

106TH CONGRESS
1ST SESSION

S. 335

To amend chapter 30 of title 39, United States Code, to provide for the nonmailability of certain deceptive matter relating to games of chance, administrative procedures, orders, and civil penalties relating to such matter, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 3, 1999

Ms. COLLINS (for herself, Mr. COCHRAN, Mr. LEVIN, Mr. DURBIN, and Mr. BURNS) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To amend chapter 30 of title 39, United States Code, to provide for the nonmailability of certain deceptive matter relating to games of chance, 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 INFERENCES**
2 **TO THE UNITED STATES GOVERNMENT.**

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

5 (1) in subsection (h) in the first sentence—

6 (A) by inserting after “service; and con-
7 tains” the following: “any reference to the Post-
8 master General of the United States or a cita-
9 tion to Federal statute,”;

10 (B) by striking “connection, approval or
11 endorsement” and inserting “connection, ap-
12 proval, or endorsement, or that such matter is
13 afforded any special protections or status by the
14 Federal Government”;

15 (C) in paragraph (2)—

16 (i) in subparagraph (A) by striking
17 “and” at the end;

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

20 (iii) by inserting after subparagraph
21 (B) the following:

22 “(C) does not contain any statement that
23 implies that Federal Government benefits or
24 services will be affected by any purchase, non-
25 purchase, response, or non-response to such
26 matter; or”;

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

2 (A) by inserting after “service; and con-
3 tains” the following: “any reference to the Post-
4 master General of the United States or a cita-
5 tion to Federal statute,”;

6 (B) by striking “connection, approval or
7 endorsement” and inserting “connection, ap-
8 proval, or endorsement, or that such matter is
9 afforded any special protections or status by the
10 Federal Government”; and

11 (C) in paragraph (2)—

12 (i) in subparagraph (A) by striking
13 “and” at the end;

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

16 (iii) by inserting after subparagraph
17 (B) the following:

18 “(C) does not contain any statement that
19 implies that Federal Government benefits or
20 services will be affected by any purchase, non-
21 purchase, response, or non-response to such
22 matter; or”;

23 (3) by redesignating subsections (j) and (k) as
24 subsections (m) and (n), respectively; and

1 (4) by inserting after subsection (i) the follow-
2 ing:

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

5 “(A) is nonmailable matter;

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

7 and

8 “(C) shall be disposed of as the Postal Service
9 directs.

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

12 “(A) constitutes a solicitation for the purchase
13 of any product that—

14 “(i) is produced by the United States Gov-
15 ernment; and

16 “(ii) may be obtained without cost from
17 the United States Government; and

18 “(B) does not contain a statement giving notice
19 of the information under subparagraph (A) (i) and
20 (ii).

21 “(3) The statement under paragraph (2)(B) shall be
22 clearly and prominently displayed in conspicuous and leg-
23 ible type in such size and manner as the Postal Service
24 shall prescribe by regulation.”.

1 **SEC. 3. RESTRICTIONS ON SWEEPSTAKES AND DECEPTIVE**
2 **MAILINGS.**

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

6 “(k)(1) Matter otherwise legally acceptable in the
7 mails that is nonmailable matter described under para-
8 graph (2) shall not be carried or delivered by mail and
9 may be disposed of as the Postal Service directs.

10 “(2) Matter that is nonmailable matter referred to
11 under paragraph (2) is any matter that—

12 “(A) relates to a sweepstakes, prize promotion,
13 or award; and

14 “(B)(i) does not contain a statement in the
15 mailing, including any rules or order form, that no
16 purchase is necessary to enter such sweepstakes,
17 prize promotion, or award;

18 “(ii) indicates that individuals not purchasing
19 products may be disqualified from receiving future
20 mailings;

21 “(iii) requires that an entry be accompanied by
22 a payment for a product ordered;

23 “(iv) suggests that the odds of winning will be
24 increased by making a purchase;

25 “(v) represents that an individual is a winner
26 unless that individual has won a prize;

1 “(vi) does not state all terms and conditions of
2 a sweepstakes promotion, including the rules and
3 entry procedures for the sweepstakes, in language
4 that is easy to find, read, and understand;

5 “(vii) does not clearly and conspicuously dis-
6 close the name of the person mailing such matter
7 and the principal place of business of such person;

