

Section 89, act Oct. 28, 1919, ch. 85, title III, §19, 41 Stat. 322, provided for repeal of prior laws relating to alcohol.

Section 90, act June 26, 1936, ch. 830, title III, §329(c), 49 Stat. 1957, related to extension of industrial alcohol laws to Puerto Rico and Virgin Islands, was incorporated in section 3123 of Internal Revenue Code of 1939.

Section 90a, act June 26, 1936, ch. 830, title IV, §414, 49 Stat. 1964, related to effect of act June 26, 1936, upon chapter.

CHAPTER 4—PENALTIES

§§ 91, 92. Repealed. Aug. 27, 1935, ch. 740, title I, § 1, 49 Stat. 872

Section 91, acts Mar. 2, 1929, ch. 473, §1, 45 Stat. 1446; Jan. 15, 1931, ch. 29, 46 Stat. 1036, set forth maximum penalties that could be imposed in a criminal prosecution for illegal manufacture, sale, transportation, importation, or exportation of intoxicating liquor, as defined in section 4 of this title.

Section 92, act Mar. 2, 1929, ch. 473, §2, 45 Stat. 1446, provided that section 91 of this title did not operate to repeal or eliminate any minimum penalty provided by this title for first or subsequent offense.

CHAPTER 5—PROHIBITION REORGANIZATION ACT OF 1930

§§ 101 to 108. Repealed. Aug. 27, 1935, ch. 740, title I, § 1, 49 Stat. 872

Section 101, act May 27, 1930, ch. 342, §1, 46 Stat. 427, provided that this chapter may be cited as the “Prohibition Reorganization Act of 1930”.

Section 102, act May 27, 1930, ch. 342, §2, 46 Stat. 427, established a Bureau of Prohibition in Department of Justice and authorized appointment of a Director and Assistant Director of Prohibition and designation of officers and employees.

Section 103, act May 27, 1930, ch. 342, §3, 46 Stat. 428, related to creation of an enforcement division in Bureau of Prohibition in Treasury Department.

Section 104, act May 27, 1930, ch. 342, §4, 46 Stat. 428, related to imposition of duties on Attorney General with respect to enforcement of prohibition laws.

Section 105, acts May 27, 1930, ch. 342, §5, 46 Stat. 429; Mar. 31, 1933, ch. 18, §4, 48 Stat. 24, authorized Attorney General and Secretary of the Treasury to jointly prescribe regulations relating to permits and prescriptions for liquor for medicinal purposes.

Section 106, act May 27, 1930, ch. 342, §6, 46 Stat. 429, related to filing of reports by Attorney General with Secretary of the Treasury with respect to civil liabilities for taxes and penalties and filing of reports by Secretary of the Treasury with Attorney General with respect to revocation of permits.

Section 107, act May 27, 1930, ch. 342, §7, 46 Stat. 429, related to grant, renewal, and amendment of permits.

Section 108, act May 27, 1930, ch. 342, §8, 46 Stat. 430, provided that Bureau of Prohibition shall hereafter be known as Bureau of Industrial Alcohol, and Commissioner of Prohibition shall hereafter have title of Commissioner of Industrial Alcohol.

CHAPTER 6—TRANSPORTATION IN INTERSTATE COMMERCE

- Sec.
121. State statutes as operative on termination of transportation; original packages.
122. Shipments into States for possession or sale in violation of State law.
- 122a. Injunctive relief in Federal district court.
- (a) Definitions.
 - (b) Action by State attorney general.
 - (c) Federal jurisdiction.
 - (d) Requirements for injunctions and orders.

Sec.

- (e) Rules of construction.
- (f) Additional remedies.

122b. General provisions.

- (a) Effect on Internet Tax Freedom Act.
- (b) Inapplicability to service providers.

123. Repealed.

§ 121. State statutes as operative on termination of transportation; original packages

All fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory or remaining therein for use, consumption, sale, or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise.

(Aug. 8, 1890, ch. 728, 26 Stat. 313.)

SHORT TITLE

Act Aug. 8, 1890, is popularly known as the “Wilson Act” or the “Original Packages Act”.

