

Calendar No. 191

106TH CONGRESS
1ST SESSION

S. 335

[Report No. 106-102]

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, Mr. BURNS, MR. AKAKA, Mr. CAMPBELL, Mr. STEVENS, Mr. JEFFORDS, Mr. EDWARDS, Mr. BIDEN, Ms. MIKULSKI, Mrs. LINCOLN, Mr. ENZI, Mrs. MURRAY, Mr. CLELAND, Mr. LIEBERMAN, Mr. KOHL, Mr. CHAFEE, Mr. SESSIONS, Mr. JOHNSON, Mr. THURMOND, Mr. HELMS, Mr. ROBB, Mr. SPECTER, Mr. GRAHAM, Mr. DODD, Mr. ROCKEFELLER, Mr. BRYAN, Mr. HATCH, Mr. ROTH, Mr. THOMPSON, Mr. REID, and Mr. SARBANES) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

JULY 1, 1999

Reported by Mr. THOMPSON, with an amendment and an amendment to the title

[Strike out all after the enacting clause and insert the part printed in *italie*]

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”.

6 **SEC. 2. RESTRICTIONS ON MAILINGS USING INFERENCES**
 7 **TO THE UNITED STATES GOVERNMENT.**

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

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

11 (A) by inserting after “service; and con-

12 tains” the following: “any reference to the Post-

13 master General of the United States or a cita-

14 tion to Federal statute,”;

15 (B) by striking “connection, approval or

16 endorsement” and inserting “connection, ap-

17 proval, or endorsement, or that such matter is

18 afforded any special protections or status by the

19 Federal Government”;

20 (C) in paragraph (2)—

21 (i) in subparagraph (A) by striking

22 “and” at the end;

23 (ii) in subparagraph (B) by striking

24 “or” at the end and inserting “and”; and

1 (iii) by inserting after subparagraph
2 (B) the following:

3 “(C) does not contain any statement that
4 implies that Federal Government benefits or
5 services will be affected by any purchase, non-
6 purchase, response, or non-response to such
7 matter; or”;

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

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

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

18 (C) in paragraph (2)—

19 (i) in subparagraph (A) by striking
20 “and” at the end;

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

23 (iii) by inserting after subparagraph
24 (B) the following:

1 “(C) does not contain any statement that
2 implies that Federal Government benefits or
3 services will be affected by any purchase, non-
4 purchase, response, or non-response to such
5 matter; or”;

6 (3) by redesignating subsections (j) and (k) as
7 subsections (m) and (n), respectively; and

8 (4) by inserting after subsection (i) the fol-
9 lowing:

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

12 “(A) is nonmailable matter;

13 “(B) shall not be carried or delivered by mail;
14 and

15 “(C) shall be disposed of as the Postal Service
16 directs.

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

19 “(A) constitutes a solicitation for the purchase
20 of any product that—

21 “(i) is produced by the United States Gov-
22 ernment; and

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

1 “(B) does not contain a statement giving notice
2 of the information under subparagraph (A) (i) and
3 (ii).”

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

8 **SEC. 3. RESTRICTIONS ON SWEEPSTAKES AND DECEPTIVE**
9 **MAILINGS.**

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

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

17 “(2) Matter that is nonmailable matter referred to
18 under paragraph (2) is any matter that—

19 “(A) relates to a sweepstakes, prize promotion,
20 or award; and

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

1 “(ii) indicates that individuals not purchasing
2 products may be disqualified from receiving future
3 mailings;

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

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

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

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

14 “(vii) does not clearly and conspicuously dis-
15 close the name of the person mailing such matter
16 and the principal place of business of such person;

17 “(viii) contains any statement that contradicts
18 or is inconsistent with contest rules, including any
19 statement qualifying, limiting, or explaining such
20 rules in a manner inconsistent with such rules;

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

1 “(x) suggests or requires that the purchase of
2 a product will allow an entry to receive priority, or
3 to be eligible to receive additional prizes or special
4 treatment for future contests;

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

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

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

14 “(3) Any statement, notice, or disclaimer referred to
15 under paragraph (2) shall be clearly and prominently dis-
16 played in conspicuous and legible type in such size and
17 manner as the Postal Service shall prescribe by regula-
18 tions.

