

DECEPTIVE MAIL PREVENTION AND ENFORCEMENT ACT

NOVEMBER 1, 1999.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BURTON of Indiana, from the Committee on Government Reform, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 170]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Reform, to whom was referred the bill (H.R. 170) to require certain notices in any mailing using a game of chance for the promotion of a product or service, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Deceptive Mail Prevention and Enforcement Act”.

SEC. 2. RESTRICTIONS ON MAILINGS USING MISLEADING REFERENCES TO THE UNITED STATES GOVERNMENT.

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

(1) in subsection (h)—

(A) in the first sentence by striking “contains a seal, insignia, trade or brand name, or any other term or symbol that reasonably could be interpreted or construed as implying any Federal Government connection, approval or endorsement” and inserting the following: “which reasonably could be interpreted or construed as implying any Federal Government connection, approval, or endorsement through the use of a seal, insignia, reference to the Postmaster General, citation to a Federal statute, name of a Federal agency, department, commission, or program, trade or brand name, or any other term or symbol; or contains any reference to the Postmaster General or a citation to a Federal statute that misrepresents either the identity of the mailer or the protection or status afforded such matter by the Federal Government”; and

(B) in paragraph (2)—

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

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

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

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

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

(A) in the first sentence by striking “contains a seal, insignia, trade or brand name, or any other term or symbol that reasonably could be interpreted or construed as implying any Federal Government connection, approval or endorsement” and inserting the following: “which reasonably could be interpreted or construed as implying any Federal Government connection, approval, or endorsement through the use of a seal, insignia, reference to the Postmaster General, citation to a Federal statute, name of a Federal agency, department, commission, or program, trade or brand name, or any other term or symbol; or contains any reference to the Postmaster General or a citation to a Federal statute that misrepresents either the identity of the mailer or the protection or status afforded such matter by the Federal Government”; and

(B) in paragraph (2)—

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

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

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

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

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

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

“(j)(1) Any matter otherwise legally acceptable in the mails which is described in paragraph (2) is nonmailable matter, shall not be carried or delivered by mail, and shall be disposed of as the Postal Service directs.

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

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

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

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

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

SEC. 3. RESTRICTIONS ON SWEEPSTAKES AND DECEPTIVE MAILINGS.

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

- “(k)(1) In this subsection—
- “(A) the term ‘clearly and conspicuously displayed’ means presented in a manner that is readily noticeable, readable, and understandable to the group to whom the applicable matter is disseminated;
 - “(B) the term ‘facsimile check’ means any matter that—
 - “(i) is designed to resemble a check or other negotiable instrument; but
 - “(ii) is not negotiable;
 - “(C) the term ‘skill contest’ means a puzzle, game, competition, or other contest in which—
 - “(i) a prize is awarded or offered;
 - “(ii) the outcome depends predominately on the skill of the contestant;
 - and
 - “(iii) a purchase, payment, or donation is required or implied to be required to enter the contest; and
 - “(D) the term ‘sweepstakes’ means a game of chance for which no consideration is required to enter.
- “(2) Except as provided in paragraph (4), any matter otherwise legally acceptable in the mails which is described in paragraph (3) is nonmailable matter, shall not be carried or delivered by mail, and shall be disposed of as the Postal Service directs.
- “(3) Matter described in this paragraph is any matter that—
- “(A)(i) includes entry materials for a sweepstakes or a promotion that purports to be a sweepstakes; and
 - “(ii)(I) does not contain a statement that discloses in the mailing, in the rules, and on the order or entry form, that no purchase is necessary to enter such sweepstakes;
 - “(II) does not contain a statement that discloses in the mailing, in the rules, and on the order or entry form, that a purchase will not improve an individual’s chances of winning with such entry;
 - “(III) does not state all terms and conditions of the sweepstakes promotion, including the rules and entry procedures for the sweepstakes;
 - “(IV) does not disclose the sponsor or mailer of such matter and the principal place of business or an address at which the sponsor or mailer may be contacted;
 - “(V) does not contain sweepstakes rules that state—
 - “(aa) the estimated odds of winning each prize;
 - “(bb) the quantity, estimated retail value, and nature of each prize; and
 - “(cc) the schedule of any payments made over time;
 - “(VI) represents that individuals not purchasing products or services may be disqualified from receiving future sweepstakes mailings;
 - “(VII) requires that a sweepstakes entry be accompanied by an order or payment for a product or service previously ordered;
 - “(VIII) represents that an individual is a winner of a prize unless that individual has won such prize; or
 - “(IX) contains a representation that contradicts, or is inconsistent with sweepstakes rules or any other disclosure required to be made under this subsection, including any statement qualifying, limiting, or explaining the rules or disclosures in a manner inconsistent with such rules or disclosures;
- “(B)(i) includes entry materials for a skill contest or a promotion that purports to be a skill contest; and
- “(ii)(I) does not state all terms and conditions of the skill contest, including the rules and entry procedures for the skill contest;
 - “(II) does not disclose the sponsor or mailer of the skill contest and the principal place of business or an address at which the sponsor or mailer may be contacted; or
 - “(III) does not contain skill contest rules that state, as applicable—
 - “(aa) the number of rounds or levels of the contest and the cost to enter each round or level;
 - “(bb) that subsequent rounds or levels will be more difficult to solve;
 - “(cc) the maximum cost to enter all rounds or levels;
 - “(dd) the estimated number or percentage of entrants who may correctly solve the skill contest or the approximate number or percentage of entrants correctly solving the past 3 skill contests conducted by the sponsor;
 - “(ee) the identity or description of the qualifications of the judges if the contest is judged by other than the sponsor;
 - “(ff) the method used in judging;
 - “(gg) the date by which the winner or winners will be determined and the date or process by which prizes will be awarded;

- “(hh) the quantity, estimated retail value, and nature of each prize; and
 “(ii) the schedule of any payments made over time; or
 “(C) includes any facsimile check that does not contain a statement on the check itself that such check is not a negotiable instrument and has no cash value.
 “(4) Matter that appears in a magazine, newspaper, or other periodical shall be exempt from paragraph (2) if such matter—
 “(A) is not directed to a named individual; or
 “(B) does not include an opportunity to make a payment or order a product or service.
 “(5) Any statement, notice, or disclaimer required under paragraph (3) shall be clearly and conspicuously displayed. Any statement, notice, or disclaimer required under subclause (I) or (II) of paragraph (3)(A)(ii) shall be displayed more conspicuously than would otherwise be required under the preceding sentence.
 “(6) In the enforcement of paragraph (3), the Postal Service shall consider all of the materials included in the mailing and the material and language on and visible through the envelope or outside cover or wrapper in which those materials are mailed.
 “(1)(1) Any person who uses the mails for any matter to which subsection (h), (i), (j), or (k) applies shall adopt reasonable practices and procedures to prevent the mailing of such matter to any person who, personally or through a conservator, guardian, or individual with power of attorney—
 “(A) submits to the mailer of such matter a written request that such matter should not be mailed to such person; or
 “(B)(i) submits such a written request to the attorney general of the appropriate State (or any State government officer who transmits the request to that attorney general); and
 “(ii) that attorney general transmits such request to the mailer.
 “(2) Any person who mails matter to which subsection (h), (i), (j), or (k) applies shall maintain or cause to be maintained a record of all requests made under paragraph (1). The records shall be maintained in a form to permit the suppression of an applicable name at the applicable address for a 5-year period beginning on the date the written request under paragraph (1) is submitted to the mailer.”.

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

- Section 3005(a) of title 39, United States Code, is amended—
 (1) by striking “or” after “(h),” each place it appears; and
 (2) by inserting “, (j), or (k)” after “(i)” each place it appears.

SEC. 5. TEMPORARY RESTRAINING ORDER FOR DECEPTIVE MAILINGS.

- (a) IN GENERAL.—Section 3007 of title 39, United States Code, is amended—
 (1) by redesignating subsection (b) as subsection (c); and
 (2) by striking subsection (a) and inserting the following:
 “(a)(1) In preparation for or during the pendency of proceedings under section 3005, the Postal Service may, under the provisions of section 409(d), apply to the district court in any district in which mail is sent or received as part of the alleged scheme, device, lottery, gift enterprise, sweepstakes, skill contest, or facsimile check or in any district in which the defendant is found, for a temporary restraining order and preliminary injunction under the procedural requirements of rule 65 of the Federal Rules of Civil Procedure.
 “(2)(A) Upon a proper showing, the court shall enter an order which shall—
 “(i) remain in effect during the pendency of the statutory proceedings, any judicial review of such proceedings, or any action to enforce orders issued under the proceedings; and
 “(ii) direct the detention by the postmaster, in any and all districts, of the defendant’s incoming mail and outgoing mail, which is the subject of the proceedings under section 3005.
 “(B) A proper showing under this paragraph shall require proof of a likelihood of success on the merits of the proceedings under section 3005.
 “(3) Mail detained under paragraph (2) shall—
 “(A) be made available at the post office of mailing or delivery for examination by the defendant in the presence of a postal employee; and
 “(B) be delivered as addressed if such mail is not clearly shown to be the subject of proceedings under section 3005.
 “(4) No finding of the defendant’s intent to make a false representation or to conduct a lottery is required to support the issuance of an order under this section.
 “(b) If any order is issued under subsection (a) and the proceedings under section 3005 are concluded with the issuance of an order under that section, any judicial

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

(b) REPEAL.—

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

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

(B) Section 3011(e) of title 39, United States Code, is amended by striking “3006, 3007,” and inserting “3007”.

SEC. 6. CIVIL PENALTIES AND COSTS.

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

(1) in subsection (a) by striking “\$10,000 for each day that such person engages in conduct described by paragraph (1), (2), or (3) of this subsection.” and inserting “\$50,000 for each mailing of less than 50,000 pieces; \$100,000 for each mailing of 50,000 to 100,000 pieces; with an additional \$10,000 for each additional 10,000 pieces above 100,000, not to exceed \$2,000,000.”;

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

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

(4) by inserting after subsection (b) the following:

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

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

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

SEC. 7. ADMINISTRATIVE SUBPOENAS.

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

“§ 3016. Administrative subpoenas

“(a) SUBPOENA AUTHORITY.—

“(1) INVESTIGATIONS.—

“(A) IN GENERAL.—In any investigation conducted under section 3005(a), the Postmaster General may require by subpoena the production of any records (including books, papers, documents, and other tangible things which constitute or contain evidence) which the Postmaster General considers relevant or material to such investigation.

“(B) CONDITION.—No subpoena shall be issued under this paragraph except in accordance with procedures, established by the Postal Service, requiring that—

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

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

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

“(2) STATUTORY PROCEEDINGS.—In any statutory proceeding conducted under section 3005(a), the Judicial Officer may require by subpoena the attendance and testimony of witnesses and the production of any records (including books, papers, documents, and other tangible things which constitute or contain evidence) which the Judicial Officer considers relevant or material to such proceeding.

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

“(b) SERVICE.—

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

“(2) FOREIGN SERVICE.—Any such subpoena may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States, in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States may assert jurisdiction over such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such court would have if such person were personally within the jurisdiction of such court.

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

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

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

“(C) depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such partnership, corporation, association, or entity at its principal office or place of business.

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

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

“(B) depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such person at his residence or principal office or place of business.

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

“(c) ENFORCEMENT.—

“(1) IN GENERAL.—Whenever any person, partnership, corporation, association, or entity fails to comply with any subpoena duly served upon him, the Postmaster General may request that the Attorney General seek enforcement of the subpoena in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section.

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

“(d) DISCLOSURE.—Any documentary material provided pursuant to any subpoena issued under this section shall be exempt from disclosure under section 552 of title 5.”

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

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

“(5) the number of cases in which the authority described in section 3016 was used, and a comprehensive statement describing how that authority was used in each of those cases; and”.

(d) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 30 of title 39, United States Code, is amended by adding at the end the following: “3016. Administrative subpoenas.”

SEC. 8. REQUIREMENTS OF PROMOTERS OF SKILL CONTESTS OR SWEEPSTAKES MAILINGS.

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

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

“(a) DEFINITIONS.—In this section—

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

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

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

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

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

“(4) the term ‘duly authorized person’, as used in connection with an individual, means a conservator or guardian of, or person granted power of attorney by, such individual.

