

## 15 USC Ch. 10A: COLLECTION OF STATE CIGARETTE TAXES

### From Title 15—COMMERCE AND TRADE

#### CHAPTER 10A—COLLECTION OF STATE CIGARETTE TAXES

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### §375. Definitions

As used in this chapter, the following definitions apply:

#### **(1) Attorney general**

The term "attorney general", with respect to a State, means the attorney general or other chief law enforcement officer of the State.

#### **(2) Cigarette**

##### **(A) In general**

The term "cigarette"—

- (i) has the meaning given that term in section 2341 of title 18; and
- (ii) includes roll-your-own tobacco (as defined in section 5702 of title 26).

##### **(B) Exception**

The term "cigarette" does not include a cigar (as defined in section 5702 of title 26).

#### **(3) Common carrier**

The term "common carrier" means any person (other than a local messenger service or the United States Postal Service) that holds itself out to the general public as a provider for hire of the transportation by water, land, or air of merchandise (regardless of whether the person actually operates the vessel, vehicle, or aircraft by which the transportation is provided) between a port or place and a port or place in the United States.

#### **(4) Consumer**

The term "consumer"—

- (A) means any person that purchases cigarettes or smokeless tobacco; and
- (B) does not include any person lawfully operating as a manufacturer, distributor, wholesaler, or retailer of cigarettes or smokeless tobacco.

#### **(5) Delivery sale**

The term "delivery sale" means any sale of cigarettes or smokeless tobacco to a consumer if—

- (A) the consumer submits the order for the sale by means of a telephone or other method of voice transmission, the mails, or the Internet or other online service, or the seller is otherwise not in the physical presence of the buyer when the request for purchase or order is made; or
- (B) the cigarettes or smokeless tobacco are delivered to the buyer by common carrier, private delivery service, or other method of remote delivery, or the seller is not in the physical presence of the buyer when the buyer obtains possession of the cigarettes or smokeless tobacco.

#### **(6) Delivery seller**

The term "delivery seller" means a person who makes a delivery sale.

**(7) Indian country**

The term "Indian country"—

(A) has the meaning given that term in section 1151 of title 18, except that within the State of Alaska that term applies only to the Metlakatla Indian Community, Annette Island Reserve; and

(B) includes any other land held by the United States in trust or restricted status for one or more Indian tribes.

**(8) Indian tribe**

The term "Indian tribe", "tribe", or "tribal" refers to an Indian tribe as defined in section 450b(e) of title 25 or as listed pursuant to section 479a–1 of title 25.

**(9) Interstate commerce****(A) In general**

The term "interstate commerce" means commerce between a State and any place outside the State, commerce between a State and any Indian country in the State, or commerce between points in the same State but through any place outside the State or through any Indian country.

**(B) Into a State, place, or locality**

A sale, shipment, or transfer of cigarettes or smokeless tobacco that is made in interstate commerce, as defined in this paragraph, shall be deemed to have been made into the State, place, or locality in which such cigarettes or smokeless tobacco are delivered.

**(10) Person**

The term "person" means an individual, corporation, company, association, firm, partnership, society, State government, local government, Indian tribal government, governmental organization of such a government, or joint stock company.

**(11) State**

The term "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

**(12) Smokeless tobacco**

The term "smokeless tobacco" means any finely cut, ground, powdered, or leaf tobacco, or other product containing tobacco, that is intended to be placed in the oral or nasal cavity or otherwise consumed without being combusted.

**(13) Tobacco tax administrator**

The term "tobacco tax administrator" means the State, local, or tribal official duly authorized to collect the tobacco tax or administer the tax law of a State, locality, or tribe, respectively.

**(14) Use**

The term "use" includes the consumption, storage, handling, or disposal of cigarettes or smokeless tobacco.

(Oct. 19, 1949, ch. 699, §1, as added Pub. L. 111–154, §2(a), Mar. 31, 2010, 124 Stat. 1088.)

**PRIOR PROVISIONS**

A prior section 375, act Oct. 19, 1949, ch. 699, §1, 63 Stat. 884; Aug. 9, 1955, ch. 695, §1, 69 Stat. 627, set out definitions for this chapter, prior to repeal by Pub. L. 111–154, §2(a), Mar. 31, 2010, 124 Stat. 1088.

**EFFECTIVE DATE**

Pub. L. 111–154, §6, Mar. 31, 2010, 124 Stat. 1110, provided that:

"(a) IN GENERAL.—Except as provided in subsection (b), this Act [see Short Title of 2010 Amendment note below] shall take effect on the date that is 90 days after the date of enactment of this Act [Mar. 31, 2010].

"(b) BATFE AUTHORITY.—The amendments made by section 4 [amending section 2343 of Title 18, Crimes and Criminal Procedure] shall take effect on the date of enactment of this Act."

**SHORT TITLE OF 2010 AMENDMENT**

Pub. L. 111–154, §1(a), Mar. 31, 2010, 124 Stat. 1087, provided that: "This Act [enacting this section, sections 376a, 377, and 378 of this title, and section 1716E of Title 18, Crimes and Criminal

Procedure, amending section 376 of this title and section 2343 of Title 18, repealing former sections 375, 377, and 378 of this title, and enacting provisions set out as notes under this section] may be cited as the 'Prevent All Cigarette Trafficking Act of 2009' or 'PACT Act'."

### SHORT TITLE

Act Oct. 19, 1949, ch. 699, 63 Stat. 884, which is classified generally to this chapter, is popularly known as the Jenkins Act.

### SEVERABILITY

Pub. L. 111–154, §7, Mar. 31, 2010, 124 Stat. 1111, provided that: "If any provision of this Act [see Short Title of 2010 Amendment note above], or any amendment made by this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act and the application of the Act to any other person or circumstance shall not be affected thereby."

