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.

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".

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"

(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)";

(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.

"(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:

§ 3012. Civil penalties

"(a) Any person—

"(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 engage 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 estab­
lished 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 defend­
ant 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 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 begin­
ing 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 activ­
ities 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.".

(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.

(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 consulta­
tion with representatives of the mail order industry, shall develop
and carry out a program designed to provide consumer education to

Judicial review.
5 USC 701 et seq.

Ante, p. 1315.

Transmittal to
Congress.
39 USC 3012
note.

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 appro­
priate measures which an individual may take upon receiving mail
matter which the individual believes may be part of such a scheme.

(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).
Nov. 3, considered and passed Senate.
Nov. 16, considered and passed House.