

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 396a, 396b (July 24, 1935, ch. 412, § 1, 49 Stat. 494; Oct. 14, 1940, ch. 872, 54 Stat. 1134; July 9, 1941, ch. 283, 55 Stat. 581).

Section consolidates sections 396a and 396b of title 18, U.S.C., 1940 ed. Each section related to the same subject matter and defined the same offense. Section 396a of title 18, U.S.C., 1940 ed., was enacted later and superseded section 396b of title 18, U.S.C., 1940 ed.

Reference to persons aiding, causing or assisting was omitted. Such persons are principals under section 2 of this title.

Reference to states, territories, specific places, etc., were omitted. This was made possible by insertion of words "interstate commerce or from any foreign country into the United States," and by definitive section 10 of this title.

Subsection (b) was rewritten to eliminate ambiguity and uncertainty by expressly making the exceptive language apply to the entire chapter and by permitting State institutions to manufacture goods for the Federal Government and the District of Columbia and vice versa. In such subsections, the words "penal and correctional" and "penal or correctional," preceding "institutions" and "institution," respectively, were omitted as surplusage.

Minor changes in phraseology were made.

AMENDMENTS

2011—Subsec. (c)(1). Pub. L. 112-55, § 221(1), struck out "non-Federal" after "50".

Subsecs. (d), (e). Pub. L. 112-55, § 221(2), (3), added subsec. (d) and redesignated former subsec. (d) as (e).

1996—Subsec. (a). Pub. L. 104-294, § 601(a)(7), substituted "fined under this title" for "fined not more than \$50,000".

Subsec. (b). Pub. L. 104-134 inserted "or not-for-profit organizations" after "of a State".

Subsec. (d). Pub. L. 104-294, § 607(h), added subsec. (d).

1994—Pub. L. 103-322, § 330016(1)(H), which directed the amendment of this section by substituting "under this title" for "not more than \$1,000", could not be executed because the phrase "not more than \$1,000" did not appear in text subsequent to amendment of subsec. (a) by Pub. L. 102-393. See 1992 Amendment note below.

Subsec. (c). Pub. L. 103-322, § 330010(11), struck out "and" at end of par. (1), substituted semicolon for period at end of par. (2)(B), and inserted "and" at end of par. (3).

1992—Subsec. (a). Pub. L. 102-393 substituted "\$50,000" for "\$1,000" and "two years" for "one year".

1990—Subsec. (c). Pub. L. 101-647, § 2906(1), (2), substituted "In addition to the exceptions set forth in subsection (b) of this section, this chapter shall not apply to goods, wares, or merchandise manufactured, produced, or mined by convicts or prisoners who" for "In addition to the exceptions set forth in subsection (b) of this section, this chapter shall also not apply to goods, wares, or merchandise manufactured, produced, or mined by convicts or prisoners participating in a program of not more than twenty pilot projects designated by the Director of the Bureau of Justice Assistance and who" in introductory provisions, added par. (1), and redesignated former pars. (1) to (3) as (2) to (4), respectively.

Subsec. (c)(2)(B). Pub. L. 101-647, § 2906(3), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "reasonable charges for room and board as determined by regulations which shall be issued by the Chief State correctional officer;"

1987—Subsec. (d). Pub. L. 100-17 struck out subsec. (d) which read as follows: "Notwithstanding any law to the contrary, materials produced by convict labor may be used in the construction of any highways or portion of highways located on Federal-aid systems, as described in section 103 of title 23, United States Code."

1984—Subsec. (a). Pub. L. 98-473, § 223(c), inserted "supervised release," after "parole".

Subsec. (c). Pub. L. 98-473, § 609K(a), substituted "twenty" for "seven" and "Director of the Bureau of

Justice Assistance" for "Administrator of the Law Enforcement Assistance Administration".

Subsec. (d). Pub. L. 98-473, § 609K(b), added subsec. (d). 1979—Subsec. (c). Pub. L. 90-351 added subsec. (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 223(c) of Pub. L. 98-473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98-473, set out as an Effective Date note under section 3551 of this title.

TRANSFER OF FUNCTIONS

Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumerated in section 3742(3) through (6) of Title 42, The Public Health and Welfare, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, § 108(b)] of Pub. L. 106-113, set out as a note under section 3741 of Title 42.

REPORTS BY SECRETARY OF LABOR

Pub. L. 101-647, title XXIX, § 2908, Nov. 29, 1990, 104 Stat. 4915, which required the Secretary of Labor to submit an annual report to Congress on compliance by State Prison Industry Enhancement Certification programs with requirements set forth in section 1761(c) of this title, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 123 of House Document No. 103-7.

EXEMPTIONS TO FEDERAL RESTRICTIONS ON MARKETABILITY OF PRISON-MADE GOODS

Pub. L. 90-351, title I, § 819(c), formerly § 827(c), as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1215, renumbered and amended Pub. L. 98-473, title II, § 609B(f), (o), Oct. 12, 1984, 98 Stat. 2093, 2096, provided that: "The provisions of section 1761 of title 18, United States Code, and of the first section of the Act of June 30, 1936 (49 Stat. 2036; [former] 41 U.S.C. 35 [see 41 U.S.C. 6502]), commonly known as the Walsh-Healey Act, creating exemptions to Federal restrictions on marketability of prison-made goods, as amended from time to time, shall not apply unless—

"(1) representatives of local union central bodies or similar labor union organizations have been consulted prior to the initiation of any project qualifying of any exemption created by this section; and

"(2) such paid inmate employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services."

