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H. R. 170

IN THE SENATE OF THE UNITED STATES

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AN ACT

To require certain notices in any mailing using a game of chance for the promotion of a product or service, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Deceptive Mail Preven-
3 tion and Enforcement Act”.

4 **SEC. 2. RESTRICTIONS ON MAILINGS USING MISLEADING**
5 **REFERENCES TO THE UNITED STATES GOV-**
6 **ERNMENT.**

7 Section 3001 of title 39, United States Code, is
8 amended—

9 (1) in subsection (h)—

10 (A) in the first sentence by striking “con-
11 tains a seal, insignia, trade or brand name, or
12 any other term or symbol that reasonably could
13 be interpreted or construed as implying any
14 Federal Government connection, approval or en-
15 dorsement” and inserting the following: “which
16 reasonably could be interpreted or construed as
17 implying any Federal Government connection,
18 approval, or endorsement through the use of a
19 seal, insignia, reference to the Postmaster Gen-
20 eral, citation to a Federal statute, name of a
21 Federal agency, department, commission, or
22 program, trade or brand name, or any other
23 term or symbol; or contains any reference to
24 the Postmaster General or a citation to a Fed-
25 eral statute that misrepresents either the iden-
26 tity of the mailer or the protection or status af-

1 forfed such matter by the Federal Govern-
2 ment”; and

3 (B) in paragraph (2)—

4 (i) in subparagraph (A) by striking
5 “and” at the end;

6 (ii) in subparagraph (B) by striking
7 “or” at the end and inserting “and”; and

8 (iii) by inserting after subparagraph
9 (B) the following:

10 “(C) such matter does not contain a false
11 representation stating or implying that Federal
12 Government benefits or services will be affected
13 by any purchase or nonpurchase; or”;

14 (2) in subsection (i) in the first sentence—

15 (A) in the first sentence by striking “con-
16 tains a seal, insignia, trade or brand name, or
17 any other term or symbol that reasonably could
18 be interpreted or construed as implying any
19 Federal Government connection, approval or en-
20 dorsement” and inserting the following: “which
21 reasonably could be interpreted or construed as
22 implying any Federal Government connection,
23 approval, or endorsement through the use of a
24 seal, insignia, reference to the Postmaster Gen-
25 eral, citation to a Federal statute, name of a

1 Federal agency, department, commission, or
2 program, trade or brand name, or any other
3 term or symbol; or contains any reference to
4 the Postmaster General or a citation to a Fed-
5 eral statute that misrepresents either the iden-
6 tity of the mailer or the protection or status af-
7 forded such matter by the Federal Govern-
8 ment”; and

9 (B) in paragraph (2)—

10 (i) in subparagraph (A) by striking
11 “and” at the end;

12 (ii) in subparagraph (B) by striking
13 “or” at the end and inserting “and”; and

14 (iii) by inserting after subparagraph
15 (B) the following:

16 “(C) such matter does not contain a false
17 representation stating or implying that Federal
18 Government benefits or services will be affected
19 by any contribution or noncontribution; or”;

20 (3) by redesignating subsections (j) and (k) as
21 subsections (m) and (n), respectively; and

22 (4) by inserting after subsection (i) the fol-
23 lowing:

24 “(j)(1) Any matter otherwise legally acceptable in the
25 mails which is described in paragraph (2) is nonmailable

1 matter, shall not be carried or delivered by mail, and shall
2 be disposed of as the Postal Service directs.

3 “(2) Matter described in this paragraph is any matter
4 that—

5 “(A) constitutes a solicitation for the purchase
6 of or payment for any product or service that—

7 “(i) is provided by the Federal Govern-
8 ment; and

9 “(ii) may be obtained without cost from
10 the Federal Government; and

11 “(B) does not contain a clear and conspicuous
12 statement giving notice of the information set forth
13 in clauses (i) and (ii) of subparagraph (A).”.

