

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4755(c)(2) of Pub. L. 101-508 provided that the amendment made by that section is effective as if included in subtitle D of title VI of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101-239, title VI, §§6601, 6602, Dec. 19, 1989, 103 Stat. 2285, see 42 U.S.C. 300aa-1 note, 300aa-10 note.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-293 effective upon expiration of 90 days after Apr. 22, 1988, see section 8(a) of Pub. L. 100-293, set out as a note under section 353 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-387 effective on first day of sixth month beginning after Aug. 16, 1972, see section 5 of Pub. L. 92-387, set out as a note under section 360 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-513 effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 704 of Pub. L. 91-513, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENTS

Amendment by Pub. L. 90-399 effective on first day of thirteenth calendar month after July 13, 1968, see section 108(a) of Pub. L. 90-399, set out as an Effective Date and Transitional Provisions note under section 360b of this title.

Amendment by Pub. L. 90-639 applicable only with respect to violations of this chapter committed after Oct. 24, 1968, see section 6 of Pub. L. 90-639, set out as an Effective Date of 1968 Amendments; Transitional Provisions note under section 321 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89-74 effective Feb. 1, 1966, see section 11 of Pub. L. 89-74, set out as a note under section 321 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by sections 103(c) and 106(c) of Pub. L. 87-781 effective on first day of seventh calendar month following Oct. 1962, and amendment by section 104(e)(1) of Pub. L. 87-781 effective Oct. 10, 1962, see section 107 of Pub. L. 87-781, set out as a note under section 321 of this title.

Section 114(b) of Pub. L. 87-781 provided that: "This section [amending this section] shall take effect on the first day of the seventh calendar month following the month in which this Act is enacted [October 1962]."

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86-618 effective July 12, 1960, subject to provisions of section 203 of Pub. L. 86-618, see section 202 of Pub. L. 86-618, set out as a note under section 379e of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-929 effective Sept. 6, 1958, see section 6(a) of Pub. L. 85-929, set out as a note under section 342 of this title.

EFFECTIVE DATE OF 1950 AMENDMENT

Amendment by act Mar. 16, 1950, effective July 1, 1950, see section 7 of that act, set out as an Effective Date note under section 347 of this title.

REGULATIONS

Secretary of Health and Human Services to promulgate regulations to implement amendments made by section 401 of Pub. L. 105-115 not later than 1 year after Nov. 21, 1997, see section 401(c) of Pub. L. 105-115, set out as a note under section 360aaa of this title.

SAVINGS PROVISION

Amendment by Pub. L. 91-513 not to affect or abate any prosecutions for violation of law or any civil seizures or forfeitures and injunctive proceedings commenced prior to the effective date of such amendment, and all administrative proceedings pending before the Bureau of Narcotics and Dangerous Drugs [now the Drug Enforcement Administration] on Oct. 27, 1970, to be continued and brought to final determination in accord with laws and regulations in effect prior to Oct. 27, 1970, see section 702 of Pub. L. 91-513, set out as a note under section 321 of this title.

CONSTRUCTION OF AMENDMENTS BY PUB. L. 107-188

Pub. L. 107-188, title III, §315, June 12, 2002, 116 Stat. 675, provided that: "Nothing in this title [enacting sections 350c, 350d, 398, 399, and 679c of this title, sections 3353, 3354, 8319, and 8320 of Title 7, Agriculture, and section 247b-20 of Title 42, The Public Health and Welfare, amending this section, sections 334, 335a, 342, 343, 360, 372, 374, and 381 of this title, and section 43 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as notes under this section and sections 341, 350c, 350d, and 381 of this title], or an amendment made by this title, shall be construed to alter the jurisdiction between the Secretaries of Agriculture and of Health and Human Services, under applicable statutes and regulations."

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Security Administrator to Secretary of Health, Education, and Welfare [now Health and Human Services], and of Food and Drug Administration in the Department of Agriculture to Federal Security Agency, see note set out under section 41 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 321, 332, 333, 335a, 347b, 355a, 360, 360i, 360j, 360aaa of this title; title 42 section 1396r-8.

§ 332. Injunction proceedings

(a) Jurisdiction of courts

The district courts of the United States and the United States courts of the Territories shall have jurisdiction, for cause shown¹ to restrain violations of section 331 of this title, except paragraphs (h), (i), and (j).

(b) Violation of injunction

In case of violation of an injunction or restraining order issued under this section, which also constitutes a violation of this chapter, trial shall be by the court, or, upon demand of the accused, by a jury.

(June 25, 1938, ch. 675, §302, 52 Stat. 1043; Pub. L. 87-781, title I, §103(d), title II, §201(c), Oct. 10, 1962, 76 Stat. 784, 793; Pub. L. 103-80, §3(d), Aug. 13, 1993, 107 Stat. 775.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103-80, §3(d)(1), struck out “, and subject to the provisions of section 17 (relating to notice to opposite party) of the Act entitled ‘An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes’, approved October 15, 1914, as amended (U.S.C., 1934 ed., title 28, sec. 381),” after “for cause shown”.