§ 122. Shipments into States for possession or sale in violation of State law

The shipment or transportation, in any manner or by any means whatsoever, of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, which said spirituous, vinous, malted, fermented, or other intoxicating liquor is intended, by any person interested therein, to be received, possessed, sold, or in any manner used, either in the original package or otherwise, in violation of any law of such State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, is prohibited.

(Mar. 1, 1913, ch. 90, §1, 37 Stat. 699; Aug. 27, 1935, ch. 740, §202(b), 49 Stat. 877.)

AMENDMENTS

1935—Act Aug. 27, 1935, reenacted section without change.

SHORT TITLE

Act Mar. 1, 1913, is popularly known as the “Webb-Kenyon Act”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 122a of this title.

§ 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) of this section 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.)

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.)

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, Telegraphs, Telephones, and Radiotelegraphs.

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.

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.

§ 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, §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.

CHAPTER 7—LIQUOR LAW REPEAL AND ENFORCEMENT ACT

§§ 151 to 167. Omitted

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 attorney violations of this chapter and chapter 3 of this title, was incorporated in section 3117(a) of the Internal Revenue Code of 1939.

Section 153, act Aug. 27, 1935, ch. 740, §4, 49 Stat. 872, subjected violators of laws relating to denatured alcohol to laws relating to nondenatured alcohol, was incorporated in section 3111 of Internal Revenue Code of 1939.

Section 154, act Aug. 27, 1935, ch. 740, §5, 49 Stat. 873, related to revocation of manufacturer’s permits for false descriptions of denatured alcohol, was incorporated in section 3114(c) of Internal Revenue Code of 1939.

Section 155, act Aug. 27, 1935, ch. 740, §6, 49 Stat. 873, required persons manufacturing or dealing in denatured alcohol to obtain a permit from Commissioner, was incorporated in section 3114(a) of Internal Revenue Code of 1939.

Section 156, act Aug. 27, 1935, ch. 740, §7, 49 Stat. 874, provided for revocation of permits by Commissioner where terms of permit have been violated or provisions of this chapter and chapter 3 of this title have not been conformed to or other laws and regulations relating to intoxicating liquor have been violated, was incorporated in section 3114(b) of Internal Revenue Code of 1939.

Section 157, act Aug. 27, 1935, ch. 740, §8, 49 Stat. 874, related to search, seizure, and forfeiture of liquor or property to be used in violation of this chapter or chapter 3 of this title or laws or regulations with respect to intoxicating liquor, was incorporated in section 3116 of Internal Revenue Code of 1939.

Section 158, act Aug. 27, 1935, ch. 740, §9, 49 Stat. 875, related to rights, privileges, powers, and protection of Commissioner and his assistants and employees, was incorporated in section 3121(a) of Internal Revenue Code of 1939.

Section 159, act Aug. 27, 1935, ch. 740, §10, 49 Stat. 875, related to penalties prescribed for violation of provisions of this chapter, was incorporated in section 3115(b) of Internal Revenue Code of 1939.

Section 160, act Aug. 27, 1935, ch. 740, §11, 49 Stat. 875, related to privileges and immunities of witnesses, was incorporated in section 3119 of Internal Revenue Code of 1939.

Section 161, act Aug. 27, 1935, ch. 740, §12, 49 Stat. 875, related to place of sale when delivery is made by a carrier for purposes of prosecution or revocation of any permit, was incorporated in section 3114(d) of Internal Revenue Code of 1939.

Section 162, act Aug. 27, 1935, ch. 740, §13, 49 Stat. 875, related to affidavits, information, and indictments for violation of this chapter, was incorporated in section 3120 of Internal Revenue Code of 1939.

Section 163, act Aug. 27, 1935, ch. 740, §14, 49 Stat. 876, related to inspection of records, liquor, and property with respect to this chapter by Commissioner, was incorporated in section 3121(c) of Internal Revenue Code of 1939.

Section 164, act Aug. 27, 1935, ch. 740, §2, 49 Stat. 872, authorized Commissioner to designate assistants or agents to perform certain duties, was incorporated in section 3121(d) of Internal Revenue Code of 1939.

Section 165, act Aug. 27, 1935, ch. 740, §15, 49 Stat. 876, provided that a conviction under this chapter or chapter 3 of this title will bar a subsequent prosecution under another law relating to intoxicating liquors, was incorporated in section 3115(c) of Internal Revenue Code of 1939.

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