14 **SEC. 3. RESTRICTIONS ON SWEEPSTAKES AND DECEPTIVE**
15 **MAILINGS.**

16 Section 3001 of title 39, United States Code, is
17 amended by inserting after subsection (j) (as added by sec-
18 tion 2(4) of this Act) the following:

19 “(k)(1) In this subsection—

20 “(A) the term ‘clearly and conspicuously dis-
21 played’ means presented in a manner that is readily
22 noticeable, readable, and understandable to the
23 group to whom the applicable matter is dissemi-
24 nated;

1 “(B) the term ‘facsimile check’ means any mat-
2 ter that—

3 “(i) is designed to resemble a check or
4 other negotiable instrument; but

5 “(ii) is not negotiable;

6 “(C) the term ‘skill contest’ means a puzzle,
7 game, competition, or other contest in which—

8 “(i) a prize is awarded or offered;

9 “(ii) the outcome depends predominately
10 on the skill of the contestant; and

11 “(iii) a purchase, payment, or donation is
12 required or implied to be required to enter the
13 contest; and

14 “(D) the term ‘sweepstakes’ means a game of
15 chance for which no consideration is required to
16 enter.

17 “(2) Except as provided in paragraph (4), any matter
18 otherwise legally acceptable in the mails which is described
19 in paragraph (3) is nonmailable matter, shall not be car-
20 ried or delivered by mail, and shall be disposed of as the
21 Postal Service directs.

22 “(3) Matter described in this paragraph is any matter
23 that—

1 “(A)(i) includes entry materials for a sweep-
2 stakes or a promotion that purports to be a sweep-
3 stakes; and

4 “(ii)(I) does not contain a statement that dis-
5 closes in the mailing, in the rules, and on the order
6 or entry form, that no purchase is necessary to enter
7 such sweepstakes;

8 “(II) does not contain a statement that dis-
9 closes in the mailing, in the rules, and on the order
10 or entry form, that a purchase will not improve an
11 individual’s chances of winning with such entry;

12 “(III) does not state all terms and conditions of
13 the sweepstakes promotion, including the rules and
14 entry procedures for the sweepstakes;

15 “(IV) does not disclose the sponsor or mailer of
16 such matter and the principal place of business or
17 an address at which the sponsor or mailer may be
18 contacted;

19 “(V) does not contain sweepstakes rules that
20 state—

21 “(aa) the estimated odds of winning each
22 prize;

23 “(bb) the quantity, estimated retail value,
24 and nature of each prize; and

1 “(cc) the schedule of any payments made
2 over time;

3 “(VI) represents that individuals not pur-
4 chasing products or services may be disqualified
5 from receiving future sweepstakes mailings;

6 “(VII) requires that a sweepstakes entry be ac-
7 companied by an order or payment for a product or
8 service previously ordered;

9 “(VIII) represents that an individual is a win-
10 ner of a prize unless that individual has won such
11 prize; or

12 “(IX) contains a representation that con-
13 tradicts, or is inconsistent with sweepstakes rules or
14 any other disclosure required to be made under this
15 subsection, including any statement qualifying, lim-
16 iting, or explaining the rules or disclosures in a
17 manner inconsistent with such rules or disclosures;

18 “(B)(i) includes entry materials for a skill con-
19 test or a promotion that purports to be a skill con-
20 test; and

21 “(ii)(I) does not state all terms and conditions
22 of the skill contest, including the rules and entry
23 procedures for the skill contest;

24 “(II) does not disclose the sponsor or mailer of
25 the skill contest and the principal place of business

1 or an address at which the sponsor or mailer may
2 be contacted; or

3 “(III) does not contain skill contest rules that
4 state, as applicable—

5 “(aa) the number of rounds or levels of the
6 contest and the cost to enter each round or
7 level;

8 “(bb) that subsequent rounds or levels will
9 be more difficult to solve;

10 “(cc) the maximum cost to enter all rounds
11 or levels;

12 “(dd) the estimated number or percentage
13 of entrants who may correctly solve the skill
14 contest or the approximate number or percent-
15 age of entrants correctly solving the past 3 skill
16 contests conducted by the sponsor;

17 “(ee) the identity or description of the
18 qualifications of the judges if the contest is
19 judged by other than the sponsor;

20 “(ff) the method used in judging;

21 “(gg) the date by which the winner or win-
22 ners will be determined and the date or process
23 by which prizes will be awarded;

24 “(hh) the quantity, estimated retail value,
25 and nature of each prize; and

1 “(ii) the schedule of any payments made
2 over time; or

3 “(C) includes any facsimile check that does not
4 contain a statement on the check itself that such
5 check is not a negotiable instrument and has no
6 cash value.

