

Public Law 95-575
95th Congress

An Act

To amend title 18 of the United States Code to eliminate racketeering in the sale and distribution of cigarettes, and for other purposes.

Nov. 2, 1978

[S. 1487]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 18, United States Code, is amended by inserting after chapter 113 the following new chapter:

Cigarettes.
Sale and
distribution
racketeering,
elimination.

**"CHAPTER 114—TRAFFICKING IN CONTRABAND
CIGARETTES**

"Sec.

"2341. Definitions.

"2342. Unlawful acts.

"2343. Recordkeeping and inspection.

"2344. Penalties.

"2345. Effect on State law.

"2346. Enforcement and regulations.

"§ 2341. Definitions

18 USC 2341.

"As used in this chapter—

"(1) the term 'cigarette' means—

"(A) any roll of tobacco wrapped in paper or in any substance not containing tobacco; and

"(B) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (A);

"(2) the term 'contraband cigarettes' means a quantity in excess of 60,000 cigarettes, which bear no evidence of the payment of applicable State cigarette taxes in the State where such cigarettes are found, if such State requires a stamp, impression, or other indication to be placed on packages or other containers of cigarettes to evidence payment of cigarette taxes, and which are in the possession of any person other than—

"(A) a person holding a permit issued pursuant to chapter 52 of the Internal Revenue Code of 1954 as a manufacturer of tobacco products or as an export warehouse proprietor, or a person operating a customs bonded warehouse pursuant to section 311 or 555 of the Tariff Act of 1930 (19 U.S.C. 1311 or 1555) or an agent of such person;

"(B) a common or contract carrier transporting the cigarettes involved under a proper bill of lading or freight bill which states the quantity, source, and destination of such cigarettes;

"(C) a person—

"(i) who is licensed or otherwise authorized by the State where the cigarettes are found to account for and pay cigarette taxes imposed by such State; and

"(ii) who has complied with the accounting and payment requirements relating to such license or authorization with respect to the cigarettes involved; or

26 USC 5701 et
seq.

"(D) an officer, employee, or other agent of the United States or a State, or any department, agency, or instrumentality of the United States or a State (including any political subdivision of a State) having possession of such cigarettes in connection with the performance of official duties;

"(3) the term 'common or contract carrier' means a carrier holding a certificate of convenience and necessity, a permit for contract carrier by motor vehicle, or other valid operating authority under the Interstate Commerce Act, or under equivalent operating authority from a regulatory agency of the United States or of any State;

"(4) the term 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Virgin Islands; and

"(5) the term 'Secretary' means the Secretary of the Treasury.

49 USC prec. 1
note.

18 USC 2342.

"§ 2342. Unlawful acts

"(a) It shall be unlawful for any person knowingly to ship, transport, receive, possess, sell, distribute, or purchase contraband cigarettes.

"(b) It shall be unlawful for any person knowingly to make any false statement or representation with respect to the information required by this chapter to be kept in the records of any person who ships, sells, or distributes any quantity of cigarettes in excess of 60,000 in a single transaction.

18 USC 2343.

"§ 2343. Recordkeeping and inspection

"(a) Any person who ships, sells, or distributes any quantity of cigarettes in excess of 60,000 in a single transaction shall maintain such information about the shipment, receipt, sale, and distribution of cigarettes as the Secretary may prescribe by rule or regulation. The Secretary may require such person to keep only—

"(1) the name, address, destination (including street address), vehicle license number, driver's license number, signature of the person receiving such cigarettes, and the name of the purchaser;

"(2) a declaration of the specific purpose of the receipt (personal use, resale, or delivery to another); and

"(3) a declaration of the name and address of the recipient's principal in all cases when the recipient is acting as an agent.

Such information shall be contained on business records kept in the normal course of business. Nothing contained herein shall authorize the Secretary to require reporting under this section.

"(b) Upon the consent of any person who ships, sells, or distributes any quantity of cigarettes in excess of 60,000 in a single transaction, or pursuant to a duly issued search warrant, the Secretary may enter the premises (including places of storage) of such person for the purpose of inspecting any records or information required to be maintained by such person under this chapter, and any cigarettes kept or stored by such person at such premises.

