

106TH CONGRESS  
1ST SESSION

# S. 335

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## AN ACT

To amend chapter 30 of title 39, United States Code, to provide for the nonmailability of certain deceptive matter relating to sweepstakes, skill contests, facsimile checks, administrative procedures, orders, and civil penalties relating to such matter, 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 “Deceptive Mail Preven-  
5        tion and Enforcement Act”.

1 **SEC. 2. RESTRICTIONS ON MAILINGS USING MISLEADING**  
2 **REFERENCES TO THE UNITED STATES GOV-**  
3 **ERNMENT.**

4 Section 3001 of title 39, United States Code, is  
5 amended—

6 (1) in subsection (h)—

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

26 (B) in paragraph (2)—

1 (i) in subparagraph (A) by striking  
2 “and” at the end;

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

5 (iii) by inserting after subparagraph  
6 (B) the following:

7 “(C) does not contain a false representa-  
8 tion implying that Federal Government benefits  
9 or services will be affected by any purchase or  
10 nonpurchase; or”;

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

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

1 the Postmaster General or a citation to a Fed-  
2 eral statute that misrepresents either the iden-  
3 tity of the mailer or the protection or status af-  
4 farded such matter by the Federal Govern-  
5 ment”; and

6 (B) in paragraph (2)—

7 (i) in subparagraph (A) by striking  
8 “and” at the end;

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

11 (iii) by inserting after subparagraph  
12 (B) the following:

13 “(C) does not contain a false representa-  
14 tion implying that Federal Government benefits  
15 or services will be affected by any purchase or  
16 nonpurchase; or”;

17 (3) by redesignating subsections (j) and (k) as  
18 subsections (m) and (o), respectively; and

19 (4) by inserting after subsection (i) the fol-  
20 lowing:

21 “(j)(1) Matter otherwise legally acceptable in the  
22 mails described under paragraph (2)—

23 “(A) is nonmailable matter;

24 “(B) shall not be carried or delivered by mail;

25 and

1           “(C) shall be disposed of as the Postal Service  
2           directs.

3           “(2) Matter that is nonmailable matter referred to  
4           under paragraph (1) is any matter that—

5           “(A) constitutes a solicitation for the purchase  
6           of 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 under  
13          subparagraph (A) (i) and (ii).”.

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, the term—

20               “(A) ‘clearly and conspicuously displayed’  
21               means presented in a manner that is readily notice-  
22               able, readable, and understandable to the group to  
23               whom the applicable matter is disseminated;

1           “(B) ‘facsimile check’ means any matter de-  
2           signed to resemble a check or other negotiable in-  
3           strument that is not negotiable;

4           “(C) ‘skill contest’ means a puzzle, game, com-  
5           petition, or other contest in which—

6                   “(i) a prize is awarded or offered;

7                   “(ii) the outcome depends predominately  
8           on the skill of the contestant; and

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

12          “(D) ‘sweepstakes’ means a game of chance for  
13          which no consideration is required to enter.

14          “(2) Matter otherwise legally acceptable in the mails  
15          that is nonmailable matter described under paragraph (3)  
16          shall not be carried or delivered by mail and may be dis-  
17          posed of as the Postal Service directs.

18          “(3) Matter that is nonmailable matter referred to  
19          under paragraph (2) is any matter (except matter as pro-  
20          vided under paragraph (4)) that—

21                   “(A)(i) includes entry materials for a sweep-  
22                  stakes or a promotion that purports to be a sweep-  
23                  stakes; and

24                   “(ii)(I) does not contain a statement that  
25                  prominently discloses in the mailing, in the rules,

1 and on the order or entry form, that no purchase is  
2 necessary to enter such sweepstakes;

3 “(II) does not contain a statement that promi-  
4 nently discloses in the mailing, in the rules, and on  
5 the order or entry form, that a purchase will not im-  
6 prove an individual’s chances of winning with such  
7 entry;

8 “(III) does not state all terms and conditions of  
9 the sweepstakes promotion, including the rules and  
10 entry procedures for the sweepstakes;

11 “(IV) does not disclose the sponsor or mailer of  
12 such matter and the principal place of business or  
13 an address at which the sponsor or mailer may be  
14 contacted;

15 “(V) does not contain sweepstakes rules that  
16 state—

17 “(aa) the estimated odds of winning each  
18 prize;

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

21 “(cc) the schedule of any payments made  
22 over time;

23 “(VI) represents that individuals not pur-  
24 chasing products may be disqualified from receiving  
25 future sweepstakes mailings;

