

111TH CONGRESS
1ST SESSION

H. R. 1676

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 23, 2009

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; FINDINGS; PURPOSES.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Prevent All Cigarette Trafficking Act of 2009” or
6 “PACT Act”.

7 (b) **FINDINGS.**—Congress finds that—

8 (1) the sale of illegal cigarettes and smokeless
9 tobacco products significantly reduces Federal,
10 State, and local government revenues, with Internet

1 sales alone accounting for billions of dollars of lost
2 Federal, State, and local tobacco tax revenue each
3 year;

4 (2) Hezbollah, Hamas, al Qaeda, and other ter-
5 rorist organizations have profited from trafficking in
6 illegal cigarettes or counterfeit cigarette tax stamps;

7 (3) terrorist involvement in illicit cigarette traf-
8 ficking will continue to grow because of the large
9 profits such organizations can earn;

10 (4) the sale of illegal cigarettes and smokeless
11 tobacco over the Internet, and through mail, fax, or
12 phone orders, make it cheaper and easier for chil-
13 dren to obtain tobacco products;

14 (5) the majority of Internet and other remote
15 sales of cigarettes and smokeless tobacco are being
16 made without adequate precautions to protect
17 against sales to children, without the payment of ap-
18 plicable taxes, and without complying with the nomi-
19 nal registration and reporting requirements in exist-
20 ing Federal law;

21 (6) unfair competition from illegal sales of eiga-
22 rettes and smokeless tobacco is taking billions of dol-
23 lars of sales away from law-abiding retailers
24 throughout the United States;

1 (7) with rising State and local tobacco tax
2 rates, the incentives for the illegal sale of cigarettes
3 and smokeless tobacco have increased;

4 (8) the number of active tobacco investigations
5 being conducted by the Bureau of Alcohol, Tobacco,
6 Firearms, and Explosives rose to 452 in 2005;

7 (9) the number of Internet vendors in the
8 United States and in foreign countries that sell ciga-
9 rettes and smokeless tobacco to buyers in the United
10 States increased from only about 40 in 2000 to
11 more than 500 in 2005; and

12 (10) the intrastate sale of illegal cigarettes and
13 smokeless tobacco over the Internet has a substan-
14 tial effect on interstate commerce.

15 (c) PURPOSES.—It is the purpose of this Act to—

16 (1) require Internet and other remote sellers of
17 cigarettes and smokeless tobacco to comply with the
18 same laws that apply to law-abiding tobacco retail-
19 ers;

20 (2) create strong disincentives to illegal smug-
21 gling of tobacco products;

22 (3) provide government enforcement officials
23 with more effective enforcement tools to combat to-
24 bacco smuggling;

1 (4) make it more difficult for cigarette and
2 smokeless tobacco traffickers to engage in and profit
3 from their illegal activities;

4 (5) increase collections of Federal, State, and
5 local excise taxes on cigarettes and smokeless to-
6 bacco; and

7 (6) prevent and reduce youth access to inexpen-
8 sive cigarettes and smokeless tobacco through illegal
9 Internet or contraband sales.

10 **SEC. 2. COLLECTION OF STATE CIGARETTE AND SMOKE-**
11 **LESS TOBACCO TAXES.**

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

17 **“SEC. 1. DEFINITIONS.**

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

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

23 “(2) CIGARETTE.—

24 “(A) IN GENERAL.—For purposes of this
25 Act, the term ‘cigarette’ shall—

1 “(i) have the same meaning given that
2 term in section 2341 of title 18, United
3 States Code; and

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

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

11 “(3) COMMON CARRIER.—The term ‘common
12 carrier’ means any person (other than a local mes-
13 senger service or the United States Postal Service)
14 that holds itself out to the general public as a pro-
15 vider for hire of the transportation by water, land,
16 or air of merchandise, whether or not the person ac-
17 tually operates the vessel, vehicle, or aircraft by
18 which the transportation is provided, between a port
19 or place and a port or place in the United States.

20 “(4) CONSUMER.—The term ‘consumer’ means
21 any person that purchases cigarettes or smokeless
22 tobacco, but does not include any person lawfully op-
23 erating as a manufacturer, distributor, wholesaler,
24 or retailer of cigarettes or smokeless tobacco.

1 “(5) DELIVERY SALE.—The term ‘delivery sale’
2 means any sale of cigarettes or smokeless tobacco to
3 a consumer if—

4 “(A) the consumer submits the order for
5 such sale by means of a telephone or other
6 method of voice transmission, the mails, or the
7 Internet or other online service, or the seller is
8 otherwise not in the physical presence of the
9 buyer when the request for purchase or order is
10 made; or

11 “(B) the cigarettes or smokeless tobacco
12 are delivered to the buyer by common carrier,
13 private delivery service, or other method of
14 remote delivery, or the seller is not in the phys-
15 ical presence of the buyer when the buyer ob-
16 tains possession of the cigarettes or smokeless
17 tobacco.

18 “(6) DELIVERY SELLER.—The term ‘delivery
19 seller’ means a person who makes a delivery sale.

20 “(7) INDIAN COUNTRY.—The term ‘Indian
21 country’ means—

22 “(A) Indian country as defined in section
23 1151 of title 18, United States Code, except
24 that within the State of Alaska that term ap-

1 plies only to the Metlakatla Indian Community,
2 Annette Island Reserve; and

3 “(B) any other land held by the United
4 States in trust or restricted status for one or
5 more Indian tribes.

6 “(8) INDIAN TRIBE.—The term ‘Indian tribe’,
7 ‘tribe’, or ‘tribal’ refers to an Indian tribe as defined
8 in section 4(e) of the Indian Self-Determination and
9 Education Assistance Act (25 U.S.C. 450b(e)) or as
10 listed pursuant to section 104 of the Federally Rec-
11 ognized Indian Tribe List Act of 1994 (25 U.S.C.
12 479a–1).