“(b) NONMAILABLE MATTER.—

“(1) IN GENERAL.—Matter otherwise legally acceptable in the mails described in paragraph (2)—

“(A) is nonmailable matter;

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

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

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

“(A) is a skill contest or sweepstakes, except for any matter described in section 3001(k)(4); and

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

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

“(c) REQUIREMENTS OF PROMOTERS.—

“(1) NOTICE TO INDIVIDUALS.—Any promoter who mails a skill contest or sweepstakes shall provide with each mailing a statement that—

“(A) is clearly and conspicuously displayed;

“(B) includes the address or toll-free telephone number of the notification system established under paragraph (2); and

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

“(2) NOTIFICATION SYSTEM.—Any promoter that mails or causes to be mailed a skill contest or sweepstakes shall establish and maintain a notification system that provides for any individual (or other duly authorized person) to notify the system of the individual’s election to have the name and address of the individual excluded from all lists of names and addresses used by that promoter to mail any skill contest or sweepstakes.

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

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

“(2) RESPONSE AFTER SUBMITTING REMOVAL REQUEST TO THE NOTIFICATION SYSTEM.—Not later than 60 calendar days after a promoter receives a removal request pursuant to an election under paragraph (1), the promoter shall exclude the individual’s name and address from all lists of names and addresses used by that promoter to select recipients for any skill contest or sweepstakes.

“(3) EFFECTIVENESS OF ELECTION.—An election under paragraph (1) shall remain in effect, unless an individual (or other duly authorized person) notifies the promoter in writing that such individual—

“(A) has changed the election; and

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

“(e) PRIVATE RIGHT OF ACTION.—

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

“(A) an action to enjoin such violation,

“(B) an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater,

or

“(C) both such actions.

It shall be an affirmative defense in any action brought under this subsection that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent mailings in violation of subsection (d). If the court finds that the defendant willfully or knowingly violated subsection (d), the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B).

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

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

“(1) a removal request is received by the promoter’s notification system; and

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

“(A) the individual whose name and address is to be excluded; or

“(B) another duly authorized person.

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

“(1) IN GENERAL.—

“(A) PROHIBITION.—No person may provide any information (including the sale or rental of any name or address) derived from a list described in subparagraph (B) to another person for commercial use.

“(B) LISTS.—A list referred to under subparagraph (A) is any list of names and addresses (or other related information) compiled from individuals who exercise an election under subsection (d).

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

“(h) CIVIL PENALTIES.—

“(1) IN GENERAL.—Any promoter—

“(A) who recklessly mails nonmailable matter in violation of subsection (b) shall be liable to the United States in an amount of \$10,000 per violation for each mailing to an individual of nonmailable matter; or

“(B) who fails to comply with the requirements of subsection (c)(2) shall be liable to the United States.

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

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

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

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

SEC. 9. STATE LAW NOT PREEMPTED.

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

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

SEC. 10. TECHNICAL AND CONFORMING AMENDMENTS.

(a) REFERENCES TO REPEALED PROVISIONS.—Section 3001(a) of title 39, United States Code, is amended by striking “1714,” and “1718.”.

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

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

(A) by striking “Board” each place it appears and inserting “Inspector General”;

(B) in the third sentence by striking “Each such report shall be submitted within sixty days after the close of the reporting period involved” and inserting “Each such report shall be submitted within 1 month (or such short-

er length of time as the Inspector General may specify) after the close of the reporting period involved"; and

(C) by striking the last sentence and inserting the following:

"The information in a report submitted under this section to the Inspector General with respect to a reporting period shall be included as part of the semiannual report prepared by the Inspector General under section 5 of the Inspector General Act of 1978 for the same reporting period. Nothing in this section shall be considered to permit or require that any report by the Postmaster General under this section include any information relating to activities of the Inspector General."

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

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

SEC. 11. EFFECTIVE DATE.

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

I. PURPOSE AND SUMMARY

H.R. 170 would establish strong consumer protections to prevent a number of types of deceptive mailings. It will impose various requirements on sweepstakes mailings, skill contests, facsimile checks, and mailings made to look like government documents. The reported bill will establish strong financial penalties, provide the Postal Service with additional authority to investigate and stop deceptive mailings, and preserve the ability of states to impose stricter requirements on such mailings.

H.R. 170, as amended by the substitute agreed to by the Committee on October 28, would require sweepstakes mailings to clearly and conspicuously display: (1) a statement in the mailing, including the rules and order form, that no purchase is necessary to enter the contest; (2) a statement that a purchase would not improve the recipient's chances of winning; (3) all terms and conditions of the sweepstakes promotion, including the rules and entry procedures in language that is easy to find, read and understand; (4) the sponsor or mailer of the promotion and the principal place of business or other contact address of the sponsor or mailer; and (5) rules that clearly state the estimated odds of winning each prize, the quantity, estimated retail value, and nature of each prize, and the schedule of any payments made over time. In addition, the bill would prohibit sweepstakes mailings from making certain statements, including statements that an entry must be accompanied by an order or payment for a product previously ordered or that an individual is a winner of a prize unless that individual actually has won a prize.

The bill also imposes requirements on skill contest mailings. Skill contests are defined as a puzzle, game, competition, or other contest in which a prize is awarded based on skill, and a purchase, payment, or donation is required. Skill contests mailings would be required to follow provisions on rules and disclosure of the sponsor similar to sweepstakes promotions. Skill contests mailings also must disclose: (1) the number of rounds, the cost to enter each round, whether subsequent rounds will be more difficult, and the maximum cost to enter all rounds; (2) the percentage of entrants

who may solve correctly the skill contest; (3) the identity of the judges and the method used in judging; and (4) the date the winner will be determined as well as quantity and estimated value of each prize.

The bill imposes new federal standards on facsimile checks sent in any mailing. These checks must include a statement on the check itself that it is non-negotiable and has no cash value.

The legislation strengthens existing law on government look-alike mailings. Such mailings often come in a brown envelope and may use terms that imply a connection with the federal government, but actually are solicitations by a private sector company for a product or service. To address government look-alike mailings, the bill prohibits mailings that imply a connection to, approval, or endorsement by the federal government through the misleading use of a seal, insignia, reference to the Postmaster General, citation to a federal statute, trade or brand name, or any other term or symbol, unless the mailings carry two disclaimers already contained in existing law.

Additionally, the bill prohibits mailings that contain any false representation implying that federal government benefits or services will be affected by any purchase or non-purchase. Any mailing that offers to sell any product or service provided by the federal government without cost must contain a notice to that effect.

In addition to restrictions on the deceptive mailings themselves, the bill imposes new obligations on the companies sending sweepstakes and skill contests. Any person who uses the mail for any covered mailing would be required to adopt reasonable practices and procedures to prevent the mailing of these materials to any person, who by virtue of a written request, including requests made by a conservator, guardian, individual with power of attorney or a state attorney general, states their intent not to receive such mailings. The bill requires these persons or companies to maintain records of such requests for five years.

The bill further requires companies sending sweepstakes or skill contests to establish a notification system, which would allow consumers to call a toll-free number to be removed from the mailing lists of the company. All sweepstakes or skill contest mailings would be required to contain the contact information for the company's notification system. The bill establishes a private right of action in state court for citizens who receive a follow-up mailing despite having requested removal from a mailer's lists. A similar provision was enacted as part of the Telephone Consumer Protection Act of 1991 (47 U.S.C. 227).

Under current law, the United States Postal Service (USPS) has inadequate authority to investigate, penalize, and stop deceptive mailings. The USPS does not have subpoena authority, is unable to obtain an order to stop deceptive mailings nationwide, and may only seek financial penalties when a company violates an order previously imposed by the USPS for sending deceptive mailings. This bill addresses these weaknesses in current law by granting the USPS subpoena authority, nationwide stop mail authority, and the ability to impose civil penalties.

The bill also increases the civil penalties that the USPS may impose. The civil penalties for sending mailings that do not comply

with the bill would be up to \$25,000 for each mailing of less than 50,000 pieces; \$50,000 for each mailing of 50,000 to 100,000 pieces; with an additional \$5,000 for each additional 10,000 pieces above 100,000, not to exceed \$1,000,000. Any person who, through the use of the mail, evades or attempts to evade the terms of an order would be liable for twice the amount of this civil penalty.

The bill also recognizes the states' strong role in investigating and prosecuting deceptive mailings. The bill states that nothing in the Act shall preempt any provision of state or local law that imposes more restrictive requirements, regulations, damages, costs or penalties. Nothing contained in the bill shall be construed to prohibit an authorized state official from proceeding in state court on the basis of an alleged violation of any civil or criminal statute of such state.

Nearly all provisions of the bill would take effect 120 days after the date of enactment.

II. BACKGROUND AND NEED FOR THE LEGISLATION

The direct marketing industry has used sweepstakes mailings for over 30 years as a method to promote the sale of their products. Companies use sweepstakes to sell magazines and other merchandise, while other groups use sweepstakes mailings to raise funds or promote services.

While most sweepstakes are legitimate and appropriate marketing devices, some of these promotions can be used to defraud and deceive consumers. Four major sweepstakes firms each send out hundreds of millions of mailings every year, and there is evidence that a significant number of individuals make excessive purchases in response to these mailings. In the aggregate, the sweepstakes industry has sent over one billion mailings per year in recent years. Deceptive mailings include a wide variety of promotions, including sweepstakes, skill contests, solicitations, and sales of goods or services by mail.

The Magazine Publishers of America estimates that Americans annually spend \$7 billion on magazine subscriptions, and 12 percent of those sales derive from sweepstakes promotions. Thus, sweepstakes companies generate nearly \$1 billion of magazine revenues per year. Indeed, sweepstakes mailings account for nearly one-third of all 156 million new magazine subscriptions sold each year.

In the last 20 years, major sweepstakes companies have greatly increased their grand prizes and the sophistication of their marketing practices. They conduct a variety of contests every year, many offering a multi-million-dollar prize. Companies use many traditional direct marketing principles, such as targeting consumers according to timing, frequency and monetary value or the dollar amount of the purchases.

Sweepstakes companies are constantly testing their marketing appeals, and have generally concluded that consumers make purchases in response to mailings with large prizes, "involvement devices" such as stickers and stamps, and certain types of personalized appeals. As with many direct mail companies, sweepstakes firms send a large number of mailings to the general public that

are often followed by targeted mailings to specialized lists of repeat customers.

Mass mailings can be personalized within several places in a letter, and can feature symbols, devices, or documents that make them look unique. In general, the goal of such mass mailings is to distinguish them from other mail, enticing the consumer to open the envelope. Upon viewing the contents of these mass mailings, the consumer finds a personalized mailing that offers a message that can convince the consumer to make a purchase.

Those on a target list can be sent even more sophisticated mailings, informing them when they became a customer, how many purchases they have made recently, and when they last entered a contest without making a purchase. Such mailings reinforce the concept that purchases are linked with receiving sweepstakes mailings and, therefore, with winning a prize. The implication, sometimes made by a direct statement, is that if the customer does not purchase a product, they may not receive the future sweepstakes mailings necessary to win a prize. Sweepstakes mailers often advertise the same contest in multiple mailings, thereby confusing targeted or vulnerable recipients and enticing them to make several purchases for the same contest.

The tactics of sweepstakes mailings have generated thousands of consumer complaints, including complaints to state Attorneys General, the Federal Trade Commission, the Postal Service, consumer groups, and Members of Congress.

Skill contests differ from sweepstakes in that the consumer must demonstrate skill, such as solving a word puzzle, in order to win the prize. The key difference between a skill contest and a sweepstakes is that a skill contest does not rely on chance, and may require consideration to participate. Winning a sweepstakes must be based solely on chance and no purchase can be required. Like sweepstakes promotions, skill contests may also be used in a deceptive manner to promote unnecessary purchases or payments.

Consumers may be similarly deceived by skill contests offering large prizes in return for the payment of a small "judging fee." Responding to such mailings by sending money may only result in the consumer receiving even more mailings with additional skill contests that must be completed before any prize is awarded. Many skill contests have several levels that culminate in a complex contest that is extremely difficult. Thus, by the time the consumer is close to actually winning a prize, they have invested substantial sums of money solving relatively easy puzzles only to be presented with an extremely difficult puzzle that they have very little chance of solving.

Facsimile checks are also used in promotional mailings, sometimes by operators of sweepstakes or skill contests, to catch the eye of the recipient. Mailings may be designed so that such facsimile checks are displayed through a window envelope, prompting many consumers to open the mailing. The facsimile check itself may look real in many respects, such as having an authorized signature and showing the name of a financial institution. Such facsimile checks can deceive consumers.

Mailings may also be deceptive through the use of a variety of terms or symbols designed to make the mailing appear to be con-

nected or endorsed by the federal government. Some mailings may offer to sell a product the government provides for free without so indicating.

