

18 USC Ch. 114: TRAFFICKING IN CONTRABAND CIGARETTES AND SMOKELESS TOBACCO

From Title 18—CRIMES AND CRIMINAL PROCEDURE

PART I—CRIMES

CHAPTER 114—TRAFFICKING IN CONTRABAND CIGARETTES AND SMOKELESS TOBACCO

Sec.

2341.

Definitions.

2342.

Unlawful acts.

2343.

Recordkeeping, reporting, and inspection.

2344.

Penalties.

2345.

Effect on State and local law.

2346.

Enforcement and regulations.

AMENDMENTS

2006—Pub. L. 109–177, title I, §121(g)(3), (4)(A), Mar. 9, 2006, 120 Stat. 224, substituted "TRAFFICKING IN CONTRABAND CIGARETTES AND SMOKELESS TOBACCO" for "TRAFFICKING IN CONTRABAND CIGARETTES" in chapter heading, added items 2343 and 2345, and struck out former items 2343 "Recordkeeping and inspection" and 2345 "Effect on State law".

§2341. Definitions

As used in this chapter—

(1) the term "cigarette" means—

(A) any roll of tobacco wrapped in paper or in any substance not containing tobacco; and

(B) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (A);

(2) the term "contraband cigarettes" means a quantity in excess of 10,000 cigarettes, which bear no evidence of the payment of applicable State or local cigarette taxes in the State or locality where such cigarettes are found, if the State or local government requires a stamp, impression, or other indication to be placed on packages or other containers of cigarettes to evidence payment of cigarette taxes, and which are in the possession of any person other than—

(A) a person holding a permit issued pursuant to chapter 52 of the Internal Revenue Code of 1986 as a manufacturer of tobacco products or as an export warehouse proprietor, or a person operating a customs bonded warehouse pursuant to section 311 or 555 of the Tariff Act of 1930 (19 U.S.C. 1311 or 1555) or an agent of such person;

(B) a common or contract carrier transporting the cigarettes involved under a proper bill of lading or freight bill which states the quantity, source, and destination of such cigarettes;

(C) a person—

(i) who is licensed or otherwise authorized by the State where the cigarettes are found to account for and pay cigarette taxes imposed by such State; and

(ii) who has complied with the accounting and payment requirements relating to such license or authorization with respect to the cigarettes involved; or

(D) an officer, employee, or other agent of the United States or a State, or any department, agency, or

instrumentality of the United States or a State (including any political subdivision of a State) having possession of such cigarettes in connection with the performance of official duties;

(3) the term "common or contract carrier" means a carrier holding a certificate of convenience and necessity, a permit for contract carrier by motor vehicle, or other valid operating authority under subtitle IV of title 49, or under equivalent operating authority from a regulatory agency of the United States or of any State;

(4) the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Virgin Islands;

(5) the term "Attorney General" means the Attorney General of the United States;

(6) the term "smokeless tobacco" means any finely cut, ground, powdered, or leaf tobacco that is intended to be placed in the oral or nasal cavity or otherwise consumed without being combusted;

(7) the term "contraband smokeless tobacco" means a quantity in excess of 500 single-unit consumer-sized cans or packages of smokeless tobacco, or their equivalent, that are in the possession of any person other than—

(A) a person holding a permit issued pursuant to chapter 52 of the Internal Revenue Code of 1986 as manufacturer ¹ of tobacco products or as an export warehouse proprietor, a person operating a customs bonded warehouse pursuant to section 311 or 555 of the Tariff Act of 1930 (19 U.S.C. 1311, 1555), or an agent of such person;

(B) a common carrier transporting such smokeless tobacco under a proper bill of lading or freight bill which states the quantity, source, and designation of such smokeless tobacco;

(C) a person who—

(i) is licensed or otherwise authorized by the State where such smokeless tobacco is found to engage in the business of selling or distributing tobacco products; and