19 “(4) In the enforcement of paragraph (2), the Postal
20 Service shall consider the materials included in the mailing
21 and on the material and language visible through the enve-
22 lope.

23 “(5)(A) Any person who uses the mails for any mat-
24 ter that contains sweepstakes entry materials shall adopt
25 reasonable practices and procedures to prevent the mailing

1 of such materials to any person at any address who sub-
 2 mits a written request to the mailer of such materials that
 3 such materials should not be mailed to such person at such
 4 address.

5 “(B) Any person who mails such solicitation mate-
 6 rials shall maintain or cause to be maintained a record
 7 of all such requests. The records shall be maintained in
 8 a form to permit the suppression of such name at such
 9 address for a 5-year period beginning on the date the writ-
 10 ten request under subparagraph (A) is submitted.”

11 **SEC. 4. POSTAL SERVICE ORDERS TO PROHIBIT DECEPTIVE**
 12 **MAILINGS.**

13 Section 3005(a) of title 39, United States Code, is
 14 amended—

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

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

19 **SEC. 5. TEMPORARY RESTRAINING ORDER FOR DECEPTIVE**
 20 **MAILINGS.**

21 Section 3007 of title 39, United States Code, is
 22 amended—

23 (1) by redesignating subsection (b) as sub-
 24 section (c); and

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

3 “(a)(1) In preparation for or during the pendency of
4 proceedings under sections 3005 and 3006, the Postal
5 Service, in accordance with section 409(d), may apply to
6 the district court in any district in which mail is sent or
7 received as part of the alleged scheme, device, lottery, or
8 gift enterprise or in any district in which the defendant
9 is found, for a temporary restraining order and prelimi-
10 nary injunction under rule 65 of the Federal Rules of Civil
11 Procedure.

12 “(2) Upon a showing of probable cause and without
13 any further showing, the court shall enter an order which
14 shall—

15 “(A) remain in effect during pendency of the
16 statutory proceedings, any judicial review of such
17 proceedings, or any action to enforce orders issued
18 under the proceedings; and

19 “(B) direct the detention by the postmaster, in
20 any and all districts, of the defendant’s incoming
21 mail and outgoing mail, in furtherance of the
22 scheme which is in the postmaster’s custody for dis-
23 patch or delivery.

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

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

4 “(B) be delivered as addressed if such mail is
5 clearly not connected with the alleged unlawful activ-
6 ity.

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

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

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

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 “twice the amount of the
22 civil penalty under subsection (b)(2) for the applica-
23 ble pieces mailed.”;

24 (2) by redesignating subsections (b), (c), and
25 (d), as subsections (c), (d), and (e), respectively; and

1 ~~(3)~~ by inserting after subsection (a) the fol-
 2 lowing:

3 ~~“(b)(1) Any person who, through use of the mail,~~
 4 sends any matter which is nonmailable under sections
 5 ~~3001 (a) through (l), 3005(a), 3014, or 3015 of this title,~~
 6 shall be liable to the United States for a civil penalty in
 7 accordance with regulations the Postal Service shall pre-
 8 scribe.

9 ~~“(2) The civil penalty under this subsection shall not~~
 10 ~~exceed \$50,000 for each mailing of less than 50,000~~
 11 ~~pieces; \$100,000 for each mailing of 50,000 to 100,000~~
 12 ~~pieces; with an additional \$10,000 for each additional~~
 13 ~~10,000 pieces above 100,000, not to exceed \$2,000,000.”;~~

14 (4) in subsection (c)(1) and (2), as redesign-
 15 ated, by inserting after “of subsection (a)” the fol-
 16 lowing: “or (b),”; and

17 (5) in subsection (d), as redesignated, by strik-
 18 ing “Treasury of the United States” and inserting
 19 “Postal Service Fund established by section 2003”.