III. LEGISLATIVE HEARINGS AND COMMITTEE ACTIONS

H.R. 170 was introduced on January 6, 1999, by Mr. LoBiondo of New Jersey and Mr. Condit of California and referred to the Committee on Government Reform. On January 20, 1999, the bill was subsequently referred to the Postal Service Subcommittee. The measure was considered by the Subcommittee on September 30, 1999. H.R. 170 was approved as amended by voice vote, and forwarded to the full Committee. On October 28, 1999, the full Committee on Government Reform considered H.R. 170 and passed the measure as amended by voice vote.

IV. COMMITTEE HEARINGS AND WRITTEN TESTIMONY

Both the Senate and the House have had several bills introduced regarding deceptive sweepstakes mailings during the 105th and the 106th Congresses.

The Postal Service Subcommittee conducted a hearing on the issue on August 4, 1999, because of the deep concern regarding the need to protect recipients, particularly the elderly, who fall prey to the deceptive information transmitted in the mailings, while at the same time recognizing that there is a commercial aspect to legitimate sweepstakes mailing that must be balanced against fraudulent and misleading mailings.

Representative LoBiondo and Representative Rogan testified for their own bills, H.R. 170 and H.R. 237, which were both introduced on January 6, 1999. The Subcommittee also invited witnesses who commented on these bills as well as S. 335, the Senate passed legislation, the Deceptive Mail Prevention and Enforcement Act.

Two sweepstakes bills, H.R. 2678 and H.R. 2731, were introduced in the House and referred to the subcommittee after the hearing and were, therefore, not considered at that time.

HEARING CONDUCTED BY THE SUBCOMMITTEE ON THE POSTAL SERVICE

In addition to Representatives LoBiondo and Rogan, the witnesses at the Subcommittee hearing on August 4, 1999, included the Honorable Orson Swindle, Commissioner, Federal Trade Commission (FTC); Ken Hunter, Chief Postal Inspector, United States Postal Inspection Service; Bernard L. Ungar, Director, Government Business Operations Issues, General Accounting Office (GAO); Sara Cooper, National Consumers League (NCL); Virginia Tierney, American Association of Retired Persons (AARP); Lee M. Cassidy, National Federation of Nonprofits (NFN); Jerry Cerasale, Direct Marketing Association (DMA); Michael Pashby, Magazine Publishers of America (MPA); Linda Goldstein, Promotion Marketing Association (PMA).

Commissioner Swindle of the FTC testified that the Federal Trade Commission Act prohibits unfair methods of competition and deceptive practices affecting commerce and has a long history of challenging deceptive mail promotions. Its recent efforts include

“Project Mailbox,” a joint federal-state initiative focusing on deceptive use of sweepstakes, prize promotions and other misleading marketing techniques in mail solicitations. The FTC systemically collects and analyzes consumer complaint data, which is currently about 7,000 contacts a week, and more than 423,000 consumer complaints and inquiries. The Commissioner testified that the legislation covering sweepstakes was consistent with FTC’s Telemarketing Sales Rule (TSR) which covers telemarketing and consumer fraud in that they both ensure that consumers receive information necessary to prevent making purchasing decisions on false or misleading information.

The Inspection Service testified that among its duties, it is responsible for protecting consumers from being victimized by fraudulent schemes and other crimes using the U.S. mails system. Presently, 39 U.S.C. §3005 permits the Postal Service to take administrative action to return mail sent in response to a deceptive mailing, however, the proceedings may be time-consuming. Section 3007 authorizes the U.S. district courts to issue an injunction to prevent consumer losses while administrative proceedings are pending; it also allows the U.S. district courts to issue temporary restraining orders and preliminary injunctions. Other statutes permit the Postal Service to withhold mail sent to false or fictitious names or addresses. However, the Inspection Service testified that despite some success in protecting consumers, unscrupulous promoters have capitalized on the weaknesses of the statutes and continue to exploit the public. Though there are provisions for false representations in lotteries, there is no such provision for solicitations using sweepstakes, prize promotions, games of skill, or facsimile checks. Additionally, Mr. Hunter testified that the statutes offer little in use of penalties to deter the fraudulent use of the mails. The Inspection Service is limited by the lack of subpoena authority. They asked for administrative subpoena authority such as given to other federal agencies whereby only records, document and other non-testimonial material relevant to the investigation could be compelled. The witness testified that because some promoters of fraudulent mailings use multiple fictitious names and addresses, consumers could be victimized many times by the same promoter. They suggested that the solicitor’s name and principal place of business should be disclosed in a clear and conspicuous manner. It was suggested that the Inspection Service be permitted to detain mail to the promoter for temporary periods to forestall consumer injury. However, as some promoters receive mail in more than one judicial district, the Postal Service and the Department of Justice must apply to each district court in the district where mail is received. This can be avoided by allowing the court in any district where the promoter receives mail to order the Postal Service to detain mail, by virtue of a temporary restraining order, received at any address in response to the fraudulent scheme. The Postal Inspection Service does not advocate preemption of state and local statutes.

Mr. Ungar of the GAO testified that consumer problems with deceptive mailings appear substantial, although comprehensive data to indicate the full extent of consumer problems with deceptive mailings were unavailable. However, studies conducted by the GAO

and a national market research firm provided additional data regarding telephone pay per call schemes, telephone carrier switching (or slamming), prizes/sweepstakes/gifts schemes that solicit advance fees prior to participation, complaints against credit bureau policies, and third party debt collection.

The National Consumers League testified that there was a need for a central source of advice on telemarketing and assistance for fraud. The NCL created the National Fraud Information Center, which is a hotline for consumers to call for advice and to report suspected fraud. The information is relayed to more than 160 federal, state and local law enforcement agencies. Many telemarketing schemes are initiated by mail announcing that the consumer has won a prize and they should call to claim their winnings after paying a fee. Elderly people are more susceptible to falling for such schemes. It is becoming increasingly difficult to distinguish between legitimate and fraudulent sweepstakes. Even "no purchase necessary" messages do not convince consumers that a purchase will not put them in a better winning category. The NCL testified that a clear and prominent disclosure indicating that the mailing is merely an invitation to enter a game of chance, the odds of winning and that making a purchase will not in any way improve the chance of winning is essential. They testified that the Postal Inspection Service need more tools to stop fraudulent and deceptive mailings and must be able to issue subpoenas to help in its investigations.

AARP testified that it has for the past three years campaigned against charity and telemarketing fraud because of targeting of older Americans. It has taken steps to educate its members and the public. In their studies, it was reported that 40 percent of older American, mean age of 72, respond to sweepstakes solicitation. Those who ask to be billed later are more likely to continue participation in the sweepstakes. Twenty-three percent of those who participate believe that purchasing something might increase their chances of winning, in spite of disclaimers stating that a purchase is not necessary to win. AARP endorsed provisions to require mailings to include language stating that a purchase is not necessary to win, providing definition and guidelines to games of skill and providing stiff penalties for noncompliance. Also, it endorses enhanced subpoena authority to the Postal Inspection Service to stop deceptive mail and a notification system to provide consumers with numbers to call to have their names removed from the mailing lists of companies that promote products and services through sweepstakes. Both NCL and AARP testified in support of adding a private right of action to the bill, similar to that that exists in the Telephone Consumer Protection Act.

The National Federation of Nonprofits (NFN) testified that charities especially rely on public trust to raise funds. They said that deceptive mailings should be prevented, but legislation should not discourage creative marketing, nor permit reasonable people to be deceived. They testified that the Senate bill might unnecessarily restrict charities and other nonprofit organization from seeking funds. NFN asked that charities and other nonprofit organizations should be exempt from the provisions of the legislation. Further-

more, they requested a 90-day period within which names can be added to the "do not mail" list, rather than 45 days.

The Direct Marketing Association (DMA) testified that many of its 4,800 members utilize sweepstakes promotions to advertise their products. They reported that 80 percent of American households have received sweepstakes and 56 percent of those have entered. DMA testified that fraudulent operators required a payment at entry, including shipping and handling charges. DMA supports the increased authority for the Postal Service to issue subpoenas for information, after providing due process, and stop mail orders issued in one U.S. District Court to be enforceable in all Districts in the United States. DMA testified that 9 out of 10 sweepstakes participants do not make a purchase. However, DMA supports a national standard to help avoid confusion and to help those who are adversely impacted by these mailing to no longer receive such promotions. DMA opposes any legislation that would impede commercial speech; they oppose the legislative provisions that prescribe specific language, placement and size of font. They advocate that the bill establish a national standard, and not delegate authority to the Postal Service or another federal agency to establish them. Commenting on the manager's amendment in the Senate, the DMA supported the Federal Trade Commission's use of the terms "clear and conspicuous" and opposed the inclusion of the word "prominent" as confusing and not adding to the requirements in the legislation. However, DMA supports significant penalties for violation of the disclosures and the need for national standards. DMA supports the inclusion of an individual, private right of action in the bill, similar to the Telephone Consumer Protection Act.

Michael Pashby of the Magazine Publishers of America (MPA), testified that sweepstakes has been used as a marketing tool in that industry for more than 30 years. The organization supports legislative changes to remedy the controversy in sweepstakes mailing practices and a uniform national standard for disclosures. MPA endorses self-regulatory efforts and consumer education, which they implemented in January to identify consumers who over subscribe, and reminding them of the "no purchase" clause. They also support the opt-out provision of consumers to deter future mailings. MPA is a founding member of the Freedom to Advertise Coalition, which is against the use of express wording, type size, style or place of sweepstakes disclosures. They are against giving additional rulemaking authority to the Postal Service because of the belief that the USPS is not subject to the Administrative Procedure Act and the public hearing and due process protections of law. MPA advocates the "clear and conspicuous" standard as used by the FTC and has concerns with the Manager's Amendment to insert "prominently" in the formula. PMA supports the company-by-company opt-out provision, and a preemption provision.

Testifying on behalf of the Promotion Marketing Association (PMA) Linda Goldstein said that PMA supported strong consumer education to assist consumers in distinguishing between fraudulent and legitimate promotions. She said that there is great concern because of the decline in consumer confidence in sweepstakes resulting in loss of business and jobs. Many companies are instituting policies to identify high volume purchasers and to help them un-

derstand that purchase is not necessary to enter sweepstakes. Where appropriate, they are also instituting refunds and cancellations of orders. PMA supports legislation establishing uniform, minimum national standards for sweepstakes mailing that will curb fraudulent and deceptive practices while not restricting legitimate sweepstakes as an effective marketing tool. They caution that sweepstakes are a commercially protected form of free speech and therefore the legislation should conform to first amendment principles. PMA suggests that the legislation should be flexible enough to permit individual marketers to comply with different formats in their promotions. They support the clear and conspicuous language of the Senate bill rather than a uniform format that is more restrictive. PMA supports the affirmative disclosures relating to no purchase necessary language, numerical odds of winning and terms, conditions of the sweepstakes and the notification provision for the name removal procedure. However, magazines because of the manner in which the consumer acquires them, may find it burdensome to comply with the mandated disclosures. PMA, therefore, urges an exemption for magazines from disclosure provisions, as many marketers would place their advertisements in media other than magazines and newspapers. PMA opposes the Manager's Amendment to add the word "prominently" to the disclosure provisions, but supports the original "clear and conspicuous" language. PMA also was concerned at the lack of the reasonable person standard in the amendment though it is used in the FTC definition. The definition, they testified, should be determined in context of the group to whom the representation is primarily directed. The witness suggested some wording changes in the application of the notification system by replacing "prohibit" with "exclude" and "or other duly authorized person" with "conservator, guardian or individual with power-of attorney." PMA is in favor of federal preemption because of the likely inconsistent regulations.

V. EXPLANATION OF THE BILL

SECTION-BY-SECTION ANALYSIS

Section 1: Short title

This section cites the title of the bill as the "Deceptive Mail Prevention and Enforcement Act."

Section 2: Restrictions on mailings using misleading references to the United States Government

This section amends existing law, section 3001 (h) and (i) of title 39 of the U.S.C. and adds a new paragraph (j). This section adds to existing law by better preventing mailings from deceptively appearing to be endorsed or sent by the federal government.

Paragraph (1) amends Section 3001(h) of Title 39 to broaden the types of mailings that are subject to the requirements of this subsection. The bill adds new terms to the list of those that would trigger the existing disclaimer requirements for solicitations by a non-governmental entity for the purchase of, or payment for, a product or service. In addition, paragraph (1)(C) imposes a new requirement which prohibits mailings covered under subsection (h) from containing a false representation stating or implying that federal

government benefits or services will be directly affected by any purchase or nonpurchase.

