

Union Calendar No. 251

106TH CONGRESS
1ST SESSION

H. R. 170

[Report No. 106-431]

A BILL

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

NOVEMBER 1, 1999

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 1999

Mr. LOBIONDO (for himself and Mr. CONDIT) introduced the following bill;
which was referred to the Committee on Government Reform

NOVEMBER 1, 1999

Additional sponsors: Mr. CARDIN, Mrs. MYRICK, Ms. CARSON, Ms. MILLENDER-MCDONALD, Mr. UNDERWOOD, Mr. GILMAN, Mr. WELDON of Pennsylvania, Mr. QUINN, Mr. COOKSEY, Mr. KASICH, Mr. BILIRAKIS, Mr. BARRETT of Wisconsin, Ms. DANNER, Mr. HILLIARD, Mr. OLVER, Mr. CASTLE, Mr. GILCHREST, Mrs. KELLY, Mr. FRANKS of New Jersey, Mr. WAMP, Mr. STENHOLM, Ms. SLAUGHTER, Mr. SALMON, Mr. MORAN of Virginia, Mr. GEORGE MILLER of California, Mr. FROST, Mr. BISHOP, Mr. BILBRAY, Mr. GREENWOOD, Mrs. THURMAN, Ms. ROYBAL-ALLARD, Mr. PALLONE, Mr. SAXTON, Mr. HINCHEY, Ms. PELOSI, Mr. LaFALCE, Mr. FALCOMA, Mr. STARK, Mr. KUCINICH, Mr. BALDACCI, Mr. TANNER, Mr. WISE, Mr. BENTSEN, Mrs. CHRISTENSEN, Mr. BOYD, Mr. ANDREWS, Mr. SHOWS, Mr. WYNN, Mr. TAYLOR of Mississippi, Mrs. CAPPES, Mr. GIBBONS, Mr. FRELINGHUYSEN, Mr. INSLEE, Mr. MCGOVERN, Mr. UPTON, Mr. GANSKE, Mr. RAMSTAD, Mr. DEAL of Georgia, Mr. COOK, Mr. FORBES, Mr. GEKAS, Mr. GILLMOR, Mr. HORN, Mr. WELLER, Mrs. BIGGERT, Mr. BEREUTER, Mr. BORSKI, Mr. DEFAZIO, Mrs. JOHNSON of Connecticut, Mrs. MORELLA, Mr. WEXLER, Mr. BATEMAN, Mr. OXLEY, Mr. FOLEY, Mr. KOLBE, Mrs. EMERSON, Mr. WATKINS, Mr. LUTHER, Mr. EWING, Mr. LATOURETTE, Mr. EHLERS, Mr. TRAFICANT, Mr. SWEENEY, Mrs. ROUKEMA, Ms. PRYCE of Ohio, Mr. EDWARDS, Mr. HILL of Indiana, Mr. YOUNG of Alaska, Mr. SHAYS, Mr. GARY MILLER of California, Mr. HALL of Texas, Mr. HOLDEN, Mr. DOYLE, Mr. SMITH of New Jersey, Mr. MENENDEZ, Mr. PASCRELL, Ms. NORTON, Mr. MOAKLEY, Mr. BROWN of California, Mr. BLAGOJEVICH, Mr. GEJDENSON, Mr.

BOUCHER, Mr. KING, Mr. BLILEY, Mr. EHRLICH, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. ROTHMAN, Mr. FORD, Mr. SCARBOROUGH, Mr. BRYANT, Mr. HOLT, Ms. BERKLEY, Mr. CLYBURN, Mr. LIPINSKI, Mr. ENGEL, Mr. CUMMINGS, Mr. SHERMAN, Mr. DIXON, Mrs. TAUSCHER, Mr. DAVIS of Illinois, Mr. STUMP, Mr. WU, Mr. KUYKENDALL, Mr. RUSH, Mr. GONZALEZ, Mr. DUNCAN, Mr. CRAMER, Ms. SCHAKOWSKY, Mr. ABERCROMBIE, Ms. KILPATRICK, Mr. COSTELLO, Mr. SANDERS, Mr. CAMP, Ms. WOOLSEY, Mr. CALVERT, Mr. MEEHAN, Mr. GORDON, Mr. DAVIS of Florida, Mr. McNULTY, Mr. SMITH of Washington, Mr. ROYCE, Mr. UDALL of New Mexico, Mr. UDALL of Colorado, Mr. LUCAS of Kentucky, Mr. REYES, Mr. WAXMAN, and Mr. HALL of Ohio