13 “(9) INTERSTATE COMMERCE.—The term
14 ‘interstate commerce’ means commerce between a
15 State and any place outside the State, commerce be-
16 tween a State and any Indian country in the State,
17 or commerce between points in the same State but
18 through any place outside the State or through any
19 Indian country.

20 “(10) INTO A STATE, PLACE, OR LOCALITY.—A
21 sale, shipment, or transfer of cigarettes or smokeless
22 tobacco that is made in interstate commerce, as de-
23 fined herein, shall be deemed to have been made into
24 the State, place or locality in which such cigarettes
25 or smokeless tobacco are delivered.

1 “(11) PERSON.—The term ‘person’ means an
2 individual, corporation, company, association, firm,
3 partnership, society, State government, local govern-
4 ment, Indian tribal government, governmental orga-
5 nization of such government, or joint stock company.

6 “(12) STATE.—The term ‘State’ means each of
7 the several States of the United States, the District
8 of Columbia, the Commonwealth of Puerto Rico, or
9 any territory or possession of the United States.

10 “(13) SMOKELESS TOBACCO.—The term
11 ‘smokeless tobacco’ means any finely cut, ground,
12 powdered, or leaf tobacco, or other product con-
13 taining tobacco, that is intended to be placed in the
14 oral or nasal cavity or otherwise consumed without
15 being combusted.

16 “(14) TOBACCO TAX ADMINISTRATOR.—The
17 term ‘tobacco tax administrator’ means the State,
18 local, or tribal official duly authorized to collect the
19 tobacco tax or administer the tax law of a State, lo-
20 cality, or tribe, respectively.

21 “(15) TRIBAL ENTERPRISE.—The term ‘tribal
22 enterprise’ means any business enterprise, incor-
23 porated or unincorporated under Federal or tribal
24 law, of an Indian tribe or group of Indian tribe.

1 “(16) USE.—The term ‘use’, in addition to its
2 ordinary meaning, means the consumption, storage,
3 handling, or disposal of cigarettes or smokeless to-
4 bacco.”.

5 (b) REPORTS TO STATE TOBACCO TAX ADMINISTRA-
6 TORS.—Section 2 of the Jenkins Act (15 U.S.C. 376) is
7 amended—

8 (1) by striking “cigarettes” each place it ap-
9 pears and inserting “cigarettes or smokeless to-
10 bacco”;

11 (2) in subsection (a)—

12 (A) in the matter preceding paragraph

13 (1)—

14 (i) by inserting “CONTENTS.—” after
15 “(a)”;

16 (ii) by striking “or transfers” and in-
17 serting “, transfers, or ships”;

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

21 (iv) by striking “to other than a dis-
22 tributor licensed by or located in such
23 State,”; and

1 (v) by striking “or transfer and ship-
2 ment” and inserting “, transfer, or ship-
3 ment”;

4 (B) in paragraph (1)—

5 (i) by striking “with the tobacco tax
6 administrator of the State” and inserting
7 “with the Attorney General of the United
8 States and with the tobacco tax adminis-
9 trators of the State and place”; and

10 (ii) by striking “; and” and inserting
11 the following: “, as well as telephone num-
12 bers for each place of business, a principal
13 electronic mail address, any website ad-
14 dresses, and the name, address, and tele-
15 phone number of an agent in the State au-
16 thorized to accept service on behalf of such
17 person;”;

18 (C) in paragraph (2), by striking “and the
19 quantity thereof.” and inserting “the quantity
20 thereof, and the name, address, and phone
21 number of the person delivering the shipment to
22 the recipient on behalf of the delivery seller,
23 with all invoice or memoranda information re-
24 lating to specific customers to be organized by
25 city or town and by zip code; and”;

1 (D) by adding at the end the following:

2 “(3) with respect to each memorandum or in-
3 voice filed with a State under paragraph (2), also
4 file copies of such memorandum or invoice with the
5 tobacco tax administrators and chief law enforce-
6 ment officers of the local governments and Indian
7 tribes operating within the borders of the State that
8 apply their own local or tribal taxes on cigarettes or
9 smokeless tobacco.”;

10 (3) in subsection (b)—

11 (A) by inserting “PRESUMPTIVE EVI-
12 DENCE.—” after “(b)”;

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

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

17 (4) by adding at the end the following:

18 “(c) USE OF INFORMATION.—A tobacco tax adminis-
19 trator or chief law enforcement officer who receives a
20 memorandum or invoice under paragraph (2) or (3) of
21 subsection (a) shall use such memorandum or invoice sole-
22 ly for the purposes of the enforcement of this Act and the
23 collection of any taxes owed on related sales of cigarettes
24 and smokeless tobacco, and shall keep confidential any

1 personal information in such memorandum or invoice not
2 otherwise required for such purposes.”.

3 (c) REQUIREMENTS FOR DELIVERY SALES.—The
4 Jenkins Act is amended by inserting after section 2 the
5 following:

6 **“SEC. 2A. DELIVERY SALES.**

7 “(a) IN GENERAL.—With respect to delivery sales
8 into a specific State and place, each delivery seller shall
9 comply with—

10 “(1) the shipping requirements set forth in sub-
11 section (b);

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

14 “(3) all State, local, tribal, and other laws gen-
15 erally applicable to sales of cigarettes or smokeless
16 tobacco as if such delivery sales occurred entirely
17 within the specific State and place, including laws
18 imposing—

19 “(A) excise taxes;

20 “(B) licensing and tax-stamping require-
21 ments;

22 “(C) restrictions on sales to minors; and

23 “(D) other payment obligations or legal re-
24 quirements relating to the sale, distribution, or
25 delivery of cigarettes or smokeless tobacco; and

1 “(4) the tax collection requirements set forth in
2 subsection (d).