20 **SEC. 7. ADDITIONAL AUTHORITY FOR THE POSTAL INSPEC-**
 21 **TION SERVICE.**

22 (a) **IN GENERAL.**—Chapter 30 of title 39, United
 23 States Code, is amended by adding at the end the fol-
 24 lowing:

1 **“§ 3016. Administrative subpoenas**

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

9 “(b) SERVICE.—

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

11 A subpoena issued under this section may be served
12 by a person designated under section 3061 of title
13 18 at any place within the territorial jurisdiction of
14 any court of the United States.

15 “(2) FOREIGN SERVICE.—Any such subpoena
16 may be served upon any person who is not to be
17 found within the territorial jurisdiction of any court
18 of the United States, in such manner as the Federal
19 Rules of Civil Procedure prescribe for service in a
20 foreign country. To the extent that the courts of the
21 United States may assert jurisdiction over such per-
22 son consistent with due process, the United States
23 District Court for the District of Columbia shall
24 have the same jurisdiction to take any action re-
25 specting compliance with this section by such person

1 that such court would have if such person were per-
2 sonally within the jurisdiction of such court.

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

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

13 “(B) delivering a duly executed copy there-
14 of to the principal office or place of business of
15 the partnership, corporation, association, or en-
16 tity; or

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

22 “(4) SERVICE ON NATURAL PERSONS.—Service
23 of any subpoena may be made upon any natural per-
24 son by—

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

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

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

15 “(c) ENFORCEMENT.—

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

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

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

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

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

“3016. Administrative subpoenas.”.

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

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

1 **SEC. 9. EFFECTIVE DATE.**

2 This Act shall take effect 60 days after the date of
3 enactment of this Act.

4 **SECTION 1. SHORT TITLE.**

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

7 **SEC. 2. RESTRICTIONS ON MAILINGS USING MISLEADING**
8 **REFERENCES TO THE UNITED STATES GOV-**
9 **ERNMENT.**

10 Section 3001 of title 39, United States Code, is
11 amended—

12 (1) in subsection (h)—

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

1 *master General or a citation to a Federal statute*
2 *that misrepresents either the identity of the mail-*
3 *er or the protection or status afforded such mat-*
4 *ter by the Federal Government”;* and

5 *(B) in paragraph (2)—*

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

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

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

12 *“(C) does not contain a false representation*
13 *implying that Federal Government benefits or*
14 *services will be affected by any purchase or non-*
15 *purchase; or”;*

16 *(2) in subsection (i) in the first sentence—*

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

1 *seal, insignia, reference to the Postmaster Gen-*
2 *eral, citation to a Federal statute, name of a*
3 *Federal agency, department, commission, or pro-*
4 *gram, trade or brand name, or any other term*
5 *or symbol; or contains any reference to the Post-*
6 *master General or a citation to a Federal statute*
7 *that misrepresents either the identity of the mail-*
8 *er or the protection or status afforded such mat-*
9 *ter by the Federal Government”;* and

10 *(B) in paragraph (2)—*

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

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

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

17 *“(C) does not contain a false representation*
18 *implying that Federal Government benefits or*
19 *services will be affected by any purchase or non-*
20 *purchase; or”;*

21 *(3) by redesignating subsections (j) and (k) as*
22 *subsections (m) and (o), respectively; and*

23 *(4) by inserting after subsection (i) the following:*

24 *“(j)(1) Matter otherwise legally acceptable in the mails*
25 *described under paragraph (2)—*

1 “(A) is nonmailable matter;

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

3 and

4 “(C) shall be disposed of as the Postal Service di-
5 rects.

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

8 “(A) constitutes a solicitation for the purchase of
9 any product or service that—

10 “(i) is provided by the Federal Government;

11 and

12 “(ii) may be obtained without cost from the
13 Federal Government; and

14 “(B) does not contain a clear and conspicuous
15 statement giving notice of the information under sub-
16 paragraph (A) (i) and (ii).”.