NOVEMBER 1, 1999

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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

[For text of introduced bill, see copy of bill as introduced on January 6, 1999]

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. RESTRICTIONS ON MAILINGS USING MISLEADING**

7 **REFERENCES TO THE UNITED STATES GOV-**
 8 **ERNMENT.**

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

11 (1) *in subsection (h)—*

1 (A) *in the first sentence by striking “con-*
2 *tains a seal, insignia, trade or brand name, or*
3 *any other term or symbol that reasonably could*
4 *be interpreted or construed as implying any*
5 *Federal Government connection, approval or en-*
6 *dorsement” and inserting the following: “which*
7 *reasonably could be interpreted or construed as*
8 *implying any Federal Government connection,*
9 *approval, or endorsement through the use of a*
10 *seal, insignia, reference to the Postmaster Gen-*
11 *eral, citation to a Federal statute, name of a*
12 *Federal agency, department, commission, or pro-*
13 *gram, trade or brand name, or any other term*
14 *or symbol; or contains any reference to the Post-*
15 *master General or a citation to a Federal statute*
16 *that misrepresents either the identity of the mail-*
17 *er or the protection or status afforded such mat-*
18 *ter by the Federal Government”;* and

19 (B) *in paragraph (2)—*

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

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

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

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

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

6 (A) in the first sentence by striking “con-
7 tains a seal, insignia, trade or brand name, or
8 any other term or symbol that reasonably could
9 be interpreted or construed as implying any
10 Federal Government connection, approval or en-
11 dorsement” and inserting the following: “which
12 reasonably could be interpreted or construed as
13 implying any Federal Government connection,
14 approval, or endorsement through the use of a
15 seal, insignia, reference to the Postmaster Gen-
16 eral, citation to a Federal statute, name of a
17 Federal agency, department, commission, or pro-
18 gram, trade or brand name, or any other term
19 or symbol; or contains any reference to the Post-
20 master General or a citation to a Federal statute
21 that misrepresents either the identity of the mail-
22 er or the protection or status afforded such mat-
23 ter by the Federal Government”; and

24 (B) in paragraph (2)—

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

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

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

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

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

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

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

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

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

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

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

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

4 **SEC. 3. RESTRICTIONS ON SWEEPSTAKES AND DECEPTIVE**
5 **MAILINGS.**

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

9 “(k)(1) In this subsection—

10 “(A) the term ‘clearly and conspicuously dis-
11 played’ means presented in a manner that is readily
12 noticeable, readable, and understandable to the group
13 to whom the applicable matter is disseminated;

14 “(B) the term ‘facsimile check’ means any matter
15 that—

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

18 “(ii) is not negotiable;

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

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

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

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

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

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

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

14 “(A)(i) includes entry materials for a sweep-
15 stakes or a promotion that purports to be a sweep-
16 stakes; and

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

21 “(II) does not contain a statement that discloses
22 in the mailing, in the rules, and on the order or entry
23 form, that a purchase will not improve an individ-
24 ual’s chances of winning with such entry;

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

4 “(IV) does not disclose the sponsor or mailer of
5 such matter and the principal place of business or an
6 address at which the sponsor or mailer may be con-
7 tacted;

8 “(V) does not contain sweepstakes rules that
9 state—

10 “(aa) the estimated odds of winning each
11 prize;

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

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

16 “(VI) represents that individuals not purchasing
17 products or services may be disqualified from receiv-
18 ing future sweepstakes mailings;

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

22 “(VIII) represents that an individual is a win-
23 ner of a prize unless that individual has won such
24 prize; or

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

7 “(B)(i) includes entry materials for a skill con-
8 test or a promotion that purports to be a skill contest;
9 and

10 “(ii)(I) does not state all terms and conditions
11 of the skill contest, including the rules and entry pro-
12 cedures for the skill contest;

