apply it for".

Pub. L. 91-662, § 3(2), (3), in fourth par., substituted "means abortion may be produced" for "means conception may be prevented or abortion produced".

Pub. L. 91-662, § 3(1), in fifth par., struck out "preventing conception or" after "applied for".

Pub. L. 91-662, § 6(3), in eighth par., inserted "or section 3001(e) of title 39" after "this section". Section 5(b) of Pub. L. 91-662 inserted reference to section 4001(d) of Title 39, The Postal Service, which reflected provisions of Title 39 prior to the effective date of Title 39, Postal Service, as enacted by the Postal Reorganization Act.

Said section 4001(d) was repealed by section 6(2) of Pub. L. 91-662, effective on the date that the Board of Governors of the Postal Service establish as the effective date for section 3001 of Title 39, Postal Service.

1958—Pub. L. 85-796 provided in eighth par. for continuing offenses by use of the mails instead of by deposits for mailing and for punishment for subsequent offenses.

1955—Act June 28, 1955, § 1, in first par., substituted "indecent, filthy or vile article, matter, thing, device or substance" for "or filthy book, pamphlet, picture paper, letter, writing, print, or other publication of an indecent character".

Act June 28, 1955, § 2, struck out fifth par., which read as follows: "Every letter, packet, or package, or other mail matter containing any filthy, vile, or indecent thing, device or substance; and".

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by sections 3 and 5(b) of Pub. L. 91-662 effective Jan. 9, 1971, see section 7 of Pub. L. 91-662, set out as a note under section 552 of this title.

Pub. L. 91-662, § 6, Jan. 8, 1971, 84 Stat. 1974, provided that the amendment made by that section is effective on date that Board of Governors of United States Postal Service establishes as the effective date for section 3001 of title 39 of the United States Code, as enacted by the Postal Reorganization Act.

COMMISSION ON OBSCENITY AND PORNOGRAPHY

Pub. L. 90-100, Oct. 3, 1967, 81 Stat. 253, as amended by Pub. L. 90-350, title V, § 502, June 19, 1968, 82 Stat. 197; Pub. L. 91-74, title V, § 503, Sept. 29, 1969, 83 Stat. 123, provided for establishment of Commission on Obscenity and Pornography, its membership, compensation of members, powers, functions, and duties of Commission, required Commission to report to President and to Congress its findings and recommendations no later than Sept. 30, 1970, and provided for its termination ten days following submission of report.

§ 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 or interactive computer service (as defined in section 230(e)(2)¹ of the Communications Act of 1934), 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 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 or receives, from such express company or other common carrier or interactive computer service (as defined in section 230(e)(2)¹ of the Communications Act of 1934) any matter or thing the carriage or importation of which is herein made unlawful—

¹ See References in Text note below.

Shall be fined under this title or imprisoned not more than five years, or both, for the first such offense and shall be fined under this title or imprisoned not more than ten years, or both, for each such offense thereafter.

(June 25, 1948, ch. 645, 62 Stat. 768; May 27, 1950, ch. 214, §1, 64 Stat. 194; Pub. L. 85-796, §2, Aug. 28, 1958, 72 Stat. 962; Pub. L. 91-662, §4, Jan. 8, 1971, 84 Stat. 1973; Pub. L. 103-322, title XXXIII, §330016(1)(K), (L), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104-104, title V, §507(a), Feb. 8, 1996, 110 Stat. 137.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §396 (Mar. 4, 1909, ch. 321, §245, 35 Stat. 1138; June 5, 1920, ch. 268, 41 Stat. 1060).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Words "in interstate or foreign commerce" were substituted for ten lines of text without loss of meaning. (See definitive section 10 of this title.)

(See reviser's note under section 1461 of this title.)

Minor changes in phraseology were made.

