

"(D) a swap participant that receives a transfer in connection with a swap agreement, as defined in section 101(49) of this title, takes for value to the extent of such transfer".

Sec. 5. Section 553(b)(1) of title 11, United States Code, is amended by inserting "362(b)(14)," after "362(b)(7)."

Sec. 6. Subchapter III of chapter 5 of title 11, United States Code, is amended by adding at the end thereof the following:

"§560. Contractual right to terminate a swap agreement

"The exercise of any contractual rights of a swap participant to cause the termination of a swap agreement because of a condition of the kind specified in section 365(e)(1) of this title or to set off or net out any termination values or payment amounts arising under or in connection with one or more swap agreements shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by order of a court or administrative agency in any proceeding under this title. As used in this section, the term 'contractual right' includes a right, whether or not evidenced in writing, arising under common law, under law merchant or by reason of normal business practice."

#### PERSONAL PRIVACY WITH RESPECT TO VIDEOTAPES, AUDIOVISUAL MATERIALS, AND LIBRARY MATERIALS OR SERVICES

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 1075, S. 2361.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 2361) to amend title 18, United States Code, to preserve personal privacy with respect to the rental, purchase, or delivery of video tapes or similar audiovisual materials and the use of library materials or services.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which has been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and insert in lieu thereof, the following:

S. 2361

##### SECTION 1. SHORT TITLE.

This Act may be cited as the "Video Privacy Protection Act of 1988".

##### SEC. 2. CHAPTER 121 AMENDMENT.

(a) IN GENERAL.—Chapter 121 of title 18, United States Code, is amended—

(1) by redesignating section 2710 as section 2711; and

(2) by inserting after section 2709 the following:

"§2710. Wrongful disclosure of video tape rental or sale records

"(A) DEFINITIONS.—For purposes of this section—

"(1) the term 'consumer' means any renter, purchaser, or subscriber of goods or services from a video tape service provider;

"(2) the term 'ordinary course of business' means only debt collection activities, order fulfillment, request processing, and the transfer of ownership;

"(3) the term 'personally identifiable information' includes information which identifies a person as having requested or obtained specific video materials or services from a video tape service provider or library; and

"(4) the term 'video tape service provider' means any person, engaged in the business of rental, sale, or delivery of prerecorded video cassette tapes or similar audio visual materials, or any person or other entity to whom a disclosure is made under paragraph (b)(2)(D), but only with respect to the information contained in the disclosure.

"(b) VIDEO TAPE RENTAL AND SALE RECORDS.—(1) A video tape service provider who knowingly discloses, to any person, personally identifiable information concerning any consumer of such provider shall be liable to the aggrieved person for the relief provided in subsection (d).

"(2) A video tape service provider may disclose personally identifiable information concerning any consumer—

"(A) to the consumer;

"(B) to any person with the informed, written consent of the consumer given at the time the disclosure is sought;

"(C) to a law enforcement agency pursuant to a warrant issued under the Federal Rules of Criminal Procedure, an equivalent State warrant, a grand jury subpoena, or a court order;

"(D) to any person if the disclosure is solely of the names and addresses of consumers and if—

"(i) the video tape service provider has provided the consumer with the opportunity, in a clear and conspicuous manner, to prohibit such disclosure; and

"(ii) the disclosure does not identify the title, description, or subject matter of any video tapes or other audio visual material; however, the subject matter of such materials may be disclosed if the disclosure is for the exclusive use of marketing goods and services directly to the consumer;

"(E) to any person if the disclosure is incident to the ordinary course of business of the video tape service provider; or

"(F) pursuant to a court order, in a civil proceeding upon a showing of compelling need for the information that cannot be accommodated by any other means, if—

"(i) the consumer is given reasonable notice, by the person seeking the disclosure, of the court proceeding relevant to the issuance of the court order; and

"(ii) the consumer is afforded the opportunity to appear and contest the claim of the person seeking the disclosure.

If an order is granted pursuant to subparagraph (C) or (F), the court shall impose appropriate safeguards against unauthorized disclosure.

"(3) Court orders authorizing disclosure under subparagraph (C) shall issue only with prior notice to the consumer and only if the law enforcement agency shows that there is probable cause to believe that the records or other information sought are relevant to a legitimate law enforcement inquiry. In the case of a State government authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion made promptly by the video tape service provider, may quash or modify such order if the information or records requested are unreasonably voluminous in nature or if compliance with such order otherwise would cause an unreasonable burden on such provider.