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

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

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

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

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

1 “(dd) the estimated number or percentage of
2 entrants who may correctly solve the skill contest
3 or the approximate number or percentage of en-
4 trants correctly solving the past 3 skill contests
5 conducted by the sponsor;

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

9 “(ff) the method used in judging;

10 “(gg) the date by which the winner or win-
11 ners will be determined and the date or process
12 by which prizes will be awarded;

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

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

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

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

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

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

1 “(5) Any statement, notice, or disclaimer required
2 under paragraph (3) shall be clearly and conspicuously dis-
3 played. Any statement, notice, or disclaimer required under
4 subclause (I) or (II) of paragraph (3)(A)(ii) shall be dis-
5 played more conspicuously than would otherwise be re-
6 quired under the preceding sentence.

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

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

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

21 “(B)(i) submits such a written request to the at-
22 torney general of the appropriate State (or any State
23 government officer who transmits the request to that
24 attorney general); and

1 “(i) that attorney general transmits such re-
2 quest to the mailer.

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

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

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

14 (1) by striking “or” after “(h),” each place it ap-
15 pears; and

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

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

20 (a) *IN GENERAL.*—Section 3007 of title 39, United
21 States Code, is amended—

22 (1) by redesignating subsection (b) as subsection
23 (c); and

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

1 “(a)(1) *In preparation for or during the pendency of*
2 *proceedings under section 3005, the Postal Service may,*
3 *under the provisions of section 409(d), apply to the district*
4 *court in any district in which mail is sent or received as*
5 *part of the alleged scheme, device, lottery, gift enterprise,*
6 *sweepstakes, skill contest, or facsimile check or in any dis-*
7 *trict in which the defendant is found, for a temporary re-*
8 *straining order and preliminary injunction under the pro-*
9 *cedural requirements of rule 65 of the Federal Rules of Civil*
10 *Procedure.*

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

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

17 “(ii) *direct the detention by the postmaster, in*
18 *any and all districts, of the defendant’s incoming*
19 *mail and outgoing mail, which is the subject of the*
20 *proceedings under section 3005.*

21 “(B) *A proper showing under this paragraph shall re-*
22 *quire proof of a likelihood of success on the merits of the*
23 *proceedings under section 3005.*

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

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

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

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

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

15 (b) REPEAL.—

16 (1) IN GENERAL.—Section 3006 of title 39,
17 United States Code, and the item relating to such sec-
18 tion in the table of sections for chapter 30 of such title
19 are repealed.

20 (2) CONFORMING AMENDMENTS.—(A) Section
21 3005(c) of title 39, United States Code, is amended by
22 striking “section and section 3006 of this title,” and
23 inserting “section,”.

1 (B) *Section 3011(e) of title 39, United States*
2 *Code, is amended by striking “3006, 3007,” and in-*
3 *serting “3007”.*

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

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

7 (1) *in subsection (a) by striking “\$10,000 for*
8 *each day that such person engages in conduct de-*
9 *scribed by paragraph (1), (2), or (3) of this sub-*
10 *section.” and inserting “\$50,000 for each mailing of*
11 *less than 50,000 pieces; \$100,000 for each mailing of*
12 *50,000 to 100,000 pieces; with an additional \$10,000*
13 *for each additional 10,000 pieces above 100,000, not*
14 *to exceed \$2,000,000.”;*

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

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

20 (4) *by inserting after subsection (b) the fol-*
21 *lowing:*

22 “(c)(1) *In any proceeding in which the Postal Service*
23 *may issue an order under section 3005(a), the Postal Serv-*
24 *ice may in lieu of that order or as part of that order assess*
25 *civil penalties in an amount not to exceed \$25,000 for each*

1 mailing of less than 50,000 pieces; \$50,000 for each mailing
2 of 50,000 to 100,000 pieces; with an additional \$5,000 for
3 each additional 10,000 pieces above 100,000, not to exceed
4 \$1,000,000.

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

15 “(d) Any person who violates section 3001(l) shall be
16 liable to the United States for a civil penalty not to exceed
17 \$10,000 for each mailing to an individual.”