3 “(b) SHIPPING AND PACKAGING.—

4 “(1) REQUIRED STATEMENT.—For any ship-
5 ping package containing cigarettes or smokeless to-
6 bacco, the delivery seller shall include on the bill of
7 lading, if any, and on the outside of the shipping
8 package, on the same surface as the delivery ad-
9 dress, a clear and conspicuous statement providing
10 as follows: ‘CIGARETTES/SMOKELESS TO-
11 BACCO: FEDERAL LAW REQUIRES THE PAY-
12 MENT OF ALL APPLICABLE EXCISE TAXES,
13 AND COMPLIANCE WITH APPLICABLE LI-
14 CENSING AND TAX-STAMPING OBLIGA-
15 TIONS’.

16 “(2) FAILURE TO LABEL.—Any shipping pack-
17 age described in paragraph (1) that is not labeled in
18 accordance with that paragraph shall be treated as
19 nondeliverable matter by a common carrier or other
20 delivery service, if the common carrier or other deliv-
21 ery service knows or should know the package con-
22 tains cigarettes or smokeless tobacco. If a common
23 carrier or other delivery service believes a package is
24 being submitted for delivery in violation of para-
25 graph (1), it may require the person submitting the

1 package for delivery to establish that it is not being
2 sent in violation of paragraph (1) before accepting
3 the package for delivery. Nothing in this paragraph
4 shall require the common carrier or other delivery
5 service to open any package to determine its con-
6 tents.

7 “(3) WEIGHT RESTRICTION.—A delivery seller
8 shall not sell, offer for sale, deliver, or cause to be
9 delivered in any single sale or single delivery any
10 cigarettes or smokeless tobacco weighing more than
11 10 pounds.

12 “(4) AGE VERIFICATION.—

13 “(A) IN GENERAL.—Notwithstanding any
14 other provision of law, a delivery seller who
15 mails or ships tobacco products—

16 “(i) shall not sell, deliver, or cause to
17 be delivered any tobacco products to a per-
18 son under the minimum age required for
19 the legal sale or purchase of tobacco prod-
20 ucts, as determined by the applicable law
21 at the place of delivery;

22 “(ii) shall use a method of mailing or
23 shipping that requires—

24 “(I) the purchaser placing the
25 delivery sale order, or an adult who is

1 at least the minimum age required for
2 the legal sale or purchase of tobacco
3 products, as determined by the appli-
4 cable law at the place of delivery, to
5 sign to accept delivery of the shipping
6 container at the delivery address; and

7 “(II) the person who signs to ac-
8 cept delivery of the shipping container
9 to provide proof, in the form of a
10 valid, government-issued identification
11 bearing a photograph of the indi-
12 vidual, that the person is at least the
13 minimum age required for the legal
14 sale or purchase of tobacco products,
15 as determined by the applicable law at
16 the place of delivery; and

17 “(iii) shall not accept a delivery sale
18 order from a person without—

19 “(I) obtaining the full name,
20 birth date, and residential address of
21 that person; and

22 “(II) verifying the information
23 provided in subclause (I), through the
24 use of a commercially available data-
25 base or aggregate of databases, con-

1 sisting primarily of data from govern-
2 ment sources, that are regularly used
3 by government and businesses for the
4 purpose of age and identity
5 verification and authentication, to en-
6 sure that the purchaser is at least the
7 minimum age required for the legal
8 sale or purchase of tobacco products,
9 as determined by the applicable law at
10 the place of delivery.

11 “(B) LIMITATION.—No database being
12 used for age and identity verification under
13 subparagraph (A)(iii) shall be in the possession
14 or under the control of the delivery seller, or be
15 subject to any changes or supplementation by
16 the delivery seller.

17 “(c) RECORDS.—

18 “(1) IN GENERAL.—Each delivery seller shall
19 keep a record of any delivery sale, including all of
20 the information described in section 2(a)(2), orga-
21 nized by the State, and within such State, by the
22 city or town and by zip code, into which such deliv-
23 ery sale is so made.

24 “(2) RECORD RETENTION.—Records of a deliv-
25 ery sale shall be kept as described in paragraph (1)

1 in the year in which the delivery sale is made and
2 for the next 4 years.

3 “(3) ACCESS FOR OFFICIALS.—Records kept
4 under paragraph (1) shall be made available to to-
5 bacco tax administrators of the States, to local gov-
6 ernments and Indian tribes that apply their own
7 local or tribal taxes on cigarettes or smokeless to-
8 bacco, to the attorneys general of the States, to the
9 chief law enforcement officers of such local govern-
10 ments and Indian tribes, and to the Attorney Gen-
11 eral of the United States in order to ensure the com-
12 pliance of persons making delivery sales with the re-
13 quirements of this Act.

14 “(d) DELIVERY.—

15 “(1) IN GENERAL.—Except as provided in para-
16 graph (2), no delivery seller may sell or deliver to
17 any consumer, or tender to any common carrier or
18 other delivery service, any cigarettes or smokeless to-
19 bacco pursuant to a delivery sale unless, in advance
20 of the sale, delivery, or tender—

21 “(A) any cigarette or smokeless tobacco ex-
22 cise tax that is imposed by the State in which
23 the cigarettes or smokeless tobacco are to be
24 delivered has been paid to the State;

1 “(B) any cigarette or smokeless tobacco
2 excise tax that is imposed by the local govern-
3 ment of the place in which the cigarettes or
4 smokeless tobacco are to be delivered has been
5 paid to the local government; and

6 “(C) any required stamps or other indicia
7 that such excise tax has been paid are properly
8 affixed or applied to the cigarettes or smokeless
9 tobacco.