(ii) has complied with the accounting, tax, and payment requirements relating to such license or authorization with respect to such smokeless tobacco; or

(D) an officer, employee, or agent of the United States or a State, or any department, agency, or instrumentality of the United States or a State (including any political subdivision of a State), having possession of such smokeless tobacco in connection with the performance of official duties; ²

(Added Pub. L. 95–575, §1, Nov. 2, 1978, 92 Stat. 2463; amended Pub. L. 97–449, §5(c), Jan. 12, 1983, 96 Stat. 2442; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 107–296, title XI, §1112(i)(1), Nov. 25, 2002, 116 Stat. 2277; Pub. L. 109–177, title I, §121(a)(1), (b)(1), (6), Mar. 9, 2006, 120 Stat. 221, 222.)

REFERENCES IN TEXT

Chapter 52 of the Internal Revenue Code of 1986, referred to in pars. (2)(A) and (7)(A), is classified generally to chapter 52 (§5701 et seq.) of Title 26, Internal Revenue Code.

AMENDMENTS

2006—Par. (2). Pub. L. 109–177, §121(b)(6), which directed amendment of par. (2) by substituting "State or local cigarette taxes in the State or locality where such cigarettes are found, if the State or local government" for "State cigarette taxes in the State where such cigarettes are found, if the State" in introductory provisions, was executed by making the substitution for "State cigarette taxes in the State where such cigarettes are found, if such State", to reflect the probable intent of Congress.

Pub. L. 109–177, §121(a)(1), substituted "10,000 cigarettes" for "60,000 cigarettes" in introductory provisions.

Pars. (6), (7). Pub. L. 109–177, §121(b)(1), added pars. (6) and (7).

2002—Par. (5). Pub. L. 107–296 added par. (5) and struck out former par. (5) which read as follows: "the term 'Secretary' means the Secretary of the Treasury."

1986—Par. (2)(A). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

1983—Par. (3). Pub. L. 97–449 substituted "subtitle IV of title 49" for "the Interstate Commerce Act".

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE

Pub. L. 95–575, §4, Nov. 2, 1978, 92 Stat. 2466, provided:

"(a) Except as provided in subsection (b), this Act [enacting this chapter, amending section 1961 of this title and sections 781 and 787 of former Title 49, Transportation, and enacting provisions set out as a note under this section] shall take effect on the date of its enactment [Nov. 2, 1978].

"(b) Sections 2342(b) and 2343 of title 18, United States Code as enacted by the first section of this Act, shall take effect on the first day of the first month beginning more than 120 days after the date of the enactment of this Act [Nov. 2, 1978]."

AUTHORIZATION OF APPROPRIATIONS

Pub. L. 95–575, §5, Nov. 2, 1978, 92 Stat. 2466, provided that: "There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of chapter 114 of title 18, United States Code, added by the first section of this Act."

¹ So in original. Probably should be "a manufacturer".

² So in original. The semicolon probably should be a period.

§2342. Unlawful acts

(a) It shall be unlawful for any person knowingly to ship, transport, receive, possess, sell, distribute, or purchase contraband cigarettes or contraband smokeless tobacco.

(b) It shall be unlawful for any person knowingly to make any false statement or representation with respect to the information required by this chapter to be kept in the records of any person who ships, sells, or distributes any quantity of cigarettes in excess of 10,000 in a single transaction.

(Added Pub. L. 95–575, §1, Nov. 2, 1978, 92 Stat. 2464; amended Pub. L. 109–177, title I, §121(a)(2), (b)(2), Mar. 9, 2006, 120 Stat. 221, 222.)

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–177, §121(b)(2), inserted "or contraband smokeless tobacco" after "contraband cigarettes".

Subsec. (b). Pub. L. 109–177, §121(a)(2), substituted "10,000" for "60,000".