### FINDINGS AND PURPOSE

Pub. L. 111–154, §1(b), (c), Mar. 31, 2010, 124 Stat. 1087, 1088, provided that:

"(b) FINDINGS.—Congress finds that—

- "(1) the sale of illegal cigarettes and smokeless tobacco products significantly reduces Federal, State, and local government revenues, with Internet sales alone accounting for billions of dollars of lost Federal, State, and local tobacco tax revenue each year;
- "(2) Hezbollah, Hamas, al Qaeda, and other terrorist organizations have profited from trafficking in illegal cigarettes or counterfeit cigarette tax stamps;
- "(3) terrorist involvement in illicit cigarette trafficking will continue to grow because of the large profits such organizations can earn;
- "(4) the sale of illegal cigarettes and smokeless tobacco over the Internet, and through mail, fax, or phone orders, makes it cheaper and easier for children to obtain tobacco products;
- "(5) the majority of Internet and other remote sales of cigarettes and smokeless tobacco are being made without adequate precautions to protect against sales to children, without the payment of applicable taxes, and without complying with the nominal registration and reporting requirements in existing Federal law;
- "(6) unfair competition from illegal sales of cigarettes and smokeless tobacco is taking billions of dollars of sales away from law-abiding retailers throughout the United States;
- "(7) with rising State and local tobacco tax rates, the incentives for the illegal sale of cigarettes and smokeless tobacco have increased;
- "(8) the number of active tobacco investigations being conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives rose to 452 in 2005;
- "(9) the number of Internet vendors in the United States and in foreign countries that sell cigarettes and smokeless tobacco to buyers in the United States increased from only about 40 in 2000 to more than 500 in 2005; and
- "(10) the intrastate sale of illegal cigarettes and smokeless tobacco over the Internet has a substantial effect on interstate commerce.

"(c) PURPOSES.—It is the purpose of this Act [see Short Title of 2010 Amendment note above] to—

- "(1) require Internet and other remote sellers of cigarettes and smokeless tobacco to comply with the same laws that apply to law-abiding tobacco retailers;
- "(2) create strong disincentives to illegal smuggling of tobacco products;
- "(3) provide government enforcement officials with more effective enforcement tools to combat tobacco smuggling;
- "(4) make it more difficult for cigarette and smokeless tobacco traffickers to engage in and profit from their illegal activities;
- "(5) increase collections of Federal, State, and local excise taxes on cigarettes and smokeless tobacco; and
- "(6) prevent and reduce youth access to inexpensive cigarettes and smokeless tobacco through illegal Internet or contraband sales."

### EXCLUSIONS REGARDING INDIAN TRIBES AND TRIBAL MATTERS

Pub. L. 111–154, §5, Mar. 31, 2010, 124 Stat. 1109, provided that:

"(a) IN GENERAL.—Nothing in this Act [see Short Title of 2010 Amendment note above] or the

amendments made by this Act shall be construed to amend, modify, or otherwise affect—

"(1) any agreements, compacts, or other intergovernmental arrangements between any State or local government and any government of an Indian tribe (as that term is defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) relating to the collection of taxes on cigarettes or smokeless tobacco sold in Indian country;

"(2) any State laws that authorize or otherwise pertain to any such intergovernmental arrangements or create special rules or procedures for the collection of State, local, or tribal taxes on cigarettes or smokeless tobacco sold in Indian country;

"(3) any limitations under Federal or State law, including Federal common law and treaties, on State, local, and tribal tax and regulatory authority with respect to the sale, use, or distribution of cigarettes and smokeless tobacco by or to Indian tribes, tribal members, tribal enterprises, or in Indian country;

"(4) any Federal law, including Federal common law and treaties, regarding State jurisdiction, or lack thereof, over any tribe, tribal members, tribal enterprises, tribal reservations, or other lands held by the United States in trust for one or more Indian tribes; or

"(5) any State or local government authority to bring enforcement actions against persons located in Indian country.

"(b) COORDINATION OF LAW ENFORCEMENT.—Nothing in this Act or the amendments made by this Act shall be construed to inhibit or otherwise affect any coordinated law enforcement effort by 1 or more States or other jurisdictions, including Indian tribes, through interstate compact or otherwise, that—

"(1) provides for the administration of tobacco product laws or laws pertaining to interstate sales or other sales of tobacco products;

"(2) provides for the seizure of tobacco products or other property related to a violation of such laws; or

"(3) establishes cooperative programs for the administration of such laws.

"(c) TREATMENT OF STATE AND LOCAL GOVERNMENTS.—Nothing in this Act or the amendments made by this Act shall be construed to authorize, deputize, or commission States or local governments as instrumentalities of the United States.

"(d) ENFORCEMENT WITHIN INDIAN COUNTRY.—Nothing in this Act or the amendments made by this Act shall prohibit, limit, or restrict enforcement by the Attorney General of the United States of this Act or an amendment made by this Act within Indian country.

"(e) AMBIGUITY.—Any ambiguity between the language of this section or its application and any other provision of this Act shall be resolved in favor of this section.

"(f) DEFINITIONS.—In this section—

"(1) the term 'Indian country' has the meaning given that term in section 1 of the Jenkins Act [Act of October 19, 1949, 15 U.S.C. 375], as amended by this Act; and

"(2) the term 'tribal enterprise' means any business enterprise, regardless of whether incorporated or unincorporated under Federal or tribal law, of an Indian tribe or group of Indian tribes."