10 “(2) EXCEPTION.—Paragraph (1) does not
11 apply to a delivery sale of smokeless tobacco if the
12 law of the State or local government of the place
13 where the smokeless tobacco is to be delivered re-
14 quires or otherwise provides that delivery sellers col-
15 lect the excise tax from the consumer and remit the
16 excise tax to the State or local government, and the
17 delivery seller complies with the requirement.

18 “(e) LIST OF UNREGISTERED OR NONCOMPLIANT
19 DELIVERY SELLERS.—

20 “(1) IN GENERAL.—

21 “(A) INITIAL LIST.—Not later than 90
22 days after this subsection goes into effect under
23 the Prevent All Cigarette Trafficking Act of
24 2009, the Attorney General of the United
25 States shall compile a list of delivery sellers of

1 cigarettes or smokeless tobacco that have not
2 registered with the Attorney General, pursuant
3 to section 2(a) or that are otherwise not in
4 compliance with this Act, and—

5 “(i) distribute the list to—

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

8 “(II) common carriers and other
9 persons that deliver small packages to
10 consumers in interstate commerce, in-
11 cluding the United States Postal Serv-
12 ice; and

13 “(III) at the discretion of the At-
14 torney General of the United States,
15 to any other persons; and

16 “(ii) publicize and make the list avail-
17 able to any other person engaged in the
18 business of interstate deliveries or who de-
19 livers cigarettes or smokeless tobacco in or
20 into any State.

21 “(B) LIST CONTENTS.—To the extent
22 known, the Attorney General of the United
23 States shall include, for each delivery seller on
24 the list described in subparagraph (A)—

1 “(i) all names the delivery seller uses
2 in the transaction of its business or on
3 packages delivered to customers;

4 “(ii) all addresses from which the de-
5 livery seller does business or ships ciga-
6 rettes or smokeless tobacco;

7 “(iii) the website addresses, primary
8 e-mail address, and phone number of the
9 delivery seller; and

10 “(iv) any other information that the
11 Attorney General determines would facili-
12 tate compliance with this subsection by re-
13 cipients of the list.

14 “(C) UPDATING.—The Attorney General of
15 the United States shall update and distribute
16 the list at least once every 4 months, and may
17 distribute the list and any updates by regular
18 mail, electronic mail, or any other reasonable
19 means, or by providing recipients with access to
20 the list through a nonpublic website that the
21 Attorney General of the United States regularly
22 updates.

23 “(D) STATE, LOCAL, OR TRIBAL ADDI-
24 TIONS.—The Attorney General of the United
25 States shall include in the list under subpara-

1 graph (A) any noncomplying delivery sellers
2 identified by any State, local, or tribal govern-
3 ment under paragraph (5), and shall distribute
4 the list to the attorney general or chief law en-
5 forcement official and the tax administrator of
6 any government submitting any such informa-
7 tion and to any common carriers or other per-
8 sons who deliver small packages to consumers
9 identified by any government pursuant to para-
10 graph (5).

11 “(E) ACCURACY AND COMPLETENESS OF
12 LIST OF NONCOMPLYING DELIVERY SELLERS.—
13 In preparing and revising the list required by
14 subparagraph (A), the Attorney General shall—

15 “(i) use reasonable procedures to en-
16 sure maximum possible accuracy and com-
17 pleteness of the records and information
18 relied on for the purpose of determining
19 that such delivery seller is noncomplying;

20 “(ii) not later than 14 days prior to
21 including any delivery seller on the list
22 under paragraph (1), make a reasonable
23 attempt to send notice to the delivery seller
24 by letter, electronic mail, or other means
25 that the delivery seller is being placed on

1 such list or update, with that notice citing
2 the relevant provisions of this Act and the
3 specific reasons for being placed on such
4 list;

5 “(iii) provide an opportunity to such
6 delivery seller to challenge placement on
7 such list;

8 “(iv) investigate each such challenge
9 by contacting the relevant Federal, State,
10 tribal, and local law enforcement officials,
11 and provide the specific findings and re-
12 sults of such investigation to such delivery
13 seller not later than 30 days after the chal-
14 lenge is made; and

15 “(v) upon finding that any placement
16 is inaccurate, incomplete, or cannot be
17 verified, promptly delete such delivery sell-
18 er from the list as appropriate and notify
19 each appropriate Federal, State, tribal,
20 and local authority of such finding.

21 “(F) CONFIDENTIALITY.—The list distrib-
22 uted pursuant to subparagraph (A) shall be
23 confidential, and any person receiving the list
24 shall maintain the confidentiality of the list but
25 may deliver the list, for enforcement purposes,

1 to any government official or to any common
2 carrier or other person that delivers tobacco
3 products or small packages to consumers. Noth-
4 ing in this section shall prohibit a common car-
5 rier, the United States Postal Service, or any
6 other person receiving the list from discussing
7 with the listed delivery sellers the delivery sell-
8 ers' inclusion on the list and the resulting ef-
9 fects on any services requested by such listed
10 delivery seller.

11 “(2) PROHIBITION ON DELIVERY.—

12 “(A) IN GENERAL.—Commencing on the
13 date that is 60 days after the date of the initial
14 distribution or availability of the list under
15 paragraph (1)(A), no person who receives the
16 list under paragraph (1), and no person who
17 delivers cigarettes or smokeless tobacco to con-
18 sumers, shall knowingly complete, cause to be
19 completed, or complete its portion of a delivery
20 of any package for any person whose name and
21 address are on the list, unless—

22 “(i) the person making the delivery
23 knows or believes in good faith that the
24 item does not include cigarettes or smoke-
25 less tobacco;

1 “(ii) the delivery is made to a person
2 lawfully engaged in the business of manu-
3 facturing, distributing, or selling cigarettes
4 or smokeless tobacco; or

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

11 “(B) IMPLEMENTATION OF UPDATES.—
12 Commencing on the date that is 30 days after
13 the date of the distribution or availability of
14 any updates or corrections to the list under
15 paragraph (1), all recipients and all common
16 carriers or other persons that deliver cigarettes
17 or smokeless tobacco to consumers shall be sub-
18 ject to subparagraph (A) in regard to such cor-
19 rections or updates.

