H. R. 4081

To prevent tobacco smuggling, to ensure the collection of all tobacco taxes, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

November 5, 2007

Mr. Weiner introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To prevent tobacco smuggling, to ensure the collection of all tobacco 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; FINDINGS; PURPOSES.

(a) SHORT TITLE.—This Act may be cited as the “Prevent All Cigarette Trafficking Act of 2007” or “PACT Act”.

(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, make 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 has 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 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.

SEC. 2. COLLECTION OF STATE CIGARETTE AND SMOKELESS TOBACCO TAXES.

(a) DEFINITIONS.—The Act of October 19, 1949 (15 U.S.C. 375 et seq.; commonly referred to as the “Jenkins Act”) (referred to in this Act as the “Jenkins Act”), is amended by striking the first section and inserting the following:

“SEC. 1. DEFINITIONS.

“As used in this Act, the following definitions apply:

“(1) ATTORNEY GENERAL.—The term ‘attorney general’, with respect to a State, means the attorney general or other chief law enforcement officer of the State, or the designee of that officer.

“(2) CIGARETTE.—

“(A) IN GENERAL.—For purposes of this Act, the term ‘cigarette’ shall—
“(i) have the same meaning given that term in section 2341 of title 18, United States Code; and

“(ii) include ‘roll-your-own tobacco’ (as that term is defined in section 5702 of the Internal Revenue Code of 1986).

“(B) EXCEPTION.—For purposes of this Act, the term ‘cigarette’ does not include a ‘cigar,’ as that term is defined in section 5702 of the Internal Revenue Code of 1986.

“(3) COMMON CARRIER.—The term ‘common carrier’ means any person (other than a local messenger service or the United States Postal Service) 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.

“(4) CONSUMER.—The term ‘consumer’ means any person that purchases cigarettes or smokeless tobacco, but does not include any person lawfully operating as a manufacturer, distributor, wholesaler, or retailer of cigarettes or smokeless tobacco.
“(5) Delivery sale.—The term ‘delivery sale’ means any sale of cigarettes or smokeless tobacco 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 the seller is otherwise not in the physical presence of the buyer when the request for purchase or order is made; or

“(B) the cigarettes or smokeless tobacco are delivered by use of a common carrier, private delivery service, or the mails, or the seller is not in the physical presence of the buyer when the buyer obtains possession of the cigarettes or smokeless tobacco.

“(6) Delivery seller.—The term ‘delivery seller’ means a person who makes a delivery sale.

“(7) Indian country.—The term ‘Indian country’ has the meaning given that term in section 1151 of title 18, United States Code, except that within the State of Alaska that term applies only to the Metlakatla Indian Community, Annette Island Reserve.
“(8) Indian Tribe.—The term ‘Indian tribe’, ‘tribe’, or ‘tribal’ refers to an Indian tribe as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) or as listed pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a–1).

“(9) Interstate Commerce.—The term ‘interstate commerce’ means commerce between a State and any place outside the State, commerce between a State and any Indian country in the State, or commerce between points in the same State but through any place outside the State or through any Indian country.

“(10) Person.—The term ‘person’ means an individual, corporation, company, association, firm, partnership, society, State government, local government, Indian tribal government, governmental organization of such government, or joint stock company.

“(11) State.—The term ‘State’ means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

“(12) Smokeless Tobacco.—The term ‘smokeless tobacco’ means any finely cut, ground,
powdered, or leaf tobacco, or other product containing tobacco, that is intended to be placed in the oral or nasal cavity or otherwise consumed without being combusted.

“(13) TOBACCO TAX ADMINISTRATOR.—The term ‘tobacco tax administrator’ means the State, local, or tribal official duly authorized to collect the tobacco tax or administer the tax law of a State, locality, or tribe, respectively.

“(14) USE.—The term ‘use’, in addition to its ordinary meaning, means the consumption, storage, handling, or disposal of cigarettes or smokeless tobacco.”.