18 **SEC. 7. ADMINISTRATIVE SUBPOENAS.**

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

21 **“§ 3016. Administrative subpoenas**

22 “(a) *SUBPOENA AUTHORITY.*—

23 “(1) *INVESTIGATIONS.*—

24 “(A) *IN GENERAL.*—In any investigation
25 conducted under section 3005(a), the Postmaster

1 *General may require by subpoena the production*
2 *of any records (including books, papers, docu-*
3 *ments, and other tangible things which constitute*
4 *or contain evidence) which the Postmaster Gen-*
5 *eral considers relevant or material to such inves-*
6 *tigation.*

7 “(B) *CONDITION.—No subpoena shall be*
8 *issued under this paragraph except in accord-*
9 *ance with procedures, established by the Postal*
10 *Service, requiring that—*

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

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

17 “(iii) *delegation of subpoena approval*
18 *authority be limited to the Postal Service’s*
19 *General Counsel or a Deputy General Coun-*
20 *sel.*

21 “(2) *STATUTORY PROCEEDINGS.—In any statu-*
22 *tory proceeding conducted under section 3005(a), the*
23 *Judicial Officer may require by subpoena the attend-*
24 *ance and testimony of witnesses and the production*
25 *of any records (including books, papers, documents,*

1 *and other tangible things which constitute or contain*
2 *evidence) which the Judicial Officer considers relevant*
3 *or material to such proceeding.*

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

7 “(b) *SERVICE.*—

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

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

1 “(3) *SERVICE ON BUSINESS PERSONS.*—*Service*
2 *of any such subpoena may be made upon a partner-*
3 *ship, corporation, association, or other legal entity*
4 *by—*

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

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

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

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

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

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

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

12 “(c) *ENFORCEMENT*.—

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

23 “(2) *JURISDICTION*.—Whenever any petition is
24 filed in any district court of the United States under
25 this section, such court shall have jurisdiction to hear

1 *and determine the matter so presented, and to enter*
2 *such order or orders as may be required to carry into*
3 *effect the provisions of this section. Any final order*
4 *entered shall be subject to appeal under section 1291*
5 *of title 28. Any disobedience of any final order en-*
6 *tered under this section by any court may be pun-*
7 *ished as contempt.*

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

12 (b) *REGULATIONS.—Not later than 120 days after the*
13 *date of enactment of this section, the Postal Service shall*
14 *promulgate regulations setting out the procedures the Postal*
15 *Service will use to implement the amendment made by sub-*
16 *section (a).*

17 (c) *SEMIANNUAL REPORTS.—Section 3013 of title 39,*
18 *United States Code, is amended by striking “and” at the*
19 *end of paragraph (4), by redesignating paragraph (5) as*
20 *paragraph (6), and by inserting after paragraph (4) the*
21 *following:*

22 “(5) *the number of cases in which the authority*
23 *described in section 3016 was used, and a comprehen-*
24 *sive statement describing how that authority was used*
25 *in each of those cases; and”.*

1 (d) *TECHNICAL AND CONFORMING AMENDMENT.*—The
 2 table of sections for chapter 30 of title 39, United States
 3 Code, is amended by adding at the end the following:

“3016. *Administrative subpoenas.*”.

4 **SEC. 8. REQUIREMENTS OF PROMOTERS OF SKILL CON-**
 5 **TESTS OR SWEEPSTAKES MAILINGS.**

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

9 **“§ 3017. Nonmailable skill contests or sweepstakes**
 10 **matter; notification to prohibit mailings**

11 “(a) *DEFINITIONS.*—In this section—

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

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

17 “(B) originates and causes to be mailed any
 18 skill contest or sweepstakes, except for any mat-
 19 ter described in section 3001(k)(4);

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

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

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

8 “(b) NONMAILABLE MATTER.—

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

11 “(A) is nonmailable matter;

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

14 “(C) shall be disposed of as the Postal Serv-
15 ice directs.

16 “(2) NONMAILABLE MATTER DESCRIBED.—Mat-
17 ter described in this paragraph is any matter that—

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

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

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

25 “(c) REQUIREMENTS OF PROMOTERS.—

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

4 “(A) is clearly and conspicuously displayed;

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

8 “(C) states that the notification system may
9 be used to prohibit the mailing of all skill con-
10 tests or sweepstakes by that promoter to such in-
11 dividual.