20 “(C) EXEMPTIONS.—Subparagraphs (A)
21 and (B), subsection (b)(2), and any other re-
22 quirements or restrictions placed directly on
23 common carriers elsewhere in this subsection,
24 shall not apply to a common carrier that is sub-
25 ject to a settlement agreement relating to to-

1 bacco product deliveries to consumers or, if any
2 such settlement agreement to which the com-
3 mon carrier was a party is terminated or other-
4 wise becomes inactive, is administering and en-
5 forcing, on a nationwide basis, policies and
6 practices that are at least as stringent as any
7 such agreement. For the purposes of this sec-
8 tion, ‘settlement agreement’ shall be defined to
9 include the Assurance of Discontinuance en-
10 tered into by the Attorney General of New York
11 and DHL Holdings USA, Inc. and DHL Ex-
12 press (USA), Inc. on or about July 1, 2005, the
13 Assurance of Discontinuance entered into by
14 the Attorney General of New York and United
15 Parcel Service, Inc. on or about October 21,
16 2005, and the Assurance of Compliance entered
17 into by the Attorney General of New York and
18 Federal Express Corporation and Fed Ex
19 Ground package Systems, Inc. on or about Feb-
20 ruary 3, 2006, so long as each is honored na-
21 tionwide to block illegal deliveries of cigarettes
22 or smokeless tobacco to consumers, and also in-
23 cludes any other active agreement between a
24 common carrier and the States that operates
25 nationwide to ensure that no deliveries of ciga-

1 rettes and smokeless tobacco shall be made to
2 consumers for illegally operating Internet or
3 mail-order sellers and that any such deliveries
4 to consumers shall not be made to minors or
5 without payment to the States and localities
6 where the consumers are located of all taxes on
7 the tobacco products.

8 “(3) SHIPMENTS FROM PERSONS ON LIST.—

9 “(A) IN GENERAL.—In the event that a
10 common carrier or other delivery service delays
11 or interrupts the delivery of a package it has in
12 its possession because it determines or has rea-
13 son to believe that the person ordering the de-
14 livery is on a list distributed under paragraph
15 (1)—

16 “(i) the person ordering the delivery
17 shall be obligated to pay—

18 “(I) the common carrier or other
19 delivery service as if the delivery of
20 the package had been timely com-
21 pleted; and

22 “(II) if the package is not deliv-
23 erable, any reasonable additional fee
24 or charge levied by the common car-
25 rier or other delivery service to cover

1 its extra costs and inconvenience and
2 to serve as a disincentive against such
3 noncomplying delivery orders; and

4 “(ii) if the package is determined not
5 to be deliverable, the common carrier or
6 other delivery service shall, in its discre-
7 tion, either provide the package and its
8 contents to a Federal, State, or local law
9 enforcement agency or destroy the package
10 and its contents.

11 “(B) RECORDS.—A common carrier or
12 other delivery service shall maintain, for a pe-
13 riod of 5 years, any records kept in the ordi-
14 nary course of business relating to any deliv-
15 eries interrupted pursuant to this paragraph
16 and provide that information, upon request, to
17 the Attorney General of the United States or to
18 the attorney general or chief law enforcement
19 official or tax administrator of any State, local,
20 or tribal government.

21 “(C) CONFIDENTIALITY.—Any person re-
22 ceiving records under subparagraph (B) shall
23 use such records solely for the purposes of the
24 enforcement of this Act and the collection of
25 any taxes owed on related sales of cigarettes

1 and smokeless tobacco, and the person receiving
2 records under subparagraph (B) shall keep con-
3 fidential any personal information in such
4 records not otherwise required for such pur-
5 poses.

6 “(4) PREEMPTION.—

7 “(A) IN GENERAL.—No State, local, or
8 tribal government, nor any political authority of
9 2 or more State, local, or tribal governments,
10 may enact or enforce any law or regulation re-
11 lating to delivery sales that restricts deliveries
12 of cigarettes or smokeless tobacco to consumers
13 by common carriers or other delivery services
14 on behalf of delivery sellers by—

15 “(i) requiring that the common carrier
16 or other delivery service verify the age or
17 identity of the consumer accepting the de-
18 livery by requiring the person who signs to
19 accept delivery of the shipping container to
20 provide proof, in the form of a valid, gov-
21 ernment-issued identification bearing a
22 photograph of the individual, that such
23 person is at least the minimum age re-
24 quired for the legal sale or purchase of to-

1 bacco products, as determined by either
2 State or local law at the place of delivery;

3 “(ii) requiring that the common car-
4 rier or other delivery service obtain a sig-
5 nature from the consumer accepting the
6 delivery;

7 “(iii) requiring that the common car-
8 rier or other delivery service verify that all
9 applicable taxes have been paid;

10 “(iv) requiring that packages delivered
11 by the common carrier or other delivery
12 service contain any particular labels, no-
13 tice, or markings; or

14 “(v) prohibiting common carriers or
15 other delivery services from making deliv-
16 eries on the basis of whether the delivery
17 seller is or is not identified on any list of
18 delivery sellers maintained and distributed
19 by any entity other than the Federal Gov-
20 ernment.