1           “(VII) requires that a sweepstakes entry be ac-  
2           companied by an order or payment for a product  
3           previously ordered;

4           “(VIII) represents that an individual is a win-  
5           ner of a prize unless that individual has won a prize;  
6           or

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

13          “(B)(i) includes entry materials for a skill con-  
14          test or a promotion that purports to be a skill con-  
15          test; and

16          “(ii)(I) does not state all terms and conditions  
17          of the skill contest, including the rules and entry  
18          procedures for the skill contest;

19          “(II) does not disclose the sponsor or mailer of  
20          the skill contest and the principal place of business  
21          or an address at which the sponsor or mailer may  
22          be contacted; or

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

1           “(aa) the number of rounds or levels of the  
2 contest and the cost to enter each round or  
3 level;

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

6           “(cc) the maximum cost to enter all rounds  
7 or levels;

8           “(dd) the estimated number or percentage  
9 of entrants who may correctly solve the skill  
10 contest or the approximate number or percent-  
11 age of entrants correctly solving the past 3 skill  
12 contests conducted by the sponsor;

13           “(ee) the identity or description of the  
14 qualifications of the judges if the contest is  
15 judged by other than the sponsor;

16           “(ff) the method used in judging;

17           “(gg) the date by which the winner or win-  
18 ners will be determined and the date or process  
19 by which prizes will be awarded;

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

22           “(ii) the schedule of any payments made  
23 over time; or

24           “(C) includes any facsimile check that does not  
25 contain a statement on the check itself that such

1 check is not a negotiable instrument and has no  
2 cash value.

3 “(4) Matter that appears in a magazine, newspaper,  
4 or other periodical and contains materials that are a fac-  
5 simile check, skill contest, or sweepstakes is exempt from  
6 paragraph (3), if the matter—

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

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

10 “(5) Any statement, notice, or disclaimer required  
11 under paragraph (3) shall be clearly and conspicuously  
12 displayed.

13 “(6) In the enforcement of paragraph (3), the Postal  
14 Service shall consider all of the materials included in the  
15 mailing and the material and language on and visible  
16 through the envelope.

17 “(l)(1) Any person who uses the mails for any matter  
18 to which subsection (h), (i), (j), or (k) applies shall adopt  
19 reasonable practices and procedures to prevent the mailing  
20 of such matter to any person who, personally or through  
21 a conservator, guardian, individual with power of  
22 attorney—

23 “(A) submits to the mailer of such matter a  
24 written request that such matter should not be  
25 mailed to such person; or

1           “(B)(i) submits such a written request to the  
2           attorney general of the appropriate State (or any  
3           State government officer who transmits the request  
4           to that attorney general); and

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

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

15   **SEC. 4. POSTAL SERVICE ORDERS TO PROHIBIT DECEPTIVE**  
16                                   **MAILINGS.**

17          Section 3005(a) of title 39, United States Code, is  
18          amended—

19                 (1) by striking “or” after “(h),” both places it  
20                 appears; and

21                 (2) by inserting “, (j), or (k)” after “(i)” in  
22                 both such places.

1 **SEC. 5. TEMPORARY RESTRAINING ORDER FOR DECEPTIVE**  
2 **MAILINGS.**

3 Section 3007 of title 39, United States Code, is  
4 amended—

5 (1) by redesignating subsection (b) as sub-  
6 section (c); and

7 (2) by striking subsection (a) and inserting the  
8 following:

9 “(a)(1) In preparation for or during the pendency of  
10 proceedings under sections 3005 and 3006, the Postal  
11 Service, in accordance with section 409(d), may apply to  
12 the district court in any district in which mail is sent or  
13 received as part of the alleged scheme, device, lottery, gift  
14 enterprise, sweepstakes, skill contest, or facsimile check  
15 or in any district in which the defendant is found, for a  
16 temporary restraining order and preliminary injunction  
17 under the procedural requirements of rule 65 of the Fed-  
18 eral Rules of Civil Procedure.

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

21 (i) remain in effect during pendency of the  
22 statutory proceedings, any judicial review of such  
23 proceedings, or any action to enforce orders issued  
24 under the proceedings; and

25 (ii) direct the detention by the postmaster, in  
26 any and all districts, of the defendant’s incoming

1 mail and outgoing mail, which is the subject of the  
2 proceedings under sections 3005 and 3006.

