

(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.