

DECEPTIVE MAIL PREVENTION
AND ENFORCEMENT ACT

SPEECH OF

HON. JOHN M. McHUGH

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 9, 1999

Mr. McHUGH. Mr. Speaker, I am pleased to bring forward S. 335 with the provisions of the House passed deceptive sweepstakes mailing bill, H.R. 170, and would like to take this opportunity to thank the members of the Subcommittee on the Postal Service for the interest they showed in moving this important legislation, particularly our ranking member, the gentlemen from Pennsylvania, Mr. FATTAH, for his input in making this legislation stronger and of wider appeal to those affected by its provisions. By taking this action today, we help to ensure enactment of this important legislation in 1999.

On behalf of our full committee chairman, Mr. BURTON, I must also note that S. 335 includes additional provisions that, it is my understanding, that the other body has agreed to include in the bill. Incorporated in the bill is H.R. 807, which passed the House under suspension of the rules by voice vote on March 16, 1999, after being introduced on February 23 by our Civil Service Subcommittee chairman, Mr. SCARBOROUGH of Florida, with eight original cosponsors, including the committee's ranking member, Mr. WAXMAN of California.

H.R. 807, included as Title II of S. 335, provides retirement portability for certain Federal Reserve Board employees who take jobs in the executive branch. It will allow those employees who participate in the Board's FERS-like retirement plan to obtain FERS credit for their Federal Reserve years when they transfer to another federal agency. The Federal Reserve already provides such reciprocity for employees who transfer to the Federal Reserve from other federal agencies. Without this correction, former Board employees would receive smaller annuities upon retirement than they otherwise should.

This title will also correct an inequity in current law that prevents certain Federal Reserve employees from withdrawing their funds from their Thrift Savings Plan accounts. Finally, one section in this title is critically important to the men and women who have served our nation in the armed services. It clarifies the Veterans Employment Opportunities Act of 1998 to ensure that veterans will receive the benefits that Congress intended when it passed that act last year.

Title III includes H.R. 3187, a bill introduced by Representative KEN CALVERT, that would amend the 1949 Federal Property and Administrative Services Act to continue the authority allowing no-cost conveyances of surplus Federal property to State and local governments for law enforcement and emergency response purposes.

Under the Federal Property Act, State and local governments or eligible nonprofit entities can obtain surplus property, at no cost, for several authorized public purpose programs. These programs include education, public health, correctional facilities, and public airports. A bill that became law in the 105th Congress, introduced by Representative CALVERT, added law enforcement and emergency management response purposes to this list. Prior

to its enactment, however, Mr. CALVERT's bill was amended to include a December 31, 1999 sunset date for these new public purpose categories.

Three properties have been conveyed to local governments, under these authorities. There are more than 22 pending State and local government application nationwide. These new conveyance categories have been invaluable for local governments who are enhancing their law enforcement, and fire and rescue training efforts. These new authorities have allowed for an excellent reuse of surplus Federal property.

H.R. 3187 provides that during the extension, the General Services Administration may not convey surplus Federal property at no cost for law enforcement and emergency response purposes. However, the General Services Administration could at least accept, consider, and approve applications for transfer during this extension. Additionally, prior to December 31, 1999, the General Services Administration can convey surplus property at no cost, for law enforcement and emergency response proposes, to qualifying State and local government entities.

In regard to S. 335 itself, Mr. Speaker, the testimony from the General Accounting Office at the subcommittee's August 4 hearing summed it up well: when it comes to deceptive mail, which includes sweepstakes and other kinds of mailed material, "Consumers' Problems Appear Substantial." We are all concerned by the way some sweepstakes mailings entice consumers, particularly senior citizens, into making unwanted purchases under the mistaken impression that this will enhance their chances of winning a major prize.

As I have stated previously, sweepstakes, themselves, are not evil. They are an effective marketing tool that are accessed by willing and often highly satisfied millions. But experience teaches us, where the laws fall short, the dishonest will flock and honest people will suffer. Now is the time to correct these shortcomings.

S. 335, as amended with the language of the House passed H.R. 170, was carefully developed with our ranking member, Mr. FATTAH, and the bill's original author, the gentleman from New Jersey, Mr. LOBIONDO. Keeping with H.R. 170's objective of ensuring honesty in sweepstakes mailings, the amended language incorporates and responds to the extensive testimony submitted at the hearing conducted by the Subcommittee on the Postal Service, and was agreed to by the House under suspension of the rules on November 2.

The gentleman from New Jersey, Mr. LOBIONDO is to be commended for championing the necessary changes to our nation's postal laws in this area, and I deeply appreciate the assistance of the gentleman from Pennsylvania, Mr. FATTAH. In fact, the language before us today reflects the input of other Members who also introduced bills, including the gentleman from California, Mr. ROGAN, and the gentleman from Florida, Mr. MCCOLLUM, authors of H.R. 237 and H.R. 2678 respectively. This language is also based upon Senator SUSAN COLLINS' comprehensive, bipartisan sweepstakes mailing legislation, which passed in the other body, by a 93-0 vote on August 2. Mr. Speaker, you can see we have drawn from many sources to craft what I believe is a reasonably balanced and effective piece of legislation.

S. 335, as amended, would establish strong consumer protections to prevent a number of types of deceptive mailings. It would impose various requirements on sweepstakes mailings, skill contests, facsimile checks, and mailings made to look like government documents. It would 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.

I should note that in adopting H.R. 170, the House made changes to the notification system required by those sending skill contests or sweepstakes mailings. The House increased the number of days after which a name must be removed from such mailings lists from 35 to 60 days due to concerns raised by nonprofit mailers in the House hearing; the nonprofit mailers did not testify before the other body. In addition, the House included the opportunity for a consumer to bring an individual, private right of action in State court when they receive a mailing after previously requesting to be removed from the mailing list of a skill contest or sweepstakes promoter. The House included provisions stating that promoters will have an affirmative defense against such actions if they have established and implemented, with due care, reasonable practices and procedures to effectively prevent mailings in violation of the section allowing names to be removed.

Pursuant to the new section 3016(d), promoters of skill contests or sweepstakes must establish and maintain a notification system that will allow for any individual to elect to have the name and address of that individual excluded from all lists of names and addresses used by that promoter to mail any skill contest or sweepstakes. The notification system in the bill passed by the Senate, and modified by the House, does not require that companies establish a specific type of system to allow consumers to request the removal of their names from mailing lists. The legislation requires companies to include in every mailing the address or a toll-free telephone number of the notification system, but does not require that consumers submit their request in writing to comply with the removal system. Companies are encouraged to adopt a consumer friendly system for the removal of names from their mailing lists, which may include the ability to have names removed by means of a call to a toll-free number. Companies using such a system would not be required to additionally require a consumer to provide their name in writing, but may wish to elect to verify the validity and accuracy of the consumer's election to be removed from their mailing list. Any appropriate method of establishing a record of removal requests by consumers would comply with the requirements of Section 8(d). This requirement should not require a promoter originating sweepstakes or skill contests on behalf of multiple unaffiliated entities to honor removal requests made to one entity in mailings sent on behalf of any other entity.