S. 1177

To ensure the collection of all cigarette taxes, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 3, 2003

Mr. HATCH (for himself and Mr. KOHL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To ensure the collection of all cigarette taxes, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Prevent All Cigarette Trafficking Act” or “PACT Act”.

SEC. 2. COLLECTION OF STATE CIGARETTE TAXES.

(a) DEFINITIONS.—Section 1 of the Act of October 19, 1949 (15 U.S.C. 375; commonly referred to as the “Jenkins Act”), is amended—

(1) in paragraph (1), by inserting “and other legal entities” after “individuals”;
(2) by striking paragraph (3);

(3) by redesignating paragraphs (4) through (7) as paragraphs (3) through (6), respectively; and

(4) by adding at the end the following new paragraphs:

“(7) The term ‘delivery sale’ means any sale of cigarettes to a consumer if—

“(A) the consumer submits the order for such sale by means of a telephone or other method of voice transmission, the mails, or the Internet or other online service; or

“(B) the cigarettes are delivered by use of a common carrier.

“(8) The term ‘common carrier’ means any person (other than a local messenger service or the United States Postal Service (as defined in section 102 of title 39, United States Code)) that holds itself out to the general public as a provider for hire of the transportation by water, land, or air of merchandise, whether or not the person actually operates the vessel, vehicle, or aircraft by which the transportation is provided, between a port or place and a port or place in the United States.”.
(b) Reports to State Tobacco Tax Administrators.—Section 2 of that Act (15 U.S.C. 376) is amended—

(1) in subsection (a)—

(A) by striking “or transfers” and inserting “, transfers, or ships”; and

(B) by striking “to other than a distributor licensed by or located in such State,”;

and

(2) in subsection (b)—

(A) by striking “(1)”; and

(B) by striking “, and (2)” and all that follows and inserting a period.

(c) Requirements for Delivery Sales.—That Act is further amended by inserting after section 2 the following new section:

“SEC. 2A. (a) Each person making a delivery sale into a State shall comply with—

“(1) the shipping requirements set forth in subsection (b);

“(2) the recordkeeping requirements set forth in subsection (c); and

“(3) all laws of the State generally applicable to sales of cigarettes that occur entirely within the State, including laws imposing—
“(A) excise taxes;
“(B) sales taxes;
“(C) licensing and tax-stamping requirements; and
“(D) other payment obligations.

“(b)(1) Each person who takes a delivery sale order shall include on the bill of lading included with the shipping package containing cigarettes sold pursuant to such order a clear and conspicuous statement providing as follows: ‘CIGARETTES: FEDERAL LAW REQUIRES THE PAYMENT OF ALL APPLICABLE EXCISE AND SALES TAXES, AND COMPLIANCE WITH APPLICABLE LICENSING AND TAX-STAMPING OBLIGATIONS’.  

“(2) Any shipping package described in paragraph (1) that is not labeled in accordance with that paragraph shall be treated as non-deliverable matter by common carriers.

“(c)(1) Each person making delivery sales into a State shall keep a record of all delivery sales so made, organized by State into which such delivery sales are so made.

“(2) Records of delivery sales shall be kept under paragraph (1) in the year in which made and for the next four years.
“(3) Records kept under paragraph (1) shall be made available to tobacco tax administrators of the States in order to ensure the compliance of persons making delivery sales with the requirements of this Act.

“(d) Each State shall have the authority to require any person making a delivery sale of cigarettes into such State—

“(1) to collect or pay the taxes referred to in subsection (a)(3); and

“(2) to provide evidence that the manufacturer of the cigarettes sold in such State is in compliance with all Federal, State, or local laws generally applicable to the sale or distribution of cigarettes.”.

(d) Penalties.—Section 3 of that Act (15 U.S.C. 377) is amended—

(1) by inserting “(a)” before “Whoever”; (2) in subsection (a), as so designated, by striking “shall be guilty of a misdemeanor and shall be fined not more than $1,000, or imprisoned not more than 6 months” and inserting “shall be fined not more than $100,000, imprisoned not more than 2 years”; and

(3) by adding at the end the following new subsection:
“(b)(1) Whoever violates any provision of this Act shall be subject to a civil penalty in an amount not to exceed 2 percent of the gross sales of cigarettes of such person during the one-year period ending on the date of the violation.

“(2) A civil penalty under paragraph (1) for a violation of this Act is in addition to any criminal penalty under subsection (a) for the violation.”.

(e) INJUNCTIONS.—Section 4 of that Act (15 U.S.C. 378) is amended—

(1) by inserting “(a)” before “The United States district courts”; and

(2) by adding at the end the following new subsections:

“(b)(1) A State, through its attorney general, or any person who holds a permit under section 5712 of the Internal Revenue Code of 1986, may bring an action in the United States district courts to prevent and restrain violations of this Act by any person (or by any person controlling such person).