"(c) CIVIL ACTION.—(1) Any person aggrieved by any act of a person in violation of this section may bring a civil action in a United States district court.

"(2) The court may award—

"(A) actual damages but not less than liquidated damages in an amount of \$2,500;

"(B) punitive damages;

"(C) reasonable attorneys' fees and other litigation costs reasonably incurred; and

"(D) such other preliminary and equitable relief as the court determines to be appropriate.

"(3) No action may be brought under this subsection unless such action is begun within 2 years from the date of the act complained of or the date of discovery.

"(4) No liability shall result from lawful disclosure permitted by this section.

"(d) PERSONALLY IDENTIFIABLE INFORMATION.—Personally identifiable information obtained in any manner other than as provided in this section shall not be received in evidence in any trial, hearing, arbitration, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a State, or a political subdivision of a State.

"(e) DESTRUCTION OF OLD RECORDS.—A person subject to this section shall destroy personally identifiable information as soon as practicable, but no later than one year from the date the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under subsections (b)(2) or (c)(2) or pursuant to a court order.

"(f) SELECTION OF A FORUM.—Nothing in this section shall limit rights of consumers or patrons otherwise provided under State or local law. A Federal court shall, in accordance with section 1738 of title 28, United States Code, give preclusive effect to the decision to any State or local court or agency in an action brought by a consumer or patron under a State or local law similar to this section. A decision of a Federal court under this section shall preclude any action under a State or local law similar to this section."

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 121 of title 18, United States Code, is amended—

(1) in the item relating to section 2710, by striking out "2710" and inserting "2711" in lieu thereof; and

(2) by inserting after the item relating to section 2709 the following new item:

"2710. Wrongful disclosure of video tape rental or sale records".

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read "A bill to amend title 18, United States Code, to preserve personal privacy with respect to the rental, purchase, or delivery of video tapes or similar audio visual material."

##### AMENDMENT NO. 3702

(Purpose: To make technical corrections to the committee substitute)

Mr. BYRD. Mr. President, on behalf of Mr. LEAHY, I submit an amendment and ask for its immediate consideration.

THE PRESIDING OFFICER. The amendment will be stated. The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD], for Mr. LEAHY, proposes an amendment numbered 3702.

Mr. BYRD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

THE PRESIDING OFFICER. Without objection, it is so ordered. The amendment is as follows:

On page 9, strike out lines 18 and 19, and insert in lieu thereof the following:

"§ 2710. Wrongful disclosure of video tape rental or sale records."

On page 10, line 7, strike out "or library".

On page 10, line 10, after "engaged in" insert "interstate or foreign commerce in or affecting".

On page 10, line 13, strike out "paragraph (b)(2)(D)" and insert in lieu thereof "subparagraph (D) or (E) of subsection (b)(2)".

On page 14, beginning with line 8, strike out through line 16, and insert in lieu thereof the following:

"(c) Preemption.—The provisions of this section preempt only the provisions of State and local law that require disclosure prohibited by this section."

On page 14, strike out all after line 24 and insert in lieu thereof the following:

"2710. Wrongful disclosure of video tape rental or sale records."

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3702) was agreed to.

Mr. SIMON. Mr. President, I rise today in support of the Video Privacy Protection Act which was introduced by my colleagues Senators LEAHY, GRASSLEY, SIMPSON, and I, to protect one of the most treasured liberties of all, the right to privacy. There is no denying that the computer age has revolutionized our world. Over the past 20 years we have seen remarkable changes in the way each one of us goes about our lives. Our children learn through computers. We bank by machine. We watch movies in our living rooms. These technological innovations are exciting and as a Nation we should be proud of the accomplishments we have made.

Yet as we continue to move ahead, we must protect time honored values that are so central to this society, particularly our right to privacy. The advent of the computer means not only that we can be more efficient than ever before, but that we have the ability to be more intrusive than ever before. Every day Americans are forced to provide to businesses and others personal information without having any control over where that information goes. Computer records are kept on where we travel, what we eat, what we buy, what we watch and what we read. These records are a window into our loves, likes and dislikes. As Justice Brandeis predicted over 40 years ago in his famous dissent in the *Olmstead* wiretap case—

Time works changes, brings into existence new conditions and purposes . . . Subtler and more far reaching means of invading privacy have become available . . . Ways may some day be developed by which the Government, without removing papers from secret drawers, can reproduce them in court and by which it will be enabled to expose to

a jury the most intimate occurrences of the home.