The new terms provide that any mailing which reasonably could be interpreted or construed as implying any endorsement, approval, or connection to the federal government through a reference to the Postmaster General, or name of a federal agency, department, commission, or program, or through the use of the seal or insignia of a federal entity would be considered nonmailable matter unless it satisfied the requirements of section 3001(h) (1), (2), or (3). In addition, mailings containing a reference to the Postmaster General or a citation to a federal statute that misrepresents either the identity of the mailer or the protection afforded such matter by the federal government would be considered nonmailable matter unless it met the requirements of section 3001(h) (1), (2), or (3).

Concerns have been raised that the terms used to establish a government connection under existing law were unduly limited. By expanding the coverage of this subsection to include use of a reference to the Postmaster General, or name of a federal agency, department, commission, or program, the amendment adopted by the Committee intends to broaden the coverage of this subsection. Mailings should not use references to the Postmaster General or a Postmaster, the name of a federal agency, department, or commission, or the name of a federal program, to deceive consumers into believing the mailing or offer is endorsed or sent by the federal government.

In addition, there is concern that mailings that sell products or services may contain false representations implying that an individual's federal benefits or services will be impacted if that individual does not make a purchase or agree to pay for a service. This section will prohibit mailings that appear to be connected to the government from soliciting funds through false representations implying that a reduction in an individual's government benefits may directly result if a product or service is not purchased. This provision is intended to prohibit the personalized representation in a mailing that an individual's own benefits, or those of a family member, will be directly affected by the individual's decision to purchase or not purchase goods or services, as opposed to false representations about federal benefits in general. Advocacy mailings, including those that solicit funds, which discuss the general status of federal benefits or programs, are not covered by this bill.

Paragraph (2) amends subsection (i) of existing law to broaden the types of mailings that are subject to the requirements of this subsection. In a manner identical to paragraph (1), this paragraph adds new terms to the list of those that would trigger the existing disclaimer requirements for solicitations by a nongovernmental entity for information or the contribution of funds or membership fees. In addition, paragraph (2)(C) imposes a new requirement which prohibits mailings covered under subsection (i) from containing a false representation stating or implying that federal government benefits or services will be affected directly by any purchase or nonpurchase.

As in paragraph (1), paragraph (2) adds new terms to existing law to restrict the use of terms implying the endorsement or approval of, or some official connection to, the federal government.

These changes to existing law are made for the same reasons described for subsection (h).

Paragraph (3) redesignates subsections (j) and (k) of existing law as subsections (m) and (n). Any regulations necessary to implement the provisions of this bill shall be provided with appropriate notice and opportunity for comment. Since provisions of this bill relate to the mailability of matter under the existing Chapter 30, which is titled Nonmailable Matter, existing subsection 3001(j), which is redesignated as (m), would apply to any regulations issued to implement provisions of this Act.

Paragraph (4) adds a new subsection (j) that declares as non-mailable any matter that constitutes a solicitation for the purchase of any product or service that is provided without cost by the federal government, if it does not contain a clear and conspicuous statement that the product or service is provided without cost by the federal government. Such mailings may use a corporate name that implies a connection to the federal government, and may refer to certain federal laws or requirements. A mailing, for example, may offer to complete a form to obtain a Social Security number for an individual for a \$15 fee. Under the provisions of the bill, such a mailing must contain a statement indicating that such information is provided by the federal government and can be obtained without cost from the federal government.

There may be instances where a company makes use of government forms or services that are provided for free, but adds value to these forms or services by providing an additional service or additional expertise. For example, a tax preparer may obtain and provide to a client government tax form and, in doing so, also provides tax advice. In such instances where an individual is paying for the expertise of a company, and the mere acquisition of a government form is incidental to the service, this subsection shall not apply.

Similarly, a company may offer to sell a service that the federal government provides for free on a limited or qualified basis. For example, the federal government may offer a service only to certain individuals. If the service is not provided for free to the public in general, then it would be permissible under this provision to mail solicitations offering that service without the required disclaimer.

Section 3: Restrictions on sweepstakes and deceptive mailings

This section establishes a number of consumer protections by making sweepstakes, skill contests, and facsimile checks non-mailable under certain circumstances.

Section 3001 of existing law is amended by adding a new subsection (k), which details the requirements for sweepstakes, skill contests, and facsimile checks. Subsection (k)(1)(A) defines “clearly and conspicuously displayed” as presented in a manner that is readily noticeable, readable, and understandable to the group to whom the applicable matter is disseminated. A disclosure that is readily noticeable and understandable to the average member of the group to which the mail matter was sent would meet this definition. Subsection (k)(1)(B) defines a facsimile check as any matter designed to resemble a check or other negotiable instrument that is not negotiable. Subsection (k)(1)(C) defines a skill contest as a puzzle, game, competition, or other contest in which (i) a prize is

awarded or offered; (ii) the outcome depends predominately on the skill of the contestant; and (iii) a purchase, payment, or donation is required or implied to be required to enter the contest. Subsection (k)(1)(D) defines a sweepstakes as a game of chance one voluntarily enters for which no consideration is required.

Subsection (k)(2) directs the Postal Service not to deliver, and to dispose of, any mail declared nonmailable by paragraph (3). Subsection (k)(3) sets forth the conditions by which the Postal Service shall determine if sweepstakes, skill contests, and facsimile checks are nonmailable.

Subsection (k)(3)(A)(i) limits the requirements on sweepstakes mailings to those mailings that include entry materials for a sweepstakes. Some mailings may contain information about a particular sweepstakes, but not offer an individual the opportunity to enter the sweepstakes or purchase a product. Such mailings might announce a future sweepstakes or respond to the inquiry of an individual about an ongoing sweepstakes. Since such mailings do not offer the opportunity to make a purchase enter a sweepstakes, there is no direct link between placing an order and entering the sweepstakes. While this subsection does not impose requirements on sweepstakes mailings that do not include entry materials, those sending such sweepstakes mailings are cautioned to avoid marketing practices designed to circumvent the consumer safeguards provided in this section.

Subsection (k)(3)(A)(ii) contains a number of requirements for sweepstakes mailings. Subsections (k)(3)(A)(ii)(I) and (II) require all sweepstakes mailings to contain a statement in the mailing, in the rules, and on the order form that no purchase is necessary to enter the sweepstakes and that a purchase will not improve the chances of winning with that entry.

The Committee recognizes the wide variety of formats used in sweepstakes mailings, and should a mailing not contain a separate solicitation, rules and entry or order form, these statements need only appear in the rules and on the order form. Should mailings contain the rules and order form on the same document or on separate sides of a document, the statements required by these subsections shall appear in both places.

Subsection (k)(3)(A)(ii)(III) requires the terms and conditions of sweepstakes mailings, including the rules and entry procedures, to be written in language that is easy to find, read, and understand.

Subsection (k)(3)(A)(ii)(IV) requires each sweepstakes mailing to state the name of the sponsor or mailer and their principal place of business or the address at which they may be contacted. Many sweepstakes mailings use the name of fictitious companies or identities intended to hide the true name of the company responsible for the sweepstakes mailing. The use of fictitious company names, combined with the use of Post Office Boxes or addresses of Commercial Mail Receiving Agencies makes it difficult for consumers and enforcement agencies to identify the actual name and address of the party responsible for the mailing. Those sending sweepstakes mailings are expected to disclose on each mailing a name and address where the sponsor of the sweepstakes may be contacted.

Subsection (k)(3)(A)(ii)(V)(aa) requires the rules in each sweepstakes mailing to list the estimated odds of winning each prize, and

the odds should be stated in clear terms. If the odds of winning a particular prize or all prizes are dependent on the number of entries received, the rules should state the estimated odds based on the number of expected entries.

Subsection (k)(3)(A)(ii)(V)(bb) requires the rules in each sweepstakes mailing to clearly state the quantity, estimated retail value, and nature of each prize.

Subsection (k)(3)(A)(ii)(V)(cc) requires the rules in each sweepstakes mailing to clearly state the schedule of any payments made over time. For example, if a \$1,000,000 prize is to be awarded over 20 years, the rules should indicate that the \$1,000,000 shall be paid in equal amounts of \$50,000 per year for 20 years starting in 1999.

Subsection (k)(3)(A)(ii)(VI) prohibits sweepstakes mailings from representing that individuals not purchasing products or services may be disqualified from receiving future sweepstakes mailings. There is concern that some sweepstakes mailings link ordering products with entering the contests, and may give the impression that not purchasing a product will prevent an individual from receiving future contest entries.

Subsection (k)(3)(A)(ii)(VII) prohibits sweepstakes mailings from requiring that an entry be accompanied by an order or payment for a product or service previously ordered. This subsection outlaws "prompt pay" sweepstakes, which offer the opportunity to enter a sweepstakes only to those making or paying for a purchase. Such sweepstakes inappropriately link the purchase of a product with entering a sweepstakes.

Subsection (k)(3)(A)(ii)(VIII) prohibits sweepstakes mailings from representing that an individual is a winner of a prize unless that individual has actually won a prize.

Subsection (k)(3)(A)(ii)(IX) prohibits sweepstakes mailings from containing any representation that contradicts or is inconsistent with the sweepstakes rules or with any other disclosure required under this subsection. Sweepstakes mailings are prohibited from including any statement qualifying, limiting, or explaining the rules or disclosures in a manner inconsistent with the rules or disclosures.

Subsection (k)(3)(B) establishes requirements for mailings, including entry materials for skill contests or promotions that purport to be a skill contest. Subsection (k)(3)(B)(ii)(I) requires skill contests to state all terms and conditions, including the rules and entry procedures, in language that is easy to find, read, and understand.

Subsection (k)(3)(B)(ii)(II) requires each skill contest mailing to state the name of the sponsor or mailer and their principal place of business or the address at which they may be contacted.

Subsection (k)(3)(B)(ii)(III) lists the requirements for the rules of skill contests: (aa) the number of rounds or levels of the contest and the cost to enter each round or level; (bb) if subsequent rounds or levels of the contest will be more difficult to solve; (cc) the maximum cost to enter all rounds or levels of the contest; (dd) the estimated number or percentage of entrants who may correctly solve the skill contest or the approximate number or percentage of entrants correctly solving the past three skill contests conducted by

the sponsor; (ee) the identity or description of the qualifications of the judges if the contest is judged by other than the sponsor; (ff) the method used in judging; (gg) the date by which the winner or winners will be determined and the date or process by which prizes will be awarded; (hh) the quantity, estimated retail value, and nature of each prize; and (ii) the schedule of any payments made over time.

Subsection (k)(3)(C) requires any facsimile check to contain a statement on the check itself that it is not a negotiable instrument and has no cash value. These documents seek to attract the attention of consumers, often by including a device that resembles a check, but which is not negotiable. Such facsimile checks may include a bank name, the name of the recipient of the letter listed as the payee, a dollar amount, and an authorized signature. Facsimile checks may create consumer confusion, increasing the impression that an individual has actually won a large amount of money or is eligible to receive the payment listed on the facsimile check. Including a clear and conspicuous disclaimer on the face of the facsimile check, which states that the check is not a negotiable instrument and has no cash value, will decrease the consumer's confusion over the nature of the facsimile check.

Subsection (k)(4) provides an exemption from the nonmailability provisions of the bill for magazines, newspapers, and other periodicals containing sweepstakes, skill contests, and facsimile checks if the sweepstakes, skill contest, or facsimile check, contained therein (A) is not directed to a named individual, or (B) does not include an opportunity to make a payment or order a product or service.

The Committee does not intend that magazines, newspapers, and other periodicals be judged as nonmailable simply because they contain an advertisement publicizing a sweepstakes or skill contest, or because they contain a facsimile check. An advertisement alone does not present the same potential for abuse or deception as direct mail promotions unless such advertisement contains personalization and offers the opportunity to make a purchase. Advertisements including those elements would make the publication similar to a promotional mailing soliciting a purchase from an individual and, thus, would be required to adhere to the provisions of subsection (k)(3) (A), (B), and (C).