(b) REPORTS TO STATE TOBACCO TAX ADMINISTRATORS.—Section 2 of the Jenkins Act (15 U.S.C. 376) is amended—

(1) by striking “cigarettes” each place it appears and inserting “cigarettes or smokeless tobacco”; 

(2) in subsection (a)—

(A) in the matter preceding paragraph (1)—

(i) by inserting “CONTENTS.—” after “(a)”
(ii) by striking “or transfers” and inserting “, transfers, or ships”;

(iii) by inserting “, locality, or Indian country of an Indian tribe” after “a State”;

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

(v) by striking “or transfer and shipment” and inserting “, transfer, or shipment”;

(B) in paragraph (1)—

(i) by striking “with the tobacco tax administrator of the State” and inserting “with the Attorney General of the United States and with the tobacco tax administrators of the State and place”; and

(ii) by striking “; and” and inserting the following: “, 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 such person;”;

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(C) in paragraph (2), by striking “and the quantity thereof.” and inserting “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”; and

(D) by adding at the end the following:

“(3) with respect to each memorandum or invoice filed with a State under paragraph (2), also file copies of such 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.”;

(3) in subsection (b)—

(A) by inserting “Presumptive Evidence.—” after “(b)”; 

(B) by striking “(1) that” and inserting “that”; and

(C) by striking “, and (2)” and all that follows and inserting a period; and

(4) by adding at the end the following:
“(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 such memorandum or invoice solely for the purposes of the enforcement of this Act and the collection of any taxes owed on related sales of cigarettes and smokeless tobacco, and shall keep confidential any personal information in such memorandum or invoice not otherwise required for such purposes.”.

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

“SEC. 2A. 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 such 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/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
nondeliverable matter by a common carrier or other
delivery service, if the common carrier or other deliv-
ery service knows or should know the package con-
tains cigarettes or smokeless tobacco. If a common
carrier or other delivery service believes a package is
being submitted for delivery in violation of para-
graph (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 con-
tents.

“(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.—Notwithstanding any
other provision of law, a delivery seller who
mails or ships tobacco products—

“(i) shall not sell, deliver, or cause to
be delivered any tobacco products to a per-
son under the minimum age required for
the legal sale or purchase of tobacco prod-
ucts, 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 appli-
cable 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 ac-
cept delivery of the shipping container
to provide proof, in the form of a
valid, government-issued identification
bearing a photograph of the indi-
vidual, 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 2(a)(2), organized by the State, and within such State, by the city or town and by zip code, into which such delivery sale is so made.

“(2) RECORD RETENTION.—Records of a delivery sale shall be kept as described in paragraph (1) in the year in which the delivery sale is made and for the next 4 years.

“(3) ACCESS FOR OFFICIALS.—Records kept under paragraph (1) shall be made available to tobacco tax administrators of the States, to local governments and Indian tribes that apply their own local or tribal taxes on cigarettes or smokeless tobacco, to the attorneys general of the States, to the chief law enforcement officers of such local governments and Indian tribes, and to the Attorney General of the United States in order to ensure the compliance of persons making delivery sales with the requirements of this Act.

“(d) DELIVERY.—

“(1) IN GENERAL.—Except as provided in paragraph (2), no delivery seller may sell or deliver to any consumer, or tender to any common carrier or
other delivery service, any cigarettes or smokeless to-

bacco pursuant to a delivery sale unless, in advance

of the sale, delivery, or tender—

“(A) any cigarette or smokeless tobacco ex-
cise tax that is imposed by the State in which

the cigarettes or smokeless tobacco are to be
delivered has been paid to the State;

“(B) any cigarette or smokeless tobacco
excise tax that is imposed by the local govern-

ment of the place in which the cigarettes or
smokeless tobacco are to be delivered has been
paid to the local government; and

“(C) any required stamps or other indicia
that such excise tax has been paid are properly

affixed or applied to the cigarettes or smokeless
tobacco.

“(2) EXCEPTION.—Paragraph (1) does not
apply to a delivery sale of smokeless tobacco if the
law of the State or local government of the place
where the smokeless tobacco is to be delivered re-
quires or otherwise provides that delivery sellers col-
lect the excise tax from the consumer and remit the
excise tax to the State or local government, and the
delivery seller complies with the requirement.
“(e) List of Unregistered or Noncompliant Delivery Sellers.—

“(1) In general.—

“(A) Initial list.—Not later than 90 days after this subsection goes into effect under the Prevent All Cigarette Trafficking Act of 2007, the Attorney General of the United States shall compile a list of delivery sellers of cigarettes or smokeless tobacco that have not registered with the Attorney General, pursuant to section 2(a) or that are otherwise not in compliance with this Act, and—

“(i) distribute the list to—

“(I) the attorney general and tax administrator of every State;

“(II) common carriers and other persons that deliver small packages to consumers in interstate commerce, including the United States Postal Service; and

“(III) at the discretion of the Attorney General of the United States, to any other persons; and

“(ii) publicize and make the list available to any other person engaged in the
business of interstate deliveries or who de-

delivers cigarettes or smokeless tobacco in or

into any State.