17 **SEC. 3. RESTRICTIONS ON SWEEPSTAKES AND DECEPTIVE**
18 **MAILINGS.**

19 Section 3001 of title 39, United States Code, is amend-
20 ed by inserting after subsection (j) (as added by section 2(4)
21 of this Act) the following:

22 “(k)(1) In this subsection, the term—

23 “(A) ‘facsimile check’ means any matter designed
24 to resemble a check or other negotiable instrument
25 that is not negotiable;

1 “(B) ‘skill contest’ means a puzzle, game, com-
2 petition, or other contest in which—

3 “(i) a prize is awarded or offered;

4 “(ii) the outcome depends predominately on
5 the skill of the contestant; and

6 “(iii) a purchase, payment, or donation is
7 required or implied to be required to enter the
8 contest; and

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

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

15 “(3) Matter that is nonmailable matter referred to
16 under paragraph (2) is any matter (except matter as pro-
17 vided under paragraph (4)) that—

18 “(A)(i) includes entry materials for a sweep-
19 stakes or a promotion that purports to be a sweep-
20 stakes; and

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

1 “(II) does not contain a statement that discloses
2 in the mailing, in the rules, and on the order or entry
3 form, that a purchase will not improve an individ-
4 ual’s chances of winning with an entry from such
5 materials;

6 “(III) does not state all terms and conditions of
7 the sweepstakes promotion, including the rules and
8 entry procedures for the sweepstakes, in language that
9 is easy to find, read, and understand;

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

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

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

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

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

22 “(VI) represents that individuals not purchasing
23 products may be disqualified from receiving future
24 sweepstakes mailings;

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

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

6 “(IX) contains a representation that contradicts,
7 or is inconsistent with sweepstakes rules or any other
8 disclosure required to be made under this subsection,
9 including any statement qualifying, limiting, or ex-
10 plaining the rules or disclosures in a manner incon-
11 sistent with such rules or disclosures; or

12 “(X) represents that the purchase of a product
13 will allow a sweepstakes entry to receive an advan-
14 tage in the winner selection process, to be eligible for
15 additional prizes in that sweepstakes, or for an entry
16 submitted in a future sweepstakes to have a better
17 chance of winning;

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

21 “(ii)(I) does not state all terms and conditions
22 of the skill contest, including the rules and entry pro-
23 cedures for the skill contest, in language that is easy
24 to find, read and understand;

1 “(II) does not clearly and conspicuously disclose
2 the sponsor or mailer of the skill contest and the prin-
3 cipal place of business or an address at which the
4 sponsor or mailer may be contacted; or

5 “(III) does not contain skill contest rules that
6 clearly state, as applicable—

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

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

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

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

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

21 “(ff) the method used in judging;

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

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

3 “(ii) the schedule of any payments made
4 over time; or

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

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

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

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

15 “(5) Any statement, notice, or disclaimer required
16 under paragraph (3) shall be clearly and conspicuously dis-
17 played.

18 “(6) In the enforcement of paragraph (3), the Postal
19 Service shall consider all of the materials included in the
20 mailing and the material and language on and visible
21 through the envelope.

22 “(l)(1) Any person who uses the mails for any matter
23 to which subsection (h), (i), (j), or (k) applies shall adopt
24 reasonable practices and procedures to prevent the mailing
25 of such matter to any person who, personally or through

1 a conservator, guardian, individual with power of
2 attorney—

3 “(A) submits to the mailer of such matter a writ-
4 ten request that such matter should not be mailed to
5 such person; or

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

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

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

19 **SEC. 4. POSTAL SERVICE ORDERS TO PROHIBIT DECEPTIVE**
20 **MAILINGS.**

21 Section 3005(a) of title 39, United States Code, is
22 amended—

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

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

3 **SEC. 5. TEMPORARY RESTRAINING ORDER FOR DECEPTIVE**
4 **MAILINGS.**

5 Section 3007 of title 39, United States Code, is
6 amended—

7 (1) by redesignating subsection (b) as subsection
8 (c); and

9 (2) by striking subsection (a) and inserting the
10 following:

11 “(a)(1) In preparation for or during the pendency of
12 proceedings under sections 3005 and 3006, the Postal Serv-
13 ice, in accordance with section 409(d), may apply to the
14 district court in any district in which mail is sent or re-
15 ceived as part of the alleged scheme, device, lottery, gift en-
16 terprise, sweepstakes, skill contest, or facsimile check or in
17 any district in which the defendant is found, for a tem-
18 porary restraining order and preliminary injunction under
19 the procedural requirements of rule 65 of the Federal Rules
20 of Civil Procedure.