3 “(B) A proper showing under this paragraph shall  
4 require proof of a likelihood of success on the merits of  
5 the proceedings under section 3005 or 3006.

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

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

10 “(B) be delivered as addressed if such mail is  
11 clearly shown not to be the subject of proceedings  
12 under sections 3005 and 3006.

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

16 “(b) If any order is issued under subsection (a) and  
17 the proceedings under section 3005 or 3006 are concluded  
18 with the issuance of an order under that section, any judi-  
19 cial review of the matter shall be in the district in which  
20 the order under subsection (a) was issued.”.

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

22 Section 3012 of title 39, United States Code, is  
23 amended—

24 (1) in subsection (a) by striking “\$10,000 for  
25 each day that such person engages in conduct de-

1 scribed by paragraph (1), (2), or (3) of this sub-  
2 section.” and inserting “\$50,000 for each mailing of  
3 less than 50,000 pieces; \$100,000 for each mailing  
4 of 50,000 to 100,000 pieces; with an additional  
5 \$10,000 for each additional 10,000 pieces above  
6 100,000, not to exceed \$2,000,000.”;

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

10 (3) by redesignating subsections (c) and (d), as  
11 subsections (e) and (f), respectively;

12 (4) by inserting after subsection (b) the fol-  
13 lowing:

14 “(c)(1) In any proceeding in which the Postal Service  
15 may issue an order under section 3005(a), the Postal  
16 Service may in lieu of that order or as part of that order  
17 assess civil penalties in an amount not to exceed \$25,000  
18 for each mailing of less than 50,000 pieces; \$50,000 for  
19 each mailing of 50,000 to 100,000 pieces; with an addi-  
20 tional \$5,000 for each additional 10,000 pieces above  
21 100,000, not to exceed \$1,000,000.

22 “(2) In any proceeding in which the Postal Service  
23 assesses penalties under this subsection the Postal Service  
24 shall determine the civil penalty taking into account the  
25 nature, circumstances, extent, and gravity of the violation

1 or violations of section 3005(a), and with respect to the  
2 violator, the ability to pay the penalty, the effect of the  
3 penalty on the ability of the violator to conduct lawful  
4 business, any history of prior violations of such section,  
5 the degree of culpability and other such matters as justice  
6 may require.

7 “(d) Any person who violates section 3001(l) shall be  
8 liable to the United States for a civil penalty not to exceed  
9 \$10,000 for each mailing to an individual.”; and

10 (5) by amending subsection (e) (as redesignated  
11 by paragraph (3) of this section) to read as follows:

12 “(e)(1) From all civil penalties collected in the admin-  
13 istrative and judicial enforcement of this chapter, an  
14 amount equal to the administrative and judicial costs in-  
15 curred by the Postal Service in such enforcement, not to  
16 equal or exceed \$500,000 in each year, shall be—

17 “(A) deposited in the Postal Service Fund es-  
18 tablished under section 2003; and

19 “(B) available for payment of such costs.

20 “(2) Except for amounts deposited in the Postal  
21 Service Fund under paragraph (1), all civil penalties col-  
22 lected in the administrative and judicial enforcement of  
23 this chapter shall be deposited in the General Fund of the  
24 Treasury.”.

1 **SEC. 7. ADDITIONAL AUTHORITY FOR THE POSTAL INSPEC-**  
2 **TION SERVICE.**

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

6 **“§ 3016. Administrative subpoenas**

7 “(a) AUTHORIZATION OF USE OF SUBPOENAS BY  
8 POSTMASTER GENERAL.—In any investigation conducted  
9 under this chapter, the Postmaster General may require  
10 by subpoena the production of any records (including  
11 books, papers, documents, and other tangible things which  
12 constitute or contain evidence) which the Postmaster Gen-  
13 eral finds relevant or material to the investigation.

14 “(b) SERVICE.—

15 “(1) SERVICE WITHIN THE UNITED STATES.—

16 A subpoena issued under this section may be served  
17 by a person designated under section 3061 of title  
18 18 at any place within the territorial jurisdiction of  
19 any court of the United States.

20 “(2) FOREIGN SERVICE.—Any such subpoena

21 may be served upon any person who is not to be  
22 found within the territorial jurisdiction of any court  
23 of the United States, in such manner as the Federal  
24 Rules of Civil Procedure prescribe for service in a  
25 foreign country. To the extent that the courts of the  
26 United States may assert jurisdiction over such per-

1 son consistent with due process, the United States  
2 District Court for the District of Columbia shall  
3 have the same jurisdiction to take any action re-  
4 specting compliance with this section by such person  
5 that such court would have if such person were per-  
6 sonally within the jurisdiction of such court.