“(B) LIST CONTENTS.—To the extent

known, the Attorney General of the United

States shall include, for each delivery seller on

the list described in subparagraph (A)—

“(i) all names the delivery seller uses

in the transaction of its business or on

packages delivered to customers;

“(ii) all addresses from which the de-

livery seller does business or ships ciga-

rettes or smokeless tobacco;

“(iii) the website addresses, primary

e-mail address, and phone number of the
delivery seller; and

“(iv) any other information that the

Attorney General determines would facili-
tate compliance with this subsection by re-
cipients of the list.

“(C) UPDATING.—The Attorney General of

the United States shall update and distribute

the list at least once every 4 months, and may
distribute the list and any updates by regular
mail, electronic mail, or any other reasonable
means, or by providing recipients with access to the list through a nonpublic website that the Attorney General of the United States regularly updates.

“(D) State, local, or tribal additions.—The Attorney General of the United States shall include in the list under subparagraph (A) any noncomplying delivery sellers identified by any State, local, or tribal government under paragraph (5), and shall distribute the list to the attorney general or chief law enforcement official and the tax administrator of any government submitting any such information and to any common carriers or other persons who deliver small packages to consumers identified by any government pursuant to paragraph (5).

“(E) Confidentiality.—The list distributed pursuant to subparagraph (A) shall be confidential, and any person receiving the list shall maintain the confidentiality of the list but may deliver the list, for enforcement purposes, to any government official or to any common carrier or other person that delivers tobacco products or small packages to consumers. Noth-
ing in this section shall prohibit a common carrier, the United States Postal Service, or any other person receiving the list from discussing with the listed delivery sellers the delivery sellers’ inclusion on the list and the resulting effects on any services requested by such listed delivery seller.

“(2) PROHIBITION ON DELIVERY.—

“(A) IN GENERAL.—Commencing on the date that is 60 days after the date of the initial distribution or availability of the list under paragraph (1)(A), no person who receives the list under paragraph (1), and no person who delivers cigarettes or smokeless tobacco to consumers, shall knowingly complete, cause to be completed, or complete its portion of a delivery of any package for any person whose name and address are on the list, unless—

“(i) the person making the delivery knows or believes in good faith that the item does not include cigarettes or smokeless tobacco; 

“(ii) the delivery is made to a person lawfully engaged in the business of manu-

•HR 4081 IH
facturing, distributing, or selling cigarettes
or smokeless tobacco; or

“(iii) the package being delivered
weighs more than 100 pounds and the per-
son making the delivery does not know or
have reasonable cause to believe that the
package contains cigarettes or smokeless
tobacco.

“(B) Implementation of Updates.—
Commencing on the date that is 30 days after
the date of the distribution or availability of
any updates or corrections to the list under
paragraph (1), all recipients and all common
carriers or other persons that deliver cigarettes
or smokeless tobacco to consumers shall be sub-
ject to subparagraph (A) in regard to such cor-
rections or updates.

“(3) Shipments from Persons on List.—

“(A) In General.—In the event that a
common carrier or other delivery service delays
or interrupts the delivery of a package it has in
its possession because it determines or has rea-
son to believe that the person ordering the de-
livery is on a list distributed under paragraph
(1)—
“(i) the person ordering the delivery shall be obligated to pay—

“(I) the common carrier or other delivery service as if the delivery of the package had been timely completed; and

“(II) if the package is not deliverable, any reasonable additional fee or charge levied by the common carrier or other delivery service to cover its extra costs and inconvenience and to serve as a disincentive against such noncomplying delivery orders; and

“(ii) if the package is determined not to be deliverable, the common carrier or other delivery service shall, in its discretion, either provide the package and its contents to a Federal, State, or local law enforcement agency or destroy the package and its contents.

“(B) RECORDS.—A common carrier or other delivery service shall maintain, for a period of 5 years, any records kept in the ordinary course of business relating to any deliveries interrupted pursuant to this paragraph
and provide that information, upon request, to
the Attorney General of the United States or to
the attorney general or chief law enforcement
official or tax administrator of any State, local,
or tribal government.

“(C) CONFIDENTIALITY.—Any person re-
ceiving records under subparagraph (B) shall
use such records solely for the purposes of the
enforcement of this Act and the collection of
any taxes owed on related sales of cigarettes
and smokeless tobacco, and the person receiving
records under subparagraph (B) shall keep con-
fidential any personal information in such
records not otherwise required for such pur-
poses.

