

§ 122a. Injunctive relief in Federal district court**(a) Definitions**

In this section—

(1) the term “attorney general” means the attorney general or other chief law enforcement officer of a State or the designee thereof;

(2) the term “intoxicating liquor” means any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind;

(3) the term “person” means any individual and any partnership, corporation, company, firm, society, association, joint stock company, trust, or other entity capable of holding a legal or beneficial interest in property, but does not include a State or agency thereof; and

(4) the term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(b) Action by State attorney general

If the attorney general has reasonable cause to believe that a person is engaged in, or has engaged in, any act that would constitute a violation of a State law regulating the importation or transportation of any intoxicating liquor, the attorney general may bring a civil action in accordance with this section for injunctive relief (including a preliminary or permanent injunction) against the person, as the attorney general determines to be necessary to—

(1) restrain the person from engaging, or continuing to engage, in the violation; and

(2) enforce compliance with the State law.

(c) Federal jurisdiction**(1) In general**

The district courts of the United States shall have jurisdiction over any action brought under this section by an attorney general against any person, except one licensed or otherwise authorized to produce, sell, or store intoxicating liquor in such State.

(2) Venue

An action under this section may be brought only in accordance with section 1391 of title 28 or in the district in which the recipient of the intoxicating liquor resides or is found.

(3) Form of relief

An action under this section is limited to actions seeking injunctive relief (a preliminary and/or permanent injunction).

(4) No right to jury trial

An action under this section shall be tried before the court.

(d) Requirements for injunctions and orders**(1) In general**

In any action brought under this section, upon a proper showing by the attorney general of the State, the court may issue a preliminary or permanent injunction to restrain a violation of this section. A proper showing under this paragraph shall require that a State prove by a preponderance of the evidence that a violation of State law as described in subsection (b) has taken place or is taking place.

(2) Additional showing for preliminary injunction

No preliminary injunction may be granted except upon—

(A) evidence demonstrating the probability of irreparable injury if injunctive relief is not granted; and

(B) evidence supporting the probability of success on the merits.

(3) Notice

No preliminary or permanent injunction may be issued under paragraph (1) without notice to the adverse party and an opportunity for a hearing.

(4) Form and scope of order

Any preliminary or permanent injunction entered in an action brought under this section shall—

(A) set forth the reasons for the issuance of the order;

(B) be specific in terms;

(C) describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and

(D) be binding upon—

(i) the parties to the action and the officers, agents, employees, and attorneys of those parties; and

(ii) persons in active concert or participation with the parties to the action who receive actual notice of the order by personal service or otherwise.

(5) Admissibility of evidence

In a hearing on an application for a permanent injunction, any evidence previously received on an application for a preliminary injunction in connection with the same civil action and that would otherwise be admissible, may be made a part of the record of the hearing on the permanent injunction.

(e) Rules of construction

This section shall be construed only to extend the jurisdiction of Federal courts in connection with State law that is a valid exercise of power vested in the States—

(1) under the twenty-first article of amendment to the Constitution of the United States as such article of amendment is interpreted by the Supreme Court of the United States including interpretations in conjunction with other provisions of the Constitution of the United States; and

(2) under section 122 of this title as such section is interpreted by the Supreme Court of the United States; but shall not be construed to grant to States any additional power.

(f) Additional remedies**(1) In general**

A remedy under this section is in addition to any other remedies provided by law.

(2) State court proceedings

Nothing in this section may be construed to prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any State law.

(Mar. 1, 1913, ch. 90, § 2, as added Pub. L. 106-386, div. C, § 2004(a), Oct. 28, 2000, 114 Stat. 1546.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 106-386, div. C, § 2004(b), Oct. 28, 2000, 114 Stat. 1548, provided that: "This section [enacting this section and section 122b of this title and provisions set out as a note under this section] and the amendments made by this section shall become effective 90 days after the date of the enactment of this Act [Oct. 28, 2000]."

IMPACT STUDY

Pub. L. 106-386, div. C, § 2004(c), Oct. 28, 2000, 114 Stat. 1548, provided that: "The Attorney General shall carry out the study to determine the impact of this section [enacting this section and section 122b of this title and provisions set out as a note under this section] and shall submit the results of such study not later than 180 days after the enactment of this Act [Oct. 28, 2000]."