EFFECTIVE DATE

Subsec. (a) of this section effective Nov. 2, 1978, and subsec. (b) of this section effective on first day of first month beginning more than 120 days after Nov. 2, 1978, see section 4 of Pub. L. 95–575, set out as a note under section 2341 of this title.

§2343. Recordkeeping, reporting, and inspection

(a) Any person who ships, sells, or distributes any quantity of cigarettes in excess of 10,000, or any quantity of smokeless tobacco in excess of 500 single-unit consumer-sized cans or packages, in a single transaction shall maintain such information about the shipment, receipt, sale, and distribution of cigarettes as the Attorney General may prescribe by rule or regulation. The Attorney General may require such person to keep such information as the Attorney General considers appropriate for purposes of enforcement of this chapter, including—

(1) the name, address, destination (including street address), vehicle license number, driver's license number, signature of the person receiving such cigarettes, and the name of the purchaser;

(2) a declaration of the specific purpose of the receipt (personal use, resale, or delivery to another); and

(3) a declaration of the name and address of the recipient's principal in all cases when the recipient is acting as an agent.

Such information shall be contained on business records kept in the normal course of business.

(b) Any person, except for a tribal government, who engages in a delivery sale, and who ships, sells, or distributes any quantity in excess of 10,000 cigarettes, or any quantity in excess of 500 single-unit consumer-

sized cans or packages of smokeless tobacco, or their equivalent, within a single month, shall submit to the Attorney General, pursuant to rules or regulations prescribed by the Attorney General, a report that sets forth the following:

(1) The person's beginning and ending inventory of cigarettes and cans or packages of smokeless tobacco (in total) for such month.

(2) The total quantity of cigarettes and cans or packages of smokeless tobacco that the person received within such month from each other person (itemized by name and address).

(3) The total quantity of cigarettes and cans or packages of smokeless tobacco that the person distributed within such month to each person (itemized by name and address) other than a retail purchaser.

(c)(1) Any officer of the Bureau of Alcohol, Tobacco, Firearms, and Explosives may, during normal business hours, enter the premises of any person described in subsection (a) or (b) for the purposes of inspecting—

(A) any records or information required to be maintained by the person under this chapter; or

(B) any cigarettes or smokeless tobacco kept or stored by the person at the premises.

(2) The district courts of the United States shall have the authority in a civil action under this subsection to compel inspections authorized by paragraph (1).

(3) Whoever denies access to an officer under paragraph (1), or who fails to comply with an order issued under paragraph (2), shall be subject to a civil penalty in an amount not to exceed \$10,000.

(d) Any report required to be submitted under this chapter to the Attorney General shall also be submitted to the Secretary of the Treasury and to the attorneys general and the tax administrators of the States from where the shipments, deliveries, or distributions both originated and concluded.

(e) In this section, the term "delivery sale" means any sale of cigarettes or smokeless tobacco in interstate commerce to a consumer if—

(1) the consumer submits the order for such sale by means of a telephone or other method of voice transmission, the mails, or the Internet or other online service, or by any other means where the consumer is not in the same physical location as the seller when the purchase or offer of sale is made; or

(2) the cigarettes or smokeless tobacco are delivered by use of the mails, common carrier, private delivery service, or any other means where the consumer is not in the same physical location as the seller when the consumer obtains physical possession of the cigarettes or smokeless tobacco.

(f) In this section, the term "interstate commerce" means commerce between a State and any place outside the State, or commerce between points in the same State but through any place outside the State.

(Added Pub. L. 95–575, §1, Nov. 2, 1978, 92 Stat. 2464; amended Pub. L. 107–296, title XI, §1112(i)(2), Nov. 25, 2002, 116 Stat. 2277; Pub. L. 109–177, title I, §121(a)(3), (b)(3), (c), (g)(1), Mar. 9, 2006, 120 Stat. 221, 222, 224; Pub. L. 111–154, §4, Mar. 31, 2010, 124 Stat. 1109.)