“(4) PREEMPTION.—

“(A) IN GENERAL.—No State, local, or
tribal government, nor any political authority of
2 or more State, local, or tribal governments,
may enact or enforce any law or regulation re-
lating to delivery sales that restricts deliveries
of cigarettes or smokeless tobacco to consumers
by common carriers or other delivery services
on behalf of delivery sellers by—
“(i) requiring that the common carrier or other delivery service verify the age or identity of the consumer accepting the delivery by requiring 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 such person is at least the minimum age required for the legal sale or purchase of tobacco products, as determined by either State or local law at the place of delivery;

“(ii) requiring that the common carrier or other delivery service obtain a signature from the consumer accepting the delivery;

“(iii) requiring that the common carrier or other delivery service verify that all applicable taxes have been paid;

“(iv) requiring that packages delivered by the common carrier or other delivery service contain any particular labels, notice, or markings; or

“(v) prohibiting common carriers or other delivery services from making deliv-
eries on the basis of whether the delivery seller is or is not identified on any list of delivery sellers maintained and distributed by any entity other than the Federal Government.

“(B) Relationship to Other Laws.—Nothing in this paragraph shall be construed to prohibit, expand, restrict, or otherwise amend or modify—

“(i) section 14501(c)(1) or 41713(b)(4) of title 49, United States Code;

“(ii) any other restrictions in Federal law on the ability of State, local, or tribal governments to regulate common carriers;

or

“(iii) any provision of State, local, or tribal law regulating common carriers that falls within the provisions of chapter 49 of the United States Code, sections 14501(c)(2) or 41713(b)(4)(B).

“(C) State Laws Prohibiting Delivery Sales.—Nothing in the Prevent All Cigarette Trafficking Act of 2007, or the amendments made by that Act, may be construed to preempt
or supersede State laws prohibiting the delivery
sale, or the shipment or delivery pursuant to a
delivery sale, of cigarettes or smokeless tobacco
to individual consumers.

“(5) State, local, and tribal additions.—

“(A) In general.—Any State, local, or
tribal government shall provide the Attorney
General of the United States with—

“(i) all known names, addresses,
website addresses, and other primary con-
tact information of any delivery seller that
offers for sale or makes sales of cigarettes
or smokeless tobacco in or into the State,
locality, or tribal land but has failed to
register with or make reports to the re-
spective tax administrator, as required by
this Act, or that has been found in a legal
proceeding to have otherwise failed to com-
ply with this Act; and

“(ii) a list of common carriers and
other persons who make deliveries of ciga-
rettes or smokeless tobacco in or into the
State, locality, or tribal lands.

“(B) Updates.—Any government pro-
viding a list to the Attorney General of the
United States under subparagraph (A) shall also provide updates and corrections every 4 months until such time as such government notifies the Attorney General of the United States in writing that such government no longer desires to submit such information to supplement the list maintained and distributed by the Attorney General of the United States under paragraph (1).

“(C) REMOVAL AFTER WITHDRAWAL.—
Upon receiving written notice that a government no longer desires to submit information under subparagraph (A), the Attorney General of the United States shall remove from the list under paragraph (1) any persons that are on the list solely because of such government’s prior submissions of its list of noncomplying delivery sellers of cigarettes or smokeless tobacco or its subsequent updates and corrections.

“(6) DEADLINE TO INCORPORATE ADDITIONS.—The Attorney General of the United States shall—

“(A) include any delivery seller identified and submitted by a State, local, or tribal government under paragraph (5) in any list or up-
date that is distributed or made available under paragraph (1) on or after the date that is 30 days after the date on which the information is received by the Attorney General of the United States; and

“(B) distribute any such list or update to any common carrier or other person who makes deliveries of cigarettes or smokeless tobacco that has been identified and submitted by another government, pursuant to paragraph (5).

“(7) NOTICE TO DELIVERY SELLERS.—Not later than 14 days prior to including any delivery seller on the initial list distributed or made available under paragraph (1), or on any subsequent list or update for the first time, the Attorney General of the United States shall make a reasonable attempt to send notice to the delivery seller by letter, electronic mail, or other means that the delivery seller is being placed on such list or update, with that notice citing the relevant provisions of this Act.

“(8) LIMITATIONS.—

“(A) IN GENERAL.—Any common carrier or other person making a delivery subject to this subsection shall not be required or otherwise obligated to—
“(i) determine whether any list distributed or made available under paragraph (1) is complete, accurate, or up-to-date;

“(ii) determine whether a person ordering a delivery is in compliance with this Act; or

“(iii) open or inspect, pursuant to this Act, any package being delivered to determine its contents.