This point was brought home to me during the course of the confirmation hearings on Judge Bork when I learned that a reporter had received from a local video store a list of the movies that Judge Bork and his family had rented. Who would guess that the choice of movies one watches in the privacy of the home would not be confidential?

The Video Privacy Protection Act takes an important step in ensuring that individuals will maintain control over their personal information when renting or purchasing a movie. The bill specifically provides for a federal cause of action in the event a list which identifies the movies we watch is released. Since there are certain circumstances in which it may be necessary for this information to be divulged, the bill provides for some limited exceptions to the prohibition, including an exemption to cover legitimate law enforcement activities which has been modified since introduction to meet the concerns expressed by the FBI.

No doubt in the days and years ahead we will continue to make much progress in developing new technologies. While I am fully supportive of innovation and growth, I remain committed to protecting those principles which are so central to America. The Video Privacy Protection Act strikes the necessary balance to ensure that our privacy will not be lost as we move ahead. In closing, I want to thank all who helped move this legislation and urge my colleagues in the House to take swift action as well.

Mr. LEAHY. Mr. President, the right of privacy is one of our most cherished freedoms.

It shields us from the enormous appetite of large organizations of personal information.

It preserves our freedom to explore new ideas and to question popular beliefs without fear of criticism or re- crimination.

And it protects the individuality reflected in each of our unique likes and dislikes.

Privacy protection is an increasingly challenging problem for the Congress in an information age. Government agencies and private corporations are keeping more information, in a more detailed manner, about more activities in our personal lives.

The Video Privacy Protection Act will establish comprehensive privacy protection for video tape users. It is a timely response to the need to protect private activities in an era of increasing information collection and dissemination.

The Judiciary Committee reported out favorably the Video Privacy Protection Act. All of us on the committee share a strong interest in the passage of this bill. The reason is that we all remember the disclosure of the video

rental list of Judge Bork and his family last fall.

That was outrageous. Together we on the committee have drafted a bill that will extend privacy protection to all Americans.

This bill makes explicit the right to information privacy—an increasingly important part of the right to privacy in an age of automated information systems. It seeks to strike the "delicate balance," as described by the Privacy Protection Study Commission in 1977, between the information needs of organizations and each individual's desire of confidentiality and control over the records of personal activities.

In 1986 we enacted landmark privacy legislation—the Electronic Communications Privacy Act. That law protected communications from unlawful interception. This law will protect information from unlawful disclosure.

It is the most recent in a long line of statutes protecting the right of privacy. Beginning with the Fair Credit Reporting Act of 1970 and continuing up to the Electronic Communications Privacy Act, which I sponsored in 1986, we in the Congress have continually reaffirmed our commitment to the right of privacy. In 1973 we established privacy protection for educational records. In 1974 we passed the landmark Privacy Act that set up comprehensive restrictions on Federal agencies' collection, use and disclosure of personally identifiable information. We protected tax records in 1976 and bank records in 1978; 1980 was the year we passed legislation to protect newsrooms from unannounced searches. And 1984, the year of Orwell, the U.S. Congress established comprehensive privacy protection for cable service subscribers. In each instance, the Congress has established statutory protections to extend the right of privacy.

I am pleased to have worked with Erol's, the Video Software Dealer's Association, the Direct Marketing Association, the [ACLU], the American Library Association, the FBI, and the Department of Justice to develop a bill that establishes strong safeguards, clear guidelines, and workable commercial practices.

Erol's and the members of the Direct Marketing Association have established good policies to provide their customers with some control over the dissemination of transactional information. I support these efforts by the private sector to establish information privacy protection for their customers. Confidentiality provisions, "negative check-off" provisions, record destruction policies, and enhanced security for automated systems containing personal information make good business sense and help safeguard the right of information privacy. As we learned with the Electronic Communications Privacy Act, customers place greater value on services with clear privacy protections.