21 “(B) RELATIONSHIP TO OTHER LAWS.—

22 Except as provided in subparagraph (C), noth-
23 ing in this paragraph shall be construed to pro-
24 hibit, expand, restrict, or otherwise amend or
25 modify—

1 “(i) section 14501(c)(1) or
2 41713(b)(4) of title 49, United States
3 Code;

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

8 “(iii) any provision of State, local, or
9 tribal law regulating common carriers that
10 falls within the provisions of sections
11 14501(c)(2) or 41713(b)(4)(B) of title 49
12 of the United States Code.

13 “(C) STATE LAWS PROHIBITING DELIVERY
14 SALES.—Nothing in the Prevent All Cigarette
15 Trafficking Act of 2008, the amendments made
16 by that Act, or in any other Federal statute
17 shall be construed to preempt, supersede, or
18 otherwise limit or restrict State laws prohibiting
19 the delivery sale, or the shipment or delivery
20 pursuant to a delivery sale, of cigarettes or
21 other tobacco products to individual consumers
22 or personal residences except that no State may
23 enforce against a common carrier a law prohib-
24 iting the delivery of cigarettes or other tobacco
25 products to individual consumers or personal

1 residences without proof that the common car-
2 rier was not entitled to an exemption referred
3 to in paragraph (2)(C) of this subsection.

4 “(5) STATE, LOCAL, AND TRIBAL ADDITIONS.—

5 “(A) IN GENERAL.—Any State, local, or
6 tribal government shall provide the Attorney
7 General of the United States with—

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

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

23 “(B) UPDATES.—Any government pro-
24 viding a list to the Attorney General of the
25 United States under subparagraph (A) shall

1 also provide updates and corrections every 4
2 months until such time as such government no-
3 tifies the Attorney General of the United States
4 in writing that such government no longer de-
5 sires to submit such information to supplement
6 the list maintained and distributed by the At-
7 torney General of the United States under
8 paragraph (1).

9 “(C) REMOVAL AFTER WITHDRAWAL.—

10 Upon receiving written notice that a govern-
11 ment no longer desires to submit information
12 under subparagraph (A), the Attorney General
13 of the United States shall remove from the list
14 under paragraph (1) any persons that are on
15 the list solely because of such government’s
16 prior submissions of its list of noncomplying de-
17 livery sellers of cigarettes or smokeless tobacco
18 or its subsequent updates and corrections.

19 “(6) DEADLINE TO INCORPORATE ADDI-
20 TIONS.—The Attorney General of the United States
21 shall—

22 “(A) include any delivery seller identified
23 and submitted by a State, local, or tribal gov-
24 ernment under paragraph (5) in any list or up-
25 date that is distributed or made available under

1 paragraph (1) on or after the date that is 30
2 days after the date on which the information is
3 received by the Attorney General of the United
4 States; and

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

10 “(7) NOTICE TO DELIVERY SELLERS.—Not
11 later than 14 days prior to including any delivery
12 seller on the initial list distributed or made available
13 under paragraph (1), or on any subsequent list or
14 update for the first time, the Attorney General of
15 the United States shall make a reasonable attempt
16 to send notice to the delivery seller by letter, elec-
17 tronic mail, or other means that the delivery seller
18 is being placed on such list or update, with that no-
19 tice citing the relevant provisions of this Act.

20 “(8) LIMITATIONS.—

21 “(A) IN GENERAL.—Any common carrier
22 or other person making a delivery subject to
23 this subsection shall not be required or other-
24 wise obligated to—

1 “(i) determine whether any list dis-
2 tributed or made available under para-
3 graph (1) is complete, accurate, or up-to-
4 date;

5 “(ii) determine whether a person or-
6 dering a delivery is in compliance with this
7 Act; or

8 “(iii) open or inspect, pursuant to this
9 Act, any package being delivered to deter-
10 mine its contents.

11 “(B) ALTERNATE NAMES.—Any common
12 carrier or other person making a delivery sub-
13 ject to this subsection shall not be required or
14 otherwise obligated to make any inquiries or
15 otherwise determine whether a person ordering
16 a delivery is a delivery seller on the list under
17 paragraph (1) who is using a different name or
18 address in order to evade the related delivery
19 restrictions, but shall not knowingly deliver any
20 packages to consumers for any such delivery
21 seller who the common carrier or other delivery
22 service knows is a delivery seller who is on the
23 list under paragraph (1) but is using a different
24 name or address to evade the delivery restric-
25 tions of paragraph (2).

1 “(C) PENALTIES.—Any common carrier or
2 person in the business of delivering packages on
3 behalf of other persons shall not be subject to
4 any penalty under section 14101(a) of title 49,
5 United States Code, or any other provision of
6 law for—

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

10 “(ii) not, as a matter of regular prac-
11 tice and procedure, making any deliveries,
12 or any deliveries in certain States, of any
13 cigarettes or smokeless tobacco for any
14 person or for any person not in the busi-
15 ness of manufacturing, distributing, or
16 selling cigarettes or smokeless tobacco; or

17 “(iii) delaying or not making a deliv-
18 ery for any person because of reasonable
19 efforts to comply with this Act.

20 “(D) OTHER LIMITS.—Section 2 and sub-
21 sections (a), (b), (c), and (d) of this section
22 shall not be interpreted to impose any respon-
23 sibilities, requirements, or liability on common
24 carriers.

1 “(f) PRESUMPTION.—For purposes of this Act, a de-
2 livery sale shall be deemed to have occurred in the State
3 and place where the buyer obtains personal possession of
4 the cigarettes or smokeless tobacco, and a delivery pursu-
5 ant to a delivery sale is deemed to have been initiated or
6 ordered by the delivery seller.”.