“(B) ALTERNATE NAMES.—Any common carrier or other person making a delivery subject to this subsection shall not be required or otherwise obligated to make any inquiries or otherwise determine whether a person ordering a delivery is a delivery seller on the list under paragraph (1) who is using a different name or address in order to evade the related delivery restrictions, but shall not knowingly deliver any packages to consumers for any such delivery seller who the common carrier or other delivery service knows is a delivery seller who is on the list under paragraph (1) but is using a different name or address to evade the delivery restrictions of paragraph (2).
“(C) PENALTIES.—Any common carrier or person in the business of delivering packages on behalf of other persons shall not be subject to any penalty under section 14101(a) of title 49, United States Code, or any other provision of law for—

“(i) not making any specific delivery, or any deliveries at all, on behalf of any person on the list under paragraph (1);

“(ii) not, as a matter of regular practice and procedure, making any deliveries, or any deliveries in certain States, of any cigarettes or smokeless tobacco for any person or for any person not in the business of manufacturing, distributing, or selling cigarettes or smokeless tobacco; or

“(iii) delaying or not making a delivery for any person because of reasonable efforts to comply with this Act.

“(D) OTHER LIMITS.—Section 2 and subsections (a), (b), (c), and (d) of this section shall not be interpreted to impose any responsibilities, requirements, or liability on common carriers.
“(f) Presumption.—For purposes of this Act, a delivery sale shall be deemed to have occurred in the State and place where the buyer obtains personal possession of the cigarettes or smokeless tobacco, and a delivery pursuant to a delivery sale is deemed to have been initiated or ordered by the delivery seller.”.

(d) Penalties.—The Jenkins Act is amended by striking section 3 and inserting the following:

“Sec. 3. Penalties.

“(a) Criminal Penalties.—

“(1) In general.—Except as provided in paragraph (2), whoever violates any provision of this Act shall be guilty of a felony and shall be imprisoned not more than 3 years, fined under title 18, United States Code, or both.

“(2) Exceptions.—

“(A) Governments.—Paragraph (1) shall not apply to a State, local, or tribal government.

“(B) Delivery violations.—A common carrier or independent delivery service, or employee of a common carrier or independent delivery service, shall be subject to criminal penalties under paragraph (1) for a violation of
section 2A(e) only if the violation is committed intentionally—

“(i) as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value; or

“(ii) for the purpose of assisting a delivery seller to violate, or otherwise evading compliance with, section 2A.

“(b) Civil Penalties.—

“(1) In general.—Except as provided in paragraph (3), whoever violates any provision of this Act shall be subject to a civil penalty in an amount not to exceed—

“(A) in the case of a delivery seller, the greater of—

“(i) $5,000 in the case of the first violation, or $10,000 for any other violation; or

“(ii) for any violation, 2 percent of the gross sales of cigarettes or smokeless tobacco of such person during the 1-year period ending on the date of the violation.

“(B) in the case of a common carrier or other delivery service, $2,500 in the case of a
first violation, or $5,000 for any violation with-

in 1 year of a prior violation.

“(2) Relation to other penalties.—A civil
penalty under paragraph (1) for a violation of this
Act shall be imposed in addition to any criminal
penalty under subsection (a) and any other damages,
equitable relief, or injunctive relief awarded by the
court, including the payment of any unpaid taxes to
the appropriate Federal, State, local, or tribal gov-
ernments.

“(3) Exceptions.—

“(A) Delivery violations.—An em-
ployee of a common carrier or independent de-
ivery service shall be subject to civil penalties
under paragraph (1) for a violation of section
2A(e) only if the violation is committed inten-
tionally—

“(i) as consideration for the receipt
of, or as consideration for a promise or
agreement to pay, anything of pecuniary
value; or

“(ii) for the purpose of assisting a de-
livery seller to violate, or otherwise evading
compliance with, section 2A.
“(B) OTHER LIMITATIONS.—No common carrier or independent delivery service shall be subject to civil penalties under paragraph (1) for a violation of section 2A(e) if—

“(i) the common carrier or independent delivery service has implemented and enforces effective policies and practices for complying with that section; or

“(ii) an employee of the common carrier or independent delivery service who physically receives and processes orders, picks up packages, processes packages, or makes deliveries, takes actions that are outside the scope of employment of the employee in the course of the violation, or that violate the implemented and enforced policies of the common carrier or independent delivery service described in clause (i).”.