## **§376. Reports to State tobacco tax administrator**

### **(a) Contents**

Any person who sells, transfers, or ships for profit cigarettes or smokeless tobacco in interstate commerce, whereby such cigarettes or smokeless tobacco are shipped into a State, locality, or Indian country of an Indian tribe taxing the sale or use of cigarettes or smokeless tobacco, or who advertises or offers cigarettes or smokeless tobacco for such a sale, transfer, or shipment, shall—

(1) first file with the Attorney General of the United States and with the tobacco tax administrators of the State and place into which such shipment is made or in which such advertisement or offer is disseminated a statement setting forth his name and trade name (if any), and the address of his principal place of business and of any other place of business, as well as telephone numbers for each place of business, a principal electronic mail address, any website addresses, and the name, address, and telephone number of an agent in the State authorized to accept service on behalf of the person;

(2) not later than the 10th day of each calendar month, file with the tobacco tax administrator of the State into which such shipment is made, a memorandum or a copy of the invoice covering each and every shipment of cigarettes or smokeless tobacco made during the previous calendar month into such State; the

memorandum or invoice in each case to include the name and address of the person to whom the shipment was made, the brand, the quantity thereof, and the name, address, and phone number of the person delivering the shipment to the recipient on behalf of the delivery seller, with all invoice or memoranda information relating to specific customers to be organized by city or town and by zip code; and

(3) with respect to each memorandum or invoice filed with a State under paragraph (2), also file copies of the memorandum or invoice with the tobacco tax administrators and chief law enforcement officers of the local governments and Indian tribes operating within the borders of the State that apply their own local or tribal taxes on cigarettes or smokeless tobacco.

### **(b) Presumptive evidence**

The fact that any person ships or delivers for shipment any cigarettes or smokeless tobacco shall, if such shipment is into a State in which such person has filed a statement with the tobacco tax administrator under subsection (a)(1) of this section, be presumptive evidence that such cigarettes or smokeless tobacco were sold, or transferred for profit, by such person.

### **(c) Use of information**

A tobacco tax administrator or chief law enforcement officer who receives a memorandum or invoice under paragraph (2) or (3) of subsection (a) shall use the memorandum or invoice solely for the purposes of the enforcement of this chapter and the collection of any taxes owed on related sales of cigarettes and smokeless tobacco, and shall keep confidential any personal information in the memorandum or invoice except as required for such purposes.

(Oct. 19, 1949, ch. 699, §2, 63 Stat. 884; Aug. 15, 1953, ch. 512, title II, §201(a), 67 Stat. 617; Aug. 9, 1955, ch. 695, §1, 69 Stat. 627; Pub. L. 111–154, §2(b), Mar. 31, 2010, 124 Stat. 1090.)

## **AMENDMENTS**

**2010**—Subsec. (a). Pub. L. 111–154, §2(b)(1), (2)(A), inserted heading and, in introductory provisions, substituted "cigarettes or smokeless tobacco" for "cigarettes" wherever appearing, ", transfers, or ships" for "or transfers", and ", transfer, or shipment" for "or transfer and shipment", inserted ", locality, or Indian country of an Indian tribe" after "a State", and struck out "to other than a distributor licensed by or located in such State," after "use of cigarettes or smokeless tobacco,".

Subsec. (a)(1). Pub. L. 111–154, §2(b)(2)(B), substituted "with the Attorney General of the United States and with the tobacco tax administrators of the State and place" for "with the tobacco tax administrator of the State" and ", as well as telephone numbers for each place of business, a principal electronic mail address, any website addresses, and the name, address, and telephone number of an agent in the State authorized to accept service on behalf of the person;" for "; and".

Subsec. (a)(2). Pub. L. 111–154, §2(b)(1), (2)(C), substituted "cigarettes or smokeless tobacco" for "cigarettes" and "the quantity thereof, and the name, address, and phone number of the person delivering the shipment to the recipient on behalf of the delivery seller, with all invoice or memoranda information relating to specific customers to be organized by city or town and by zip code; and" for "and the quantity thereof."

Subsec. (a)(3). Pub. L. 111–154, §2(b)(2)(D), added par. (3).

Subsec. (b). Pub. L. 111–154, §2(b)(1), (3), inserted heading, substituted "cigarettes or smokeless tobacco" for "cigarettes" in two places and "evidence that" for "evidence (1) that", and struck out ", and (2) that such sale or transfer was to other than a distributor licensed by or located in such State" after "by such person".

Subsec. (c). Pub. L. 111–154, §2(b)(4), added subsec. (c).

**1955**—Act Aug. 9, 1955, designated existing provisions as subsec. (a), inserted provisions requiring filing of a statement of name, trade name, address, and places of business by persons who sell or transfer for profit cigarettes in interstate commerce or by persons who advertise or offer cigarettes for such sale or transfer, and added subsec. (b).

**1953**—Act Aug. 15, 1953, required that the memorandum or copy of invoice be filed with, rather than forwarded to, the tobacco tax administrator.

### **EFFECTIVE DATE OF 2010 AMENDMENT**

Amendment by Pub. L. 111–154 effective on the date that is 90 days after March 31, 2010, see section 6 of Pub. L. 111–154, set out as a note under section 375 of this title.

### **EFFECTIVE DATE OF 1955 AMENDMENT**

Act Aug. 9, 1955, ch. 695, §2, 69 Stat. 628, provided that:

"(a) Except as provided in subsection (b), the amendments made by this Act [amending this section and former sections 375, 377, and 378 of this title] shall take effect thirty days after the date of its enactment [Aug. 9, 1955].

"(b) The provisions of section 2(a) of the Act of October 19, 1949, as amended by this Act [15 U.S.C. 376(a)], insofar as it requires the filing of memoranda or copies of invoices with the appropriate tax administrator for shipments of cigarettes into the District of Columbia, Alaska, Hawaii, and the Commonwealth of Puerto Rico, shall apply in respect of memoranda or copies of invoices covering shipments made during calendar months beginning after the month in which this Act is enacted [August 1955]."