8 “(viii) contains any statement that contradicts
9 or is inconsistent with contest rules, including any
10 statement qualifying, limiting, or explaining such
11 rules in a manner inconsistent with such rules;

12 “(ix) does not contain contest rules that clearly
13 state the odds of winning all prizes, the quantity, es-
14 timated retail value, and nature of all prizes, and
15 the schedule of any payments made over time;

16 “(x) suggests or requires that the purchase of
17 a product will allow an entry to receive priority, or
18 to be eligible to receive additional prizes or special
19 treatment for future contests;

20 “(xi) does not clearly and completely disclose
21 any fees, charges, and conditions to be met to re-
22 ceive the prize in any promotional mailing awarding
23 free prizes or awards;

1 “(xii) if any facsimile check is included, does
2 not contain a statement that such checks are not ne-
3 gotiable instruments and have no cash value; or

4 “(xiii) does not meet any other requirement the
5 Postal Service shall prescribe by regulation.

6 “(3) Any statement, notice, or disclaimer referred to
7 under paragraph (2) shall be clearly and prominently dis-
8 played in conspicuous and legible type in such size and
9 manner as the Postal Service shall prescribe by regula-
10 tions.

11 “(4) In the enforcement of paragraph (2), the Postal
12 Service shall consider the materials included in the mailing
13 and on the material and language visible through the enve-
14 lope.

15 “(5)(A) Any person who uses the mails for any mat-
16 ter that contains sweepstakes entry materials shall adopt
17 reasonable practices and procedures to prevent the mailing
18 of such materials to any person at any address who sub-
19 mits a written request to the mailer of such materials that
20 such materials should not be mailed to such person at such
21 address.

22 “(B) Any person who mails such solicitation mate-
23 rials shall maintain or cause to be maintained a record
24 of all such requests. The records shall be maintained in
25 a form to permit the suppression of such name at such

1 address for a 5-year period beginning on the date the writ-
 2 ten request under subparagraph (A) is submitted.”.

3 **SEC. 4. POSTAL SERVICE ORDERS TO PROHIBIT DECEPTIVE**
 4 **MAILINGS.**

5 Section 3005(a) of title 39, United States Code, is
 6 amended—

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

9 (2) by inserting “, (j), (k), or (l)” after “(i)”
 10 in both such places.

11 **SEC. 5. TEMPORARY RESTRAINING ORDER FOR DECEPTIVE**
 12 **MAILINGS.**

13 Section 3007 of title 39, United States Code, is
 14 amended—

15 (1) by redesignating subsection (b) as sub-
 16 section (c); and

17 (2) by striking subsection (a) and inserting the
 18 following:

19 “(a)(1) In preparation for or during the pendency of
 20 proceedings under sections 3005 and 3006, the Postal
 21 Service, in accordance with section 409(d), may apply to
 22 the district court in any district in which mail is sent or
 23 received as part of the alleged scheme, device, lottery, or
 24 gift enterprise or in any district in which the defendant
 25 is found, for a temporary restraining order and prelimi-

1 nary injunction under rule 65 of the Federal Rules of Civil
2 Procedure.

3 “(2) Upon a showing of probable cause and without
4 any further showing, the court shall enter an order which
5 shall—

6 “(A) remain in effect during pendency of the
7 statutory proceedings, any judicial review of such
8 proceedings, or any action to enforce orders issued
9 under the proceedings; and

10 “(B) direct the detention by the postmaster, in
11 any and all districts, of the defendant’s incoming
12 mail and outgoing mail, in furtherance of the
13 scheme which is in the postmaster’s custody for dis-
14 patch or delivery.

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

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

19 “(B) be delivered as addressed if such mail is
20 clearly not connected with the alleged unlawful activ-
21 ity.

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

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

6 **SEC. 6. CIVIL PENALTIES.**

7 Section 3012 of title 39, United States Code, is
8 amended—

9 (1) in subsection (a) by striking “\$10,000 for
10 each day that such person engages in conduct de-
11 scribed by paragraph (1), (2), or (3) of this sub-
12 section.” and inserting “twice the amount of the
13 civil penalty under subsection (b)(2) for the applica-
14 ble pieces mailed.”;

15 (2) by redesignating subsections (b), (c), and
16 (d), as subsections (c), (d), and (e), respectively; and

17 (3) by inserting after subsection (a) the follow-
18 ing:

19 “(b)(1) Any person who, through use of the mail,
20 sends any matter which is nonmailable under sections
21 3001 (a) through (l), 3005(a), 3014, or 3015 of this title,
22 shall be liable to the United States for a civil penalty in
23 accordance with regulations the Postal Service shall pre-
24 scribe.