18 USC 2344.

"§ 2344. Penalties

"(a) Whoever knowingly violates section 2342(a) of this title shall be fined not more than \$100,000 or imprisoned not more than five years, or both.

"(b) Whoever knowingly violates any rule or regulation promulgated under section 2343(a) or 2346 of this title or violates section

2342(b) of this title shall be fined not more than \$5,000 or imprisoned not more than three years, or both.

“(c) Any contraband cigarettes involved in any violation of the provisions of this chapter shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1954 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of such Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter.

26 USC 1 *et seq.*

26 USC 5845.

“§ 2345. Effect on State law

18 USC 2345.

“(a) Nothing in this chapter shall be construed to affect the concurrent jurisdiction of a State to enact and enforce cigarette tax laws, to provide for the confiscation of cigarettes and other property seized for violation of such laws, and to provide for penalties for the violation of such laws.

“(b) Nothing in this chapter shall be construed to inhibit or otherwise affect any coordinated law enforcement effort by a number of States, through interstate compact or otherwise, to provide for the administration of State cigarette tax laws, to provide for the confiscation of cigarettes and other property seized in violation of such laws, and to establish cooperative programs for the administration of such laws.

“§ 2346. Enforcement and regulations

18 USC 2346.

“The Secretary, subject to the provisions of section 2343(a) of this title, shall enforce the provisions of this chapter and may prescribe such rules and regulations as he deems reasonably necessary to carry out the provisions of this chapter.”

SEC. 2. The table of chapters of part I of title 18, United States Code, is amended by inserting immediately below the item relating to chapter 113 the following:

“114. Trafficking in Contraband Cigarettes..... 2341.”

SEC. 3. (a) Section 1(b) of the Act of August 9, 1939 (ch. 618, 53 Stat. 1291 (49 U.S.C. 781(b))), is amended—

(1) by striking out “or” at the end of paragraph (2);

(2) by striking out the period at the end of paragraph (3) and inserting in lieu thereof “; or”; and

(3) by inserting after paragraph (3) the following new paragraph:

“(4) Any cigarette, with respect to which there has been committed any violation of chapter 114 of title 18, United States Code, or any regulation issued pursuant thereto.”

Ante, p. 2463.

(b) Section 7 of the Act of August 9, 1939 (ch. 618, 53 Stat. 1291 (49 U.S.C. 787)), is amended—

Definitions.

(1) by striking out “and” at the end of subsection (e);

(2) by striking out the period at the end of subsection (f) and inserting in lieu thereof “; and”; and

(3) by inserting after subsection (f) the following new subsection:

“(g) The term ‘cigarettes’ means ‘contraband cigarettes’ as now or hereafter defined in section 2341 of title 18, United States Code.”

“Cigarettes.”

(c) Section 1961(1)(B) of title 18, United States Code, is amended by inserting after “sections 2314 and 2315 (relating to interstate trans-

18 USC 2341
note.

Appropriation
authorization.
18 USC 2341
note.

portation of stolen property),” the following: “sections 2341-2346 (relating to trafficking in contraband cigarettes),”.

SEC. 4. (a) Except as provided in subsection (b), this Act shall take effect on the date of its enactment.

(b) Sections 2342(b) and 2343 of title 18, United States Code, as enacted by the first section of this Act, shall take effect on the first day of the first month beginning more than 120 days after the date of the enactment of this Act.

SEC. 5. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of chapter 114 of title 18, United States Code, added by the first section of this Act.

Approved November 2, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 95-1629, accompanying H.R. 8853 (Comm. on the Judiciary) and No. 95-1778 (Comm. of Conference).

SENATE REPORT No. 95-962 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 128 (1978):

Sept. 29, considered and passed Senate.

Oct. 3, H.R. 8853 considered and passed House; passage vacated, and S. 1487, amended, passed in lieu.

Oct. 15, House and Senate agreed to conference report.