7 “(4) Matter that appears in a magazine, newspaper,
8 or other periodical shall be exempt from paragraph (2)
9 if such matter—

10 “(A) is not directed to a named individual; or

11 “(B) does not include an opportunity to make
12 a payment or order a product or service.

13 “(5) Any statement, notice, or disclaimer required
14 under paragraph (3) shall be clearly and conspicuously
15 displayed. Any statement, notice, or disclaimer required
16 under subclause (I) or (II) of paragraph (3)(A)(ii) shall
17 be displayed more conspicuously than would otherwise be
18 required under the preceding sentence.

19 “(6) In the enforcement of paragraph (3), the Postal
20 Service shall consider all of the materials included in the
21 mailing and the material and language on and visible
22 through the envelope or outside cover or wrapper in which
23 those materials are mailed.

24 “(l)(1) Any person who uses the mails for any matter
25 to which subsection (h), (i), (j), or (k) applies shall adopt

1 reasonable practices and procedures to prevent the mailing
2 of such matter to any person who, personally or through
3 a conservator, guardian, or individual with power of
4 attorney—

5 “(A) submits to the mailer of such matter a
6 written request that such matter should not be
7 mailed to such person; or

8 “(B)(i) submits such a written request to the
9 attorney general of the appropriate State (or any
10 State government officer who transmits the request
11 to that attorney general); and

12 “(ii) that attorney general transmits such re-
13 quest to the mailer.

14 “(2) Any person who mails matter to which sub-
15 section (h), (i), (j), or (k) applies shall maintain or cause
16 to be maintained a record of all requests made under para-
17 graph (1). The records shall be maintained in a form to
18 permit the suppression of an applicable name at the appli-
19 cable address for a 5-year period beginning on the date
20 the written request under paragraph (1) is submitted to
21 the mailer.”.

22 **SEC. 4. POSTAL SERVICE ORDERS TO PROHIBIT DECEPTIVE**
23 **MAILINGS.**

24 Section 3005(a) of title 39, United States Code, is
25 amended—

1 (1) by striking “or” after “(h),” each place it
2 appears; and

3 (2) by inserting “, (j), or (k)” after “(i)” each
4 place it appears.

5 **SEC. 5. TEMPORARY RESTRAINING ORDER FOR DECEPTIVE**
6 **MAILINGS.**

7 (a) IN GENERAL.—Section 3007 of title 39, United
8 States Code, is amended—

9 (1) by redesignating subsection (b) as sub-
10 section (c); and

11 (2) by striking subsection (a) and inserting the
12 following:

13 “(a)(1) In preparation for or during the pendency of
14 proceedings under section 3005, the Postal Service may,
15 under the provisions of section 409(d), apply to the dis-
16 trict court in any district in which mail is sent or received
17 as part of the alleged scheme, device, lottery, gift enter-
18 prise, sweepstakes, skill contest, or facsimile check or in
19 any district in which the defendant is found, for a tem-
20 porary restraining order and preliminary injunction under
21 the procedural requirements of rule 65 of the Federal
22 Rules of Civil Procedure.

23 “(2)(A) Upon a proper showing, the court shall enter
24 an order which shall—

1 “(i) remain in effect during the pendency of the
2 statutory proceedings, any judicial review of such
3 proceedings, or any action to enforce orders issued
4 under the proceedings; and

5 “(ii) direct the detention by the postmaster, in
6 any and all districts, of the defendant’s incoming
7 mail and outgoing mail, which is the subject of the
8 proceedings under section 3005.

9 “(B) A proper showing under this paragraph shall
10 require proof of a likelihood of success on the merits of
11 the proceedings under section 3005.

