

106TH CONGRESS
1ST SESSION

S. 336

To curb deceptive and misleading games of chance mailings, to provide Federal agencies with additional investigative tools to police such mailings, to establish additional penalties for such mailings, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 3, 1999

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

A BILL

To curb deceptive and misleading games of chance mailings, to provide Federal agencies with additional investigative tools to police such mailings, to establish additional penalties for such mailings, 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. DECEPTIVE GAMES OF CHANCE MAILINGS**

4 **ELIMINATION.**

5 (a) **SHORT TITLE.**—This Act may be cited as the
6 “Deceptive Games of Chance Mailings Elimination Act of
7 1999”.

8 (b) **NONMAILABLE MATTER.**—

1 (1) IN GENERAL.—Section 3001 of title 39,
2 United States Code, is amended—

3 (A) by redesignating subsections (j) and
4 (k) as subsections (k) and (l), respectively; and

5 (B) by inserting after subsection (i) the
6 following:

7 “(j)(1) Matter otherwise legally acceptable in the
8 mails that constitutes a solicitation or offer in connection
9 with the sales promotion for a product or service or the
10 promotion of a game of skill that includes the chance or
11 opportunity to win anything of value and that contains
12 words or symbols that suggest the recipient will, or is like-
13 ly to, receive anything of value, shall conform with require-
14 ments prescribed in regulations issued by the Postmaster
15 General.

16 “(2) Matter not in conformance with the regulations
17 prescribed under paragraph (1) shall not be carried or de-
18 livered by mail and shall be disposed of as the Postal Serv-
19 ice directs.

20 “(3) Regulations prescribed under paragraph (1)
21 shall require, at a minimum, that—

22 “(A) promotion of games of chance mailings
23 contain notification or disclosure statements, with
24 sufficiently large and noticeable type to be effective
25 notice to recipients that—

1 “(i) any recipient is not obligated to pur-
2 chase a product in order to win;

3 “(ii) sets out the chances of winning accu-
4 rately; and

5 “(iii) advises that purchases do not en-
6 hance the recipient’s chances of winning;

7 “(B) games of chance mailings shall be clearly
8 labeled to—

9 “(i) identify such mailings as games of
10 chance mailings; and

11 “(ii) prohibit misleading statements rep-
12 resenting that recipients are guaranteed win-
13 ners; and

14 “(C) solicitations in games of chance mailings
15 may not represent that the recipient is a member of
16 a selected group whose chances of winning are en-
17 hanced as a member of that group.”.

18 (2) FALSE REPRESENTATIONS.—Section
19 3005(a) of title 39, United States Code, is
20 amended—

21 (A) in the first sentence by striking “sec-
22 tion 3001 (d), (h), or (i)” and inserting “sec-
23 tion 3001 (d), (h), (i), or (j)”; and

1 (B) in the second sentence by striking
 2 “section 3001 (d), (h), or (i)” and inserting
 3 “section 3001 (d), (h), (i), or (j)”.

4 (c) ADMINISTRATIVE SUBPOENAS.—

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

8 **“§ 3016. Administrative subpoenas**

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

16 “(b) SERVICE.—

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

22 “(2) FOREIGN SERVICE.—Any such subpoena
 23 may be served upon any person who is not to be
 24 found within the territorial jurisdiction of any court
 25 of the United States, in such manner as the Federal

1 Rules of Civil Procedure prescribe for service in a
2 foreign country. To the extent that the courts of the
3 United States may assert jurisdiction over such per-
4 son consistent with due process, the United States
5 District Court for the District of Columbia shall
6 have the same jurisdiction to take any action re-
7 specting compliance with this section by such person
8 that such court would have if such person were per-
9 sonally within the jurisdiction of such court.

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

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

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

24 “(C) depositing such copy in the United
25 States mails, by registered or certified mail, re-

1 turn receipt requested, duly addressed to such
2 partnership, corporation, association, or entity
3 at its principal office or place of business.

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

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

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

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

21 “(c) ENFORCEMENT.—

22 “(1) IN GENERAL.—Whenever any person, part-
23 nership, corporation, association, or entity fails to
24 comply with any subpoena duly served upon him, the
25 Postmaster General may request that the Attorney

1 General seek enforcement of the subpoena in the dis-
2 trict court of the United States for any judicial dis-
3 trict in which such person resides, is found, or
4 transacts business, and serve upon such person a pe-
5 tition for an order of such court for the enforcement
6 of this section.

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

17 “(d) DISCLOSURE.—Any documentary material pro-
18 vided pursuant to any subpoena issued under this section
19 shall be exempt from disclosure under section 552 of title
20 5.”.

21 (2) REGULATIONS.—Not later than 180 days
22 after the date of enactment of this section, the Post-
23 al Service shall promulgate regulations setting out
24 the procedures the Postal Service will use to imple-
25 ment this subsection.

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

“3016. Administrative subpoenas.”.

5 (d) ADMINISTRATIVE CIVIL PENALTIES FOR NON-
 6 MAILABLE MATTER VIOLATIONS.—Section 3012 of title
 7 39, United States Code, is amended by adding at the end
 8 the following:

9 “(e)(1) In any proceeding in which the Postal Service
 10 may issue an order under section 3005(a), the Postal
 11 Service may in lieu of that order or as a part of that order
 12 assess civil penalties in an amount of \$10,000 per viola-
 13 tion for each mailing of nonmailable matter as defined
 14 under any provision of this chapter.

15 “(2) The Postal Service shall prescribe regulations to
 16 carry out the subsection.”.

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