

108TH CONGRESS
1ST SESSION

S. 631

To amend title 39, United States Code, with respect to cooperative mailings.

IN THE SENATE OF THE UNITED STATES

MARCH 17, 2003

Mr. SANTORUM (for himself and Mr. CARPER) introduced the following bill;
which was read twice and referred to the Committee on Governmental Affairs

A BILL

To amend title 39, United States Code, with respect to
cooperative mailings.

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. PURPOSE.**

4 The purpose of this Act is to clarify section
5 3626(j)(1)(D)(ii) of title 39, United States Code.

6 **SEC. 2. COOPERATIVE MAILINGS.**

7 Section 3626(j) of title 39, United States Code, is
8 amended by adding at the end the following:

9 “(4)(A) Notwithstanding any other provision of this
10 section or any rule or regulation of the Postal Service, but
11 subject to subparagraph (D), in the case of mail matter

1 sent (or proposed to be sent) by or on behalf of an author-
 2 ized organization having a contractual or any other busi-
 3 ness relationship with an entity described in subparagraph
 4 (B)(ii), rates of postage under former section 4452 (b)
 5 or (c) of this title shall apply if those rates would apply
 6 in the case of identical mail matter sent by such organiza-
 7 tion absent such relationship.

8 “(B) For purposes of subparagraph (A)—

9 “(i) the term ‘authorized organization’ means
 10 an organization authorized to mail at the rates for
 11 mail under former section 4452 (b) or (c) of this
 12 title; and

13 “(ii) an entity described in this clause is any or-
 14 ganization or other person that is not an authorized
 15 organization.

16 “(C) This paragraph does not authorize mail that ad-
 17 vertises, promotes, offers, or, for a fee or consideration,
 18 recommends, describes, or announces the availability of
 19 any products or services to be mailed at the rates of post-
 20 age under former section 4452 (b) or (c) of this title which
 21 would otherwise be excluded from being mailed at such
 22 rates by any other provision of this title.”.

23 **SEC. 3. CONFLICT OF INTEREST.**

24 Section 3626 of title 39, United States Code, is
 25 amended by adding at the end the following:

1 “(n)(1) For purposes of determining eligibility for
2 use of the rates to mail under former section 4452 (b)
3 or (c) of this title with respect to a qualified nonprofit
4 organization that enters into a contract with a commercial
5 entity to solicit funds for or on behalf of the nonprofit
6 organization, or to provide counseling services for the so-
7 licitation of funds, the contractual relationship shall be
8 deemed a conflict of interest creating a presumption
9 against eligibility if—

10 “(A) the parties do not act severally and inde-
11 pendently in forming the contract; or

12 “(B) the contract is not approved in advance by
13 the governing body of the nonprofit organization, the
14 controlling voting percentage of which is comprised
15 of persons other than officers, board members, prin-
16 cipals, or employees of the commercial entity; or by
17 other persons as authorized by such governing body
18 to act on its behalf.

19 “(2) If a conflict of interest is found to exist under
20 paragraph (1), the presumption against eligibility may be
21 rebutted by demonstrating to the Postal Service that the
22 contract meets the standards required to establish a rebut-
23 table presumption that a transaction is not an excess ben-
24 efit transaction as set forth in regulation by the Internal

1 Revenue Service under section 4958 of the Internal Rev-
 2 enue Code of 1986.”.

3 **SEC. 4. SENSE OF CONGRESS.**

4 It is the sense of Congress that—

5 (1) this Act addresses only the appropriate
 6 rates of postage as authorized under section 3626 of
 7 title 39, United States Code;

8 (2) to prevent the nonprofit mailing rates from
 9 being used for any unlawful purpose, nothing in this
 10 Act should be considered to alter the authority of
 11 the United States Postal Service to—

12 (A) apply regular rates of postage rather
 13 than nonprofit rates, to mail matter described
 14 in subparagraph (A), (B), (C), or (D)(i) of sec-
 15 tion 3526(j)(1) of title 39, United States Code;

16 (B) enforce any criminal law within its ju-
 17 risdiction;

18 (C) revoke the nonprofit mail permit of an
 19 authorized organization, as described in section
 20 3626(j)(4)(B)(i) of title 39, United States
 21 Code, for which the Internal Revenue Service
 22 and the courts of the United States have issued
 23 a final revocation of tax-exempt status on any
 24 legal basis, including a finding of an excess ben-
 25 efit, private inurement, or private benefit;

1 (D) prohibit schemes to obtain money or
2 property through the mail by means of false
3 representations in accordance with section
4 3005(a) of title 39, United States Code;

5 (E) prohibit any person from conducting a
6 lottery, gift enterprise, or scheme for the dis-
7 tribution of money through the mail in accord-
8 ance with section 3005(a) of title 39, United
9 States Code; or

10 (F) broadly prohibit any person having
11 fraudulent designs on others from using the
12 Postal Service as a means of effecting such
13 fraud in accordance with section 1341 of title
14 18, United States Code; and

15 (3) nothing in this Act shall be construed to
16 limit or change the authority of the Attorney Gen-
17 eral of the United States or an Attorney General of
18 the several States from exercising their consumer
19 protection jurisdiction against criminal or fraudulent
20 fundraising practices.

21 **SEC. 5. EFFECTIVE DATE AND APPLICATION.**

22 (a) IN GENERAL.—The amendments made by this
23 Act shall apply with respect to mail matter sent before,
24 on, or after the date of enactment of this Act, except that

1 section 3 of this Act shall become effective for contracts
2 entered into after the date of enactment.

3 (b) APPLICATION.—

4 (1) CAUSES OF ACTION.—Nothing in this Act
5 (including the amendments made by this Act) shall
6 be considered to create a cause of action against the
7 United States Postal Service to recover postage paid
8 on mail matter sent on or before the date of enact-
9 ment of this Act.

10 (2) CONTINUATION OF ACTIONS.—Nothing in
11 this Act (including the amendments made by this
12 Act) shall prohibit or prevent the United States Gov-
13 ernment from proceeding—

14 (A) in any civil action instituted or for-
15 mally intervened by it before the date of enact-
16 ment of this Act; or

17 (B) in any criminal action in which a com-
18 plaint or indictment has been filed on or before
19 the date of enactment of this Act.

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