

ARTICLES INTENDED FOR PREVENTING CONCEPTION

MAY 19, 1970.—Committed to the Committee of the Whole House on the State of the Union and Ordered to be printed

Mr. MILLS, from the Committee on Ways and Means,
submitted the following

REPORT

[To accompany H.R. 4605]

The Committee on Ways and Means, to whom 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.

The amendments are as follows:

Page 2, strike out line 9 and all that follows down through line 19, and insert:

SEC. 5 (a) Section 4001 of title 39 of the United States Code, relating to nonmailable matter, is amended by adding at the end thereof the following new subsection:

“(d) (1) Every article or thing 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 Postmaster General directs.

“(2) Every advertisement of any article or thing 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 if the advertisement is unsolicited, unless the advertisement—

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

“(B) accompanies in the same parcel any such article or thing mailed under conditions permitted under 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.”

(b) The eighth paragraph of section 1461 of title 18 of the United States Code is amended by inserting “or section 4001(d) of title 39” after “this section”.

Amend the title so as to read :

A bill 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.

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.

Section 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). At the suggestion of

the Post Office Department, your committee amended section 5 so as to 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.

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.

In the letter from the Department of Health, Education, and Welfare, it was stated :

There no longer seems to be any justification for associating with the obscene and immoral the importation, transportation, and mailing of drugs and other articles for the prevention of conception, and information thereon. It should be borne in mind that, if this bill should be enacted, the Federal Food, Drug, and Cosmetic Act would still apply to the importation and interstate transportation of drugs, medicines, and other articles for the prevention of conception. Accordingly, we believe that the outright deletion of the specific references to contraception from these sections of the Code, as proposed by H.R. 4605, would be in the public interest.

The Department of Labor's report stated in part :

We would not be opposed to enactment of these provisions. Such legislation would appear to be consistent with the changes that have occurred in the past few years in Federal, State, and local policies and practices with respect to the availability of birth control information and instruction, clinical and family planning services, and with the development of birth control research and services supported by numerous private and professional organizations. Moreover, it is our understanding that although the prohibitions would be removed the protective provisions of the Federal Food, Drug, and Cosmetic Act would continue to apply to imports and shipments of such items.

With regard to current provisions and their effectiveness, the Postmaster General stated in his report to the committee that :

In our view existing statutory prohibitions against the deposit of contraceptive materials in the mails today merits reappraisal, in the light of court decisions and present attitudes.

It is common knowledge that the legal standing of birth control advice and devices has in recent years undergone considerable change. The serious world problem of hunger and overpopulation, for example, has prompted our Government to make the results of scientific advances and attitudes on birth control and family planning fully available to countries requesting assistance. As a method of coping with foreign and domestic social problems, the dissemination of contraceptive information has become a widely accepted practice, and the delivery by mail of contraceptive information or materials has

by court decisions, and administrative rulings based on such decisions, been considered proper in cases where a lawful and permissive purpose is present.

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The lawful mailing or advertising of contraceptive articles, therefore, is dependent on the interpretation given to the intended purpose. The prohibitions of our postal laws, while intending to deter unlawful delivery by mail of contraceptive materials for indecent or immoral purposes, have made successful prosecution under the law difficult to achieve because of the rulings which allow the mailing of contraceptives under conditions described as "for lawful purposes". What is a lawful purpose within the meaning of the interpretations given, though vaguely identifiable, has with the passage of time also been considerably broadened. Also, many States have recognized the changing conditions, and have adopted positive legislation to authorize or encourage public family planning services. Moreover, within the past few years, many administrative decisions favorable to such programs have been made by State agencies.

In light of the above information it is quite clear that the cited law as presently written is unenforceable. And it seems equally clear that the history compiled in the administration of the law would require a reformulation of the statute in order to conform to today's views and standards of acceptability. Otherwise, the Criminal Code will continue to carry sanctions incapable of administration.

In view of the above, and in the absence of any objection to the bill having been received by the Committee on Ways and Means, your committee is unanimous in recommending enactment of H.R. 4605, as reported.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, 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 italics, 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 purpose hereinbefore specified, are exempt 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.

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 law of the United States, or con-

taining 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) *Every article or thing 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 Postmaster General directs.*

(2) *Every advertisement of any article or thing which is designed, adapter, 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 if the advertisement is unsolicited, unless the advertisement—*

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

(B) accompanies in the same parcel any such article or thing mailed under conditions permitted under 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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