A little more than a year ago, I joined with other members of the Judiciary Committee in denouncing the disclosure of the video tape rental list of Judge Bork and his family. We were in the middle of a national debate over the constitutional right to privacy with a Supreme Court nominee. In the middle of that debate, a local newspaper ran an insipid story about the movies Judge Bork and his family watch in their home. That was a mockery of privacy.

Today, after the dedicated work of our committee members, we are prepared to pass legislation that will prevent such abuses in the future. It will reaffirm our commitment to the right of privacy.

Few of us will ever undergo the public scrutiny of a Supreme Court nominee, but all of us are entitled to a reasonable expectation of privacy. It is simply no one's business what Judge Bork, PAT LEAHY or anyone else chooses to watch in their home.

I thank Senator GRASSLEY, Senator SIMON, Senator SIMPSON, Senator HUMPHREY, Senator THURMOND, and Senator BIDEN for their work in support of this legislation. I would also like to thank Chairman BOB KASTENMEIER with whom I chaired a joint hearing on this bill and who has been the guiding force on the House side to ensure enactment of the bill this session. I would also like to express my appreciation for the tireless work of the staff members who worked on this legislation: Melissa Patack with Senator GRASSLEY; Susan Kaplan with Senator SIMON; Bill Myers with Senator SIMPSON; George Smith with Senator HUMPHREY; Terry Wooten and Cindy Backburn with Senator THURMOND; Jeff Peck and Diana Huffman with Senator BIDEN; and Ginny Sloan with Representative KASTENMEIER. I also thank Marc Rotenberg and Ann Harkins on my staff for all their efforts.

Mr. GRASSLEY. Mr. President, I am pleased to speak in support of the Video Privacy Act of 1988, and at the outset, I would like to thank Senator LEAHY, as well as Senator SIMON and Senator SIMPSON, for their commitment and effort on this bill.

It was Senator SIMPSON who identified the problem this bill is intended to correct just over 1 year ago. At that time, a reporter released a list of the video tapes rented by Judge Robert Bork and his family. Senator SIMPSON, speaking, I'm sure, for all the members of the Judiciary Committee, found this to be an outrageous invasion of privacy.

So, we went to work in an effort to ensure that such activity would not happen in the future.

We all want to live in a society that values privacy. And we rightfully want both the Government and business to live in a society that respects this basic right.

But privacy is not a generalized right. And it is up to the legislature to define and give meaning to privacy. As

our society grows more complex, legislatures should be responsive to new technological threats to privacy. This is the role of the legislature in a democratic society.

The Video Privacy Act does just that, in a narrow area. Video stores will be precluded from disclosing their customers names, addresses and specific video tapes rented or bought by the customers. The bill does set forth limited circumstances in which this information may be revealed. For example, law enforcement officials may obtain this information with a warrant, grand jury subpoena, or an appropriate court order. And the bill allows for those engaged in direct marketing businesses to release mailing lists of their customers, so long as the customers has had a chance to say "no" to such mailing list disclosures.

This bill imposes liability on the video store where the information is knowingly disclosed in violation of the bill's requirements. And under the common law of agency, an employer may be liable for the actions of its employees where the employee acts within the scope of his employment. A video store would, therefore, be best advised to educate its employees about the bill's provisions and discipline employees for unauthorized disclosures. A court would, no doubt, take such employers' actions into account in determining whether the employee was acting within the scope of his job in the event of a prohibited disclosure.

Mr. President, once again I thank my colleagues for their work on and support of this legislation.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendments to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

#### S. 2361

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Video Privacy Protection Act of 1988".

#### SEC. 2. CHAPTER 121 AMENDMENT.

(a) IN GENERAL.—Chapter 121 of title 18, United States Code, is amended—

(1) by redesignating section 2710 as section 2711; and

(2) by inserting after section 2709 the following:

"§ 2710. Wrongful disclosure of video tape rental or sale records

"(a) DEFINITIONS.—For purposes of this section—

"(1) the term 'consumer' means any renter, purchaser, or subscriber of goods or services from a video tape service provider;

"(2) the term 'ordinary course of business' means only debt collection activities, order fulfillment, request processing, and the transfer of ownership;

"(3) the term 'personally identifiable information' includes information which identifies a person as having requested or obtained specific video materials or services from a video tape service provider; and

"(4) the term 'video tape service provider' means any person, engaged in interstate or foreign commerce in or affecting the business of rental, sale, or delivery of prerecorded video cassette tapes or similar audio visual materials, or any person or other entity to whom a disclosure is made under subparagraph (C) or (E) of subsection (b)(2) but only with respect to the information contained in the disclosure.