### **EFFECTIVE DATE OF 1953 AMENDMENT**

Act Aug. 15, 1953, ch. 512, title II, §201(b), 67 Stat. 617, provided that: "The amendment made by subsection (a) [amending this section] shall apply only in respect of memoranda or copies of invoices covering shipments made during the calendar month in which this Act is enacted [August 1953] and subsequent calendar months."

## **§376a. Delivery sales**

### **(a) In general**

With respect to delivery sales into a specific State and place, each delivery seller shall comply with—

- (1) the shipping requirements set forth in subsection (b);
- (2) the recordkeeping requirements set forth in subsection (c);
- (3) all State, local, tribal, and other laws generally applicable to sales of cigarettes or smokeless tobacco as if the delivery sales occurred entirely within the specific State and place, including laws imposing—
  - (A) excise taxes;
  - (B) licensing and tax-stamping requirements;
  - (C) restrictions on sales to minors; and
  - (D) other payment obligations or legal requirements relating to the sale, distribution, or delivery of cigarettes or smokeless tobacco; and

- (4) the tax collection requirements set forth in subsection (d).

### **(b) Shipping and packaging**

#### **(1) Required statement**

For any shipping package containing cigarettes or smokeless tobacco, the delivery seller shall include on the bill of lading, if any, and on the outside of the shipping package, on the same surface as the delivery address, a clear and conspicuous statement providing as follows: "CIGARETTES/SMOKELESS TOBACCO: FEDERAL LAW REQUIRES THE PAYMENT OF ALL APPLICABLE EXCISE TAXES, AND COMPLIANCE WITH APPLICABLE LICENSING AND TAX-STAMPING OBLIGATIONS".

#### **(2) Failure to label**

Any shipping package described in paragraph (1) that is not labeled in accordance with that paragraph shall be treated as nondeliverable matter by a common carrier or other delivery service, if the common carrier or other delivery service knows or should know the package contains cigarettes or smokeless tobacco. If a common carrier or other delivery service believes a package is being submitted for delivery in violation of paragraph (1), it may require the person submitting the package for delivery to establish that it is not being sent in violation of paragraph (1) before accepting the package for delivery. Nothing in this paragraph shall require the common carrier or other delivery service to open any package to determine its contents.

#### **(3) Weight restriction**

A delivery seller shall not sell, offer for sale, deliver, or cause to be delivered in any single sale or single delivery any cigarettes or smokeless tobacco weighing more than 10 pounds.

#### **(4) Age verification**

##### **(A) In general**

A delivery seller who mails or ships tobacco products—

(i) shall not sell, deliver, or cause to be delivered any tobacco products to a person under the minimum age required for the legal sale or purchase of tobacco products, as determined by the applicable law at the place of delivery;

(ii) shall use a method of mailing or shipping that requires—

(I) the purchaser placing the delivery sale order, or an adult who is at least the minimum age required for the legal sale or purchase of tobacco products, as determined by the applicable law at the place of delivery, to sign to accept delivery of the shipping container at the delivery address; and

(II) the person who signs to accept delivery of the shipping container to provide proof, in the form of a valid, government-issued identification bearing a photograph of the individual, that the person is at least the minimum age required for the legal sale or purchase of tobacco products, as determined by the applicable law at the place of delivery; and

(iii) shall not accept a delivery sale order from a person without—

(I) obtaining the full name, birth date, and residential address of that person; and

(II) verifying the information provided in subclause (I), through the use of a commercially available database or aggregate of databases, consisting primarily of data from government sources, that are regularly used by government and businesses for the purpose of age and identity verification and authentication, to ensure that the purchaser is at least the minimum age required for the legal sale or purchase of tobacco products, as determined by the applicable law at the place of delivery.

#### **(B) Limitation**

No database being used for age and identity verification under subparagraph (A)(iii) shall be in the possession or under the control of the delivery seller, or be subject to any changes or supplementation by the delivery seller.

#### **(c) Records**

##### **(1) In general**

Each delivery seller shall keep a record of any delivery sale, including all of the information described in section 376(a)(2) of this title, organized by the State, and within the State, by the city or town and by zip code, into which the delivery sale is so made.

##### **(2) Record retention**

Records of a delivery sale shall be kept as described in paragraph (1) until the end of the 4th full calendar year that begins after the date of the delivery sale.

##### **(3) Access for officials**

Records kept under paragraph (1) shall be made available to tobacco tax administrators of the States, to local governments and Indian tribes that apply local or tribal taxes on cigarettes or smokeless tobacco, to the attorneys general of the States, to the chief law enforcement officers of the local governments and Indian tribes, and to the Attorney General of the United States in order to ensure the compliance of persons making delivery sales with the requirements of this chapter.

#### **(d) Delivery**

##### **(1) In general**

Except as provided in paragraph (2), no delivery seller may sell or deliver to any consumer, or tender to any common carrier or other delivery service, any cigarettes or smokeless tobacco pursuant to a delivery sale unless, in advance of the sale, delivery, or tender—

(A) any cigarette or smokeless tobacco excise tax that is imposed by the State in which the cigarettes or smokeless tobacco are to be delivered has been paid to the State;

(B) any cigarette or smokeless tobacco excise tax that is imposed by the local government of the place in which the cigarettes or smokeless tobacco are to be delivered has been paid to the local government; and

(C) any required stamps or other indicia that the excise tax has been paid are properly affixed or applied to the cigarettes or smokeless tobacco.

##### **(2) Exception**

Paragraph (1) does not apply to a delivery sale of smokeless tobacco if the law of the State or local government of the place where the smokeless tobacco is to be delivered requires or otherwise provides that delivery sellers collect the excise tax from the consumer and remit the excise tax to the State or local government, and the delivery seller complies with the requirement.

