

Public Law 98-186
98th Congress

An Act

To amend title 39, United States Code, to strengthen the investigatory and enforcement powers of the Postal Service by authorizing certain inspection authority and by providing for civil penalties for violations of orders under section 3005 of such title (pertaining to schemes for obtaining money by false representations or lotteries), and for other purposes.

Nov. 30, 1983

[S. 450]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Mail Order Consumer Protection Amendments of 1983".

Mail Order
Consumer
Protection
Amendments of
1983.
39 USC 3001
note.

CEASE-AND-DESIST ORDERS; MIRROR IMAGE DOCTRINE; TEST PURCHASE
AUTHORITY

SEC. 2. (a) Section 3005(a) of title 39, United States Code, is amended—

- (1) by striking out "and" at the end of paragraph (1);
 - (2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; and"; and
 - (3) by inserting after paragraph (2) the following new paragraph:
 "(3) requires the person or his representative to cease and desist from engaging in any such scheme, device, lottery, or gift enterprise."
- (b) The first sentence of section 3005(d) of such title is amended—
- (1) by striking out "or" before "(2)"; and
 - (2) by inserting before the period a comma and "or (3) an advertisement promoting the sale of a book or other publication, or a solicitation to purchase, or a purchase order for any such publication, if (A) such advertisement, solicitation, or purchase order is not materially false or misleading in its description of the publication; (B) such advertisement, solicitation, or purchase order contains no material misrepresentation of fact: *Provided, however,* That no statement quoted or derived from the publication shall constitute a misrepresentation of fact as long as such statement complies with the requirements of subparagraphs (A) and (C); and (C) the advertisement, solicitation, or purchase order accurately discloses the source of any statements quoted or derived from the publication. Paragraph (3) shall not be applicable to any publication, advertisement, solicitation, or purchase order which is used to sell some other product in which the publisher or author has a financial interest as part of a commercial scheme".
- (c) Section 3005 of such title is amended by adding at the end thereof the following new subsection:
 "(e)(1) In conducting an investigation to determine if a person is engaged in any of the activities covered by subsection (a) of this section, the Postmaster General (or any duly authorized agent of the Postmaster General) may tender, at any reasonable time and by any

reasonable means, the price advertised or otherwise requested for any article or service that such person has offered to provide through the mails.

"(2) A failure to provide the article or service offered after the Postmaster General or his agent has tendered the price advertised or otherwise requested in the manner described in paragraph (1) of this subsection, and any reasons for such failure, may be considered in a proceeding held under section 3007 of this title to determine if there is probable cause to believe that a violation of this section has occurred.

Regulations.

"(3) The Postmaster General shall prescribe regulations under which any individual seeking to make a purchase on behalf of the Postal Service under this subsection from any person shall—

"(A) identify himself as an employee or authorized agent of the Postal Service, as the case may be;

"(B) state the nature of the conduct under investigation; and

"(C) inform such person that the failure to complete the transaction may be considered in a proceeding under section 3007 of this title to determine probable cause, in accordance with paragraph (2) of this subsection."

CIVIL PENALTIES; SEMIANNUAL REPORTS

SEC. 3. (a) Chapter 30 of title 39, United States Code, is amended by adding at the end thereof the following new sections:

39 USC 3012.

"§ 3012. Civil penalties

"(a) Any person—

Ante, p. 1315.

"(1) who, through the use of the mail, evades or attempts to evade the effect of an order issued under section 3005(a)(1) or 3005(a)(2) of this title;

"(2) who fails to comply with an order issued under section 3005(a)(3) of this title; or

"(3) who (other than a publisher described by section 3007(b) of this title) has actual knowledge of any such order, is in privity with any person described by paragraph (1) or (2) of this subsection, and engages in conduct to assist any such person to evade, attempt to evade, or fail to comply with any such order, as the case may be, through the use of the mail;

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. 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), 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), 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) All penalties collected under authority of this section shall be paid into the Treasury of the United States.

"(d) 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.

Judicial review.

5 USC 701 *et seq.*

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

39 USC 3013.

"The Postmaster General shall submit semiannual reports to the Board 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 and shall include with respect to such reporting period—

"(1) a summary of any proceedings instituted under section 3005 of this title, and the results of those and of any other such proceedings decided, settled, or otherwise concluded during such period;

"(2) the number of cases in which the authority described in section 3005(e) of this title was used;

"(3) the number of applications for temporary restraining orders or preliminary injunctions submitted under section 3007 of this title and, of those applications, the number granted;

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

"(5) such other information relating to the investigative activities of the Postal Service as the Board may require.

Upon approval of a report submitted under the first sentence of this section, the Board shall transmit such report to the Congress."

Ante, p. 1315.

Transmittal to Congress.

(b) Section 3012 of title 39, United States Code (as added by subsection (a) of this section) shall apply with respect to conduct which occurs on or after the date of the enactment of this Act.

39 USC 3012 note.

(c) The analysis for chapter 30 of title 39, United States Code, is amended by inserting after the item relating to section 3011 the following new items:

"3012. Civil penalties.

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

CONSUMER EDUCATION PROGRAM ON SCHEMES INVOLVING FALSE REPRESENTATIONS

SEC. 4. (a) As soon as practicable after the date of enactment of this Act, the Postmaster General or his designee, following consultation with representatives of the mail order industry, shall develop and carry out a program designed to provide consumer education to

39 USC 3005 note.

the public on schemes involving false representations through use of the mails, including the dissemination of information on recognizing practices commonly associated with such schemes, as well as appropriate measures which an individual may take upon receiving mail matter which the individual believes may be part of such a scheme.

Summary.

(b) A summary of the activities carried out under subsection (a) shall be included in each annual report rendered by the Postmaster General under section 2402 of title 39, United States Code.

Approved November 30, 1983.

LEGISLATIVE HISTORY—S. 450:

SENATE REPORT No. 98-51 (Comm. on Governmental Affairs).

CONGRESSIONAL RECORD, Vol. 129 (1983):

Nov. 3, considered and passed Senate.

Nov. 16, considered and passed House.