"(b) VIDEO TAPE RENTAL AND SALE RECORDS.—(1) A video tape service provider who knowingly discloses, to any person, personally identifiable information concerning any consumer of such provider shall be liable to the aggrieved person for the relief provided in subsection (d).

"(2) A video tape service provider may disclose personally identifiable information concerning any consumer—

"(A) to the consumer;

"(B) to any person with the informed, written consent of the consumer given at the time the disclosure is sought;

"(C) to a law enforcement agency pursuant to a warrant issued under the Federal Rules of Criminal Procedure, an equivalent State warrant, a grand jury subpoena, or a court order;

"(D) to any person if the disclosure is solely of the names and addresses of consumers and if—

"(i) the video tape service provider has provided the consumer with the opportunity, in a clear and conspicuous manner, to prohibit such disclosure; and

"(ii) the disclosure does not identify the title, description, or subject matter of any video tapes or other audio visual material; however, the subject matter of such materials may be disclosed if the disclosure is for the exclusive use of marketing goods and services directly to the consumer;

"(E) to any person if the disclosure is incident to the ordinary course of business of the video tape service provider; or

"(F) pursuant to a court order, in a civil proceeding upon a showing of compelling need for the information that cannot be accommodated by any other means, if—

"(i) the consumer is given reasonable notice, by the person seeking the disclosure, of the court proceeding relevant to the issuance of the court order; and

"(ii) the consumer is afforded the opportunity to appear and contest the claim of the person seeking the disclosure.

If an order is granted pursuant to subparagraph (C) or (F), the court shall impose appropriate safeguards against unauthorized disclosure.

"(3) Court orders authorizing disclosure under subparagraph (C) shall issue only with prior notice to the consumer and only if the law enforcement agency shows that there is probable cause to believe that the records or other information sought are relevant to a legitimate law enforcement inquiry. In the case of a State government authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion made promptly by the video tape service provider, may quash or modify such order if the information or records requested are unreasonably voluminous in nature or if compliance with such order otherwise

would cause an unreasonable burden on such provider.

"(c) CIVIL ACTION.—(1) Any person aggrieved by any act of a person in violation of this section may bring a civil action in a United States district court.

"(2) The court may award—

"(A) actual damages but not less than liquidated damages in an amount of \$2,500;

"(B) punitive damages;

"(C) reasonable attorneys' fees and other litigation costs reasonably incurred; and

"(D) such other preliminary and equitable relief as the court determines to be appropriate.

"(3) No action may be brought under this subsection unless such action is begun within 2 years from the date of the act complained of or the date of discovery.

"(4) No liability shall result from lawful disclosure permitted by this section.

"(d) PERSONALLY IDENTIFIABLE INFORMATION.—Personally identifiable information obtained in any manner other than as provided in this section shall not be received in evidence in any trial, hearing, arbitration, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a State, or a political subdivision of a State.

"(e) DESTRUCTION OF OLD RECORDS.—A person subject to this section shall destroy personally identifiable information as soon as practicable, but no later than one year from the date the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under subsections (b)(2) or (c)(2) or pursuant to a court order.

"(f) PREEMPTION.—The provisions of this section preempt only the provisions of State or local law that require disclosure prohibited by this section."

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 121 of title 18, United States Code, is amended—

(1) in the item relating to section 2710, by striking out "2710" and inserting "2711" in lieu thereof; and

(2) by inserting after the item relating to section 2709 the following new item:

"2710. Wrongful disclosure of video tape rental or sale records."

#### PUNISHMENT OF CORRUPTION

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 1078, S. 2793, a bill to amend title 18 of the United States Code to punish corruption.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 2793) to amend title 18 of the United States Code to punish corruption.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on the Judiciary, with an amendment.

On page 6, line 16, Strike "appointed", through and including the period on line 17, and insert "appointed."

So as to make the bill read:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Anti-Corruption Act of 1988".