#### **(e) List of unregistered or noncompliant delivery sellers**

**(1) In general****(A) Initial list**

Not later than 90 days after this subsection goes into effect under the Prevent All Cigarette Trafficking Act of 2009, the Attorney General of the United States shall compile a list of delivery sellers of cigarettes or smokeless tobacco that have not registered with the Attorney General of the United States pursuant to section 376(a) of this title, or that are otherwise not in compliance with this chapter, and—

- (i) distribute the list to—
  - (I) the attorney general and tax administrator of every State;
  - (II) common carriers and other persons that deliver small packages to consumers in interstate commerce, including the United States Postal Service; and
  - (III) any other person that the Attorney General of the United States determines can promote the effective enforcement of this chapter; and
- (ii) publicize and make the list available to any other person engaged in the business of interstate deliveries or who delivers cigarettes or smokeless tobacco in or into any State.

**(B) List contents**

To the extent known, the Attorney General of the United States shall include, for each delivery seller on the list described in subparagraph (A)—

- (i) all names the delivery seller uses or has used in the transaction of its business or on packages delivered to customers;
- (ii) all addresses from which the delivery seller does or has done business, or ships or has shipped cigarettes or smokeless tobacco;
- (iii) the website addresses, primary e-mail address, and phone number of the delivery seller; and
- (iv) any other information that the Attorney General of the United States determines would facilitate compliance with this subsection by recipients of the list.

**(C) Updating**

The Attorney General of the United States shall update and distribute the list described in subparagraph (A) at least once every 4 months, and may distribute the list and any updates by regular mail, electronic mail, or any other reasonable means, or by providing recipients with access to the list through a nonpublic website that the Attorney General of the United States regularly updates.

**(D) State, local, or tribal additions**

The Attorney General of the United States shall include in the list described in subparagraph (A) any noncomplying delivery sellers identified by any State, local, or tribal government under paragraph (6), and shall distribute the list to the attorney general or chief law enforcement official and the tax administrator of any government submitting any such information, and to any common carriers or other persons who deliver small packages to consumers identified by any government pursuant to paragraph (6).

**(E) Accuracy and completeness of list of noncomplying delivery sellers**

In preparing and revising the list described in subparagraph (A), the Attorney General of the United States shall—

- (i) use reasonable procedures to ensure maximum possible accuracy and completeness of the records and information relied on for the purpose of determining that a delivery seller is not in compliance with this chapter;
- (ii) not later than 14 days before including a delivery seller on the list, make a reasonable attempt to send notice to the delivery seller by letter, electronic mail, or other means that the delivery seller is being placed on the list, which shall cite the relevant provisions of this chapter and the specific reasons for which the delivery seller is being placed on the list;
- (iii) provide an opportunity to the delivery seller to challenge placement on the list;
- (iv) investigate each challenge described in clause (iii) by contacting the relevant Federal, State, tribal, and local law enforcement officials, and provide the specific findings and results of the investigation to the delivery seller not later than 30 days after the date on which the challenge is made; and
- (v) if the Attorney General of the United States determines that the basis for including a delivery seller on the list is inaccurate, based on incomplete information, or cannot be verified, promptly remove the delivery seller from the list as appropriate and notify each appropriate Federal, State, tribal, and local authority of the determination.

**(F) Confidentiality**

The list described in subparagraph (A) shall be confidential, and any person receiving the list shall maintain the confidentiality of the list and may deliver the list, for enforcement purposes, to any



government official or to any common carrier or other person that delivers tobacco products or small packages to consumers. Nothing in this section shall prohibit a common carrier, the United States Postal Service, or any other person receiving the list from discussing with a listed delivery seller the inclusion of the delivery seller on the list and the resulting effects on any services requested by the listed delivery seller.

## **(2) Prohibition on delivery**

### **(A) In general**

Commencing on the date that is 60 days after the date of the initial distribution or availability of the list described in paragraph (1)(A), no person who receives the list under paragraph (1), and no person who delivers cigarettes or smokeless tobacco to consumers, shall knowingly complete, cause to be completed, or complete its portion of a delivery of any package for any person whose name and address are on the list, unless—

- (i) the person making the delivery knows or believes in good faith that the item does not include cigarettes or smokeless tobacco;
- (ii) the delivery is made to a person lawfully engaged in the business of manufacturing, distributing, or selling cigarettes or smokeless tobacco; or
- (iii) the package being delivered weighs more than 100 pounds and the person making the delivery does not know or have reasonable cause to believe that the package contains cigarettes or smokeless tobacco.

### **(B) Implementation of updates**

Commencing on the date that is 30 days after the date of the distribution or availability of any updates or corrections to the list described in paragraph (1)(A), all recipients and all common carriers or other persons that deliver cigarettes or smokeless tobacco to consumers shall be subject to subparagraph (A) in regard to the corrections or updates.

## **(3) Exemptions**

### **(A) In general**

Subsection (b)(2) and any requirements or restrictions placed directly on common carriers under this subsection, including subparagraphs (A) and (B) of paragraph (2), shall not apply to a common carrier that —

- (i) is subject to a settlement agreement described in subparagraph (B); or
- (ii) if a settlement agreement described in subparagraph (B) to which the common carrier is a party is terminated or otherwise becomes inactive, is administering and enforcing policies and practices throughout the United States that are at least as stringent as the agreement.