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

9 **“SEC. 3. PENALTIES.**

10 “(a) CRIMINAL PENALTIES.—

11 “(1) IN GENERAL.—Except as provided in para-
12 graph (2), whoever violates any provision of this Act
13 shall be guilty of a felony and shall be imprisoned
14 not more than 3 years, fined under title 18, United
15 States Code, or both.

16 “(2) EXCEPTIONS.—

17 “(A) GOVERNMENTS.—Paragraph (1) shall
18 not apply to a State, local, or tribal govern-
19 ment.

20 “(B) DELIVERY VIOLATIONS.—A common
21 carrier or independent delivery service, or em-
22 ployee of a common carrier or independent de-
23 livery service, shall be subject to criminal pen-
24 alties under paragraph (1) for a violation of

1 section 2A(e) only if the violation is committed
2 intentionally—

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

7 “(ii) for the purpose of assisting a de-
8 livery seller to violate, or otherwise evading
9 compliance with, section 2A.

10 “(b) CIVIL PENALTIES.—

11 “(1) IN GENERAL.—Except as provided in para-
12 graph (3), whoever violates any provision of this Act
13 shall be subject to a civil penalty in an amount not
14 to exceed—

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

17 “(i) \$5,000 in the case of the first
18 violation, or \$10,000 for any other viola-
19 tion; or

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

24 “(B) in the case of a common carrier or
25 other delivery service, \$2,500 in the case of a

1 first violation, or \$5,000 for any violation with-
2 in 1 year of a prior violation.

3 “(2) RELATION TO OTHER PENALTIES.—A civil
4 penalty under paragraph (1) for a violation of this
5 Act shall be imposed in addition to any criminal
6 penalty under subsection (a) and any other damages,
7 equitable relief, or injunctive relief awarded by the
8 court, including the payment of any unpaid taxes to
9 the appropriate Federal, State, local, or tribal gov-
10 ernments.

11 “(3) EXCEPTIONS.—

12 “(A) DELIVERY VIOLATIONS.—An em-
13 ployee of a common carrier or independent de-
14 livery service shall be subject to civil penalties
15 under paragraph (1) for a violation of section
16 2A(e) only if the violation is committed inten-
17 tionally—

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

22 “(ii) for the purpose of assisting a de-
23 livery seller to violate, or otherwise evading
24 compliance with, section 2A.

1 “(B) OTHER LIMITATIONS.—No common
2 carrier or independent delivery service shall be
3 subject to civil penalties under paragraph (1)
4 for a violation of section 2A(e) if—

5 “(i) the common carrier or inde-
6 pendent delivery service has implemented
7 and enforces effective policies and practices
8 for complying with that section; or

9 “(ii) an employee of the common car-
10 rier or independent delivery service who
11 physically receives and processes orders,
12 picks up packages, processes packages, or
13 makes deliveries, takes actions that are
14 outside the scope of employment of the em-
15 ployee in the course of the violation, or
16 that violate the implemented and enforced
17 policies of the common carrier or inde-
18 pendent delivery service described in clause
19 (i).”.

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

22 **“SEC. 4. ENFORCEMENT.**

23 “(a) IN GENERAL.—The United States district
24 courts shall have jurisdiction to prevent and restrain viola-
25 tions of this Act and to provide other appropriate injunc-

1 tive or equitable relief, including money damages, for such
2 violations.

3 “(b) AUTHORITY OF THE ATTORNEY GENERAL.—

4 The Attorney General of the United States shall admin-
5 ister and enforce the provisions of this Act.

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

7 “(1) IN GENERAL.—

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

22 “(B) SOVEREIGN IMMUNITY.—Nothing in
23 this Act shall be deemed to abrogate or con-
24 stitute a waiver of any sovereign immunity of a
25 State or local government or Indian tribe

1 against any unconsented lawsuit under this Act,
2 or otherwise to restrict, expand, or modify any
3 sovereign immunity of a State or local govern-
4 ment or Indian tribe.

5 “(2) PROVISION OF INFORMATION.—A State,
6 through its attorney general, or a local government
7 or Indian tribe that levies a tax subject to section
8 2A(a)(3), through its chief law enforcement officer
9 (or a designee thereof), may provide evidence of a
10 violation of this Act by any person not subject to
11 State, local, or tribal government enforcement ac-
12 tions for violations of this Act to the Attorney Gen-
13 eral of the United States or a United States attor-
14 ney, who shall take appropriate actions to enforce
15 the provisions of this Act.

16 “(3) USE OF PENALTIES COLLECTED.—

17 “(A) IN GENERAL.—There is established a
18 separate account in the Treasury known as the
19 ‘PACT Anti-Trafficking Fund’. Notwith-
20 standing any other provision of law and subject
21 to subparagraph (B), an amount equal to 50
22 percent of any criminal and civil penalties col-
23 lected by the United States Government in en-
24 forcing the provisions of this Act shall be trans-
25 ferred into the PACT Anti-Trafficking Fund

1 and shall be available to the Attorney General
2 of the United States for purposes of enforcing
3 the provisions of this Act and other laws relat-
4 ing to contraband tobacco products.

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

13 “(4) NONEXCLUSIVITY OF REMEDY.—

14 “(A) IN GENERAL.—The remedies avail-
15 able under this section and section 3 are in ad-
16 dition to any other remedies available under
17 Federal, State, local, tribal, or other law.

18 “(B) STATE COURT PROCEEDINGS.—Noth-
19 ing in this Act shall be construed to expand, re-
20 strict, or otherwise modify any right of an au-
21 thorized State official to proceed in State court,
22 or take other enforcement actions, on the basis
23 of an alleged violation of State or other law.