“(2) Nothing in this section shall be construed to prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of State law.

“(c) The Attorney General, acting through the Director of the Bureau of Alcohol, Tobacco, Firearms, and Ex-
plosives, shall administer and enforce the provisions of this Act.”.

SEC. 3. TREATMENT OF CIGARETTES AS NONMAILABLE MATTER.

Section 1716 of title 18, United States Code, is amended—

(1) by redesignating subsection (j) as subsection (k); and

(2) by inserting after subsection (i) the following new subsection (j):

“(j) The transmission in the mails of cigarettes (as that term is defined in section 2341(1) of this title) for purposes of sale is prohibited, and cigarettes for such purposes are nonmailable and shall not be deposited in or carried through the mails.”.

SEC. 4. PENAL PROVISIONS REGARDING TRAFFICKING IN CONTRABAND CIGARETTES.

(a) Threshold Quantity for Treatment as Contraband.—(1) Section 2341(2) of title 18, United States Code, is amended by striking “60,000 cigarettes” and inserting “10,000 cigarettes”.

(2) Section 2342(b) of that title is amended by striking “60,000” and inserting “10,000”.

(3) Section 2343 of that title is amended—
(A) in subsection (a), by striking “60,000” and inserting “10,000”; and

(B) in subsection (b), by striking “60,000” and inserting “10,000”.

(b) RECORDKEEPING, REPORTING, AND INSPECTION.—Section 2343 of that title, as amended by subsection (a)(3) of this section, is further amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking “only—” and inserting “such information as the Attorney General considers appropriate for purposes of enforcement of this chapter, including—”; and

(B) in the flush matter following paragraph (3), by striking the second sentence;

(2) by redesignating subsection (b) as subsection (c);

(3) by inserting after subsection (a) the following new subsection (b):

“(b) Any person who engages in a delivery sale, and who ships, sells, distributes, or receives any quantity in excess of 10,000 cigarettes within a single month, shall submit to the Attorney General, pursuant to rules or regulations prescribed by the Attorney General, a report that sets forth the following:
“(1) The person’s beginning and ending inventory of cigarettes (in total) for such month.

“(2) The total quantity of cigarettes that the person received within such month from each other person (itemized by name and address).

“(3) The total quantity of cigarettes that the person distributed within such month to each person (itemized by name and address) other than a retail purchaser.”; and

(4) by adding at the end the following new subsections:

“(d) Any report required to be submitted under this chapter to the Attorney General shall also be submitted to the Secretary of the Treasury.

“(e) In this section:

“(1) The term ‘delivery sale’ means any sale of cigarettes to a consumer if—

“(A) the consumer submits the order for such sale by means of a telephone or other method of voice transmission, the mails, or the Internet or other online service; or

“(B) the cigarettes are delivered by use of a common carrier.

“(2) The term ‘common carrier’ means any person (other than a local messenger service or the
United States Postal Service (as defined in section 102 of title 39, United States Code)) that holds itself out to the general public as a provider for hire of the transportation by water, land, or air of merchandise, whether or not the person actually operates the vessel, vehicle, or aircraft by which the transportation is provided, between a port or place and a port or place in the United States.”.

(e) Disposal or Use of Forfeited Cigarettes.—Section 2344(c) of that title is amended by striking “seizure and forfeiture,” and all that follows and inserting “seizure and forfeiture, and any cigarettes so seized and forfeited shall be either—

“(1) destroyed and not resold; or

“(2) used for undercover investigative operations for the detection and prosecution of crimes, and then destroyed and not resold.”.

(d) Enforcement.—Section 2346 of that title is amended—

(1) by inserting “(a)” before “The Attorney General”; and

(2) by adding at the end the following new subsection:

“(b) A State, through its attorney general, or any person who holds a permit under section 5712 of the In-
ternal Revenue Code of 1986, may bring an action in the United States district courts to prevent and restrain violations of this chapter by any person (or by any person controlling such person).”.

(e) CONFORMING AND CLERICAL AMENDMENTS.—

(1) The section heading for section 2343 of that title is amended to read as follows:

“§ 2343. Recordkeeping, reporting, and inspection”.

(2) The table of sections at the beginning of chapter 114 of that title is amended by striking the item relating to section 2343 and inserting the following new item:

“2343. Recordkeeping, reporting, and inspection.”.

SEC. 5. COMPLIANCE WITH MODEL STATUTE OR QUALIFYING STATUTE.

(a) IN GENERAL.—An interstate tobacco seller may not sell in, deliver to, or place for delivery to a State that is a party to the Master Settlement Agreement any cigarette manufactured by a Tobacco Product Manufacturer that is not in full compliance with the terms of the Model Statute or Qualifying Statute enacted by such State requiring funds to be placed into a qualified escrow account under specified conditions, or any regulations promulgated pursuant to such statute.