### **(B) Settlement agreement**

A settlement agreement described in this subparagraph—

- (i) is a settlement agreement relating to tobacco product deliveries to consumers; and
- (ii) includes—
  - (I) the Assurance of Discontinuance entered into by the Attorney General of New York and DHL Holdings USA, Inc. and DHL Express (USA), Inc. on or about July 1, 2005, the Assurance of Discontinuance entered into by the Attorney General of New York and United Parcel Service, Inc. on or about October 21, 2005, and the Assurance of Compliance entered into by the Attorney General of New York and Federal Express Corporation and FedEx Ground Package Systems, Inc. on or about February 3, 2006, if each of those agreements is honored throughout the United States to block illegal deliveries of cigarettes or smokeless tobacco to consumers; and
  - (II) any other active agreement between a common carrier and a State that operates throughout the United States to ensure that no deliveries of cigarettes or smokeless tobacco shall be made to consumers or illegally operating Internet or mail-order sellers and that any such deliveries to consumers shall not be made to minors or without payment to the States and localities where the consumers are located of all taxes on the tobacco products.

## **(4) Shipments from persons on list**

### **(A) In general**

If a common carrier or other delivery service delays or interrupts the delivery of a package in the possession of the common carrier or delivery service because the common carrier or delivery service determines or has reason to believe that the person ordering the delivery is on a list described in paragraph (1)(A) and that clauses (i), (ii), and (iii) of paragraph (2)(A) do not apply—

- (i) the person ordering the delivery shall be obligated to pay—

(I) the common carrier or other delivery service as if the delivery of the package had been timely completed; and

(II) if the package is not deliverable, any reasonable additional fee or charge levied by the common carrier or other delivery service to cover any extra costs and inconvenience and to serve as a disincentive against such noncomplying delivery orders; and

(ii) if the package is determined not to be deliverable, the common carrier or other delivery service shall offer to provide the package and its contents to a Federal, State, or local law enforcement agency.

#### **(B) Records**

A common carrier or other delivery service shall maintain, for a period of 5 years, any records kept in the ordinary course of business relating to any delivery interrupted under this paragraph and provide that information, upon request, to the Attorney General of the United States or to the attorney general or chief law enforcement official or tax administrator of any State, local, or tribal government.

#### **(C) Confidentiality**

Any person receiving records under subparagraph (B) shall—

(i) use the records solely for the purposes of the enforcement of this chapter and the collection of any taxes owed on related sales of cigarettes and smokeless tobacco; and

(ii) keep confidential any personal information in the records not otherwise required for such purposes.

### **(5) Preemption**

#### **(A) In general**

No State, local, or tribal government, nor any political authority of 2 or more State, local, or tribal governments, may enact or enforce any law or regulation relating to delivery sales that restricts deliveries of cigarettes or smokeless tobacco to consumers by common carriers or other delivery services on behalf of delivery sellers by—

(i) requiring that the common carrier or other delivery service verify the age or identity of the consumer accepting the delivery by requiring the person who signs to accept delivery of the shipping container to provide proof, in the form of a valid, government-issued identification bearing a photograph of the individual, that the person is at least the minimum age required for the legal sale or purchase of tobacco products, as determined by either State or local law at the place of delivery;

(ii) requiring that the common carrier or other delivery service obtain a signature from the consumer accepting the delivery;

(iii) requiring that the common carrier or other delivery service verify that all applicable taxes have been paid;

(iv) requiring that packages delivered by the common carrier or other delivery service contain any particular labels, notice, or markings; or

(v) prohibiting common carriers or other delivery services from making deliveries on the basis of whether the delivery seller is or is not identified on any list of delivery sellers maintained and distributed by any entity other than the Federal Government.

#### **(B) Relationship to other laws**

Except as provided in subparagraph (C), nothing in this paragraph shall be construed to nullify, expand, restrict, or otherwise amend or modify—

(i) section 14501(c)(1) or 41713(b)(4) of title 49;

(ii) any other restrictions in Federal law on the ability of State, local, or tribal governments to regulate common carriers; or

(iii) any provision of State, local, or tribal law regulating common carriers that is described in section 14501(c)(2) or 41713(b)(4)(B) of title 49.

#### **(C) State laws prohibiting delivery sales**

##### **(i) In general**

Except as provided in clause (ii), nothing in the Prevent All Cigarette Trafficking Act of 2009, the amendments made by that Act, or in any other Federal statute shall be construed to preempt, supersede, or otherwise limit or restrict State laws prohibiting the delivery sale, or the shipment or delivery pursuant to a delivery sale, of cigarettes or other tobacco products to individual consumers or personal residences.

##### **(ii) Exemptions**

No State may enforce against a common carrier a law prohibiting the delivery of cigarettes or other tobacco products to individual consumers or personal residences without proof that the common carrier

is not exempt under paragraph (3) of this subsection.

## **(6) State, local, and tribal additions**

### **(A) In general**

Any State, local, or tribal government shall provide the Attorney General of the United States with—

- (i) all known names, addresses, website addresses, and other primary contact information of any delivery seller that—
  - (I) offers for sale or makes sales of cigarettes or smokeless tobacco in or into the State, locality, or tribal land; and
  - (II) has failed to register with or make reports to the respective tax administrator as required by this chapter, or that has been found in a legal proceeding to have otherwise failed to comply with this chapter; and
- (ii) a list of common carriers and other persons who make deliveries of cigarettes or smokeless tobacco in or into the State, locality, or tribal land.

### **(B) Updates**

Any government providing a list to the Attorney General of the United States under subparagraph (A) shall also provide updates and corrections every 4 months until such time as the government notifies the Attorney General of the United States in writing that the government no longer desires to submit information to supplement the list described in paragraph (1)(A).

### **(C) Removal after withdrawal**

Upon receiving written notice that a government no longer desires to submit information under subparagraph (A), the Attorney General of the United States shall remove from the list described in paragraph (1)(A) any persons that are on the list solely because of the prior submissions of the government of the list of the government of noncomplying delivery sellers of cigarettes or smokeless tobacco or a subsequent update or correction by the government.