7 “(3) SERVICE ON BUSINESS PERSONS.—Service  
8 of any such subpoena may be made by a Postal In-  
9 spector upon a partnership, corporation, association,  
10 or other legal entity by—

11 “(A) delivering a duly executed copy there-  
12 of to any partner, executive officer, managing  
13 agent, or general agent thereof, or to any agent  
14 thereof authorized by appointment or by law to  
15 receive service of process on behalf of such  
16 partnership, corporation, association, or entity;

17 “(B) delivering a duly executed copy there-  
18 of to the principal office or place of business of  
19 the partnership, corporation, association, or en-  
20 tity; or

21 “(C) depositing such copy in the United  
22 States mails, by registered or certified mail, re-  
23 turn receipt requested, duly addressed to such  
24 partnership, corporation, association, or entity  
25 at its principal office or place of business.

1           “(4) SERVICE ON NATURAL PERSONS.—Service  
2 of any subpoena may be made upon any natural per-  
3 son by—

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

6           “(B) depositing such copy in the United  
7 States mails, by registered or certified mail, re-  
8 turn receipt requested, duly addressed to such  
9 person at his residence or principal office or  
10 place of business.

11           “(5) VERIFIED RETURN.—A verified return by  
12 the individual serving any such subpoena setting  
13 forth the manner of such service shall be proof of  
14 such service. In the case of service by registered or  
15 certified mail, such return shall be accompanied by  
16 the return post office receipt of delivery of such sub-  
17 poena.

18           “(c) ENFORCEMENT.—

19           “(1) IN GENERAL.—Whenever any person, part-  
20 nership, corporation, association, or entity fails to  
21 comply with any subpoena duly served upon him, the  
22 Postmaster General may request that the Attorney  
23 General seek enforcement of the subpoena in the dis-  
24 trict court of the United States for any judicial dis-  
25 trict in which such person resides, is found, or

1 transacts business, and serve upon such person a pe-  
2 tition for an order of such court for the enforcement  
3 of this section.

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

14 “(d) DISCLOSURE.—Any documentary material pro-  
15 vided pursuant to any subpoena issued under this section  
16 shall be exempt from disclosure under section 552 of title  
17 5.”.

18 (b) REGULATIONS.—Not later than 120 days after  
19 the date of enactment of this section, the Postal Service  
20 shall promulgate regulations setting out the procedures  
21 the Postal Service will use to implement this section.

22 (c) TECHNICAL AND CONFORMING AMENDMENT.—  
23 The table of sections for chapter 30 of title 39, United  
24 States Code, is amended by adding at the end the fol-  
25 lowing:

“3016. Administrative subpoenas.”.

1 **SEC. 8. REQUIREMENTS OF PROMOTERS OF SKILL CON-**  
 2 **TESTS OR SWEEPSTAKES MAILINGS.**

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

6 **“§ 3017. Nonmailable skill contests or sweepstakes**  
 7 **matter; notification to prohibit mailings**

8 “(a) DEFINITIONS.—In this section, the term—

9 “(1) ‘promoter’ means any person who—

10 “(A) originates and mails any skill contest  
 11 or sweepstakes, except for any matter described  
 12 under section 3001(k)(4); or

13 “(B) originates and causes to be mailed  
 14 any skill contest or sweepstakes, except for any  
 15 matter described under section 3001(k)(4);

16 “(2) ‘removal request’ means a request stating  
 17 that an individual elects to have the name and ad-  
 18 dress of such individual excluded from any list used  
 19 by a promoter for mailing skill contests or sweep-  
 20 stakes;

21 “(3) ‘skill contest’ means a puzzle, game, com-  
 22 petition, or other contest in which—

23 “(A) a prize is awarded or offered;

24 “(B) the outcome depends predominately  
 25 on the skill of the contestant; and

1           “(C) a purchase, payment, or donation is  
2           required or implied to be required to enter the  
3           contest; and

4           “(4) ‘sweepstakes’ means a game of chance for  
5           which no consideration is required to enter.

6           “(b) NONMAILABLE MATTER.—

7           “(1) IN GENERAL.—Matter otherwise legally ac-  
8           ceptable in the mails described under paragraph  
9           (2)—

10           “(A) is nonmailable matter;

11           “(B) shall not be carried or delivered by  
12           mail; and

13           “(C) shall be disposed of as the Postal  
14           Service directs.