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

23 “(i) remain in effect during pendency of the stat-
24 utory proceedings, any judicial review of such pro-

1 *ceedings, or any action to enforce orders issued under*
2 *the proceedings; and*

3 *“(i) direct the detention by the postmaster, in*
4 *any and all districts, of the defendant’s incoming*
5 *mail and outgoing mail, which is the subject of the*
6 *proceedings under sections 3005 and 3006.*

7 *“(B) A proper showing under this paragraph shall re-*
8 *quire proof of a likelihood of success on the merits of the*
9 *proceedings under section 3005 or 3006.*

10 *“(3) Mail detained under paragraph (2) shall—*

11 *“(A) be made available at the post office of mail-*
12 *ing or delivery for examination by the defendant in*
13 *the presence of a postal employee; and*

14 *“(B) be delivered as addressed if such mail is*
15 *clearly shown not to be the subject of proceedings*
16 *under sections 3005 and 3006.*

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

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

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

2 *Section 3012 of title 39, United States Code, is*
3 *amended—*

4 *(1) in subsection (a) by striking “\$10,000 for*
5 *each day that such person engages in conduct de-*
6 *scribed by paragraph (1), (2), or (3) of this sub-*
7 *section.” and inserting “\$50,000 for each mailing of*
8 *less than 50,000 pieces; \$100,000 for each mailing of*
9 *50,000 to 100,000 pieces; with an additional \$10,000*
10 *for each additional 10,000 pieces above 100,000, not*
11 *to exceed \$2,000,000.”;*

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

14 *(3) by redesignating subsections (c) and (d), as*
15 *subsections (e) and (f), respectively;*

16 *(4) by inserting after subsection (b) the fol-*
17 *lowing:*

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

1 “(2) *In any proceeding in which the Postal Service*
2 *assesses penalties under this subsection the Postal Service*
3 *shall determine the civil penalty taking into account the*
4 *nature, circumstances, extent, and gravity of the violation*
5 *or violations of section 3005(a), and with respect to the vio-*
6 *lator, the ability to pay the penalty, the effect of the penalty*
7 *on the ability of the violator to conduct lawful business,*
8 *any history of prior violations of such section, the degree*
9 *of culpability and other such matters as justice may re-*
10 *quire.*

11 “(d) *Any person who violates section 3001(l) shall be*
12 *liable to the United States for a civil penalty not to exceed*
13 *\$10,000 for each mailing to an individual.”; and*

14 (5) *by amending subsection (e) (as redesignated*
15 *by paragraph (3) of this section) to read as follows:*

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

21 “(A) *deposited in the Postal Service Fund estab-*
22 *lished under section 2003; and*

23 “(B) *available for payment of such costs.*

24 “(2) *Except for amounts deposited in the Postal Serv-*
25 *ice Fund under paragraph (1), all civil penalties collected*

1 *in the administrative and judicial enforcement of this chap-*
 2 *ter shall be deposited in the General Fund of the Treasury.”.*

3 **SEC. 7. ADDITIONAL AUTHORITY FOR THE POSTAL INSPEC-**
 4 **TION SERVICE.**

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

7 **“§ 3016. Administrative subpoenas**

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

15 “(b) *SERVICE.*—

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

21 “(2) *FOREIGN SERVICE.*—Any such subpoena
 22 may be served upon any person who is not to be
 23 found within the territorial jurisdiction of any court
 24 of the United States, in such manner as the Federal
 25 Rules of Civil Procedure prescribe for service in a for-

1 *eign country. To the extent that the courts of the*
2 *United States may assert jurisdiction over such per-*
3 *son consistent with due process, the United States*
4 *District Court for the District of Columbia shall have*
5 *the same jurisdiction to take any action respecting*
6 *compliance with this section by such person that such*
7 *court would have if such person were personally with-*
8 *in the jurisdiction of such court.*