## **(7) Deadline to incorporate additions**

The Attorney General of the United States shall—

- (A) include any delivery seller identified and submitted by a State, local, or tribal government under paragraph (6) in any list or update that is distributed or made available under paragraph (1) on or after the date that is 30 days after the date on which the information is received by the Attorney General of the United States; and
- (B) distribute any list or update described in subparagraph (A) to any common carrier or other person who makes deliveries of cigarettes or smokeless tobacco that has been identified and submitted by a government pursuant to paragraph (6).

## **(8) Notice to delivery sellers**

Not later than 14 days before including any delivery seller on the initial list described in paragraph (1)(A), or on an update to the list for the first time, the Attorney General of the United States shall make a reasonable attempt to send notice to the delivery seller by letter, electronic mail, or other means that the delivery seller is being placed on the list or update, with that notice citing the relevant provisions of this chapter.

## **(9) Limitations**

### **(A) In general**

Any common carrier or other person making a delivery subject to this subsection shall not be required or otherwise obligated to—

- (i) determine whether any list distributed or made available under paragraph (1) is complete, accurate, or up-to-date;
- (ii) determine whether a person ordering a delivery is in compliance with this chapter; or
- (iii) open or inspect, pursuant to this chapter, any package being delivered to determine its contents.

### **(B) Alternate names**

Any common carrier or other person making a delivery subject to this subsection—

- (i) shall not be required to make any inquiries or otherwise determine whether a person ordering a delivery is a delivery seller on the list described in paragraph (1)(A) who is using a different name or address in order to evade the related delivery restrictions; and
- (ii) shall not knowingly deliver any packages to consumers for any delivery seller on the list described in paragraph (1)(A) who the common carrier or other delivery service knows is a delivery seller who is

on the list and is using a different name or address to evade the delivery restrictions of paragraph (2).

### **(C) Penalties**

Any common carrier or person in the business of delivering packages on behalf of other persons shall not be subject to any penalty under section 14101(a) of title 49 or any other provision of law for—

- (i) not making any specific delivery, or any deliveries at all, on behalf of any person on the list described in paragraph (1)(A);
- (ii) refusing, as a matter of regular practice and procedure, to make any deliveries, or any deliveries in certain States, of any cigarettes or smokeless tobacco for any person or for any person not in the business of manufacturing, distributing, or selling cigarettes or smokeless tobacco; or
- (iii) delaying or not making a delivery for any person because of reasonable efforts to comply with this chapter.

### **(D) Other limits**

Section 376 of this title and subsections (a), (b), (c), and (d) of this section shall not be interpreted to impose any responsibilities, requirements, or liability on common carriers.

### **(f) Presumption**

For purposes of this chapter, a delivery sale shall be deemed to have occurred in the State and place where the buyer obtains personal possession of the cigarettes or smokeless tobacco, and a delivery pursuant to a delivery sale is deemed to have been initiated or ordered by the delivery seller.

(Oct. 19, 1949, ch. 699, §2A, as added Pub. L. 111–154, §2(c), Mar. 31, 2010, 124 Stat. 1091.)

## **REFERENCES IN TEXT**

The Prevent All Cigarette Trafficking Act of 2009, referred to in subsec. (e)(1)(A), (5)(C)(i), is Pub. L. 111–154, Mar. 31, 2010, 124 Stat. 1087, also known as the PACT Act. For complete classification of this Act to the Code, see Short Title of 2010 Amendment note set out under section 375 of this title and Tables.

For the date subsection (e) of this section goes into effect, referred to in subsec. (e)(1)(A), see Effective Date note below.

## **EFFECTIVE DATE**

Section effective on the date that is 90 days after March 31, 2010, see section 6 of Pub. L. 111–154, set out as an Effective Date of 2010 Amendment note under section 375 of this title.

## **§377. Penalties**

### **(a) Criminal penalties**

#### **(1) In general**

Except as provided in paragraph (2), whoever knowingly violates this chapter shall be imprisoned for not more than 3 years, fined under title 18, or both.

#### **(2) Exceptions**

##### **(A) Governments**

Paragraph (1) shall not apply to a State, local, or tribal government.

##### **(B) Delivery violations**

A common carrier or independent delivery service, or employee of a common carrier or independent delivery service, shall be subject to criminal penalties under paragraph (1) for a violation of section 376a(e) of this title only if the violation is committed knowingly—

- (i) as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value; or
- (ii) for the purpose of assisting a delivery seller to violate, or otherwise evading compliance with, section 376a of this title.

### **(b) Civil penalties**

#### **(1) In general**

Except as provided in paragraph (3), whoever violates this chapter shall be subject to a civil penalty in an amount not to exceed—

- (A) in the case of a delivery seller, the greater of—
- (i) \$5,000 in the case of the first violation, or \$10,000 for any other violation; or
  - (ii) for any violation, 2 percent of the gross sales of cigarettes or smokeless tobacco of the delivery seller during the 1-year period ending on the date of the violation.

(B) in the case of a common carrier or other delivery service, \$2,500 in the case of a first violation, or \$5,000 for any violation within 1 year of a prior violation.

## **(2) Relation to other penalties**

A civil penalty imposed under paragraph (1) for a violation of this chapter shall be imposed in addition to any criminal penalty under subsection (a) and any other damages, equitable relief, or injunctive relief awarded by the court, including the payment of any unpaid taxes to the appropriate Federal, State, local, or tribal governments.

## **(3) Exceptions**

### **(A) Delivery violations**

An employee of a common carrier or independent delivery service shall be subject to civil penalties under paragraph (1) for a violation of section 376a(e) of this title only if the violation is committed intentionally—

- (i) as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value; or
- (ii) for the purpose of assisting a delivery seller to violate, or otherwise evading compliance with, section 376a of this title.