Subsection (k)(5) requires any statement, notice, or disclaimer required under paragraph (3) to be clearly and conspicuously displayed, and the statements required under (k)(3)(A)(ii) (I) and (II) to be more conspicuously displayed. This provision ensures that the statements required by the bill are readily apparent and understood by the average reader, and ensures that the statements that no purchase is necessary and that a purchase would not improve an entrant's chances of winning be displayed more prominently. The Federal Trade Commission suggested that the use of "more conspicuously," rather than "prominent," avoids the confusion arising from the introduction of a new standard as suggested by S. 335, and tracks laws enforced by that agency, including the Truth in Lending Act, 15 U.S.C. 1632(a).

This "more conspicuously" requirement recognizes the importance of the two disclaimers and the fact that what is "clear and conspicuous" for one disclaimer may differ from what is neces-

sitated by another. As in the requirement contained in the Truth-in-Lending Act, it is intended that the disclosures that no purchase is necessary and that a purchase will not improve an individual's chances of winning be more conspicuously displayed than the other statements, notices, and disclaimers required under (k)(3). This may be accomplished in a variety of ways as befit the format and layout of different promotional mailings. In determining whether these two disclosures meet the "more conspicuously" standard, it is intended that consideration be given to the manner in which these disclosures are presented in relation to the other material appearing on the same page or document on which these disclosures appear. It is not the intent to require that these two disclosures necessarily appear in a larger type size, bolder typeface, or similarly more prominent graphic depiction than the other disclosures required under (k)(3), which may be appearing elsewhere in the solicitation materials. For example, these two disclosures appearing on the entry or order device may, by virtue of their very placement and location, be deemed to be "displayed more conspicuously" than other disclosures appearing elsewhere in the solicitation.

Subsection (k)(6) directs the Postal Service, when enforcing paragraph (3), to consider all the materials included in the mailing and language on and visible through the envelope. Mailings should be judged based upon their overall impression and that all elements of a mailing should be reviewed to determine mailability. A mailing may be designed so that some portions comply with the requirements of paragraph (3), even though other aspects of the mailing are deceptive and misleading. In such cases, the Postal Service shall consider the disclosures in the context of all the elements of the advertisement and, if such disclosures are ineffective in correcting the overall deceptive representation of the mail piece, it should be declared nonmailable.

Subsection (l)(1) requires any person who uses the mails for any mailings covered under subsections (h), (i), (j), or (k) to adopt reasonable practices and procedures to allow individuals to request that they no longer receive such mailings. An individual may make such a request personally, or through a conservator, guardian, or individual with power of attorney. Subsection (l)(1)(A) requires such a request to be in writing to the mailer of such matter. Subsection (l)(1)(B) allows a written request to be submitted to an attorney general (or any state government official who transmits the request to that attorney general) for submission to the mailer of such matter.

Numerous individuals have encountered great difficulty removing their names or the names of their family members from sweepstakes mailing lists. Companies sending promotional mailings covered by the bill should implement a system to remove from their mailing lists the names of individuals who do not wish to receive such mailings. Companies may elect to establish their own toll-free telephone number to provide consumers with information about how they may be removed from mailing lists or where an appropriately authorized individual may write to request the removal of an individual. Companies may satisfy the requirements of this subsection by participating in the system established by section 8 of the bill, but shall also allow individuals identified in subsection

(l)(1) to request the removal of individuals from their own mailing lists.

Subsection (l)(2) requires any person who uses the mails for any mailings covered under subsections (h), (i), (j), or (k) to maintain or cause to be maintained a record of all requests made under paragraph 1. The records shall be maintained in a form to permit the suppression of an applicable name at the applicable address for five years from the time a mailer receives the request to remove the name.

Section 4: Postal Service orders to prohibit deceptive mailings

This section amends section 3005 of existing law to allow the Postal Service to impose orders prohibiting the delivery and receipt of mail by those found to be mailing nonmailable matter under subsections (j) and (k), as added by sections 2 and 3 of the bill. The bill simply adds subsections (j) and (k) to those already included in section 3005.

Under existing law, such an order allows the Postmaster to return mail delivered to a company found in violation of the law, forbids the payment by a postmaster of any money order or postal note drawn to such a company, provides for return to the customer of the sum in such postal note, and requires the person in violation to cease and desist from engaging in the deceptive activities.

Section 5: Temporary restraining order

This section authorizes a district court, upon a proper showing, to issue an order to detain incoming and outgoing mail which is the subject of a proceeding under section 3005. A proper showing shall require proof of a likelihood of success on the merits. When mail is sent or received in more than one district, the order may be sought in a single district but will be applicable in all relevant districts. Section 3007 of existing law is amended by redesignating subsection (b) as (c) and striking existing subsection (a) and inserting new subsection (a) and (b). Subsection (a)(1) authorizes the Postal Service, in preparation for or during the pendency of proceedings under section 3005, to request from a district court in any district in which mail is sent or received, or in any district in which the defendant is located, a temporary restraining order and preliminary injunction. Proceedings must follow the requirements of Rule 65 of the Federal Rules of Civil Procedure.

Subsection (a)(2)(A) establishes that, upon a proper showing, the court shall enter an order that shall remain in effect during the pendency of any statutory proceedings and any judicial review of such proceedings, or any action to enforce orders issued under the proceedings. The order shall direct the Postmaster, in any and all districts, to detain the defendant's incoming and outgoing mail that is the subject of proceedings under section 3005. Currently, the Postal Service must apply to each district in which a defendant receives mail in order to obtain an injunction detaining the incoming mail. Numerous instances have been reported where a promoter used several addresses in multiple districts under a variety of names, requiring the Postal Service to bring an action in each judicial district to detain all incoming mail. This provision promotes the efficient use of judicial and investigative resources.

Subsection (a)(2)(B) states that a proper showing shall require proof of a likelihood of success on the merits of the proceedings under section 3005. The standard for issuing a temporary restraining order under existing section 3007 is probable cause. This provision changes the standard to bring the standard in line with that of other statutory injunction provisions. A proper showing shall only require proof of a likelihood of success on the merits by a preponderance of evidence. The bill provides that no finding of irreparable harm would be necessary if the government has shown a likelihood of success on the merits of the statutory based action.

Subsection (a)(3) requires that mail detained pursuant to the statute be made available for examination by the defendant, who would have been notified of the action pursuant to the requirements of Rule 65 noted above. Any mail matter that the Postal Service has not clearly shown to be the subject of proceedings under section 3005 shall be delivered as addressed. The Postal Service is also expected to promptly deliver any of the defendant's mail that has no relationship to the detention. It shall carefully review such mail so as not to impose an undue burden or unfair restriction on the defendant's receipt of other mail.

Subsection (a)(4) states that no finding of intent to make a false representation or to conduct a lottery is required to support the issuance of an order under this section.

Subsection (b) states that any judicial review of the proceedings under sections 3005 shall be in the district in which the order under subsection (a) was issued. Thus, the decision made in the administrative forum would be appealed to the District Court that granted the temporary restraining order.

As suggested by the Department of Justice, references to Section 3006 of title 39 are removed from this bill, since Section 3006 was found unconstitutional by the United States Supreme Court in *Blount v. Rizzi*, 400 U.S. 410 (1971), and has not been enforced.

Section 6: Civil penalties and costs

The Postal Inspection Service testified that mailers routinely change their promotions in order to comply with an issued stop order but the new promotions often violate the law in a different way. Section 3012 is amended to give the Postal Service the authority to impose a fine without first obtaining a stop order, and to base the Section 3012 fines on the size of the mailing in question, rather than on the number of days on which the activity being penalized was performed. Under current law, the Postal Service can only impose a fine based on the violation of a stop order, not based on the activity for which the stop order is issued. This section provides for fines based solely on the activity being penalized (before a stop order is issued), and provides for larger fines for subsequently violating a stop order. In doing so, the bill significantly increases the civil fine available for failure to comply with a stop order.

Subsection (a) of existing law is amended by increasing the civil penalty for violating or evading a stop order from \$10,000 per day to a sliding scale based on the quantity of pieces mailed. The penalty scale is \$50,000 for each mailing of less than 50,000 pieces; \$100,000 for each mailing of 50,000 to 100,000 pieces; and an addi-

tional \$10,000 for each additional 10,000 pieces above 100,000, not to exceed \$2,000,000. These fines are twice the amounts provided in subsection (c), since they are intended to punish not only the activity being penalized, but also the failure to comply with a stop order.

Subsection (c), as amended, provides for a civil penalty prior to the issuance of a stop order. This penalty also is calculated on a sliding scale based on the quantity of pieces mailed. The penalty scale is \$25,000 for each mailing of less than 50,000 pieces; \$50,000 for each mailing of 50,000 to 100,000 pieces; and an additional \$5,000 for each additional 10,000 pieces above 100,000, not to exceed \$1,000,000.

Under current law, the civil penalty imposed by subsection (a) takes into account certain factors such as the nature, circumstances, extent, and gravity of the violation. With respect to the violator, current law also considers the defendant's ability to pay the penalty, the effect of the penalty on the ability of the violator to conduct lawful business, any history of prior violations of such section, the degree of culpability and other such matters as justice may require. The civil penalty imposed in subsection (c) takes the same factors into account.

Subsection (d) provides for a separate penalty if a company fails to comply with the requirement to adopt reasonable practices and procedures to prevent unwanted mailings to consumers who have requested cessation of such mailings. Violations of this provision can result in a civil penalty of \$10,000 for each improper mailing. Mailers who are in compliance with the provisions included in Section 8 of this Act would not be subject to this fine.

Section 7: Administrative subpoenas

Section 7 adds a new section 3016 to authorize the use of subpoenas in investigations conducted under Section 3005(a) of title 39.

Subsection (a) of section 3016 authorizes the use of subpoenas in any investigation conducted under Section 3005(a). The subpoena authority allows for the production of any records, including books, papers, documents, and other tangible things which constitute or contain evidence that is relevant or material to the investigation. Subpoena authority will provide an additional investigative tool necessary in investigations of deceptive mail schemes. The subpoena authority should assist in establishing violations of Subsections 3001 (d), (h), (i), (j), and (k) of title 39 and in the assessment of penalties.

As suggested by the Department of Justice and the United States Postal Service Office of the Inspector General, subsection (a) requires the Postal Service to develop procedures for the issuance of subpoenas, including the mandate that: (1) a case be opened on an individual or entity before a subpoena can be issued; (2) a headquarters-level review of each subpoena be conducted; and (3) the Postmaster General may only delegate subpoena approval authority to the Postal Service's General Counsel or a Deputy General Counsel. The Committee recognizes that effective enforcement of this legislation requires the timely issuance of subpoenas. Therefore, the Committee fully expects that the Postal Service will im-

plement efficient and effective procedures for the expeditious approval of requested subpoenas, and the Committee plans to examine this matter in its future oversight activities in order to ensure that an expeditious process has indeed been established.

In addition, Subsection (a)(2) of section 3016 will make this subpoena authority available to Judicial Officers during the course of a hearing during which the Postal Service may issue an order under Section 3005(a). The current sanctions for failure of a party to comply with a discovery order of the presiding officer (39 C.F.R. 952.21(j))—precluding the offending party from supporting or opposing designated charges, or inferring that facts would be adverse to a party—may not adequately substitute for either the actual production of documents or the testimony of persons. This change would give the Judicial Officer an additional tool for use in ensuring a fair hearing, available in appropriate instances at the request of either party. Final authority to issue subpoenas is vested with the Judicial Officer in these circumstances, to avoid conflicts of interest when the Judicial Officer seeks to subpoena Postal Service records or testimony on behalf of the subject of the hearings. The proposed subpoena authority would also parallel the authority already in place in the Program Fraud Civil Remedies Act (31 U.S.C. 3804) and, for the Board of Contract Appeals, in the Contract Disputes Act of 1978 (41 U.S.C. 610).

Subsection (b) of section 3016 designates the method of service of process within the United States and abroad. The section also differentiates the service of process upon natural persons versus businesses along with the proof of such service.

Subsection (c) of section 3016 prescribes the procedure for the Postmaster General to seek enforcement of a subpoena. Although the subpoenas are not self-enforcing, a federal district court pursuant to these regulations can enforce them.

Subsection (b) of the Section 7 authorizes the Postal Service to promulgate regulations setting forth the procedures it will use to implement section 3016. These regulations are to be promulgated no later than 120 days after the enactment of this section.

As suggested by the Department of Justice and the Postal Service's Inspector General, subsection (c) of Section 7 mandates that the Postal Service's use of the subpoena authority created by section 3016 be included in the information required to be included in the Inspector General's semiannual reports under section 3013.

Section 8: Requirements of promoters of skill contests or sweepstakes mailings

Section 8 creates a new section 3017 entitled "Nonmailable skill contests or sweepstakes matter; notification to prohibit mailings."