1 “(2) The civil penalty under this subsection shall not
 2 exceed \$50,000 for each mailing of less than 50,000
 3 pieces; \$100,000 for each mailing of 50,000 to 100,000
 4 pieces; with an additional \$10,000 for each additional
 5 10,000 pieces above 100,000, not to exceed \$2,000,000.”;

6 (4) in subsection (c)(1) and (2), as redesignated,
 7 nated, by inserting after “of subsection (a)” the following:
 8 “or (b),”; and

9 (5) in subsection (d), as redesignated, by striking
 10 ing “Treasury of the United States” and inserting
 11 “Postal Service Fund established by section 2003”.

12 **SEC. 7. ADDITIONAL AUTHORITY FOR THE POSTAL INSPEC-**
 13 **TION SERVICE.**

14 (a) IN GENERAL.—Chapter 30 of title 39, United
 15 States Code, is amended by adding at the end the following:
 16 ing:

17 **“§ 3016. Administrative subpoenas**

18 “(a) AUTHORIZATION OF USE OF SUBPOENAS BY
 19 POSTMASTER GENERAL.—In any investigation conducted
 20 under this chapter, the Postmaster General may require
 21 by subpoena the production of any records (including
 22 books, papers, documents, and other tangible things which
 23 constitute or contain evidence) which the Postmaster Gen-
 24 eral finds relevant or material to the investigation.

25 “(b) SERVICE.—

1 “(1) SERVICE WITHIN THE UNITED STATES.—
2 A subpoena issued under this section may be served
3 by a person designated under section 3061 of title
4 18 at any place within the territorial jurisdiction of
5 any court of the United States.

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

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

23 “(A) delivering a duly executed copy there-
24 of to any partner, executive officer, managing
25 agent, or general agent thereof, or to any agent

1 thereof authorized by appointment or by law to
2 receive service of process on behalf of such
3 partnership, corporation, association, or entity;

4 “(B) delivering a duly executed copy there-
5 of to the principal office or place of business of
6 the partnership, corporation, association, or en-
7 tity; or

8 “(C) depositing such copy in the United
9 States mails, by registered or certified mail, re-
10 turn receipt requested, duly addressed to such
11 partnership, corporation, association, or entity
12 at its principal office or place of business.

13 “(4) SERVICE ON NATURAL PERSONS.—Service
14 of any subpoena may be made upon any natural per-
15 son by—

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

18 “(B) depositing such copy in the United
19 States mails by registered or certified mail, re-
20 turn receipt requested, duly addressed to such
21 person at his residence or principal office or
22 place of business.

23 “(5) VERIFIED RETURN.—A verified return by
24 the individual serving any such subpoena setting
25 forth the matter of such service shall be proof of

1 such service. In the case of service by registered or
2 certified mail, such return shall be accompanied by
3 the return post office receipt of delivery of such sub-
4 poena.

5 “(c) ENFORCEMENT.—

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

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

1 “(d) DISCLOSURE.—Any documentary material pro-
2 vided pursuant to any subpoena issued under this section
3 shall be exempt from disclosure under section 552 of title
4 5.”.

5 (b) REGULATIONS.—Not later than 180 days after
6 the date of enactment of this section, the Postal Service
7 shall promulgate regulations setting out the procedures
8 the Postal Service will use to implement this subsection.

9 (c) TECHNICAL AND CONFORMING AMENDMENT.—
10 The table of sections for chapter 30 of title 39, United
11 States Code, is amended by adding at the end the follow-
12 ing:

“3016. Administrative subpoenas.”.

13 **SEC. 8. STATE LAW NOT PREEMPTED.**

14 Nothing in this Act shall be construed to preempt any
15 provision of State or local law.

16 **SEC. 9. EFFECTIVE DATE.**

17 This Act shall take effect 60 days after the date of
18 enactment of this Act.

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