12 “(3) Mail detained under paragraph (2) shall—

13 “(A) be made available at the post office of
14 mailing or delivery for examination by the defendant
15 in the presence of a postal employee; and

16 “(B) be delivered as addressed if such mail is
17 not clearly shown to be the subject of proceedings
18 under section 3005.

19 “(4) No finding of the defendant’s intent to make a
20 false representation or to conduct a lottery is required to
21 support the issuance of an order under this section.

22 “(b) If any order is issued under subsection (a) and
23 the proceedings under section 3005 are concluded with the
24 issuance of an order under that section, any judicial review

1 of the matter shall be in the district in which the order
2 under subsection (a) was issued.”.

3 (b) REPEAL.—

4 (1) IN GENERAL.—Section 3006 of title 39,
5 United States Code, and the item relating to such
6 section in the table of sections for chapter 30 of
7 such title are repealed.

8 (2) CONFORMING AMENDMENTS.—(A) Section
9 3005(c) of title 39, United States Code, is amended
10 by striking “section and section 3006 of this title,”
11 and inserting “section,”.

12 (B) Section 3011(e) of title 39, United States
13 Code, is amended by striking “3006, 3007,” and in-
14 serting “3007”.

15 **SEC. 6. CIVIL PENALTIES AND COSTS.**

16 Section 3012 of title 39, United States Code, is
17 amended—

18 (1) in subsection (a) by striking “\$10,000 for
19 each day that such person engages in conduct de-
20 scribed by paragraph (1), (2), or (3) of this sub-
21 section.” and inserting “\$50,000 for each mailing of
22 less than 50,000 pieces; \$100,000 for each mailing
23 of 50,000 to 100,000 pieces; with an additional
24 \$10,000 for each additional 10,000 pieces above
25 100,000, not to exceed \$2,000,000.”;

1 (2) in paragraphs (1) and (2) of subsection (b)
2 by inserting after “of subsection (a)” the following:
3 “, (c), or (d)”;

4 (3) by redesignating subsections (c) and (d), as
5 subsections (e) and (f), respectively; and

6 (4) by inserting after subsection (b) the fol-
7 lowing:

8 “(c)(1) In any proceeding in which the Postal Service
9 may issue an order under section 3005(a), the Postal
10 Service may in lieu of that order or as part of that order
11 assess civil penalties in an amount not to exceed \$25,000
12 for each mailing of less than 50,000 pieces; \$50,000 for
13 each mailing of 50,000 to 100,000 pieces; with an addi-
14 tional \$5,000 for each additional 10,000 pieces above
15 100,000, not to exceed \$1,000,000.

16 “(2) In any proceeding in which the Postal Service
17 assesses penalties under this subsection the Postal Service
18 shall determine the civil penalty taking into account the
19 nature, circumstances, extent, and gravity of the violation
20 or violations of section 3005(a), and with respect to the
21 violator, the ability to pay the penalty, the effect of the
22 penalty on the ability of the violator to conduct lawful
23 business, any history of prior violations of such section,
24 the degree of culpability and other such matters as justice
25 may require.

1 “(d) Any person who violates section 3001(l) shall be
2 liable to the United States for a civil penalty not to exceed
3 \$10,000 for each mailing to an individual.”.

4 **SEC. 7. ADMINISTRATIVE SUBPOENAS.**

5 (a) IN GENERAL.—Chapter 30 of title 39, United
6 States Code, is amended by adding at the end the fol-
7 lowing:

8 **“§ 3016. Administrative subpoenas**

9 “(a) SUBPOENA AUTHORITY.—

10 “(1) INVESTIGATIONS.—

11 “(A) IN GENERAL.—In any investigation
12 conducted under section 3005(a), the Post-
13 master General may require by subpoena the
14 production of any records (including books, pa-
15 pers, documents, and other tangible things
16 which constitute or contain evidence) which the
17 Postmaster General considers relevant or mate-
18 rial to such investigation.