In general, section 8 mandates that sweepstakes operators establish easy-to-use notification systems by which a person or someone legally authorized to act on their behalf, such as a legal guardian, or a relative with power of attorney, can have their name and address removed from the promoter's sweepstakes mailings lists. Upon appropriate notification, promoters will have 60 calendar days to remove the names and addresses from their mailing lists. Any subsequent mailings sent after the 60-day period to people who have requested removal from mailing lists are considered non-

mailable matter, and the promoter may be held liable for civil penalties for sending such matter.

Subsection (a)(1) defines who must comply with section 8. Promoter is defined as any person who originates sweepstakes and/or games of skill mailings. The person who merely prints or mails matter for a skill contest or sweepstakes is not covered by this section, unless that printer or mailer also originates or materially assists with operating the sweepstakes or contest. Only the originator of the sweepstakes or contest that is the subject of the mailing must comply with section 8 to ensure that the person responsible for the creation and promotion of the sweepstakes is covered rather than a middleman who simply prints or sends the mailing.

Promoters who send matter which is included in a magazine, newspaper or other periodical, as defined and limited by Section 3001(k)(4) of Title 39 (as amended), are not subject to the requirements of this section for those mailings, just as they are not subject to the disclosure requirements of Section 3 of the Bill. Because these mailings do not encourage an individual to make a purchase in connection with the mailing, these types of mailings are of much less concern.

Subsection (a)(2) defines a removal request as a request stating that an individual elects to have their name and address removed from skill contest or sweepstakes mailing lists. Submission of this removal request will indicate an individual's choice to be removed from all sweepstakes and skill contest mailing lists used by the promoter who receives the request. This subsection, however, does not require specific language to state such an intent.

Subsection (a)(3) states that the terms "skill contest," "sweepstakes," and "clearly and conspicuously displayed" are identical to the definitions of these terms previously used in section 3 of the bill.

Subsection (a)(4) defines the term "duly authorized person," as used to describe those who may request removal from sweepstakes and skill contest mailing lists on behalf of another. This definition tracks the language of Subsection 3001(l)(1) as amended by Section 3 of this bill, describing those who are authorized to request removal on behalf of another under that section.

Subsection (b) describes nonmailable material as any matter that (i) is a skill contest or sweepstakes (except if included in a magazine, newspaper, or other periodical); (ii) is addressed to an individual who made an election to be excluded from mailing lists by using the uniform notification system; and (iii) does not contain the information required by subsection (c)(1).

Promoters of skill contests or sweepstakes must provide in each mailing a clear and conspicuous statement that includes a toll-free telephone number or address of the notification system as required by subsection (c)(1). The mailpieces must also state that a person can use the system to prohibit the promoter from sending any further mailings. These requirements are essential to inform consumers of the option to halt all further sweepstakes and skill contest mailings from the promoter. Placing the toll-free number directly on all mailings with a description of the specific steps a person must take to stop all mailings from the promoter ensures that the removal process is easily understandable.

Subsection (c)(2) requires promoters covered by section 8 to establish and maintain a notification system.

Subsection (d)(1) specifies that an individual must submit a removal request to the notification system in order for their name and address to be excluded from future mailings. Promoters are free to accept removal requests through the use of a toll-free number.

Subsection (d)(2) states that promoters must remove an individual's name and address from skill contests and sweepstakes mailings lists no later than 60 calendar days after the notification system receives an individual's removal request. Promoters shall not include the individual's name in mailing lists used for sweepstakes or skills contest mailings after the 60-calendar day period has elapsed.

Sixty calendar days is a sufficient period of time to allow promoters to check the system and remove individuals from their mailing lists. In addition, mailers often prepare mailings weeks before sending them, and requiring such mailers to find and remove specific mailpieces from such mailings would be too onerous. The goal is to keep the amount of time promoters have to remove names to a reasonable minimum, so that months and months will not elapse while numerous additional mailings flood mailboxes.

Subsection (d)(3) establishes the means by which an individual can reverse a decision not to receive sweepstakes or skill contest mailings from a promoter. In order for an individual to change their election to be removed from all sweepstakes and skill contest mailing lists, the individual must advise the promoter in writing that they wish to receive such mailings again. During the time that an individual has been removed from all mailing lists, promoters should not flood such individuals with mailings or phone calls urging them to change their election.

Subsection (e) is modeled on the private right of action created by the Telephone Consumer Protection Act of 1991, found at Section 227 (c)(5) of Title 47, and is expected to operate in a similar manner. This subsection establishes a private, individual right of action in State court for those individuals who receive sweepstakes or skill contest mailings from a promoter more than 60 days after the individual has elected not to receive such mailings from the promoter. The promoter's liability for each violation is limited to the actual monetary loss caused by the individual's receipt of the mailing, or \$500, whichever is greater, unless the promoter willfully violated subsection (d). Given the damage limit, action most likely would be undertaken in the small claims court of that state. Individuals can also seek injunctions against future skill contest or sweepstakes mailings from the promoter in the appropriate state court.

Subsection (f) states that promoters will not be subject to civil liability if they exclude an individual's name and address from their mailing lists, so long as (i) a removal request is received by the notification system; (ii) the promoter or person maintaining the system has a good faith belief that the request is from the individual whose name and address is to be excluded or is from another duly authorized person. Promoters should not be held liable for removing someone from their mailing lists if they have a good faith belief

that the person wished to be dropped from the lists, even though it is subsequently discovered that the person making the request was not actually the individual or the person with the legal authority to request removal.

One major concern is misuse of the removal lists. Since many of the lists will be those who have been the most susceptible to misleading sweepstakes and skill contest mailings, such lists could be used to determine who is particularly vulnerable to future deception. Protection of these names is of the utmost importance. Therefore, under subsection (g)(1)(A), no person may disclose any information derived from these lists for commercial purposes, especially the sale or rental of names or addresses. Subsection (g)(1)(B) defines "list" as any roster of names and addresses or other related information compiled from individuals who elect not to receive sweepstakes and skill contest mailings.

Penalties for violation of subsection (g)(1) are significant. Subsection (g)(2) states that any person who violates subsection (g)(1) shall be assessed a civil penalty by the Postal Service of up to \$2,000,000 per violation. Strong civil penalties are necessary in order to deter misuse of the lists.

Under subsection (h)(1)(A), any promoter who recklessly mails sweepstakes or skills contest mailings (beyond the 60 day period, which begins on the day the promoter receives the request) to an individual who has made a proper removal request is liable to the United States for \$10,000 per mailing. This strong penalty is also necessary. It will deter promoters from violating the requirement that they remove an individual from their mailing lists and will encourage promoters to maintain an adequate notification system.

Failure to substantially comply with the requirement that promoters establish and maintain a notification system will also subject these promoters to civil penalties under subsection (h)(1)(B). The Courts can determine appropriate amounts on a case by-case basis.

Subsection (h)(2) states that the Postal Service shall assess civil penalties under section 8, in accordance with the procedures set forth in section 3012(b). Subsection (c) states that section 8 will take effect one year after the date of enactment of the Act.

Section 9: State laws not preempted

Subsection (a) states that nothing in this bill shall be construed to preempt any provision of state or local law that imposes more restrictive requirements, regulations, damages, costs or penalties. States and localities should be able to impose and enforce laws that also seek to prevent deceptive mailings. Also, other agencies may take actions against deceptive mailings under other federal laws, and the Committee does not intend that the provisions of this bill restrict or preempt any federal law or limit any civil penalties that may be imposed under other federal laws.

Subsection (b) states that nothing contained in this section shall be construed to prohibit an authorized state official from proceeding in state court on the basis of an alleged violation of any civil or criminal statute of such state.

Section 10: Technical and conforming amendments

Subsection (a) removes references in Section 3001 of Title 39 to Sections 1714 and 1718 of Title 18, which were repealed by Title XII of the Crime Control Act of 1990, Public Law 101-647.

Subsection (b) insures that the reporting requirements of Chapter 30 are updated to reflect conformance with the Inspector General Act of 1978 (as required by Section 410(b)(10) of Title 39) as well as the creation of a structurally independent Inspector General for the Postal Service in 1996. This change takes effect upon enactment of the bill. Under the Inspector General Act, Inspectors General are responsible for all audits and investigations conducted within their respective federal entities. The original intent of section 3013, as described in the legislative history to PL 98-186, was to require twice-yearly reports to the Congress on the investigative activities of the Postal Service under the false representation statutes.

Section 11: Effective date

Except as noted in Section 8 and Section 10(b), the provisions of the bill will take effect 120 days after the date of enactment.

VI. COMMITTEE OVERSIGHT FINDINGS

Pursuant to rule XIII, clause 3(c)(1), of the Rules of the House of Representatives, the results and findings for those oversight activities are incorporated in the recommendations found in the bill and in this report.

VII. BUDGET ANALYSIS AND PROJECTIONS

The budget analysis and projections required by Section 308(a) of the Congressional Budget Act of 1974 are contained in the estimate of the Congressional Budget Office.

VIII. COST ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 1, 1999.

Hon. DAN BURTON,
*Chairman, Committee on Government Reform,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 170, the Deceptive Mail Prevention and Enforcement Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Grabowicz (for federal costs) and John Harris (for the private-sector impact).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 170—Deceptive Mail Prevention and Enforcement Act

Summary: H.R. 170 would establish a number of new federal crimes and restrictions relating to deceptive mailings and sweepstakes and would increase the penalties for such offenses. CBO estimates that implementing this legislation would not result in any significant impact on the federal budget. Because enactment of H.R. 170 could affect receipts, pay-as-you-go procedures would apply to the bill. However, CBO estimates that any impact on receipts would not be significant.

H.R. 170 contains several private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA), but the costs imposed by these mandates would not exceed the statutory threshold established in UMRA (\$100 million in 1996, adjusted annually for inflation). This legislation contains no intergovernmental mandates as defined in UMRA and would impose no costs on the budgets of state, local, or tribal governments.

Estimated cost to the federal government: Because H.R. 170 would establish new federal crimes relating to deceptive mailings and sweepstakes, the federal government would be able to pursue cases that it otherwise would not be able to prosecute. CBO expects that any increase in federal costs for law enforcement by the Postal Service or court proceedings would not be significant, however, because of the small number of additional cases likely to be involved. Any additional costs to the Postal Service would be classified as off-budget, while any increased costs to the federal judiciary would be subject to appropriation.

Because violators of the provisions of H.R. 170 could be subject to civil penalties, the federal government might collect additional fines if the bill is enacted. Collections of such fines are recorded in the budget as governmental receipts (revenues). CBO expects that any additional receipts would be less than \$500,000 annually.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. Enacting H.R. 170 could affect receipts, but CBO estimates that any such effects would be less than \$500,000 a year.

Estimated impact on state, local, and tribal governments: H.R. 170 contains no intergovernmental mandates as defined in UMRA and would impose no costs on the budgets of state, local, or tribal governments.

Estimated impact on the private sector: H.R. 170 would create several new private-sector mandates for direct-mail advertisers and sweepstakes and contest operators. Direct-mail advertisers would be required to remove references to the Postmaster General from their advertisements. Sweepstakes and contest operators would be required to add a number of disclosures to their mailings and to honor requests from individuals to be excluded from future mailings. CBO estimates that the total costs of these mandates to the private sector would fall below the threshold established in UMRA (\$100 million in 1996, adjusted annually for inflation).

To keep firms from implying that their products or services are endorsed or approved by the federal government, federal law already prohibits most uses of federal symbols or the names and titles of federal agencies and officers in mailed advertisements. H.R.

170 would specifically extend that prohibition to the name and title of the Postmaster General. In order to comply with the mandate, firms would need to remove references to the Postmaster General from their existing advertisements. Because printing and postage constitute the bulk of firms' expenses in producing and distributing advertisements through the mail and the new prohibition would do little to affect either, this mandate would not have a significant impact on firms' immediate costs of doing business.

The disclosures that sweepstakes and contest operators would be required to make include: an explanation that purchase of the firm's products affect neither the odds of winning nor inclusion in future mailings; a statement of rules, conditions, fees, and entry procedure; and a description for each prize, given the quantity, the retail value, and a numerical statement of the odds of winning. Firms would also be required to put disclaimers on facsimile checks and to refrain from representing a person as a winner unless that person has won a prize. The largest sweepstakes firms already make most of these disclosures. To comply with the mandate, an individual firm might have to do no more than add a single disclosure, such as a numerical statement of odds. Other firms might have to do considerably more. The costs of redrafting and redesigning mailings would thus vary from firm to firm. Development costs for new mailings, however, are relatively small in relation to costs for printing and postage. CBO anticipates that sweepstakes and contest operators would try to avoid increasing the number of pages in their mailings because that would result in printing and postage cost increases. Consequently, although variation within the industry makes precise estimate difficult, the cost to firms of adding additional disclosures would probably be small.