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

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

19 *“(B) delivering a duly executed copy thereof*
20 *to the principal office or place of business of the*
21 *partnership, corporation, association, or entity;*
22 *or*

23 *“(C) depositing such copy in the United*
24 *States mails, by registered or certified mail, re-*
25 *turn receipt requested, duly addressed to such*

1 *partnership, corporation, association, or entity*
2 *at its principal office or place of business.*

3 “(4) *SERVICE ON NATURAL PERSONS.*—*Service of*
4 *any subpoena may be made upon any natural person*
5 *by—*

6 “(A) *delivering a duly executed copy to the*
7 *person to be served; or*

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

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

19 “(c) *ENFORCEMENT.*—

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

1 *trict in which such person resides, is found, or trans-*
2 *acts business, and serve upon such person a petition*
3 *for an order of such court for the enforcement of this*
4 *section.*

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

15 *“(d) DISCLOSURE.—Any documentary material pro-*
16 *vided pursuant to any subpoena issued under this section*
17 *shall be exempt from disclosure under section 552 of title*
18 *5.”.*

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

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

“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 amend-
 5 ed 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 originates
 10 and causes to be mailed more than 500,000 mailings
 11 in any calendar year of any skill contest or sweep-
 12 stakes, except for mailings that do not include an op-
 13 portunity to make a payment or order a product or
 14 service;

15 “(2) ‘removal request’ means a written request
 16 stating that an individual elects to have the name
 17 and address of such individual excluded from any list
 18 used by a promoter for mailing skill contests or
 19 sweepstakes;

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

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

23 “(B) the outcome depends predominately on
 24 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 Serv-
14 ice directs.

15 “(2) *NONMAILABLE MATTER DESCRIBED*.—Mat-
16 ter that is nonmailable matter referred to under para-
17 graph (1) is any matter that—

18 “(A) is a skill contest or sweepstakes; and

19 “(B)(i) is addressed to an individual who
20 made an election to be excluded from lists under
21 subsection (e); or

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

23 “(c) *REQUIREMENTS OF PROMOTERS*.—

24 “(1) *NOTICE TO INDIVIDUALS*.—Any promoter
25 who mails a skill contest or sweepstakes shall provide

1 *with each mailing a clear and conspicuous statement*
2 *that—*

3 “(A) *includes the address and toll-free tele-*
4 *phone number of the notification system estab-*
5 *lished under paragraph (2); and*

6 “(B) *states how the notification system may*
7 *be used to prohibit the mailing of any skill con-*
8 *test or sweepstakes to such individual.*

9 “(2) *NOTIFICATION SYSTEM.—Any promoter that*
10 *mails a skill contest or sweepstakes shall participate*
11 *in the establishment and maintenance of a single no-*
12 *tification system that provides for any individual (or*
13 *other duly authorized person) to notify the system of*
14 *the individual’s election to have the name and address*
15 *of the individual excluded from all lists of names and*
16 *addresses used by all promoters to mail any skill con-*
17 *test or sweepstakes.*

18 “(d) *NOTIFICATION SYSTEM.—If an individual con-*
19 *tacts the notification system through use of the toll-free tele-*
20 *phone number provided under subsection (c)(1)(A), the sys-*
21 *tem shall—*

22 “(1) *inform the individual of the information de-*
23 *scribed under subsection (c)(1)(B); and*

24 “(2) *inform the individual that the election to*
25 *prohibit mailings of skill contests or sweepstakes to*

1 *that individual shall take effect 45 business days after*
2 *receipt by the system of the signed removal request by*
3 *the individual.*

4 “(e) *ELECTION TO BE EXCLUDED FROM LISTS.—*

5 “(1) *IN GENERAL.—An individual may elect to*
6 *exclude the name and address of such individual from*
7 *all mailing lists used by promoters of skill contests or*
8 *sweepstakes by mailing a removal request to the noti-*
9 *fication system established under subsection (c).*