19 “(B) CONDITION.—No subpoena shall be
20 issued under this paragraph except in accord-
21 ance with procedures, established by the Postal
22 Service, requiring that—

23 “(i) a specific case, with an individual
24 or entity identified as the subject, be
25 opened before a subpoena is requested;

1 “(ii) appropriate supervisory and legal
2 review of a subpoena request be performed;
3 and

4 “(iii) delegation of subpoena approval
5 authority be limited to the Postal Service’s
6 General Counsel or a Deputy General
7 Counsel.

8 “(2) STATUTORY PROCEEDINGS.—In any statu-
9 tory proceeding conducted under section 3005(a),
10 the Judicial Officer may require by subpoena the at-
11 tendance and testimony of witnesses and the produc-
12 tion of any records (including books, papers, docu-
13 ments, and other tangible things which constitute or
14 contain evidence) which the Judicial Officer con-
15 siders relevant or material to such proceeding.

16 “(3) RULE OF CONSTRUCTION.—Nothing in
17 paragraph (2) shall be considered to apply in any
18 circumstance to which paragraph (1) applies.

19 “(b) SERVICE.—

20 “(1) SERVICE WITHIN THE UNITED STATES.—
21 A subpoena issued under this section may be served
22 by a person designated under section 3061 of title
23 18 at any place within the territorial jurisdiction of
24 any court of the United States.

1 “(2) FOREIGN SERVICE.—Any such subpoena
2 may be served upon any person who is not to be
3 found within the territorial jurisdiction of any court
4 of the United States, in such manner as the Federal
5 Rules of Civil Procedure prescribe for service in a
6 foreign country. To the extent that the courts of the
7 United States may assert jurisdiction over such per-
8 son consistent with due process, the United States
9 District Court for the District of Columbia shall
10 have the same jurisdiction to take any action re-
11 specting compliance with this section by such person
12 that such court would have if such person were per-
13 sonally within the jurisdiction of such court.

14 “(3) SERVICE ON BUSINESS PERSONS.—Service
15 of any such subpoena may be made upon a partner-
16 ship, corporation, association, or other legal entity
17 by—

18 “(A) delivering a duly executed copy there-
19 of to any partner, executive officer, managing
20 agent, or general agent thereof, or to any agent
21 thereof authorized by appointment or by law to
22 receive service of process on behalf of such
23 partnership, corporation, association, or entity;

24 “(B) delivering a duly executed copy there-
25 of to the principal office or place of business of

1 the partnership, corporation, association, or en-
2 tity; or

3 “(C) depositing such copy in the United
4 States mails, by registered or certified mail, re-
5 turn receipt requested, duly addressed to such
6 partnership, corporation, association, or entity
7 at its principal office or place of business.

8 “(4) SERVICE ON NATURAL PERSONS.—Service
9 of any subpoena may be made upon any natural per-
10 son by—

11 “(A) delivering a duly executed copy to the
12 person to be served; or

13 “(B) depositing such copy in the United
14 States mails, by registered or certified mail, re-
15 turn receipt requested, duly addressed to such
16 person at his residence or principal office or
17 place of business.

18 “(5) VERIFIED RETURN.—A verified return by
19 the individual serving any such subpoena setting
20 forth the manner of such service shall be proof of
21 such service. In the case of service by registered or
22 certified mail, such return shall be accompanied by
23 the return post office receipt of delivery of such sub-
24 poena.

25 “(c) ENFORCEMENT.—

1 “(1) IN GENERAL.—Whenever any person, part-
2 nership, corporation, association, or entity fails to
3 comply with any subpoena duly served upon him, the
4 Postmaster General may request that the Attorney
5 General seek enforcement of the subpoena in the dis-
6 trict court of the United States for any judicial dis-
7 trict in which such person resides, is found, or
8 transacts business, and serve upon such person a pe-
9 tition for an order of such court for the enforcement
10 of this section.

11 “(2) JURISDICTION.—Whenever any petition is
12 filed in any district court of the United States under
13 this section, such court shall have jurisdiction to
14 hear and determine the matter so presented, and to
15 enter such order or orders as may be required to
16 carry into effect the provisions of this section. Any
17 final order entered shall be subject to appeal under
18 section 1291 of title 28, United States Code. Any
19 disobedience of any final order entered under this
20 section by any court may be punished as contempt.