H.R. 170 would require sweepstakes operators to honor direct written requests from individuals to be excluded from future mailings. The firms would be required to store and to honor the requests for five years. Many firms already honor such requests, however, and, because there is little reason to believe that the number of requests firms receive would increase significantly in the future, it is unlikely that firms' costs would increase because of this mandate. Currently, only a small portion of recipients of sweepstakes-related mail request to be excluded from future mailings. Seventy to eighty percent of recipients simply discard unwanted mailings.

Sweepstakes and contest operators would also be required to participate in the creation of a national notification system that would allow individuals to make a single request that their names be removed from the mailing lists of all sweepstakes and contest operators. The notification system would have to forward written requests from individuals to participating firms within 60 business days. Such firms would be required to include information about the notification system in their mailings. Most sweepstakes firms already participate in the Direct Marketing Association's Mail Preference Service, which is similar to the notification system required by H.R. 170. The Mail Preference Service, however, deals with all forms of direct mail, including catalogs, coupons, and other advertisements. In order to comply with the mandate, sweepstakes and contest operators would need to establish a system limited to

sweepstakes and contest mailings. The Direct Marketing Association budgets approximately \$500,000 per year to operate the Mail Preference Service. CBO expects that it would cost sweepstakes and contest operators a similar amount each year to operate the notification system. Startup costs would increase the amount required in the first year.

Previous CBO estimate: On June 15, 1999, CBO transmitted a cost estimate for S. 335, the Deceptive Mail Prevention and Enforcement Act, as ordered reported by the Senate Committee on Governmental Affairs on May 20, 1999. Unlike H.R. 170, S. 335 would allow the Postal Service to spend any penalties collected under the bill, and the two cost estimates reflect this difference.

Estimate prepared by: Federal costs: Mark Grabowicz; impact on the private sector: John Harris.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

IX. STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to rule XIII, clause 3(d)(1), the Committee finds that clauses 7, and 18 of Article 1, Section 8 of the U.S. Constitution grants Congress the power to enact this law.

X. COMMITTEE RECOMMENDATIONS

On October 28, 1999, a quorum being present, the Committee ordered the bill favorably reported to the House for consideration by voice vote.

XI. CONGRESSIONAL ACCOUNTABILITY ACT; PUBLIC LAW 104-1

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(B)(3) of the Congressional Accountability Act (P.L. 104-1).

XII. UNFUNDED MANDATES REFORM ACT; PUBLIC LAW 104-4, SECTION 423

The Committee finds that the legislation does not impose Federal mandates within the meaning of section 423 of the Unfunded Mandates Reform Act (P.L. 104-4); enactment of H.R. 170 should also result in no significant regulatory impact. Although H.R. 170 contains several private-sector mandates, the Congressional Budget Office has determined that the cost of these mandates to the private sector would be well below the threshold specified in P.L. 104-4.

XIII. FEDERAL ADVISORY COMMITTEE ACT (5 U.S.C. APP.) SECTION 5(b)

The Committee finds that the legislation does not establish or authorize establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

XIV. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 39, UNITED STATES CODE

* * * * *

PART IV—MAIL MATTER

* * * * *

CHAPTER 30—NONMAILABLE MATTER

Sec.

3001. Nonmailable matter.

* * * * *

[3006. Unlawful matter.]

* * * * *

3015. Nonmailable plant pests and injurious animals.

3016. *Administrative subpoenas.*

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

§ 3001. Nonmailable matter

(a) Matter the deposit of which in the mails is punishable under section 1302, 1341, 1342, 1461, 1463, **[1714,]** 1715, 1716, 1717, **[1718,]** or 1738 of title 18, or section 26 of the Animal Welfare Act is nonmailable.

* * * * *

(h) Matter otherwise legally acceptable in the mails which constitutes a solicitation by a nongovernmental entity for the purchase of or payment for a product or service; and **[contains a seal, insignia, trade or brand name, or any other term or symbol that reasonably could be interpreted or construed as implying any Federal Government connection, approval or endorsement]** *which reasonably could be interpreted or construed as implying any Federal Government connection, approval, or endorsement through the use of a seal, insignia, reference to the Postmaster General, citation to a Federal statute, name of a Federal agency, department, commission, or program, trade or brand name, or any other term or symbol; or contains any reference to the Postmaster General or a citation to a Federal statute that misrepresents either the identity of the mailer or the protection or status afforded such matter by the Federal Government* is nonmailable matter and shall not be carried or delivered by mail, and shall be disposed of as the Postal Service directs, unless—

(1) such nongovernmental entity has such expressed connection, approval or endorsement;

(2)(A) such matter bears on its face, in conspicuous and legible type in contrast by typography, layout, or color with other printing on its face, in accordance with regulations which the

Postal Service shall prescribe, the following notice: **“THIS PRODUCT OR SERVICE HAS NOT BEEN APPROVED OR ENDORSED BY THE FEDERAL GOVERNMENT, AND THIS OFFER IS NOT BEING MADE BY AN AGENCY OF THE FEDERAL GOVERNMENT.”**, or a notice to the same effect in words which the Postal Service may prescribe; **[and]**

(B) the envelope or outside cover or wrapper in which such matter is mailed bears on its face in capital letters and in conspicuous and legible type, in accordance with regulations which the Postal Service shall prescribe, the following notice: **“THIS IS NOT A GOVERNMENT DOCUMENT.”**, or a notice to the same effect in words which the Postal Service may prescribe; **[or] and**

(C) *such matter does not contain a false representation stating or implying that Federal Government benefits or services will be affected by any purchase or nonpurchase; or*

* * * * *

(i) Matter otherwise legally acceptable in the mails which constitutes a solicitation by a nongovernmental entity for information or the contribution of funds or membership fees and **[contains a seal, insignia, trade or brand name, or any other term or symbol that reasonably could be interpreted or construed as implying any Federal Government connection, approval or endorsement]** *which reasonably could be interpreted or construed as implying any Federal Government connection, approval, or endorsement through the use of a seal, insignia, reference to the Postmaster General, citation to a Federal statute, name of a Federal agency, department, commission, or program, trade or brand name, or any other term or symbol; or contains any reference to the Postmaster General or a citation to a Federal statute that misrepresents either the identity of the mailer or the protection or status afforded such matter by the Federal Government* is nonmailable matter and shall not be carried or delivered by mail, and shall be disposed of as the Postal Service directs, unless—

(1) such nongovernmental entity has such expressed connection, approval or endorsement;

(2)(A) such matter bears on its face, in conspicuous and legible type in contrast by typography, layout, or color with other printing on its face, in accordance with regulations which the Postal Service shall prescribe, the following notice: **“THIS ORGANIZATION HAS NOT BEEN APPROVED OR ENDORSED BY THE FEDERAL GOVERNMENT, AND THIS OFFER IS NOT BEING MADE BY AN AGENCY OF THE FEDERAL GOVERNMENT.”**, or a notice to the same effect in words which the Postal Service may prescribe; **[and]**

(B) the envelope or outside cover or wrapper in which such matter is mailed bears on its face in capital letters and in conspicuous and legible type, in accordance with regulations which the Postal Service shall prescribe, the following notice: **“THIS IS NOT A GOVERNMENT DOCUMENT.”**, or a notice to the same effect in words which the Postal Service may prescribe; **[or] and**

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

* * * * *

(j)(1) Any matter otherwise legally acceptable in the mails which is described in paragraph (2) is nonmailable matter, shall not be carried or delivered by mail, and shall be disposed of as the Postal Service directs.

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

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

(i) is provided by the Federal Government; and

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

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

(k)(1) In this subsection—

(A) the term “clearly and conspicuously displayed” means presented in a manner that is readily noticeable, readable, and understandable to the group to whom the applicable matter is disseminated;

(B) the term “facsimile check” means any matter that—

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

(ii) is not negotiable;

(C) the term “skill contest” means a puzzle, game, competition, or other contest in which—

(i) a prize is awarded or offered;

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

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

(D) the term “sweepstakes” means a game of chance for which no consideration is required to enter.

(2) Except as provided in paragraph (4), any matter otherwise legally acceptable in the mails which is described in paragraph (3) is nonmailable matter, shall not be carried or delivered by mail, and shall be disposed of as the Postal Service directs.

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

(A)(i) includes entry materials for a sweepstakes or a promotion that purports to be a sweepstakes; and

(ii)(I) does not contain a statement that discloses in the mailing, in the rules, and on the order or entry form, that no purchase is necessary to enter such sweepstakes;

(II) does not contain a statement that discloses in the mailing, in the rules, and on the order or entry form, that a purchase will not improve an individual’s chances of winning with such entry;

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

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

(V) does not contain sweepstakes rules that state—

(aa) the estimated odds of winning each prize;

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

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

(VI) represents that individuals not purchasing products or services may be disqualified from receiving future sweepstakes mailings;

(VII) requires that a sweepstakes entry be accompanied by an order or payment for a product or service previously ordered;

(VIII) represents that an individual is a winner of a prize unless that individual has won such prize; or

(IX) contains a representation that contradicts, or is inconsistent with sweepstakes rules or any other disclosure required to be made under this subsection, including any statement qualifying, limiting, or explaining the rules or disclosures in a manner inconsistent with such rules or disclosures;

(B)(i) includes entry materials for a skill contest or a promotion that purports to be a skill contest; and

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

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

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

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

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

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

(dd) the estimated number or percentage of entrants who may correctly solve the skill contest or the approximate number or percentage of entrants correctly solving the past 3 skill contests conducted by the sponsor;

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

(ff) the method used in judging;

(gg) the date by which the winner or winners will be determined and the date or process by which prizes will be awarded;

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

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

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

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

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

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

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

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

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

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

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

(ii) that attorney general transmits such request to the mailer.

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

[(j)] *(m) Except as otherwise provided by law, proceedings concerning the mailability of matter under this chapter and chapters 71 and 83 of title 18 shall be conducted in accordance with chapters 5 and 7 of title 5.*

[(k)] *(n) The district courts, together with the District Court of the Virgin Islands and the District Court of Guam, shall have jurisdiction, upon cause shown, to enjoin violations of section 1716 of title 18.*

* * * * *

§ 3005. False representations; lotteries

(a) Upon evidence satisfactory to the Postal Service that any person is engaged in conducting a scheme or device for obtaining money or property through the mail by means of false representations, including the mailing of matter which is nonmailable under section 3001(d), (h), **[or]** (i), (j), or (k) of this title, or is engaged in conducting a lottery, gift enterprise, or scheme for the distribution of money or of real or personal property, by lottery, chance, or drawing of any kind, the Postal Service may issue an order which—

(1) * * *

* * * * *

For purposes of the preceding sentence, the mailing of matter which is nonmailable under such section 3001(d), (h), **[or]** (i), (j), or (k) by any person shall constitute prima facie evidence that such

person is engaged in conducting a scheme or device for obtaining money or property through the mail by false representations.

* * * * *

(c) As used in this [section and section 3006 of this title,] *section*, the term “representative” includes an agent or representative acting as an individual or as a firm, bank, corporation, or association of any kind.

* * * * *

[§ 3006. Unlawful matter

[Upon evidence satisfactory to the Postal Service that a person is obtaining or attempting to obtain remittances of money or property of any kind through the mail for an obscene, lewd, lascivious, indecent, filthy, or vile thing or is depositing or causing to be deposited in the United States mail information as to where, how, or from whom such a thing may be obtained, the Postal Service may—

[(1) direct any postmaster at an office at which mail arrives, addressed to such a person or to his representative, to return the mail to the sender marked “Unlawful”; and

[(2) forbid the payment by a postmaster to such a person or his representative of any money order or postal note drawn to the order of either and provide for the return to the remitter of the sum named in the money order.]

§ 3007. Detention of mail for temporary periods

[(a) In preparation for or during the pendency of proceedings under sections 3005 and 3006 of this title, the United States district court in the district in which the defendant receives his mail shall, upon application therefor by the Postal Service and upon a showing of probable cause to believe either section is being violated, enter a temporary restraining order and preliminary injunction pursuant to rule 65 of the Federal Rules of Civil Procedure directing the detention of the defendant’s incoming mail by the postmaster pending the conclusion of the statutory proceedings and any appeal therefrom. The district court may provide in the order that the detained mail be open to examination by the defendant and such mail be delivered as is clearly not connected with the alleged unlawful activity. An action taken by a court hereunder does not affect or determine any fact at issue in the statutory proceedings.]