10 “(2) *RESPONSE AFTER MAILING REMOVAL RE-*
11 *QUEST TO THE NOTIFICATION SYSTEM.—Not later*
12 *than 45 business days after receipt of a removal re-*
13 *quest, all promoters who maintain lists containing*
14 *the individual’s name or address for purposes of mail-*
15 *ing skill contests or sweepstakes shall exclude such in-*
16 *dividual’s name and address from all such lists.*

17 “(3) *EFFECTIVENESS OF ELECTION.—An election*
18 *under paragraph (1) shall—*

19 “(A) *be effective with respect to every pro-*
20 *moter; and*

21 “(B) *remain in effect, unless an individual*
22 *notifies the system in writing that such*
23 *individual—*

24 “(i) *has changed the election; and*

1 “(ii) elects to receive skill contest or
2 sweepstakes mailings.

3 “(f) *PROMOTER NONLIABILITY.*—A promoter, or any
4 other person maintaining the notification system estab-
5 lished under this section, shall not be subject to civil liabil-
6 ity for the exclusion of an individual’s name or address
7 from any mailing list maintained by a promoter for mail-
8 ing skill contests or sweepstakes, if—

9 “(1) a removal request is received by the notifi-
10 cation system; and

11 “(2) the promoter or person maintaining the sys-
12 tem has a good faith belief that the request is from—

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

15 “(B) another duly authorized person.

16 “(g) *PROHIBITION ON COMMERCIAL USE OF LISTS.*—

17 “(1) *IN GENERAL.*—

18 “(A) *PROHIBITION.*—No person may pro-
19 vide any information (including the sale or rent-
20 al of any name or address) in a list described
21 under subparagraph (B) to another person for
22 commercial use.

23 “(B) *LISTS.*—A list referred to under sub-
24 paragraph (A) is any list of names and address-
25 es (or other related information) used, main-

1 *tained, or created by the system established*
 2 *under this section.*

3 “(2) *CIVIL PENALTY.*—*Any person who violates*
 4 *paragraph (1) shall be assessed a civil penalty by the*
 5 *Postal Service not to exceed \$2,000,000 per violation.*

6 “(h) *CIVIL PENALTIES.*—

7 “(1) *IN GENERAL.*—*Any promoter—*

8 “*(A) who recklessly mails nonmailable mat-*
 9 *ter in violation of subsection (b) shall be liable*
 10 *to the United States in an amount of \$10,000*
 11 *per violation for each mailing of nonmailable*
 12 *matter; or*

13 “*(B) who fails to substantially comply with*
 14 *the requirements of subsection (c)(2) shall be lia-*
 15 *ble to the United States.*

16 “(2) *ENFORCEMENT.*—*The Postal Service shall*
 17 *assess civil penalties under this section.”.*

18 “(b) *TECHNICAL AND CONFORMING AMENDMENTS.*—
 19 *The table of sections for chapter 30 of title 39, United States*
 20 *Code, is amended by adding after the item relating to sec-*
 21 *tion 3016 the following:*

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

22 “(c) *EFFECTIVE DATE.*—*This section shall take effect*
 23 *1 year after the date of enactment of this Act.*

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

2 (a) *IN GENERAL.*—Nothing in the provisions of this
 3 Act (including the amendments made by this Act) or in
 4 the regulations promulgated under such provisions shall be
 5 construed to preempt any provision of State or local law
 6 that imposes more restrictive requirements, regulations,
 7 damages, costs, or penalties. No determination by the Postal
 8 Service that any particular piece of mail or class of mail
 9 is in compliance with such provisions of this Act shall be
 10 construed to preempt any provision of State or local law.

11 (b) *EFFECT ON STATE COURT PROCEEDINGS.*—Noth-
 12 ing contained in this section shall be construed to prohibit
 13 an authorized State official from proceeding in State court
 14 on the basis of an alleged violation of any general civil or
 15 criminal statute of such State or any specific civil or crimi-
 16 nal statute of such State.

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

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

Amend the title so as to read: “A bill 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.”.

Calendar No. 191

106TH CONGRESS
1ST Session

S. 335

[Report No. 106-102]

A BILL

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

JULY 1, 1999

Reported with an amendment and an amendment to the title