21 “(d) DISCLOSURE.—Any documentary material pro-
22 vided pursuant to any subpoena issued under this section
23 shall be exempt from disclosure under section 552 of title
24 5, United States Code.”.

1 (b) REGULATIONS.—Not later than 120 days after
2 the date of the enactment of this section, the Postal Serv-
3 ice shall promulgate regulations setting out the procedures
4 the Postal Service will use to implement the amendment
5 made by subsection (a).

6 (c) SEMIANNUAL REPORTS.—Section 3013 of title
7 39, United States Code, is amended by striking “and” at
8 the end of paragraph (4), by redesignating paragraph (5)
9 as paragraph (6), and by inserting after paragraph (4)
10 the following:

11 “(5) the number of cases in which the authority
12 described in section 3016 was used, and a com-
13 prehensive statement describing how that authority
14 was used in each of those cases; and”.

15 (d) TECHNICAL AND CONFORMING AMENDMENT.—
16 The table of sections for chapter 30 of title 39, United
17 States Code, is amended by adding at the end the fol-
18 lowing:

“3016. Administrative subpoenas.”.

19 **SEC. 8. REQUIREMENTS OF PROMOTERS OF SKILL CON-**
20 **TESTS OR SWEEPSTAKES MAILINGS.**

21 (a) IN GENERAL.—Chapter 30 of title 39, United
22 States Code (as amended by section 7 of this Act) is
23 amended by adding after section 3016 the following:

1 **“§ 3017. Nonmailable skill contests or sweepstakes**
2 **matter; notification to prohibit mailings**

3 “(a) DEFINITIONS.—In this section—

4 “(1) the term ‘promoter’ means any person
5 who—

6 “(A) originates and mails any skill contest
7 or sweepstakes, except for any matter described
8 in section 3001(k)(4); or

9 “(B) originates and causes to be mailed
10 any skill contest or sweepstakes, except for any
11 matter described in section 3001(k)(4);

12 “(2) the term ‘removal request’ means a re-
13 quest stating that an individual elects to have the
14 name and address of such individual excluded from
15 any list used by a promoter for mailing skill contests
16 or sweepstakes;

17 “(3) the terms ‘skill contest’, ‘sweepstakes’, and
18 ‘clearly and conspicuously displayed’ have the same
19 meanings as given them in section 3001(k); and

20 “(4) the term ‘duly authorized person’, as used
21 in connection with an individual, means a conser-
22 vator or guardian of, or person granted power of at-
23 torney by, such individual.

24 “(b) NONMAILABLE MATTER.—

25 “(1) IN GENERAL.—Matter otherwise legally ac-
26 ceptable in the mails described in paragraph (2)—

1 “(A) is nonmailable matter;

2 “(B) shall not be carried or delivered by
3 mail; and

4 “(C) shall be disposed of as the Postal
5 Service directs.

6 “(2) NONMAILABLE MATTER DESCRIBED.—
7 Matter described in this paragraph is any matter
8 that—

9 “(A) is a skill contest or sweepstakes, ex-
10 cept for any matter described in section
11 3001(k)(4); and

12 “(B)(i) is addressed to an individual who
13 made an election to be excluded from lists
14 under subsection (d); or

15 “(ii) does not comply with subsection
16 (c)(1).

17 “(c) REQUIREMENTS OF PROMOTERS.—

18 “(1) NOTICE TO INDIVIDUALS.—Any promoter
19 who mails a skill contest or sweepstakes shall pro-
20 vide with each mailing a statement that—

21 “(A) is clearly and conspicuously displayed;

22 “(B) includes the address or toll-free tele-
23 phone number of the notification system estab-
24 lished under paragraph (2); and

1 “(C) states that the notification system
2 may be used to prohibit the mailing of all skill
3 contests or sweepstakes by that promoter to
4 such individual.

