

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.”

RULE OF CONSTRUCTION

Pub. L. 116–260, div. FF, title VI, §602(c), Dec. 27, 2020, 134 Stat. 3137, provided that: “Nothing in this section [amending this section and section 376a of this title and enacting provisions set out as a note under this section], or an amendment made by this section, may be construed to affect or otherwise alter any provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), including its implementing regulations.”

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)) [now 25 U.S.C. 5304(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.)

Editorial Notes

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.

Statutory Notes and Related Subsidiaries

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/NICOTINE/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 non-deliverable 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.