

§ 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.