15           “(2) NONMAILABLE MATTER DESCRIBED.—  
16           Matter that is nonmailable matter referred to under  
17           paragraph (1) is any matter that—

18           “(A) is a skill contest or sweepstakes, ex-  
19           cept for any matter described under section  
20           3001(k)(4); and

21           “(B)(i) is addressed to an individual who  
22           made an election to be excluded from lists  
23           under subsection (d); or

24           “(ii) does not comply with subsection  
25           (c)(1).

1 “(c) REQUIREMENTS OF PROMOTERS.—

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

5 “(A) is clearly and conspicuously displayed;

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

9 “(C) states that the notification system  
10 may be used to prohibit the mailing of all skill  
11 contests or sweepstakes by that promoter to  
12 such individual.

13 “(2) NOTIFICATION SYSTEM.—Any promoter  
14 that mails or causes to be mailed a skill contest or  
15 sweepstakes shall establish and maintain a notifica-  
16 tion system that provides for any individual (or  
17 other duly authorized person) to notify the system of  
18 the individual’s election to have the name and ad-  
19 dress of the individual excluded from all lists of  
20 names and addresses used by that promoter to mail  
21 any skill contest or sweepstakes.

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

23 “(1) IN GENERAL.—An individual (or other  
24 duly authorized person) may elect to exclude the  
25 name and address of that individual from all lists of

1 names and addresses used by a promoter of skill  
2 contests or sweepstakes by submitting a removal re-  
3 quest to the notification system established under  
4 subsection (c).

5 “(2) RESPONSE AFTER SUBMITTING REMOVAL  
6 REQUEST TO THE NOTIFICATION SYSTEM.—Not  
7 later than 35 calendar days after a promoter re-  
8 ceives a removal request pursuant to an election  
9 under paragraph (1), the promoter shall exclude the  
10 individual’s name and address from all lists of  
11 names and addresses used by that promoter to select  
12 recipients for any skill contest or sweepstakes.

13 “(3) EFFECTIVENESS OF ELECTION.—An elec-  
14 tion under paragraph (1) shall remain in effect, un-  
15 less an individual (or other duly authorized person)  
16 notifies the promoter in writing that such  
17 individual—

18 “(A) has changed the election; and

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

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

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

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

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

7                   “(B) another duly authorized person.

8           “(f) PROHIBITION ON COMMERCIAL USE OF LISTS.—

9                   “(1) IN GENERAL.—

10                           “(A) PROHIBITION.—No person may pro-  
11 vide any information (including the sale or rent-  
12 al of any name or address) derived from a list  
13 described under subparagraph (B) to another  
14 person for commercial use.

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

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

24           “(g) CIVIL PENALTIES.—

25                   “(1) IN GENERAL.—Any promoter—

1           “(A) who recklessly mails nonmailable  
2 matter in violation of subsection (b) shall be lia-  
3 ble to the United States in an amount of  
4 \$10,000 per violation for each mailing to an in-  
5 dividual of nonmailable matter; or

6           “(B) who fails to comply with the require-  
7 ments of subsection (c)(2) shall be liable to the  
8 United States.

9           “(2) ENFORCEMENT.—The Postal Service shall  
10 assess civil penalties under this section.”.

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

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

15       (c) EFFECTIVE DATE.—This section shall take effect  
16 1 year after the date of enactment of this Act.

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

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

1 class of mail is in compliance with such provisions of this  
2 Act shall be construed to preempt any provision of State  
3 or local law.

4 (b) EFFECT ON STATE COURT PROCEEDINGS.—  
5 Nothing contained in this section shall be construed to  
6 prohibit an authorized State official from proceeding in  
7 State court on the basis of an alleged violation of any gen-  
8 eral civil or criminal statute of such State or any specific  
9 civil or criminal statute of such State.

10 **SEC. 10. EFFECTIVE DATE.**

11 Except as provided in section 8, this Act shall take  
12 effect 120 days after the date of enactment of this Act.

Passed the Senate August 2, 1999.

Attest:

*Secretary.*

106<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

**S. 335**

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**AN ACT**

To amend chapter 30 of title 39, United States Code, to provide for the nonmatrability of certain deceptive matter relating to sweepstakes, skill contests, facsimile checks, administrative procedures, orders, and civil penalties relating to such matter, and for other purposes.

S 335 ES—2

S 335 ES—3

S 335 ES—4

S 335 ES—5