§ 122b. General provisions

(a) Effect on Internet Tax Freedom Act

Nothing in this section may be construed to modify or supersede the operation of the Internet Tax Freedom Act (47 U.S.C. 151 note).

(b) Inapplicability to service providers

Nothing in this section may be construed to—

(1) authorize any injunction against an interactive computer service (as defined in section 230(f) of title 47¹ used by another person to engage in any activity that is subject to this Act;

(2) authorize any injunction against an electronic communication service (as defined in section 2510(15) of title 18) used by another person to engage in any activity that is subject to this Act; or

(3) authorize an injunction prohibiting the advertising or marketing of any intoxicating liquor by any person in any case in which such advertising or marketing is lawful in the jurisdiction from which the importation, transportation or other conduct to which this Act applies originates.

(Mar. 1, 1913, ch. 90, § 3, as added Pub. L. 106-386, div. C, § 2004(a), Oct. 28, 2000, 114 Stat. 1548.)

Editorial Notes

REFERENCES IN TEXT

The Internet Tax Freedom Act, referred to in subsec. (a), is title XI of Pub. L. 105-277, div. C, Oct. 21, 1998, 112 Stat. 2681-719, which is set out as a note under section 151 of Title 47, Telecommunications.

This Act, referred to in subsec. (b), is act Mar. 1, 1913, ch. 90, 37 Stat. 699, as amended, popularly known as the Webb-Kenyon Act, which is classified to this section and sections 122 and 122a of this title. For complete classification of this Act to the Code, see Tables.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective 90 days after Oct. 28, 2000, see section 2004(b) of Pub. L. 106-386, set out as a note under section 122a of this title.

¹ So in original. Probably should be followed by a closing parenthesis.

§ 123. Repealed. June 25, 1936, ch. 815, § 9, 49 Stat. 1930

Section, acts Mar. 3, 1917, ch. 162, § 5, 39 Stat. 1069; Mar. 4, 1917, ch. 192, 39 Stat. 1202; Feb. 24, 1919, ch. 18, title XIV, § 1407, 40 Stat. 1151; Jan. 11, 1934, ch. 1, title I, § 12, 48 Stat. 316, prescribed punishment for violation of section 122 of this title.

§ 124. Direct shipment of wine

(a) Conditions for transporting certain wine

During any period in which the Federal Aviation Administration has in effect restrictions on airline passengers to ensure safety, the direct shipment of wine shall be permitted from States where wine is purchased from a winery, to another State or the District of Columbia, if—

(1) the wine was purchased while the purchaser was physically present at the winery;

(2) the purchaser of the wine provided the winery verification of legal age to purchase alcohol;

(3) the shipping container in which the wine is shipped is marked to require an adult's signature upon delivery;

(4) the wine is for personal use only and not for resale; and

(5) the purchaser could have carried the wine lawfully into the State or the District of Columbia to which the wine is shipped.

(b) Violations

If any person fails to meet any of the conditions under subsection (a), the attorney general of any State may bring a civil action under the same terms as those set out in section 122a of this title.

(c) Report

Not later than 2 years after November 2, 2002, and at 2-year intervals thereafter, the Attorney General of the United States, in consultation with the Administrator of the Federal Aviation Administration, shall prepare and submit to the Committee on the Judiciary of the Senate and to the Committee on the Judiciary of the House of Representatives a report on the implementation of this section.

(Pub. L. 107-273, div. C, title I, § 11022, Nov. 2, 2002, 116 Stat. 1829.)

CHAPTER 7—LIQUOR LAW REPEAL AND ENFORCEMENT ACT

§§ 151 to 167. Omitted

Editorial Notes

CODIFICATION

Sections contained provisions which were incorporated in various sections of the Internal Revenue Code of 1939. For distribution of the Internal Revenue Code of 1939 to the Internal Revenue Code of 1986, see Table I preceding section 1 of Title 26, Internal Revenue Code.

Section 151, act Aug. 27, 1935, ch. 740, § 2, 49 Stat. 872, defined "person", "Commissioner", "application", "permit", "bond", "regulation", and "articles", was incorporated in section 3124(a)(3)-(8) of the Internal Revenue Code of 1939.

Section 152, act Aug. 27, 1935, ch. 740, § 3, 49 Stat. 872, authorized Commissioner, his assistants, agents, and inspectors to investigate and report to United States