(e) ENFORCEMENT.—The Jenkins Act is amended by striking section 4 and inserting the following:

“SEC. 4. ENFORCEMENT.

“(a) IN GENERAL.—The United States district courts shall have jurisdiction to prevent and restrain violations of this Act and to provide other appropriate injunc-
tive or equitable relief, including money damages, for such
violations.

“(b) AUTHORITY OF THE ATTORNEY GENERAL.—
The Attorney General of the United States shall admin-
ister and enforce the provisions of this Act.

“(c) STATE, LOCAL, AND TRIBAL ENFORCEMENT.—

“(1) IN GENERAL.—

“(A) STANDING.—A State, through its at-
torney general (or a designee thereof), or a
local government or Indian tribe that levies a
tax subject to section 2A(a)(3), through its
chief law enforcement officer (or a designee
thereof), may bring an action in a United
States district court to prevent and restrain vio-
lations of this Act by any person (or by any
person controlling such person) or to obtain any
other appropriate relief from any person (or
from any person controlling such person) for
violations of this Act, including civil penalties,
money damages, and injunctive or other equi-
table relief.

“(B) SOVEREIGN IMMUNITY.—Nothing in
this Act shall be deemed to abrogate or con-
stitute a waiver of any sovereign immunity of a
State or local government or Indian tribe
against any unconsented lawsuit under this Act,
or otherwise to restrict, expand, or modify any
sovereign immunity of a State or local govern-
ment or Indian tribe.

“(2) Provision of Information.—A State,
through its attorney general, or a local government
or Indian tribe that levies a tax subject to section
2A(a)(3), through its chief law enforcement officer
(or a designee thereof), may provide evidence of a
violation of this Act by any person not subject to
State, local, or tribal government enforcement ac-
tions for violations of this Act to the Attorney Gen-
eral of the United States or a United States attor-
ney, who shall take appropriate actions to enforce
the provisions of this Act.

“(3) Use of Penalties Collected.—
“(A) In General.—There is established a
separate account in the Treasury known as the
‘PACT Anti-Trafficking Fund’. Notwith-
standing any other provision of law and subject
to subparagraph (B), an amount equal to 50
percent of any criminal and civil penalties col-
lected by the United States Government in en-
forcing the provisions of this Act shall be trans-
ferred into the PACT Anti-Trafficking Fund
and shall be available to the Attorney General of the United States for purposes of enforcing the provisions of this Act and other laws relating to contraband tobacco products.

“(B) ALLOCATION OF FUNDS.—Of the amount available to the Attorney General under subparagraph (A), not less than 50 percent shall be made available only to the agencies and offices within the Department of Justice that were responsible for the enforcement actions in which the penalties concerned were imposed or for any underlying investigations.

“(4) NONEXCLUSIVITY OF REMEDY.—

“(A) IN GENERAL.—The remedies available under this section and section 3 are in addition to any other remedies available under Federal, State, local, tribal, or other law.

“(B) STATE COURT PROCEEDINGS.—Nothing in this Act shall be construed to expand, restrict, or otherwise modify any right of an authorized State official to proceed in State court, or take other enforcement actions, on the basis of an alleged violation of State or other law.

“(C) TRIBAL COURT PROCEEDINGS.—Nothing in this Act shall be construed to ex-
expand, restrict, or otherwise modify any right of
an authorized Indian tribal government official
to proceed in tribal court, or take other enforce-
ment actions, on the basis of an alleged viola-
tion of tribal law.

“(D) Local Government Enforcement.—Nothing in this Act shall be construed
to expand, restrict, or otherwise modify any
right of an authorized local government official
to proceed in State court, or take other enforce-
ment actions, on the basis of an alleged viola-
tion of local or other law.

“(d) Persons Dealing in Tobacco Products.—
Any person who holds a permit under section 5712 of the
Internal Revenue Code of 1986 (regarding permitting of
manufacturers and importers of tobacco products and ex-
port warehouse proprietors) may bring an action in a
United States district court to prevent and restrain viola-
tions of this Act by any person (or by any person control-
ing such person) other than a State, local, or tribal gov-
ernment.

“(e) Notice.—

“(1) Persons dealing in tobacco prod-
ucts.—Any person who commences a civil action
under subsection (d) shall inform the Attorney General of the United States of the action.

“(2) State, local, and tribal actions.—It is the sense of Congress that the attorney general of any State, or chief law enforcement officer of any locality or tribe, that commences a civil action under this section should inform the Attorney General of the United States of the action.