5 “(2) NOTIFICATION SYSTEM.—Any promoter
6 that mails or causes to be mailed a skill contest or
7 sweepstakes shall establish and maintain a notifica-
8 tion system that provides for any individual (or
9 other duly authorized person) to notify the system of
10 the individual’s election to have the name and ad-
11 dress of the individual excluded from all lists of
12 names and addresses used by that promoter to mail
13 any skill contest or sweepstakes.

14 “(d) ELECTION TO BE EXCLUDED FROM LISTS.—

15 “(1) IN GENERAL.—An individual (or other
16 duly authorized person) may elect to exclude the
17 name and address of that individual from all lists of
18 names and addresses used by a promoter of skill
19 contests or sweepstakes by submitting a removal re-
20 quest to the notification system established under
21 subsection (c).

22 “(2) RESPONSE AFTER SUBMITTING REMOVAL
23 REQUEST TO THE NOTIFICATION SYSTEM.—Not
24 later than 60 calendar days after a promoter re-
25 ceives a removal request pursuant to an election

1 under paragraph (1), the promoter shall exclude the
2 individual's name and address from all lists of
3 names and addresses used by that promoter to select
4 recipients for any skill contest or sweepstakes.

5 “(3) EFFECTIVENESS OF ELECTION.—An elec-
6 tion under paragraph (1) shall remain in effect, un-
7 less an individual (or other duly authorized person)
8 notifies the promoter in writing that such
9 individual—

10 “(A) has changed the election; and

11 “(B) elects to receive skill contest or
12 sweepstakes mailings from that promoter.

13 “(e) PRIVATE RIGHT OF ACTION.—

14 “(1) IN GENERAL.—An individual who receives
15 one or more mailings in violation of subsection (d)
16 may, if otherwise permitted by the laws or rules of
17 court of a State, bring in an appropriate court of
18 that State—

19 “(A) an action to enjoin such violation;

20 “(B) an action to recover for actual mone-
21 tary loss from such a violation, or to receive
22 \$500 in damages for each such violation, which-
23 ever is greater; or

24 “(C) both such actions.

1 It shall be an affirmative defense in any action
2 brought under this subsection that the defendant
3 has established and implemented, with due care, rea-
4 sonable practices and procedures to effectively pre-
5 vent mailings in violation of subsection (d). If the
6 court finds that the defendant willfully or knowingly
7 violated subsection (d), the court may, in its discre-
8 tion, increase the amount of the award to an amount
9 equal to not more than 3 times the amount available
10 under subparagraph (B).

11 “(2) ACTION ALLOWABLE BASED ON OTHER
12 SUFFICIENT NOTICE.—A mailing sent in violation of
13 section 3001(l) shall be actionable under this sub-
14 section, but only if such an action would not also be
15 available under paragraph (1) (as a violation of sub-
16 section (d)) based on the same mailing.

17 “(f) PROMOTER NONLIABILITY.—A promoter shall
18 not be subject to civil liability for the exclusion of an indi-
19 vidual’s name or address from any list maintained by that
20 promoter for mailing skill contests or sweepstakes, if—

21 “(1) a removal request is received by the pro-
22 moter’s notification system; and

23 “(2) the promoter has a good faith belief that
24 the request is from—

1 “(A) the individual whose name and ad-
2 dress is to be excluded; or

3 “(B) another duly authorized person.

4 “(g) PROHIBITION ON COMMERCIAL USE OF
5 LISTS.—

6 “(1) IN GENERAL.—

7 “(A) PROHIBITION.—No person may pro-
8 vide any information (including the sale or rent-
9 al of any name or address) derived from a list
10 described in subparagraph (B) to another per-
11 son for commercial use.

12 “(B) LISTS.—A list referred to under sub-
13 paragraph (A) is any list of names and address-
14 es (or other related information) compiled from
15 individuals who exercise an election under sub-
16 section (d).

17 “(2) CIVIL PENALTY.—Any person who violates
18 paragraph (1) shall be assessed a civil penalty by the
19 Postal Service not to exceed \$2,000,000 per viola-
20 tion.