§ 1762. Marking packages

(a) All packages containing any goods, wares, or merchandise manufactured, produced, or mined wholly or in part by convicts or prisoners, except convicts or prisoners on parole or probation, or in any penal or reformatory institution, when shipped or transported in interstate or foreign commerce shall be plainly and clearly marked, so that the name and address of the shipper, the name and address of the consignee, the nature of the contents, and the name and location of the penal or reformatory institution where produced wholly or in part may be readily ascertained on an inspection of the outside of such package.

(b) Whoever violates this section shall be fined under this title, and any goods, wares, or merchandise transported in violation of this section or section 1761 of this title shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by

law for the seizure and forfeiture of property imported into the United States contrary to law.

(June 25, 1948, ch. 645, 62 Stat. 786; Pub. L. 102-393, title V, §535(b), Oct. 6, 1992, 106 Stat. 1764; Pub. L. 103-322, title XXXIII, §330016(1)(H), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104-294, title VI, §601(a)(7), Oct. 11, 1996, 110 Stat. 3498.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§396c, 396d, 396e (July 24, 1935, ch. 412, §§2, 3, 4, 49 Stat. 494, 495).

Section consolidates sections 396c, 396d, and 396e of title 18, U.S.C., 1940 ed.

Words "upon conviction thereof" were deleted as unnecessary, since punishment cannot be imposed until after conviction.

Words "transported in violation of this section or section 1761" were added after the word "merchandise" to continue existing law.

The provisions of said section 396e of title 18, U.S.C., 1940 ed., relating to venue, were omitted as covered by section 3237 of this title.

Minor changes were made in translations and phraseology.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104-294 substituted "fined under this title" for "fined not more than \$50,000".

1994—Pub. L. 103-322, which directed the amendment of this section by substituting "under this title" for "not more than \$1,000", could not be executed because the phrase "not more than \$1,000" did not appear in text subsequent to amendment of subsec. (b) by Pub. L. 102-393. See 1992 Amendment note below.

1992—Subsec. (b). Pub. L. 102-393 substituted "\$50,000" for "\$1,000".

CHAPTER 87—PRISONS

Sec.

1791. Providing or possessing contraband in prison.
1792. Mutiny and riot prohibited.
1793. Trespass on Bureau of Prisons reservations and land.

AMENDMENTS

1986—Pub. L. 99-646, §64(b), Nov. 10, 1986, 100 Stat. 3614, added item 1793.

1984—Pub. L. 98-473, title II, §1109(c), Oct. 12, 1984, 98 Stat. 2148, amended analysis generally by revising items 1791 and 1792, and by inserting a second chapter heading which was not executed to text as redundant.

§ 1791. Providing or possessing contraband in prison

(a) OFFENSE.—Whoever—

(1) in violation of a statute or a rule or order issued under a statute, provides to an inmate of a prison a prohibited object, or attempts to do so; or

(2) being an inmate of a prison, makes, possesses, or obtains, or attempts to make or obtain, a prohibited object;

shall be punished as provided in subsection (b) of this section.

(b) PUNISHMENT.—The punishment for an offense under this section is a fine under this title or—

(1) imprisonment for not more than 20 years, or both, if the object is specified in subsection (d)(1)(C) of this section;

(2) imprisonment for not more than 10 years, or both, if the object is specified in subsection (d)(1)(A) of this section;

(3) imprisonment for not more than 5 years, or both, if the object is specified in subsection (d)(1)(B) of this section;

(4) imprisonment for not more than one year, or both, if the object is specified in subsection (d)(1)(D), (d)(1)(E), or (d)(1)(F) of this section; and

(5) imprisonment for not more than 6 months, or both, if the object is specified in subsection (d)(1)(G) of this section.

(c) CONSECUTIVE PUNISHMENT REQUIRED IN CERTAIN CASES.—Any punishment imposed under subsection (b) for a violation of this section involving a controlled substance shall be consecutive to any other sentence imposed by any court for an offense involving such a controlled substance. Any punishment imposed under subsection (b) for a violation of this section by an inmate of a prison shall be consecutive to the sentence being served by such inmate at the time the inmate commits such violation.

(d) DEFINITIONS.—As used in this section—

(1) the term "prohibited object" means—

(A) a firearm or destructive device or a controlled substance in schedule I or II, other than marijuana or a controlled substance referred to in subparagraph (C) of this subsection;

(B) marijuana or a controlled substance in schedule III, other than a controlled substance referred to in subparagraph (C) of this subsection, ammunition, a weapon (other than a firearm or destructive device), or an object that is designed or intended to be used as a weapon or to facilitate escape from a prison;

(C) a narcotic drug, methamphetamine, its salts, isomers, and salts of its isomers, lysergic acid diethylamide, or phencyclidine;

(D) a controlled substance (other than a controlled substance referred to in subparagraph (A), (B), or (C) of this subsection) or an alcoholic beverage;

(E) any United States or foreign currency;

(F) a phone or other device used by a user of commercial mobile service (as defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d))) in connection with such service; and

(G) any other object that threatens the order, discipline, or security of a prison, or the life, health, or safety of an individual;

(2) the terms "ammunition", "firearm", and "destructive device" have, respectively, the meanings given those terms in section 921 of this title;

(3) the terms "controlled substance" and "narcotic drug" have, respectively, the meanings given those terms in section 102 of the Controlled Substances Act (21 U.S.C. 802); and

(4) the term "prison" means a Federal correctional, detention, or penal facility or any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the Attorney General.

(June 25, 1948, ch. 645, 62 Stat. 786; Pub. L. 98-473, title II, §1109(a), Oct. 12, 1984, 98 Stat. 2147; Pub. L. 99-646, §52(a), Nov. 10, 1986, 100 Stat. 3606; Pub. L. 100-690, title VI, §6468(a), (b), Nov. 18, 1988, 102