Subsec. (b). Pub. L. 103-80, §3(d)(2), struck out at end “Such trial shall be conducted in accordance with the practice and procedure applicable in the case of proceedings subject to the provisions of section 22 of such

¹ So in original. Probably should be followed by a comma.

Act of October 15, 1914, as amended (U.S.C., 1934 ed., title 28, sec. 387)."

1962—Subsec. (a). Pub. L. 87-781, §103(d), struck out "(e)," after "paragraphs".

Pub. L. 87-781, §201(c), struck out "(f)," after "paragraphs".

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 103(c) of Pub. L. 87-781 effective on first day of seventh calendar month following October 1962, see section 107 of Pub. L. 87-781, set out as a note under section 321 of this title.

Section 203 of title II of Pub. L. 87-781 provided that: "The amendments made by this title [amending this section and section 374 of this title and enacting provisions set out as notes under sections 321 and 374 of this title] shall take effect on the date of enactment of this Act [Oct. 10, 1962]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 333, 334, 360j of this title; title 42 section 1396r-8.

§ 333. Penalties

(a) Violation of section 331 of this title; second violation; intent to defraud or mislead

(1) Any person who violates a provision of section 331 of this title shall be imprisoned for not more than one year or fined not more than \$1,000, or both.

(2) Notwithstanding the provisions of paragraph (1) of this section,¹ if any person commits such a violation after a conviction of him under this section has become final, or commits such a violation with the intent to defraud or mislead, such person shall be imprisoned for not more than three years or fined not more than \$10,000, or both.

(b) Prescription drug marketing violations

(1) Notwithstanding subsection (a) of this section, any person who violates section 331(t) of this title by—

(A) knowingly importing a drug in violation of section 381(d)(1) of this title,

(B) knowingly selling, purchasing, or trading a drug or drug sample or knowingly offering to sell, purchase, or trade a drug or drug sample, in violation of section 353(c)(1) of this title,

(C) knowingly selling, purchasing, or trading a coupon, knowingly offering to sell, purchase, or trade such a coupon, or knowingly counterfeiting such a coupon, in violation of section 353(c)(2) of this title, or

(D) knowingly distributing drugs in violation of section 353(e)(2)(A) of this title,

shall be imprisoned for not more than 10 years or fined not more than \$250,000, or both.

(2) Any manufacturer or distributor who distributes drug samples by means other than the mail or common carrier whose representative, during the course of the representative's employment or association with that manufacturer or distributor, violated section 331(t) of this title because of a violation of section 353(c)(1) of this title or violated any State law prohibiting the sale, purchase, or trade of a drug sample subject to section 353(b) of this title or the offer to sell, purchase, or trade such a drug sample

¹ So in original. Words "of this section" probably should not appear.

shall, upon conviction of the representative for such violation, be subject to the following civil penalties:

(A) A civil penalty of not more than \$50,000 for each of the first two such violations resulting in a conviction of any representative of the manufacturer or distributor in any 10-year period.

(B) A civil penalty of not more than \$1,000,000 for each violation resulting in a conviction of any representative after the second conviction in any 10-year period.

For the purposes of this paragraph, multiple convictions of one or more persons arising out of the same event or transaction, or a related series of events or transactions, shall be considered as one violation.

(3) Any manufacturer or distributor who violates section 331(t) of this title because of a failure to make a report required by section 353(d)(3)(E) of this title shall be subject to a civil penalty of not more than \$100,000.

(4)(A) If a manufacturer or distributor or any representative of such manufacturer or distributor provides information leading to the institution of a criminal proceeding against, and conviction of, any representative of that manufacturer or distributor for a violation of section 331(t) of this title because of a sale, purchase, or trade or offer to purchase, sell, or trade a drug sample in violation of section 353(c)(1) of this title or for a violation of State law prohibiting the sale, purchase, or trade or offer to sell, purchase, or trade a drug sample, the conviction of such representative shall not be considered as a violation for purposes of paragraph (2).

(B) If, in an action brought under paragraph (2) against a manufacturer or distributor relating to the conviction of a representative of such manufacturer or distributor for the sale, purchase, or trade of a drug or the offer to sell, purchase, or trade a drug, it is shown, by clear and convincing evidence—

(i) that the manufacturer or distributor conducted, before the institution of a criminal proceeding against such representative for the violation which resulted in such conviction, an investigation of events or transactions which would have led to the reporting of information leading to the institution of a criminal proceeding against, and conviction of, such representative for such purchase, sale, or trade or offer to purchase, sell, or trade, or

(ii) that, except in the case of the conviction of a representative employed in a supervisory function, despite diligent implementation by the manufacturer or distributor of an independent audit and security system designed to detect such a violation, the manufacturer or distributor could not reasonably have been expected to have detected such violation,

the conviction of such representative shall not be considered as a conviction for purposes of paragraph (2).

(5) If a person provides information leading to the institution of a criminal proceeding against, and conviction of, a person for a violation of section 331(t) of this title because of the sale, purchase, or trade of a drug sample or the offer to sell, purchase, or trade a drug sample in viola-