REFERENCES IN TEXT

Section 230(e)(2) of the Communications Act of 1934, referred to in text, was redesignated section 230(f)(2) of the Communications Act of 1934 by Pub. L. 105-277, div. C, title XIV, §1404(a)(2), Oct. 21, 1998, 112 Stat. 2681-739, and is classified to section 230(f)(2) of Title 47, Telecommunications.

AMENDMENTS

1996—Pub. L. 104-104, §507(a)(1), inserted "or interactive computer service (as defined in section 230(e)(2) of the Communications Act of 1934)" after "carrier" in first par.

Pub. L. 104-104, §507(a)(2), in second par., inserted "or receives," after "takes", "or interactive computer service (as defined in section 230(e)(2) of the Communications Act of 1934)" after "common carrier", and "or importation" after "carriage".

1994—Pub. L. 103-322, in last par., substituted "fined under this title" for "fined not more than \$5,000" after "Shall be" and for "fined not more than \$10,000" after "and shall be".

1971—Pub. L. 91-662 struck out "preventing conception, or" before "producing abortion".

1958—Pub. L. 85-796 substituted "uses" for "deposits with" in opening par., "carriage of which" for "depositing of which for carriage" in penultimate par., and inserted penalty provisions for subsequent offenses in last par.

1950—Act May 27, 1950, brought within scope of section the importation or transportation of any obscene, lewd, lascivious, or filthy phonograph recording, electrical transcription, or other article or thing capable of producing sound.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91-662 effective Jan. 9, 1971, see section 7 of Pub. L. 91-662, set out as a note under section 552 of this title.

CONSTRUCTION OF 1996 AMENDMENT

Pub. L. 104-104, title V, §507(c), Feb. 8, 1996, 110 Stat. 137, provided that: "The amendments made by this section [amending this section and section 1465 of this title] are clarifying and shall not be interpreted to limit or repeal any prohibition contained in sections 1462 and 1465 of title 18, United States Code, before such amendment, under the rule established in *United States v. Alpers*, 338 U.S. 680 (1950)."

§ 1463. Mailing indecent matter on wrappers or envelopes

All matter otherwise mailable by law, upon the envelope or outside cover or wrapper of which, and all postal cards upon which, any delineations, epithets, terms, or language of an indecent, lewd, lascivious, or obscene character are written or printed or otherwise impressed or apparent, are nonmailable matter, and shall not be conveyed in the mails nor delivered from any post office nor by any letter carrier, and shall be withdrawn from the mails under such regulations as the Postal Service shall prescribe.

Whoever knowingly deposits for mailing or delivery, anything declared by this section to be nonmailable matter, or knowingly takes the same from the mails for the purpose of circulating or disposing of or aiding in the circulation or disposition of the same, shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 769; Pub. L. 91-375, §6(j)(13), Aug. 12, 1970, 84 Stat. 778; Pub. L. 103-322, title XXXIII, §330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed. §335 (Mar. 4, 1909, ch. 321, §212, 35 Stat. 1129).

Said section 335 of title 18, U.S.C., 1940 ed., was incorporated in this section and section 1718 of this title.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103-322 substituted "fined under this title" for "fined not more than \$5,000" in last par.

1970—Pub. L. 91-375 substituted "Postal Service" for "Postmaster General".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 1464. Broadcasting obscene language

Whoever utters any obscene, indecent, or profane language by means of radio communication shall be fined under this title or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 769; Pub. L. 103-322, title XXXIII, §330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on sections 326 and 501 of title 47, U.S.C., 1940 ed., Telegraphs, Telephones, and Radio-telegraphs (June 19, 1934, ch. 652, §§326, 501, 48 Stat. 1091, 1100).

Section consolidates last sentence of section 326 with penalty provision of section 501 both of title 47, U.S.C., 1940 ed., with changes in phraseology necessary to effect the consolidation.

Section 501 of title 47, U.S.C., 1940 ed., is to remain, also, in said title 47, as it relates to other sections therein.

AMENDMENTS

1994—Pub. L. 103-322 substituted "fined under this title" for "fined not more than \$10,000".