

104TH CONGRESS
1ST SESSION

S. 1378

To combat public corruption, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 2, 1995

Mr. McCONNELL introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To combat public corruption, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Anti-Corruption Act
5 of 1995”.

6 **SEC. 2. PUBLIC CORRUPTION.**

7 (a) OFFENSES.—Chapter 11 of title 18, United
8 States Code, is amended by adding at the end the follow-
9 ing new section:

10 **“§ 226. Public corruption**

11 “(a) STATE AND LOCAL GOVERNMENT.—

1 “(1) HONEST SERVICES.—Whoever, in a cir-
2 cumstance described in paragraph (3), deprives or
3 defrauds, or endeavors to deprive or to defraud, by
4 any scheme or artifice, the inhabitants of a State or
5 political subdivision of a State of the honest services
6 of an official or employee of the State or political
7 subdivision shall be fined under this title, imprisoned
8 not more than 10 years, or both.

9 “(2) FAIR AND IMPARTIAL ELECTIONS.—Who-
10 ever, in a circumstance described in paragraph (3),
11 deprives or defrauds, or endeavors to deprive or to
12 defraud, by any scheme or artifice, the inhabitants
13 of a State or political subdivision of a State of a fair
14 and impartially conducted election process in any
15 primary, run-off, special, or general election through
16 one or more of the following means, or otherwise—

17 “(A) through the procurement, casting, or
18 tabulation of ballots that are materially false,
19 fictitious, or fraudulent or that are invalid,
20 under the laws of the State in which the elec-
21 tion is held;

22 “(B) through paying or offering to pay any
23 person for voting;

24 “(C) through the procurement or submis-
25 sion of voter registrations that contain false

1 material information, or omit material informa-
2 tion;

3 “(D) through the filing of any report re-
4 quired to be filed under Federal or State law
5 regarding an election campaign that contains
6 false material information or omits material in-
7 formation; or

8 “(E) through engaging in intimidating,
9 threatening, or deceptive conduct, with the in-
10 tent to prevent or unlawfully discourage any
11 person from voting for the candidate of that
12 person’s choice, registering to vote, or cam-
13 paigning for or against a candidate,

14 shall be fined under this title, imprisoned not more
15 than 10 years, or both.

16 “(3) CIRCUMSTANCES IN WHICH OFFENSE OC-
17 CURS.—The circumstances referred to in paragraphs
18 (1) and (2) are that—

19 “(A) for the purpose of executing or con-
20 cealing a scheme or artifice described in para-
21 graph (1) or (2) or attempting to do so, a per-
22 son—

23 “(i) places in any post office or au-
24 thorized depository for mail matter, any
25 matter or thing to be sent or delivered by

1 the Postal Service, deposits or causes to be
2 deposited any matter or thing to be sent or
3 delivered by any private or commercial
4 interstate carrier, or takes or receives
5 therefrom any such matter or thing, or
6 knowingly causes to be delivered by mail or
7 such carrier according to the direction
8 thereon, or at the place at which it is di-
9 rected to be delivered by the person to
10 whom it is addressed, any such matter or
11 thing;

12 “(ii) transmits or causes to be trans-
13 mitted by means of wire, radio, or tele-
14 vision communication in interstate or for-
15 eign commerce any writings, signs, signals,
16 pictures, or sounds;

17 “(iii) transports or causes to be trans-
18 ported any person or thing, or induces any
19 person to travel in or to be transported in,
20 interstate or foreign commerce; or

21 “(iv) uses or causes the use of any fa-
22 cility in interstate or foreign commerce;

23 “(B) the scheme or artifice affects or con-
24 stitutes an attempt to affect in any manner or

1 degree, or would if executed or concealed affect,
2 interstate or foreign commerce;

3 “(C) in the case of an offense described in
4 paragraph (1), the honest services of the official
5 or employee relate to a governmental office of
6 a State or political subdivision of a State which
7 receives funds derived from an Act of Congress
8 in an amount not less than \$10,000 during the
9 12-month period immediately preceding or fol-
10 lowing the date of the offense; or

11 “(D) in the case of an offense described in
12 paragraph (2), an objective of the scheme or ar-
13 tifice is to secure the election of an official who,
14 if elected, would have any authority over the
15 administration of funds derived from an Act of
16 Congress totaling \$10,000 or more during the
17 12-month period immediately preceding or fol-
18 lowing the election or date of the offense.

19 “(b) FEDERAL GOVERNMENT.—Whoever deprives or
20 defrauds, or endeavors to deprive or to defraud, by any
21 scheme or artifice, the inhabitants of the United States
22 of the honest services of a public official or a person who
23 has been selected to be a public official shall be fined
24 under this title, imprisoned not more than 10 years, or
25 both.