(b) PENALTIES.—(1) Whoever shall knowingly and willfully violate subsection (a) shall be fined not more than $100,000, imprisoned not more than 2 years, or both.
(2) Whoever shall violate subsection (a) shall be subject to a civil penalty in an amount not to exceed 2 percent of the gross sales of cigarettes of such person during the one-year period ending on the date of the violation.

(3) A civil penalty under paragraph (2) for a violation of subsection (a) is in addition to any criminal penalty under paragraph (1) for the violation.

(c) JURISDICTION TO PREVENT AND RESTRAIN VIOLATIONS.—(1) The United States district courts shall have jurisdiction to prevent and restrain violations of subsection (a).

(2) A State, through its attorney general, or any person who holds a permit under section 5712 of the Internal Revenue Code of 1986, may bring an action in the United States district courts to prevent and restrain violations of subsection (a) by any person (or by any person controlling such person).

(3) Nothing in this subsection shall be construed to prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of State law.

(4) The Attorney General, acting through the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, shall administer and enforce subsection (a).

(d) DEFINITIONS.—In this section:
(1) MASTER SETTLEMENT AGREEMENT.— The term “Master Settlement Agreement” means the agreement executed November 23, 1998, by the Attorneys General of 46 States, the District of Columbia, the Commonwealth of Puerto Rico, and four Territories of the United States, on the one hand, and certain tobacco manufacturers on the other hand.

(2) TOBACCO PRODUCT MANUFACTURER.—The term “Tobacco Product Manufacturer” has the meaning given that term in section II(uu) of the Master Settlement Agreement.

(3) MODEL STATUTE; QUALIFYING STATUTE.— The terms “Model Statute” and “Qualifying Statute” means a statute as defined in section IX(d)(2)(e) of the Master Settlement Agreement.

SEC. 6. UNDERCOVER CRIMINAL INVESTIGATIONS OF THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES.

(a) IN GENERAL.—(1) Commencing as of the date of the enactment of this Act and without fiscal year limitation, the authorities in section 102(b) of the Department of Justice and Related Agencies Appropriations Act, 1993 (title I of Public Law 102–395; 106 Stat. 1838) shall be available to the Bureau of Alcohol, Tobacco, Firearms,
and Explosives for undercover investigative operations of
the Bureau which are necessary for the detection and
prosecution of crimes against the United States.

(2) For purposes of the exercise of the authorities
referred to in paragraph (1) by the Bureau, a reference
in such section 102(b) to the Federal Bureau of Investiga-
tion shall be deemed to be a reference to the Bureau of
Alcohol, Tobacco, Firearms, and Explosives, and a ref-
erence to the Director of the Federal Bureau of Investiga-
tion shall be deemed to be a reference to the Director of
the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

(b) LIMITATIONS IN APPROPRIATIONS ACTS.—The
exercise of the authorities referred to in subsection (a)(1)
by the Bureau of Alcohol, Tobacco, Firearms, and Explos-
sives shall be subject to the provisions of appropriations
Acts.

SEC. 7. INSPECTION BY BUREAU OF ALCOHOL, TOBACCO,
FIREARMS, AND EXPLOSIVES OF RECORDS
OF CERTAIN CIGARETTE SELLERS.

(a) IN GENERAL.—Any officer of the Bureau of Alco-
hol, Tobacco, Firearms and Explosives may, during nor-
mal business hours, enter the premises of any person de-
scribed in subsection (b) for the purposes of inspecting—
(1) any records or information required to be
maintained by such person under the provisions of
law referred to in subsection (c); or
(2) any cigarettes kept or stored by such person
at such premises.

(b) COVERED PERSONS.—A person described in this
subsection is any person who engages in a delivery sale,
and who ships, sells, distributes, or receives any quantity
in excess of 10,000 cigarettes within a single month.

(c) COVERED PROVISIONS OF LAW.—The provisions
of law referred to in this subsection are as follows:
375; commonly referred to as the “Jenkins Act”).
(2) Chapter 114 of title 18, United States
Code.
(3) This Act.

(d) DELIVERY SALE DEFINED.—In this section, the
term “delivery sale” has the meaning given that term in
2343(c)(1) of title 18, United States Code, as amended
by section 4(b)(3) of this Act.

SEC. 8. EFFECTIVE DATE.
(a) IN GENERAL.—Except as provided in subsection
(b), this Act shall take effect 90 days after the date of
the enactment of this Act.
(b) ATFE AUTHORITY.—
(1) IN GENERAL.—Sections 6 and 7 shall take effect on the date of the enactment of this Act.

(2) DEFINITION.—For purposes of section 7, the definition of delivery sale in section 2343(e)(1) of title 18, United States Code, as amended by section 4(b)(3) of this Act, shall take effect on the date of the enactment of this Act.