“(f) Public Notice.—

“(1) In general.—The Attorney General of the United States shall make available to the public, by posting such information on the Internet and by other appropriate means, information regarding all enforcement actions undertaken by the Attorney General or United States attorneys, or reported to the Attorney General, under this section, including information regarding the resolution of such actions and how the Attorney General and the United States attorney have responded to referrals of evidence of violations pursuant to subsection (c)(2).

“(2) Reports to Congress.—The Attorney General shall submit to Congress each year a report containing the information described in paragraph (1).”
SEC. 3. TREATMENT OF CIGARETTES AND SMOKELESS TOBACCO AS NONMAILABLE MATTER.

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

(1) by redesignating subsections (j) and (k) as subsections (k) and (l), respectively; and

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

“(j) TOBACCO PRODUCTS.—

“(1) Prohibition.—

“(A) In general.—Except as provided in subparagraphs (C) and (D), all cigarettes (as that term is defined in section 1(2) of the Act of October 19, 1949 (15 U.S.C. 375; commonly referred to as the ‘Jenkins Act’)) and smokeless tobacco (as that term is defined in section 1(12) of that Act), are nonmailable and shall not be deposited in or carried through the mails. The United States Postal Service shall not accept for delivery or transmit through the mails any package that it knows or has reasonable cause to believe contains any cigarettes or smokeless tobacco made nonmailable by this subsection.

“(B) Reasonable cause to believe.—

For purposes of this section, notification to the
United States Postal Service by the Attorney
General, a United States attorney, or a State
Attorney General that an individual or entity is
primarily engaged in the business of transmit-
ting cigarettes or smokeless tobacco made non-
mailable by this section shall constitute reason-
able cause to believe that any packages pre-
sent to the United States Postal Service by
such individual or entity contain nonmailable
cigarettes or smokeless tobacco.

“(C) Cigars.—Subparagraph (A) shall not
apply to cigars (as that term is defined in sec-
tion 5702(a) of the Internal Revenue Code of
1986).

“(D) Geographic Exception.—Subpara-
graph (A) shall not apply to mailings within or
into any State that is not contiguous with at
least 1 other State of the United States. For
purposes of this paragraph, ‘State’ means any
of the 50 States or the District of Columbia.

“(2) Packaging Exceptions Inapplicable.—
Subsection (b) shall not apply to any tobacco prod-
uct made nonmailable by this subsection.

“(3) Seizure and Forfeiture.—Any ciga-
rettes or smokeless tobacco made nonmailable by
this subsection that are deposited in the mails shall be subject to seizure and forfeiture, and any tobacco products so seized and forfeited shall either be destroyed or retained by Government officials for the detection or prosecution of crimes or related investigations and then destroyed.

“(4) ADDITIONAL PENALTIES.—In addition to any other fines and penalties imposed by this chapter for violations of this section, any person violating this subsection shall be subject to an additional penalty in the amount of 10 times the retail value of the nonmailable cigarettes or smokeless tobacco, including all Federal, State, and local taxes.

“(5) USE OF PENALTIES.—There is established a separate account in the Treasury known as the ‘PACT Postal Service Fund’. Notwithstanding any other provision of law, an amount equal to 50 percent of any criminal and civil fines or monetary penalties collected by the United States Government in enforcing the provisions of this subsection shall be transferred into the PACT Postal Service Fund and shall be available to the Postmaster General for the purpose of enforcing the provisions of this subsection.”.
SEC. 4. COMPLIANCE WITH MODEL STATUTE OR QUALIFYING STATUTE.

(a) IN GENERAL.—A Tobacco Product Manufacturer or importer may not sell in, deliver to, or place for delivery sale, or cause to be sold in, delivered to, or placed for delivery sale in 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) JURISDICTION TO PREVENT AND RESTRRAIN VIOLATIONS.—

(1) IN GENERAL.—The United States district courts shall have jurisdiction to prevent and restrain violations of subsection (a) in accordance with this subsection.

(2) INITIATION OF ACTION.—A State, through its attorney general, 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) ATTORNEY FEES.—In any action under paragraph (2), a State, through its attorney general, shall be entitled to reasonable attorney fees from a
person found to have willfully and knowingly violated subsection (a).

(4) NONEXCLUSIVITY OF REMEDIES.—The remedy available under paragraph (2) is in addition to any other remedies available under Federal, State, or other law. No provision of this Act or any other Federal law shall be held or construed to prohibit or preempt the Master Settlement Agreement, the Model Statute (as defined in the Master Settlement Agreement), any legislation amending or complementary to the Model Statute in effect as of June 1, 2006, or any legislation substantially similar to such existing, amending, or complementary legislation hereinafter enacted.