1 “(c) OFFENSE BY AN OFFICIAL AGAINST AN EM-
2 PLOYEE OR OFFICIAL.—

3 “(1) CRIMINAL OFFENSE.—Whoever, being an
4 official, public official, or person who has been se-
5 lected to be a public official, directly or indirectly
6 discharges, demotes, suspends, threatens, harasses,
7 or in any manner discriminates against an employee
8 or official of the United States or of a State or polit-
9 ical subdivision of a State, or endeavors to do so, in
10 order to carry out or to conceal a scheme or artifice
11 described in subsection (a) or (b), shall be fined
12 under this title, imprisoned not more than 5 years,
13 or both.

14 “(2) CIVIL ACTION.—(A) Any employee or offi-
15 cial of a State or political subdivision of a State who
16 is discharged, demoted, suspended, threatened, har-
17 assed, or in any manner discriminated against be-
18 cause of lawful acts done by the employee or official
19 as a result of a violation of this section or because
20 of actions by the employee on behalf of himself or
21 herself or others in furtherance of prosecution under
22 this section (including investigation for, initiation of,
23 testimony for, or assistance in such a prosecution)
24 may bring a civil action in any court of competent

1 jurisdiction and obtain all relief necessary to make
2 the employee or official whole, including—

3 “(i) reinstatement with the same seniority
4 status that the employee or official would have
5 had but for the violation;

6 “(ii) the amount of backpay;

7 “(iii) a penalty of two times the amount of
8 backpay;

9 “(iv) interest on the actual amount of
10 backpay; and

11 “(v) compensation for any special damages
12 sustained as a result of the violation, including
13 reasonable litigation costs and reasonable attor-
14 ney’s fees.

15 “(B) To obtain recovery under subsection
16 (c)(2)(A) (iii) or (v) against a State or political sub-
17 division, the employee or individual bringing the ac-
18 tion shall establish by a preponderance of evidence
19 that any violation of this section was—

20 “(i) the result of widespread violations
21 within the State or political subdivision; or

22 “(ii) the result of conduct authorized by a
23 senior official within the State or political sub-
24 division.

1 “(C) In cases in which a State or political sub-
2 division is sued and found liable for recovery under
3 subsection (c)(2)(A) (iii) or (v), the State or political
4 subdivision may bring an action for contribution for
5 such recovery from any employee or official whose
6 action led to the recovery under subsection (c)(2)(A)
7 (iii) or (v).

8 “(D) An employee or official shall not be af-
9 forded relief under subparagraph (A) if the employee
10 or official participated in the violation of this section
11 with respect to which relief is sought.

12 “(E)(i) A civil action or proceeding authorized
13 by this paragraph shall be stayed by a court upon
14 certification of an attorney for the Government that
15 prosecution of the action or proceeding may ad-
16 versely affect the interests of the Government in a
17 pending criminal investigation or proceeding.

18 “(ii) The attorney for the Government shall
19 promptly notify the court when a stay may be lifted
20 without such adverse effects.

21 “(d) DEFINITIONS.—As used in this section—

22 “(1) the term ‘official’ includes—

23 “(A) any person employed by, exercising
24 any authority derived from, or holding any posi-
25 tion in the government of a State or any sub-

1 division of the executive, legislative, judicial, or
2 other branch of government thereof, including a
3 department, independent establishment, com-
4 mission, administration, authority, board, and
5 bureau, and a corporation or other legal entity
6 established and subject to control by a govern-
7 ment or governments for the execution of a gov-
8 ernmental or intergovernmental program;

9 “(B) any person acting or pretending to
10 act under color of official authority; and

11 “(C) any person who has been nominated,
12 appointed, or selected to be an official or who
13 has been officially informed that he or she will
14 be so nominated, appointed, or selected;

15 “(2) the term ‘person acting or pretending to
16 act under color of official authority’ includes a per-
17 son who represents that he or she controls, is an
18 agent of, or otherwise acts on behalf of an official,
19 public official, and person who has been selected to
20 be a public official;

21 “(3) the terms ‘public official’ and ‘person who
22 has been selected to be a public official’ have the
23 meanings stated in section 201 and include any per-
24 son acting or pretending to act under color of offi-
25 cial authority; and

1 “(4) the term ‘State’ means a State of the
2 United States, the District of Columbia, Puerto
3 Rico, and any other commonwealth, territory, or
4 possession of the United States.”.

5 (b) TECHNICAL AMENDMENTS.—(1) The chapter
6 analysis for chapter 11 of title 18, United States Code,
7 is amended by adding at the end the following new item:
 “226. Public corruption.”.

8 (2) Section 1961(1) of title 18, United States Code,
9 is amended by inserting “section 226 (relating to public
10 corruption),” after “section 224 (relating to sports brib-
11 ery),”.

12 (3) Section 2516(1)(c) of title 18, United States
13 Code, is amended by inserting “section 226 (relating to
14 public corruption),” after “section 224 (bribery in sport-
15 ing contests),”.