#### SEC. 2. OFFENSE.

Chapter 11 of title 18, United States Code, is amended by adding at the end thereof the following new section:

##### "§ 225. Public Corruption

"(a) Whoever, in a circumstance described in subsection (c), deprives or defrauds, or attempts to deprive or to defraud, by any scheme or artifice, the inhabitants of a State or political subdivision of a State of the honest services of an official or employee of such State or subdivision, shall be fined under this title, or imprisoned for not more than ten years (or, if the defendant intended that the scheme or artifice promote conduct constituting an offense under the laws of the United States or a State for which the maximum term of imprisonment is greater than ten years, shall be imprisoned as required or authorized by the law punishing such offense or for not more than twenty years, whichever is less), or both.

"(b) Whoever, in a circumstance described in subsection (c), deprives or defrauds, or attempts to deprive or to defraud, by any scheme or artifice, the inhabitants of a State or political subdivision of a State of a fair and impartially conducted election process in any primary, run-off, special, or general election, through the procurement, casting, or tabulation of ballots or voter registration forms which are false, fictitious, fraudulent, or illegal under the laws of the State in which the election is held, or through the filing of any false, fictitious or fraudulent report required to be filed under State law regarding an election campaign, shall be fined under this title or imprisoned for not more than ten years, or both.

"(c) The circumstances referred to in subsections (a) and (b) are that—

"(1) for the purpose of executing or concealing such scheme or artifice or attempting to do so, the actor—

"(A) places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, 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, any such matter or thing;

"(B) transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce any writings, signs, signals, pictures, or sounds;

"(C) transports or causes to be transported any person or thing, or induces any person to travel in or to be transported in, interstate or foreign commerce; or

"(D) uses any facility of interstate or foreign commerce; or

"(2) the scheme or artifice affects in any manner or degree, or would if executed or concealed so affect, interstate or foreign commerce.

"(d) Whoever deprives or defrauds, or attempts to deprive or defraud, by any scheme or artifice, the inhabitants of the United States of the honest services of a public official or person who has been selected to be a public official shall be fined under this title or imprisoned for not more than ten years (or, if the defendant intended that the scheme or artifice promote conduct constituting an offense under the laws of the United States or a State for which the maximum term of imprisonment is greater than

ten years, shall be imprisoned as required or authorized by the law punishing such offense, or for not more than twenty years, whichever is less), or both.

"(e) Whoever being an official, or public official, or person who has been selected to be a public official, directly or indirectly, discharges, demotes, suspends, threatens, harasses, or, in any manner, discriminates against any employee or official of the United States or any State or political subdivision of such State, or attempts to do so, in order to carry out or to conceal any scheme or artifice described in this section, shall be fined under this title or subject to imprisonment of up to five years or both.

"(f)(1) Any employee or official of the United States or any State or political subdivision of such State who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against because of lawful acts done by the employee as a result of a violation of subsection (e) or because of actions by the employee on behalf of himself or others in furtherance of a prosecution under this section (including investigation for, initiation of, testimony for, or assistance in such a prosecution) may in a civil action, obtain all relief necessary to make such individual whole. Such relief shall include reinstatement with the same seniority status such individual would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees.

"(2) An individual is not eligible for such relief if that individual participated in the violation of this section with respect to which such relief would be awarded.

"(g) For purposes of this section—

"(1) the term 'State' means a State of the United States, the District of Columbia, Puerto Rico, and any other territory or possession of the United States;

"(2) the term 'agency' means a subdivision of the executive, legislative, judicial, or other branch of government, including a department, independent establishment, commission, administration, authority, board, and bureau, and a corporation or other legal entity established and subject to control by a government or governments for the execution of a governmental or intergovernmental program;

"(3) the terms 'public official' and 'person who has been selected to be a public official' have the meaning set forth in section 201 of this title; the terms 'official', 'public official', and 'person who has been selected to be a public official' shall also include any person acting under color of official authority;

"(4) the term 'official' includes a person who has been nominated or appointed to be an official or who has been officially informed that he or she will be so nominated or appointed."

#### SEC. 3. WHITE COLLAR CRIME.

Chapter 63 of Title 18 of the United States Code is amended by adding a new section as follows:

##### "§ 1346. Scheme or artifice to defraud

"For the purposes of this chapter, the term 'scheme or artifice to defraud' includes a scheme or artifice to deprive an organization of the intangible right of honest services in which the defendant received or attempted to receive, for the defendant or another person, anything of value or in which the defendant intended or contemplated loss or harm to the organization."