12 “(2) *NOTIFICATION SYSTEM.*—Any promoter that
13 mails or causes to be mailed a skill contest or sweep-
14 stakes shall establish and maintain a notification sys-
15 tem that provides for any individual (or other duly
16 authorized person) to notify the system of the individ-
17 ual’s election to have the name and address of the in-
18 dividual excluded from all lists of names and address-
19 es used by that promoter to mail any skill contest or
20 sweepstakes.

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

22 “(1) *IN GENERAL.*—An individual (or other duly
23 authorized person) may elect to exclude the name and
24 address of that individual from all lists of names and
25 addresses used by a promoter of skill contests or

1 *sweepstakes by submitting a removal request to the*
2 *notification system established under subsection (c).*

3 “(2) *RESPONSE AFTER SUBMITTING REMOVAL*
4 *REQUEST TO THE NOTIFICATION SYSTEM.—Not later*
5 *than 60 calendar days after a promoter receives a re-*
6 *moval request pursuant to an election under para-*
7 *graph (1), the promoter shall exclude the individual’s*
8 *name and address from all lists of names and ad-*
9 *dresses used by that promoter to select recipients for*
10 *any skill contest or sweepstakes.*

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

15 “(A) *has changed the election; and*

16 “(B) *elects to receive skill contest or sweep-*
17 *stakes mailings from that promoter.*

18 “(e) *PRIVATE RIGHT OF ACTION.—*

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

24 “(A) *an action to enjoin such violation,*

1 “(B) an action to recover for actual mone-
2 tary loss from such a violation, or to receive
3 \$500 in damages for each such violation, which-
4 ever is greater, or

5 “(C) both such actions.

6 It shall be an affirmative defense in any action
7 brought under this subsection that the defendant has
8 established and implemented, with due care, reason-
9 able practices and procedures to effectively prevent
10 mailings in violation of subsection (d). If the court
11 finds that the defendant willfully or knowingly vio-
12 lated subsection (d), the court may, in its discretion,
13 increase the amount of the award to an amount equal
14 to not more than 3 times the amount available under
15 subparagraph (B).

16 “(2) ACTION ALLOWABLE BASED ON OTHER SUF-
17 FICIENT NOTICE.—A mailing sent in violation of sec-
18 tion 3001(l) shall be actionable under this subsection,
19 but only if such an action would not also be available
20 under paragraph (1) (as a violation of subsection (d))
21 based on the same mailing.

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

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

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

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

7 “(B) another duly authorized person.

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

9 “(1) *IN GENERAL.*—

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

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

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

23 “(h) *CIVIL PENALTIES.*—

24 “(1) *IN GENERAL.*—Any promoter—

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

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

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

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

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

17 “(c) *EFFECTIVE DATE.—This section shall take effect*
18 *1 year after the date of enactment of this Act.*

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

20 “(a) *IN GENERAL.—Nothing in the provisions of this*
21 *Act (including the amendments made by this Act) or in*
22 *the regulations promulgated under such provisions shall be*
23 *construed to preempt any provision of State or local law*
24 *that imposes more restrictive requirements, regulations,*

1 *damages, costs, or penalties. No determination by the Postal*
 2 *Service that any particular piece of mail or class of mail*
 3 *is in compliance with such provisions of this Act shall be*
 4 *construed to preempt any provision of State or local law.*

5 (b) *EFFECT ON STATE COURT PROCEEDINGS.—Noth-*
 6 *ing contained in this section shall be construed to prohibit*
 7 *an authorized State official from proceeding in State court*
 8 *on the basis of an alleged violation of any general civil or*
 9 *criminal statute of such State or any specific civil or crimi-*
 10 *nal statute of such State.*

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

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

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

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

19 (A) *by striking “Board” each place it ap-*
 20 *pears and inserting “Inspector General”;*

21 (B) *in the third sentence by striking “Each*
 22 *such report shall be submitted within sixty days*
 23 *after the close of the reporting period involved”*
 24 *and inserting “Each such report shall be sub-*
 25 *mitted within 1 month (or such shorter length of*

1 *time as the Inspector General may specify) after*
2 *the close of the reporting period involved”;* and

3 *(C) by striking the last sentence and insert-*
4 *ing the following:*

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

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

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

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

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