

copy thereof which has been canceled as provided by law, fails to surrender the same after at least sixty days' notice by the appropriate court or the Commissioner or Deputy Commissioner of Immigration, shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 767; Pub. L. 103-322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

#### HISTORICAL AND REVISION NOTES

Based on subsections (a) par. (31), (b), (d) of section 746 of title 8, U.S.C., 1940 ed., Aliens and Nationality (Oct. 14, 1940, ch. 876, § 346(a) par. (31), (b), (d), 54 Stat. 1167).

Subsection (b) of said section 746 of title 8 is the authority for inserting "or a copy thereof" after "citizenship."

Changes were made in phraseology.

#### AMENDMENTS

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

#### TRANSFER OF FUNCTIONS

Functions of all other officers of Department of Justice and functions of all agencies and employees of such Department, with a few exceptions, transferred to Attorney General, with power vested, in him to authorize their performance or performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 2, of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to Title 5, Government Organization and Employees.

#### ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

### § 1429. Penalties for neglect or refusal to answer subpoena

Any person who has been subpoenaed under the provisions of subsection (d) of section 336 of the Immigration and Nationality Act to appear at the final hearing of an application for naturalization, and who shall neglect or refuse to so appear and to testify, if in the power of such person to do so, shall be fined under this title or imprisoned not more than five years, or both.

(Added June 27, 1952, ch. 477, title IV, § 402(b), 66 Stat. 276; amended Pub. L. 97-116, § 18(u)(1), Dec. 29, 1981, 95 Stat. 1621; Pub. L. 101-649, title IV, § 407(c)(21), Nov. 29, 1990, 104 Stat. 5041; Pub. L. 103-322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

#### REFERENCES IN TEXT

Subsection (d) of section 336 of the Immigration and Nationality Act, referred to in text, is classified to section 1447(d) of Title 8, Aliens and Nationality.

#### AMENDMENTS

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

1990—Pub. L. 101-649 substituted "an application" for "a petition".

1981—Pub. L. 97-116 substituted "subsection (d)" for "subsection (e)".

#### EFFECTIVE DATE OF 1990 AMENDMENT; SAVINGS PROVISIONS

Amendment by Pub. L. 101-649 effective Nov. 29, 1990, with general savings provisions, see section 408(a)(3)

and (d) of Pub. L. 101-649, set out as a note under section 1421 of Title 8, Aliens and Nationality.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-116 effective Dec. 29, 1981, see section 21(a) of Pub. L. 97-116, set out as a note under section 1101 of Title 8, Aliens and Nationality.

## CHAPTER 71—OBSCENITY

Sec.

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|--------|--|
| 1460.  | Possession with intent to sell, and sale, of obscene matter on Federal property. |
| 1461.  | Mailing obscene or crime-inciting matter.  |
| 1462.  | Importation or transportation of obscene matters.                                |
| 1463.  | Mailing indecent matter on wrappers or envelopes.                                |
| 1464.  | Broadcasting obscene language.   |
| 1465.  | Transportation of obscene matters for sale or distribution. <sup>1</sup>         |
| 1466.  | Engaging in the business of selling or transferring obscene matter.              |
| 1466A. | Obscene visual representations of the sexual abuse of children.                  |
| 1467.  | Criminal forfeiture.   |
| 1468.  | Distributing obscene material by cable or subscription television.               |
| 1469.  | Presumptions.  |
| 1470.  | Transfer of obscene material to minors.  |

#### AMENDMENTS

2003—Pub. L. 108-21, title V, § 504(b), Apr. 30, 2003, 117 Stat. 682, added item 1466A.

1998—Pub. L. 105-314, title IV, § 401(b), Oct. 30, 1998, 112 Stat. 2979, added item 1470.

1988—Pub. L. 100-690, title VII, §§ 7521(b), (f)[(e)], 7523(b), 7526(b), Nov. 18, 1988, 102 Stat. 4489, 4490, 4502, 4503, added items 1460 and 1466 to 1469.

1955—Act June 28, 1955, ch. 190, § 4, 69 Stat. 184, added item 1465.

1950—Act May 27, 1950, ch. 214, § 2, 64 Stat. 194, substituted "matters" for "literature" in item 1462.

### § 1460. Possession with intent to sell, and sale, of obscene matter on Federal property

(a) Whoever, either—

(1) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States; or

(2) in the Indian country as defined in section 1151 of this title,

knowingly sells or possesses with intent to sell an obscene visual depiction shall be punished by a fine in accordance with the provisions of this title or imprisoned for not more than 2 years, or both.

(b) For the purposes of this section, the term "visual depiction" includes undeveloped film and videotape but does not include mere words.

(Added Pub. L. 100-690, title VII, § 7526(a), Nov. 18, 1988, 102 Stat. 4503; amended Pub. L. 101-647, title III, § 323(c), Nov. 29, 1990, 104 Stat. 4819.)

#### AMENDMENTS

1990—Subsec. (a). Pub. L. 101-647, § 323(c)(1), struck out "or a visual depiction of a minor engaging in or assisting another person to engage in sexually explicit conduct," after "visual depiction" in concluding provisions.

<sup>1</sup> Section catchline amended by Pub. L. 109-248 without corresponding amendment of chapter analysis.

Subsec. (b). Pub. L. 101-647, §323(c)(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "For the purposes of this section—

"(1) the term 'visual depiction' includes undeveloped film and videotape but does not include mere words; and

"(2) the terms 'minor' and 'sexually explicit conduct' have the meaning given those terms in chapter 110 of this title."

#### § 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 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 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 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 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 3001(e) 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 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.

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

(June 25, 1948, ch. 645, 62 Stat. 768; June 28, 1955, ch. 190, §§1, 2, 69 Stat. 183; Pub. L. 85-796, §1, Aug. 28, 1958, 72 Stat. 962; Pub. L. 91-662, §§3, 5(b), 6(3), Jan. 8, 1971, 84 Stat. 1973, 1974; Pub. L. 103-322, title XXXIII, §330016(1)(K), (L), Sept. 13, 1994, 108 Stat. 2147.)

#### 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. 1933, 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.