

111TH CONGRESS
2D SESSION

S. 3854

To expand the definition of scheme or artifice to defraud with respect to
mail and wire fraud.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 28, 2010

Mr. LEAHY (for himself, Mr. WHITEHOUSE, and Mr. KAUFMAN) introduced
the following bill; which was read twice and referred to the Committee
on the Judiciary

A BILL

To expand the definition of scheme or artifice to defraud
with respect to mail and wire fraud.

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 “Honest Services Res-
5 toration Act”.

6 **SEC. 2. AMENDMENT TO TITLE 18.**

7 (a) IN GENERAL.—Chapter 63 of title 18, United
8 States Code, is amended by inserting after section 1346
9 the following:

1 **“§ 1346A. Definition of ‘scheme or artifice to defraud’**

2 “(a) For purposes of this chapter, the term ‘scheme
3 or artifice to defraud’ also includes—

4 “(1) a scheme or artifice by a public official to
5 engage in undisclosed self-dealing; or

6 “(2) a scheme or artifice by officers and direc-
7 tors to engage in undisclosed private self-dealing.

8 “(b)(1) In subsection (a)(1)—

9 “(A) the term ‘undisclosed self-dealing’ means
10 that—

11 “(i) a public official performs an official
12 act for the purpose, in whole or in part, of ben-
13 efitting or furthering a financial interest of—

14 “(I) the public official;

15 “(II) the public official’s spouse or
16 minor child;

17 “(III) a general partner of the public
18 official;

19 “(IV) a business or organization in
20 which the public official is serving as an
21 employee, officer, director, trustee, or gen-
22 eral partner;

23 “(V) an individual, business, or orga-
24 nization with whom the public official is
25 negotiating for, or has any arrangement

1 concerning, prospective employment or fi-
2 nancial compensation; or

3 “(VI) a person, business, or organiza-
4 tion from whom the public official has re-
5 ceived a thing of value or a series of things
6 of value, otherwise than as provided by law
7 for the proper discharge of official duty, or
8 by rule or regulation; and

9 “(ii) the public official knowingly falsifies,
10 conceals, or covers up material information that
11 is required to be disclosed regarding that finan-
12 cial interest by any Federal, State, or local stat-
13 ute, rule, regulation, or charter applicable to
14 the public official, or knowingly fails to disclose
15 material information regarding that financial
16 interest in a manner that is required by any
17 Federal, State, or local statute, rule, regulation,
18 or charter applicable to the public official;

19 “(B) the term ‘public official’ means an officer,
20 employee, or elected or appointed representative, or
21 person acting for or on behalf of the United States,
22 a State, or subdivision of a State, or any depart-
23 ment, agency, or branch thereof, in any official func-
24 tion, under or by authority of any such department
25 agency or branch of Government;

1 “(C) the term ‘official act’—

2 “(i) includes any act within the range of
3 official duty, and any decision, recommendation,
4 or action on any question, matter, cause, suit,
5 proceeding, or controversy, which may at any
6 time be pending, or which may by law be
7 brought before any public official, in such pub-
8 lic official’s official capacity or in such official’s
9 place of trust or profit;

10 “(ii) can be a single act, more than one
11 act, or a course of conduct; and

12 “(iii) includes a decision or recommenda-
13 tion that the Government should not take ac-
14 tion; and

15 “(D) the term ‘State’ includes a State of the
16 United States, the District of Columbia, and any
17 commonwealth, territory, or possession of the United
18 States.

19 “(2) In subsection (a)(2)—

20 “(A) the term ‘undisclosed private self-dealing’
21 means that—

22 “(i) an officer or director performs an act
23 which causes or is intended to cause harm to
24 the officer’s or director’s employer, and which is
25 undertaken in whole or in part to benefit or

1 further by an actual or intended value of
2 \$5,000 or more a financial interest of—

3 “(I) the officer or director;

4 “(II) the officer or director’s spouse
5 or minor child;

6 “(III) a general partner of the officer
7 or director;

8 “(IV) another business or organiza-
9 tion in which the public official is serving
10 as an employee, officer, director, trustee,
11 or general partner; or

12 “(V) an individual, business, or orga-
13 nization with whom the officer or director
14 is negotiating for, or has any arrangement
15 concerning, prospective employment or fi-
16 nancial compensation; and

17 “(ii) the officer or director knowingly fal-
18 sifies, conceals, or covers up material informa-
19 tion that is required to be disclosed regarding
20 that financial interest by any Federal, State, or
21 local statute, rule, regulation, or charter appli-
22 cable to the officer or director, or knowingly
23 fails to disclose material information regarding
24 that financial interest in a manner that is re-
25 quired by any Federal, State, or local statute,

1 rule, regulation, or charter applicable to the of-
2 ficer or director;

3 “(B) the term ‘employer’ includes publicly trad-
4 ed corporations, and private charities under section
5 501(c)(3) of the Internal Revenue Code of 1986;
6 and

7 “(C) the term ‘act’ includes a decision or rec-
8 ommendation to take, or not to take action, and can
9 be a single act, more than one act, or a course of
10 conduct.”.

11 (b) CHAPTER ANALYSIS.—The chapter analysis for
12 chapter 63 of title 18, United States Code, is amended
13 by inserting after the item for section 1346 the following:

“Sec. 1346A. Definition of ‘scheme or artifice to defraud’.”.

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