### **(B) Other limitations**

No common carrier or independent delivery service shall be subject to civil penalties under paragraph (1) for a violation of section 376a(e) of this title if—

- (i) the common carrier or independent delivery service has implemented and enforces effective policies and practices for complying with that section; or
- (ii) the violation consists of an employee of the common carrier or independent delivery service who physically receives and processes orders, picks up packages, processes packages, or makes deliveries, taking actions that are outside the scope of employment of the employee, or that violate the implemented and enforced policies of the common carrier or independent delivery service described in clause (i).

(Oct. 19, 1949, ch. 699, §3, as added Pub. L. 111–154, §2(d), Mar. 31, 2010, 124 Stat. 1100.)

## **PRIOR PROVISIONS**

A prior section 377, act Oct. 19, 1949, ch. 699, §3, 63 Stat. 885; Aug. 9, 1955, ch. 695, §1, 69 Stat. 628, which related to penalties for violations of any provision of this chapter, was repealed, effective on the date that is 90 days after March 31, 2010, by Pub. L. 111–154, §§2(d), 6, Mar. 31, 2010, 124 Stat. 1100, 1110.

## **EFFECTIVE DATE**

Section effective on the date that is 90 days after March 31, 2010, see section 6 of Pub. L. 111–154, set out as an Effective Date of 2010 Amendment note under section 375 of this title.

## **§378. Enforcement**

### **(a) In general**

The United States district courts shall have jurisdiction to prevent and restrain violations of this chapter and to provide other appropriate injunctive or equitable relief, including money damages, for the violations.

### **(b) Authority of the Attorney General**

The Attorney General of the United States shall administer and enforce this chapter.

### **(c) State, local, and tribal enforcement**

#### **(1) In general**

##### **(A) Standing**

A State, through its attorney general, or a local government or Indian tribe that levies a tax subject to section 376a(a)(3) of this title, through its chief law enforcement officer, may bring an action in a United States district court to prevent and restrain violations of this chapter by any person or to obtain any other appropriate relief from any person for violations of this chapter, including civil penalties, money damages, and injunctive or other equitable relief.

**(B) Sovereign immunity**

Nothing in this chapter shall be deemed to abrogate or constitute a waiver of any sovereign immunity of a State or local government or 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 Indian tribe.

**(2) Provision of information**

A State, through its attorney general, or a local government or Indian tribe that levies a tax subject to section 376a(a)(3) of this title, through its chief law enforcement officer, may provide evidence of a violation of this chapter by any person not subject to State, local, or tribal government enforcement actions for violations of this chapter to the Attorney General of the United States or a United States attorney, who shall take appropriate actions to enforce this chapter.

**(3) Use of penalties collected**

**(A) In general**

There is established a separate account in the Treasury known as the "PACT Anti-Trafficking Fund". Notwithstanding any other provision of law and subject to subparagraph (B), an amount equal to 50 percent of any criminal and civil penalties collected by the Federal Government in enforcing this chapter shall be transferred into the PACT Anti-Trafficking Fund and shall be available to the Attorney General of the United States for purposes of enforcing this chapter and other laws relating to contraband tobacco products.

**(B) Allocation of funds**

Of the amount available to the Attorney General of the United States under subparagraph (A), not less than 50 percent shall be made available only to the agencies and offices within the Department of Justice that were responsible for the enforcement actions in which the penalties concerned were imposed or for any underlying investigations.

**(4) Nonexclusivity of remedy**

**(A) In general**

The remedies available under this section and section 377 of this title are in addition to any other remedies available under Federal, State, local, tribal, or other law.

**(B) State court proceedings**

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.

**(C) Tribal court proceedings**

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

**(D) Local government enforcement**

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.

**(d) Persons dealing in tobacco products**

Any person who holds a permit under section 5712 of title 26 (regarding permitting of manufacturers and importers of tobacco products and export warehouse proprietors) may bring an action in an appropriate United States district court to prevent and restrain violations of this chapter by any person other than a State, local, or tribal government.

**(e) Notice**

**(1) Persons dealing in tobacco products**

Any person who commences a civil action under subsection (d) shall inform the Attorney General of the

United States of the action.

**(2) State, local, and tribal actions**

It is the sense of Congress that the attorney general of any State, or chief law enforcement officer of any locality or tribe, that commences a civil action under this section should inform the Attorney General of the United States of the action.

**(f) Public notice**

**(1) In general**

The Attorney General of the United States shall make available to the public, by posting information on the Internet and by other appropriate means, information regarding all enforcement actions brought by the United States, or reported to the Attorney General of the United States, under this section, including information regarding the resolution of the enforcement actions and how the Attorney General of the United States has responded to referrals of evidence of violations pursuant to subsection (c)(2).

**(2) Reports to Congress**

Not later than 1 year after March 31, 2010, and every year thereafter until the date that is 5 years after March 31, 2010, the Attorney General of the United States shall submit to Congress a report containing the information described in paragraph (1).

(Oct. 19, 1949, ch. 699, §4, as added Pub. L. 111–154, §2(e), Mar. 31, 2010, 124 Stat. 1101.)

**PRIOR PROVISIONS**

A prior section 378, act Oct. 19, 1949, ch. 699, §4, as added Aug. 9, 1955, ch. 695, §1, 69 Stat. 628, which provided U.S. district courts with jurisdiction to prevent and restrain violations of this chapter, was repealed, effective on the date that is 90 days after March 31, 2010, by Pub. L. 111–154, §§2(e), 6, Mar. 31, 2010, 124 Stat. 1101, 1110.

**EFFECTIVE DATE**

Section effective on the date that is 90 days after March 31, 2010, see section 6 of Pub. L. 111–154, set out as an Effective Date of 2010 Amendment note under section 375 of this title.