(a)(1) In preparation for or during the pendency of proceedings under section 3005, the Postal Service may, under the provisions of section 409(d), apply to the district court in any district in which mail is sent or received as part of the alleged scheme, device, lottery, gift enterprise, sweepstakes, skill contest, or facsimile check or in any district in which the defendant is found, for a temporary restraining order and preliminary injunction under the procedural requirements of rule 65 of the Federal Rules of Civil Procedure.

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

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

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

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

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

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

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

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

(b) If any order is issued under subsection (a) and the proceedings under section 3005 are concluded with the issuance of an order under that section, any judicial review of the matter shall be in the district in which the order under subsection (a) was issued.

[(b)] (c) This section does not apply to mail addressed to publishers of newspapers and other periodical publications entitled to a periodical publication rate or to mail addressed to the agents of those publishers.

* * * * *

§ 3011. Judicial enforcement

(a) * * *

* * * * *

(e) Nothing in this section or in section 3010 shall be construed as amending, preempting, limiting, modifying, or otherwise in any way affecting section 1461 or 1463 of title 18 or section [3006, 3007,] 3007 or 3008 of this title.

§ 3012. Civil penalties

(a) Any person—

(1) * * *

* * * * *

shall be liable to the United States for a civil penalty in an amount not to exceed [\$10,000 for each day that such person engages in conduct described by paragraph (1), (2), or (3) of this subsection.] \$50,000 for each mailing of less than 50,000 pieces; \$100,000 for each mailing of 50,000 to 100,000 pieces; with an additional \$10,000 for each additional 10,000 pieces above 100,000, not to exceed \$2,000,000. A separate penalty may be assessed under this subsection with respect to the conduct described in each such paragraph.

(b)(1) Whenever, on the basis of any information available to it, the Postal Service finds that any person has engaged, or is engaging, in conduct described by paragraph (1), (2), or (3) of subsection (a), (c), or (d), the Postal Service may, under the provisions of section 409(d) of this title, commence a civil action to enforce the civil penalties established by such subsection. Any such action shall be

brought in the district court of the United States for the district in which the defendant resides or receives mail.

(2) If the district court determines that a person has engaged, or is engaging, in conduct described by paragraph (1), (2), or (3) of subsection (a), (c), or (d), the court shall determine the civil penalty, if any under this section, taking into account the nature, circumstances, extent, and gravity of the violation or violations of such subsection, and, with respect to the violator, the ability to pay the penalty, the effect of the penalty on the ability of the violator to conduct lawful business, any history of prior violations of such subsection, the degree of culpability, and such other matters as justice may require.

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

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

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

[(c)] *(e) All penalties collected under authority of this section shall be paid into the Treasury of the United States.*

[(d)] *(f) In any proceeding at any time under this section, the defendant shall be entitled as a defense or counterclaim to seek judicial review, if not already had, pursuant to chapter 7 of title 5, of the order issued under section 3005 of this title. However, nothing in this section shall be construed to preclude independent judicial review otherwise available pursuant to chapter 7 of title 5 of an order issued under section 3005 of this title.*

§ 3013. Semiannual reports on investigative activities of the Postal Service

The Postmaster General shall submit semiannual reports to the **[Board]** *Inspector General* summarizing the investigative activities of the Postal Service. One semiannual report shall be submitted for the reporting period beginning on October 1 and ending on March 31, and the other semiannual report shall be submitted for the reporting period beginning on April 1 and ending on September 30. **[Each such report shall be submitted within sixty days after the close of the reporting period involved]** *Each such report shall be submitted within 1 month (or such shorter length of time as the Inspector General may specify) after the close of the reporting period involved and shall include with respect to such reporting period—*

(1) * * *

* * * * *

(4) the total amount of expenditures and obligations incurred in carrying out the investigative activities of the Postal Service; **[and]**

[(5)] the number of cases in which the authority described in section 3016 was used, and a comprehensive statement describing how that authority was used in each of those cases; and

[(5)] (6) such other information relating to the investigative activities of the Postal Service as the **[Board]** *Inspector General* may require.

[Upon approval of a report submitted under the first sentence of this section, the information in such report shall be included in the next semiannual report required under section 5 of the Inspector General Act of 1978 (5 U.S.C. App.).] *The information in a report submitted under this section to the Inspector General with respect to a reporting period shall be included as part of the semiannual report prepared by the Inspector General under section 5 of the Inspector General Act of 1978 for the same reporting period. Nothing in this section shall be considered to permit or require that any report by the Postmaster General under this section include any information relating to activities of the Inspector General.*

§ 3016. Administrative subpoenas

(a) **SUBPOENA AUTHORITY.**—

(1) **INVESTIGATIONS.**—

(A) **IN GENERAL.**—*In any investigation conducted under section 3005(a), the Postmaster General may require by subpoena the production of any records (including books, papers, documents, and other tangible things which constitute or contain evidence) which the Postmaster General considers relevant or material to such investigation.*

(B) **CONDITION.**—*No subpoena shall be issued under this paragraph except in accordance with procedures, established by the Postal Service, requiring that—*

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

(ii) *appropriate supervisory and legal review of a subpoena request be performed; and*

(iii) *delegation of subpoena approval authority be limited to the Postal Service's General Counsel or a Deputy General Counsel.*

(2) **STATUTORY PROCEEDINGS.**—*In any statutory proceeding conducted under section 3005(a), the Judicial Officer may require by subpoena the attendance and testimony of witnesses and the production of any records (including books, papers, documents, and other tangible things which constitute or contain evidence) which the Judicial Officer considers relevant or material to such proceeding.*

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

(b) *SERVICE.*—

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

(2) *FOREIGN SERVICE.*—Any such subpoena may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States, in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States may assert jurisdiction over such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such court would have if such person were personally within the jurisdiction of such court.

(3) *SERVICE ON BUSINESS PERSONS.*—Service of any such subpoena may be made upon a partnership, corporation, association, or other legal entity by—

(A) delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

(B) delivering a duly executed copy thereof to the principal office or place of business of the partnership, corporation, association, or entity; or

(C) depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such partnership, corporation, association, or entity at its principal office or place of business.

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

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

(B) depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such person at his residence or principal office or place of business.

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

(c) *ENFORCEMENT.*—

(1) *IN GENERAL.*—Whenever any person, partnership, corporation, association, or entity fails to comply with any subpoena duly served upon him, the Postmaster General may request that the Attorney General seek enforcement of the subpoena in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and

serve upon such person a petition for an order of such court for the enforcement of this section.

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

(d) *DISCLOSURE.*—Any documentary material provided pursuant to any subpoena issued under this section shall be exempt from disclosure under section 552 of title 5.

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

(a) *DEFINITIONS.*—In this section—

(1) the term “promoter” means any person who—

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

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

(2) the term “removal request” means a request stating that an individual elects to have the name and address of such individual excluded from any list used by a promoter for mailing skill contests or sweepstakes;

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

(4) the term “duly authorized person”, as used in connection with an individual, means a conservator or guardian of, or person granted power of attorney by, such individual.

(b) *NONMAILABLE MATTER.*—

(1) *IN GENERAL.*—Matter otherwise legally acceptable in the mails described in paragraph (2)—

(A) is nonmailable matter;

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

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

(2) *NONMAILABLE MATTER DESCRIBED.*—Matter described in this paragraph is any matter that—

(A) is a skill contest or sweepstakes, except for any matter described in section 3001(k)(4); and

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

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

(c) *REQUIREMENTS OF PROMOTERS.*—

(1) *NOTICE TO INDIVIDUALS.*—Any promoter who mails a skill contest or sweepstakes shall provide with each mailing a statement that—

(A) is clearly and conspicuously displayed;

(B) includes the address or toll-free telephone number of the notification system established under paragraph (2); and

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

(2) **NOTIFICATION SYSTEM.**—Any promoter that mails or causes to be mailed a skill contest or sweepstakes shall establish and maintain a notification system that provides for any individual (or other duly authorized person) to notify the system of the individual's election to have the name and address of the individual excluded from all lists of names and addresses used by that promoter to mail any skill contest or sweepstakes.

(d) **ELECTION TO BE EXCLUDED FROM LISTS.**—

(1) **IN GENERAL.**—An individual (or other duly authorized person) may elect to exclude the name and address of that individual from all lists of names and addresses used by a promoter of skill contests or sweepstakes by submitting a removal request to the notification system established under subsection (c).

(2) **RESPONSE AFTER SUBMITTING REMOVAL REQUEST TO THE NOTIFICATION SYSTEM.**—Not later than 60 calendar days after a promoter receives a removal request pursuant to an election under paragraph (1), the promoter shall exclude the individual's name and address from all lists of names and addresses used by that promoter to select recipients for any skill contest or sweepstakes.

(3) **EFFECTIVENESS OF ELECTION.**—An election under paragraph (1) shall remain in effect, unless an individual (or other duly authorized person) notifies the promoter in writing that such individual—

(A) has changed the election; and

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

(e) **PRIVATE RIGHT OF ACTION.**—

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

(A) an action to enjoin such violation,

(B) an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater, or

(C) both such actions.

It shall be an affirmative defense in any action brought under this subsection that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent mailings in violation of subsection (d). If the court finds that the defendant willfully or knowingly violated subsection (d), the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B).

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

(f) *PROMOTER NONLIABILITY.*—A promoter shall not be subject to civil liability for the exclusion of an individual's name or address from any list maintained by that promoter for mailing skill contests or sweepstakes, if—

(1) a removal request is received by the promoter's notification system; and

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

(A) the individual whose name and address is to be excluded; or

(B) another duly authorized person.

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

(1) *IN GENERAL.*—

(A) *PROHIBITION.*—No person may provide any information (including the sale or rental of any name or address) derived from a list described in subparagraph (B) to another person for commercial use.

(B) *LISTS.*—A list referred to under subparagraph (A) is any list of names and addresses (or other related information) compiled from individuals who exercise an election under subsection (d).

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

(h) *CIVIL PENALTIES.*—

(1) *IN GENERAL.*—Any promoter—

(A) who recklessly mails nonmailable matter in violation of subsection (b) shall be liable to the United States in an amount of \$10,000 per violation for each mailing to an individual of nonmailable matter; or

(B) who fails to comply with the requirements of subsection (c)(2) shall be liable to the United States.

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

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ADDITIONAL VIEWS

The issue of consumer protection, whether it relates to telemarketing fraud or sweepstakes deception is finally receiving the attention it deserves. Because a number of people fell victim to telemarketing scams, Congress, in 1991 enacted legislation that addressed the problem of telephone fraud by handing consumers an option to enforce regulations against unwanted telephone solicitations. The Telephone Consumer Protection Act of 1991 (TCPA), which establishes consumer protections against unwanted telemarketing calls, mandates that individual telemarketing companies place consumers on a do-not-call list if the consumer requests not to receive further solicitation. The act creates a private right of action, permitting persons to file suit in state court if an entity violates the TCPA provisions, absent state law to the contrary.

Currently, S. 335, the Deceptive Mail Prevention and Enforcement Act, contains no provisions to provide consumers with a private right of action and instead relies on enforcement through civil penalties administered by the postal service. Under S. 335, the United States Postal Service has additional subpoena authority to investigate potential illegal sweepstakes practices, and consumers would report violations of the do-not-mail provision to the USPS for investigation. A private right of action would be an effective enforcement tool, particularly with respect to the problem of unwanted mailings.

During deliberations by the Subcommittee on the Postal Service on H.R. 170, the Honesty in Sweepstakes Act of 1999, sponsored by Representatives LoBiondo and Condit, Chairman McHugh and I offered an amendment in the nature of a substitute. Included in that amendment which was adopted by voice vote, was language I authored which added a private right of action to sweepstakes legislation. Thus, allowing consumers to file suit in state court if a sweepstakes promoter continues to send mailings despite having requested removal from a mailer's list is an important tool. This private right of action closely mirrors the provision in the Telephone Consumer Protection Act of 1991, which establishes consumer protections against unwanted and intrusive telemarketing calls.

The private right of action provision contained in section 8 of H.R. 170, is supported by the National Consumers League, the American Association of Retired Persons and the Direct Marketing Association.

CHAKA FATTAH.

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