(5) OTHER ENFORCEMENT ACTIONS.—Nothing in this subsection shall be construed to prohibit an authorized State official from proceeding in State court or taking other enforcement actions on the basis of an alleged violation of State or other law.

(6) AUTHORITY OF THE ATTORNEY GENERAL.—The Attorney General of the United States may administer and enforce subsection (a).

(e) DEFINITIONS.—In this section the following definitions apply:
(1) **Delivery Sale.**—The term “delivery sale” means any sale of cigarettes or smokeless tobacco 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 the seller is otherwise not in the physical presence of the buyer when the request for purchase or order is made; or

(B) the cigarettes or smokeless tobacco are delivered by use of a common carrier, private delivery service, or the mails, or the seller is not in the physical presence of the buyer when the buyer obtains possession of the cigarettes or smokeless tobacco.

(2) **Importer.**—The term “importer” means each of the following:

(A) **Shipping or Consigning.**—Any person in the United States to whom nontaxpaid tobacco products manufactured in a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States are shipped or consigned.
(B) MANUFACTURING WAREHOUSES.—Any person who removes cigars or cigarettes for sale or consumption in the United States from a customs-bonded manufacturing warehouse.

(C) UNLAWFUL IMPORTING.—Any person who smuggles or otherwise unlawfully brings tobacco products into the United States.

(3) MASTER SETTLEMENT AGREEMENT.—The term “Master Settlement Agreement” means the agreement executed November 23, 1998, between the attorneys general of 46 States, the District of Columbia, the Commonwealth of Puerto Rico, and 4 territories of the United States and certain tobacco manufacturers.

(4) 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.

(5) TOBACCO PRODUCT MANUFACTURER.—The term “Tobacco Product Manufacturer” has the meaning given that term in section II(uu) of the Master Settlement Agreement.
SEC. 5. INSPECTION BY BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES OF RECORDS OF CERTAIN CIGARETTE AND SMOKELESS TOBACCO SELLERS.

(a) IN GENERAL.—Any officer of the Bureau of Alcohol, Tobacco, Firearms, and Explosives may, during normal business hours, enter the premises of any person described 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 (d); or

2. any cigarettes or smokeless tobacco kept or stored by such person at such premises.

(b) COVERED PERSONS.—Subsection (a) applies to any person who engages in a delivery sale, and who ships, sells, distributes, or receives any quantity in excess of 10,000 cigarettes, or any quantity in excess of 500 single-unit consumer-sized cans or packages of smokeless tobacco, within a single month.

(c) RELIEF.—

1. IN GENERAL.—The district courts of the United States shall have the authority in a civil action under this subsection to compel inspections authorized by subsection (a).

2. VIOLATIONS.—Whoever violates subsection (a) or an order issued pursuant to paragraph (1)
shall be subject to a civil penalty in an amount not
to exceed $10,000 for each violation.

(d) COVERED PROVISIONS OF LAW.—The provisions
of law referred to in this subsection are—

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

(2) chapter 114 of title 18, United States Code;

and

(3) this Act.

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

SEC. 6. EXCLUSIONS REGARDING INDIAN TRIBES AND
TRIBAL MATTERS.

(a) IN GENERAL.—Nothing in this Act or the amend-
ments made by this Act is intended nor shall be construed
to affect, amend, or modify—

(1) any agreements, compacts, or other inter-
-governmental 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)) relating to the collection of
taxes on cigarettes or smokeless tobacco sold in In-
Indian country (as that term is defined in section 1151 of title 18, United States Code);

(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 existing Federal 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 or tribal members or in Indian country;

(4) any existing Federal law, including Federal common law and treaties, regarding State jurisdiction, or lack thereof, over any tribe, tribal members, or tribal reservations; and

(5) any existing 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 juris-
dictions, 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 is intended, and shall not 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 is intended to prohibit, limit, or restrict enforcement by the Attorney General of the United States of the provisions herein 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.
SEC. 7. EFFECTIVE DATE.

(a) In General.—Except as provided in subsection (b), this Act shall take effect on the date that is 90 days after the date of enactment of this Act.

(b) BATFE Authority.—Section 5 shall take effect on the date of enactment of this Act.

SEC. 8. SEVERABILITY.

If any provision of this, or an 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 it to any other person or circumstance shall not be affected thereby.