AMENDMENTS

2010—Subsec. (c). Pub. L. 111–154 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "Upon the consent of any person who ships, sells, or distributes any quantity of cigarettes in excess of 10,000 in a single transaction, or pursuant to a duly issued search warrant, the Attorney General may enter the premises (including places of storage) of such person for the purpose of inspecting any records or information required to be maintained by such person under this chapter, and any cigarettes kept or stored by such person at such premises."

2006—Pub. L. 109–177, §121(g)(1), substituted "Recordkeeping, reporting, and inspection" for "Recordkeeping and inspection" in section catchline.

Subsec. (a). Pub. L. 109–177, §121(a)(3)(A), (b)(3), (c)(1), in introductory provisions, substituted "10,000, or any quantity of smokeless tobacco in excess of 500 single-unit consumer-sized cans or packages," for "60,000" and "such information as the Attorney General considers appropriate for purposes of enforcement of this chapter, including—" for "only—" and, in concluding provisions, struck out "Nothing contained herein shall authorize the Attorney General to require reporting under this section." at end.

Subsec. (b). Pub. L. 109–177, §121(c)(3), added subsec. (b). Former subsec. (b) redesignated (c).

Pub. L. 109–177, §121(a)(3)(B), substituted "10,000" for "60,000".

Subsec. (c). Pub. L. 109–177, §121(c)(2), redesignated subsec. (b) as (c).

Subsecs. (d) to (f). Pub. L. 109–177, §121(c)(4), added subsecs. (d) to (f).

2002—Pub. L. 107–296 substituted "Attorney General" for "Secretary" wherever appearing.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE

Section effective on first day of first month beginning more than 120 days after Nov. 2, 1978, see section 4 of Pub. L. 95–575, set out as a note under section 2341 of this title.

§2344. Penalties

(a) Whoever knowingly violates section 2342(a) of this title shall be fined under this title or imprisoned not more than five years, or both.

(b) Whoever knowingly violates any rule or regulation promulgated under section 2343(a) or 2346 of this title or violates section 2342(b) of this title shall be fined under this title or imprisoned not more than three years, or both.

(c) Any contraband cigarettes or contraband smokeless tobacco involved in any violation of the provisions of this chapter shall be subject to seizure and forfeiture. The provisions of chapter 46 of title 18 relating to civil forfeitures shall extend to any seizure or civil forfeiture under this section. Any cigarettes or smokeless tobacco so seized and forfeited shall be either—

(1) destroyed and not resold; or

(2) used for undercover investigative operations for the detection and prosecution of crimes, and then destroyed and not resold.

(Added Pub. L. 95–575, §1, Nov. 2, 1978, 92 Stat. 2464; amended Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103–322, title XXXIII, §330016(1)(K), (S), Sept. 13, 1994, 108 Stat. 2147, 2148; Pub. L. 109–177, title I, §121(b)(4), (d), Mar. 9, 2006, 120 Stat. 222, 223.)

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–177 inserted "or contraband smokeless tobacco" after "contraband cigarettes", substituted "seizure and forfeiture. The provisions of chapter 46 of title 18 relating to civil forfeitures shall extend to any seizure or civil forfeiture under this section. Any cigarettes or smokeless tobacco so seized and forfeited shall be either—" for "seizure and forfeiture, and all provisions of the Internal Revenue Code of 1986 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of such Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter.", and added pars. (1) and (2).

1994—Subsec. (a). Pub. L. 103–322, §330016(1)(S), substituted "fined under this title" for "fined not more than \$100,000".

Subsec. (b). Pub. L. 103–322, §330016(1)(K), substituted "fined under this title" for "fined not more than \$5,000".

1986—Subsec. (c). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

§2345. Effect on State and local law

(a) Nothing in this chapter shall be construed to affect the concurrent jurisdiction of a State or local government to enact and enforce its own cigarette tax laws, to provide for the confiscation of cigarettes or smokeless tobacco and other property seized for violation of such laws, and to provide for penalties for the violation of such laws.