21 “(h) CIVIL PENALTIES.—

22 “(1) IN GENERAL.—Any promoter—

23 “(A) who recklessly mails nonmailable
24 matter in violation of subsection (b) shall be lia-
25 ble to the United States in an amount of

1 \$10,000 per violation for each mailing to an in-
2 dividual of nonmailable matter; or

3 “(B) who fails to comply with the require-
4 ments of subsection (c)(2) shall be liable to the
5 United States.

6 “(2) ENFORCEMENT.—The Postal Service shall,
7 in accordance with the same procedures as set forth
8 in section 3012(b), provide for the assessment of
9 civil penalties under this section.”.

10 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
11 The table of sections for chapter 30 of title 39, United
12 States Code, is amended by adding after the item relating
13 to section 3016 the following:

 “3017. Nonmailable skill contests or sweepstakes matter; notification to prohibit
 mailings.”.

14 (c) EFFECTIVE DATE.—This section shall take effect
15 1 year after the date of the enactment of this Act.

16 **SEC. 9. STATE LAW NOT PREEMPTED.**

17 (a) IN GENERAL.—Nothing in the provisions of this
18 Act (including the amendments made by this Act) or in
19 the regulations promulgated under such provisions shall
20 be construed to preempt any provision of State or local
21 law that imposes more restrictive requirements, regula-
22 tions, damages, costs, or penalties. No determination by
23 the Postal Service that any particular piece of mail or
24 class of mail is in compliance with such provisions of this

1 Act shall be construed to preempt any provision of State
2 or local law.

3 (b) EFFECT ON STATE COURT PROCEEDINGS.—

4 Nothing contained in this section shall be construed to
5 prohibit an authorized State official from proceeding in
6 State court on the basis of an alleged violation of any gen-
7 eral civil or criminal statute of such State or any specific
8 civil or criminal statute of such State.

9 **SEC. 10. TECHNICAL AND CONFORMING AMENDMENTS.**

10 (a) REFERENCES TO REPEALED PROVISIONS.—Sec-
11 tion 3001(a) of title 39, United States Code, is amended
12 by striking “1714,” and “1718,”.

13 (b) CONFORMANCE WITH INSPECTOR GENERAL ACT
14 OF 1978.—

15 (1) IN GENERAL.—Section 3013 of title 39,
16 United States Code, is amended—

17 (A) by striking “Board” each place it ap-
18 pears and inserting “Inspector General”;

19 (B) in the third sentence by striking
20 “Each such report shall be submitted within
21 sixty days after the close of the reporting period
22 involved” and inserting “Each such report shall
23 be submitted within 1 month (or such shorter
24 length of time as the Inspector General may

1 specify) after the close of the reporting period
2 involved”; and

3 (C) by striking the last sentence and in-
4 serting the following:

5 “The information in a report submitted under this section
6 to the Inspector General with respect to a reporting period
7 shall be included as part of the semiannual report pre-
8 pared by the Inspector General under section 5 of the In-
9 spector General Act of 1978 for the same reporting period.
10 Nothing in this section shall be considered to permit or
11 require that any report by the Postmaster General under
12 this section include any information relating to activities
13 of the Inspector General.”.

14 (2) EFFECTIVE DATE.—This subsection shall
15 take effect on the date of the enactment of this Act,
16 and the amendments made by this subsection shall
17 apply with respect to semiannual reporting periods
18 beginning on or after such date of enactment.

19 (3) SAVINGS PROVISION.—For purposes of any
20 semiannual reporting period preceding the first
21 semiannual reporting period referred to in para-
22 graph (2), the provisions of title 39, United States
23 Code, shall continue to apply as if the amendments
24 made by this subsection had not been enacted.

1 **SEC. 11. EFFECTIVE DATE.**

2 Except as provided in section 8 or 10(b), this Act
3 shall take effect 120 days after the date of the enactment
4 of this Act.

 Passed the House of Representatives November 2,
1999.

Attest:

JEFF TRANDAHL,

Clerk.

Calendar No. 418

106TH CONGRESS
1ST SESSION

H. R. 170

AN ACT

To require certain notices in any mailing using a game of chance for the promotion of a product or service, and for other purposes.

NOVEMBER 19, 1999

Read twice and placed on the calendar