16 **SEC. 3. INTERSTATE COMMERCE.**

17 (a) IN GENERAL.—Section 1343 of title 18, United
18 States Code, is amended—

19 (1) by inserting “, or uses or causes the use of
20 any facility in interstate or foreign commerce,” after
21 “sounds”; and

22 (2) by inserting “or attempting to do so” after
23 “for the purpose of executing such scheme or arti-
24 fice”.

1 (b) TECHNICAL AMENDMENTS.—(1) The heading of
2 section 1343 of title 18, United States Code, is amended
3 to read as follows:

4 **“§1343. Fraud by use of facility of interstate com-**
5 **merce”.**

6 (2) The chapter analysis for chapter 63 of title 18,
7 United States Code, is amended by amending the item re-
8 lating to section 1343 to read as follows:

“1343. Fraud by use of facility in interstate commerce.”.

9 **SEC. 4. NARCOTICS-RELATED PUBLIC CORRUPTION.**

10 (a) OFFENSES.—Chapter 11 of title 18, United
11 States Code, is amended by inserting after section 219 the
12 following new section:

13 **“§220. Narcotics and public corruption**

14 “(a) OFFENSE BY PUBLIC OFFICIAL.—A public offi-
15 cial who, in a circumstance described in subsection (c),
16 directly or indirectly, corruptly demands, seeks, receives,
17 accepts, or agrees to receive or accept anything of value
18 personally or for any other person in return for—

19 “(1) being influenced in the performance or
20 nonperformance of any official act; or

21 “(2) being influenced to commit or to aid in
22 committing, or to collude in, or to allow or make op-
23 portunity for the commission of any offense against
24 the United States or any State, shall be guilty of a
25 class B felony.

1 “(b) OFFENSE BY PERSON OTHER THAN A PUBLIC
2 OFFICIAL.—A person who, in a circumstance described in
3 subsection (c), directly or indirectly, corruptly gives, of-
4 fers, or promises anything of value to any public official,
5 or offers or promises any public official to give anything
6 of value to any other person, with intent—

7 “(1) to influence any official act;

8 “(2) to influence the public to commit or aid in
9 committing, or to collude in, or to allow or make op-
10 portunity for the commission of any offense against
11 the United States or any State; or

12 “(3) to influence the public official to do or to
13 omit to do any act in violation of the official’s lawful
14 duty, shall be guilty of a class B felony.

15 “(c) CIRCUMSTANCES IN WHICH OFFENSE OC-
16 CURS.—The circumstances referred to in subsections (a)
17 and (b) are that the offense involves, is part of, or is in-
18 tended to further or to conceal the illegal possession, im-
19 portation, manufacture, transportation, or distribution of
20 any controlled substance or controlled substance analogue.

21 “(d) DEFINITIONS.—As used in this section—

22 “(1) the terms ‘controlled substance’ and ‘con-
23 trolled substance analogue’ have the meanings stated
24 in section 102 of the Controlled Substances Act (21
25 U.S.C. 802);

1 “(2) the term ‘official act’ means any decision,
2 action, or conduct regarding any question, matter,
3 proceeding, cause, suit, investigation, or prosecution
4 which may at any time be pending, or which may be
5 brought before any public official, in such official’s
6 official capacity, or in such official’s place of trust
7 or profit; and

8 “(3) the term ‘public official’ means—

9 “(A) an officer or employee or person act-
10 ing for or on behalf of the United States, or
11 any department, agency, or branch of Govern-
12 ment thereof in any official function, under or
13 by authority of any such department, agency, or
14 branch of Government;

15 “(B) a juror;

16 “(C) an officer or employee or person act-
17 ing for or on behalf of the government of any
18 State, commonwealth, territory, or possession of
19 the United States (including the District of Co-
20 lumbia), or any political subdivision thereof, in
21 any official function, under or by the authority
22 of any such State, commonwealth, territory,
23 possession, or political subdivision; and

24 “(D) any person who has been nominated
25 or appointed to a position described in subpara-

1 graph (A), (B), or (C), or has been officially in-
2 formed that he or she will be so nominated or
3 appointed.”.

4 (b) TECHNICAL AMENDMENTS.—(1) Section 1961(1)
5 of title 18, United States Code, is amended by inserting
6 “section 220 (relating to narcotics and public corrup-
7 tion),” after “Section 201 (relating to bribery),”.

8 (2) Section 2516(1)(c) of title 18, United States
9 Code, is amended by inserting “section 220 (relating to
10 narcotics and public corruption),” after “section 201
11 (bribery of public officials and witnesses),”.

12 (3) The chapter analysis for chapter 11 of title 18,
13 United States Code, is amended by inserting after the
14 item for section 219 the following new item:

“220. Narcotics and public corruption.”.

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