(b) Nothing in this chapter shall be construed to inhibit or otherwise affect any coordinated law enforcement effort by a number of State or local governments, through interstate compact or otherwise, to provide for the administration of State or local cigarette tax laws, to provide for the confiscation of cigarettes or smokeless tobacco and other property seized in violation of such laws, and to establish cooperative programs for the administration of such laws.

(Added Pub. L. 95–575, §1, Nov. 2, 1978, 92 Stat. 2465; amended Pub. L. 109–177, title I, §121(b)(5), (e), (g) (2), Mar. 9, 2006, 120 Stat. 222–224.)

AMENDMENTS

2006—Pub. L. 109–177, §121(g)(2), substituted "Effect on State and local law" for "Effect on State law" in section catchline.

Subsec. (a). Pub. L. 109–177, §121(b)(5), (e)(1), substituted "a State or local government to enact and enforce its own" for "a State to enact and enforce" and inserted "or smokeless tobacco" after "cigarettes".

Subsec. (b). Pub. L. 109–177, §121(b)(5), (e)(2), substituted "of State or local governments, through interstate compact or otherwise, to provide for the administration of State or local" for "of States, through interstate compact or otherwise, to provide for the administration of State" and inserted "or smokeless tobacco" after "cigarettes".

§2346. Enforcement and regulations

(a) The Attorney General, subject to the provisions of section 2343(a) of this title, shall enforce the provisions of this chapter and may prescribe such rules and regulations as he deems reasonably necessary to carry out the provisions of this chapter.

(b)(1) A State, through its attorney general, a local government, through its chief law enforcement officer (or a designee thereof), or any person who holds a permit under chapter 52 of the Internal Revenue Code of 1986, may bring an action in the United States district courts to prevent and restrain violations of this chapter by any person (or by any person controlling such person), except that any person who holds a permit under chapter 52 of the Internal Revenue Code of 1986 may not bring such an action against a State or local government. No civil action may be commenced under this paragraph against an Indian tribe or an Indian in Indian country (as defined in section 1151).

(2) A State, through its attorney general, or a local government, through its chief law enforcement officer (or a designee thereof), may in a civil action under paragraph (1) also obtain any other appropriate relief for violations of this chapter from any person (or by any person controlling such person), including civil penalties, money damages, and injunctive or other equitable relief. Nothing in this chapter shall be deemed to abrogate or constitute a waiver of any sovereign immunity of a State or local government, or an Indian tribe against any unconsented lawsuit under this chapter, or otherwise to restrict, expand, or modify any sovereign immunity of a State or local government, or an Indian tribe.

(3) The remedies under paragraphs (1) and (2) are in addition to any other remedies under Federal, State, local, or other law.

(4) Nothing in this chapter shall be construed to expand, restrict, or otherwise modify any right of an authorized State official to proceed in State court, or take other enforcement actions, on the basis of an alleged violation of State or other law.

(5) Nothing in this chapter shall be construed to expand, restrict, or otherwise modify any right of an authorized local government official to proceed in State court, or take other enforcement actions, on the basis of an alleged violation of local or other law.

(Added Pub. L. 95–575, §1, Nov. 2, 1978, 92 Stat. 2465; amended Pub. L. 107–296, title XI, §1112(i)(2), Nov. 25, 2002, 116 Stat. 2277; Pub. L. 109–177, title I, §121(f), Mar. 9, 2006, 120 Stat. 223.)

REFERENCES IN TEXT

Chapter 52 of the Internal Revenue Code of 1986, referred to in subsec. (b)(1), is classified generally to chapter 52 (§5701 et seq.) of Title 26, Internal Revenue Code.

AMENDMENTS

2006—Pub. L. 109–177 designated existing provisions as subsec. (a) and added subsec. (b).

2002—Pub. L. 107–296 substituted "Attorney General" for "Secretary".

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.