24 “(C) TRIBAL COURT PROCEEDINGS.—
25 Nothing in this Act shall be construed to ex-

1 pand, restrict, or otherwise modify any right of
2 an authorized Indian tribal government official
3 to proceed in tribal court, or take other enforce-
4 ment actions, on the basis of an alleged viola-
5 tion of tribal law.

6 “(D) LOCAL GOVERNMENT ENFORCE-
7 MENT.—Nothing in this Act shall be construed
8 to expand, restrict, or otherwise modify any
9 right of an authorized local government official
10 to proceed in State court, or take other enforce-
11 ment actions, on the basis of an alleged viola-
12 tion of local or other law.

13 “(d) PERSONS DEALING IN TOBACCO PRODUCTS.—
14 Any person who holds a permit under section 5712 of the
15 Internal Revenue Code of 1986 (regarding permitting of
16 manufacturers and importers of tobacco products and ex-
17 port warehouse proprietors) may bring an action in a
18 United States district court to prevent and restrain viola-
19 tions of this Act by any person (or by any person control-
20 ling such person) other than a State, local, or tribal gov-
21 ernment.

22 “(e) NOTICE.—

23 “(1) PERSONS DEALING IN TOBACCO PROD-
24 UCTS.—Any person who commences a civil action

1 under subsection (d) shall inform the Attorney Gen-
2 eral of the United States of the action.

3 “(2) STATE, LOCAL, AND TRIBAL ACTIONS.—It
4 is the sense of Congress that the attorney general of
5 any State, or chief law enforcement officer of any lo-
6 cality or tribe, that commences a civil action under
7 this section should inform the Attorney General of
8 the United States of the action.

9 “(f) PUBLIC NOTICE.—

10 “(1) IN GENERAL.—The Attorney General of
11 the United States shall make available to the public,
12 by posting such information on the Internet and by
13 other appropriate means, information regarding all
14 enforcement actions undertaken by the Attorney
15 General or United States attorneys, or reported to
16 the Attorney General, under this section, including
17 information regarding the resolution of such actions
18 and how the Attorney General and the United States
19 attorney have responded to referrals of evidence of
20 violations pursuant to subsection (c)(2).

21 “(2) REPORTS TO CONGRESS.—The Attorney
22 General shall submit to Congress each year a report
23 containing the information described in paragraph
24 (1).”.

1 **SEC. 3. TREATMENT OF CIGARETTES AND SMOKELESS TO-**
2 **BACCO AS NONMAILABLE MATTER.**

3 (a) IN GENERAL.—Chapter 83 of title 18, United
4 States Code, is amended by inserting after section 1716D
5 the following:

6 **“§ 1716E. Tobacco products as nonmailable**

7 “(a) PROHIBITION.—All cigarettes (as that term is
8 defined in section 1 of the Act of October 19, 1949, com-
9 monly referred to as the Jenkins Act) and smokeless to-
10 bacco (as that term is defined in section 1 of the Act of
11 October 19, 1949, commonly referred to as the Jenkins
12 Act) are nonmailable and shall not be deposited in or car-
13 ried through the mails. The United States Postal Service
14 shall not accept for delivery or transmit through the mails
15 any package that it knows or has reasonable cause to be-
16 lieve contains any cigarettes or smokeless tobacco made
17 nonmailable by this subsection. For the purposes of sub-
18 section (a) reasonable cause includes—

19 “(1) a statement on a publicly available website,
20 or an advertisement, by any person that such person
21 will mail matter which is nonmailable under this sec-
22 tion in return for payment; and

23 “(2) the placement of the person on the list cre-
24 ated under section 2A(e) of the Jenkins Act.

25 “(b) EXCEPTIONS.—This section shall not apply to
26 the following:

1 “(1) CIGARS.—Cigars (as that term is defined
2 in section 5702(a) of the Internal Revenue Code of
3 1986).

4 “(2) GEOGRAPHIC EXCEPTION.—Mailings with-
5 in the State of Alaska or within the State of Hawaii.

6 “(3) BUSINESS PURPOSES.—Tobacco products
7 mailed only for business purposes between legally
8 operating businesses that have all applicable State
9 and Federal Government licenses or permits and are
10 engaged in tobacco product manufacturing, distribu-
11 tion, wholesale, export, import, testing, investigation,
12 or research, or for regulatory purposes between any
13 such businesses and State or Federal Government
14 regulatory agencies, if the Postal Service issues a
15 final rule establishing the standards and require-
16 ments that apply to all such mailings and which in-
17 cludes the following:

18 “(A) The Postal Service shall verify that
19 any person submitting an otherwise nonmailable
20 tobacco product into the mails as authorized by
21 this paragraph is a business or government
22 agency permitted to make such mailings pursu-
23 ant to this section and the related final rule.

24 “(B) The Postal Service shall ensure that
25 any recipient of an otherwise nonmailable to-

1 bacco product sent through the mails pursuant
2 to this paragraph is a business or government
3 agency that may lawfully receive such product.

4 “(C) The mailings shall be sent through
5 the Postal Service’s systems that provide for
6 the tracking and confirmation of the delivery.

7 “(D) The identities of the business or gov-
8 ernment entity submitting the mailing con-
9 taining otherwise nonmailable tobacco products
10 for delivery and the business or government en-
11 tity receiving the mailing shall be clearly set
12 forth on the package and such information shall
13 be kept in Postal Service records and made
14 available to the Postal Service, the Attorney
15 General, and to persons eligible to bring en-
16 forcement actions pursuant to section 3(d) of
17 the Prevent All Cigarette Trafficking Act of
18 2008 for a period of at least three years.

19 “(E) The mailings shall be marked with a
20 Postal Service label or marking that makes it
21 clear to Postal Service employees that it is a
22 permitted mailing of otherwise nonmailable to-
23 bacco products that may be delivered only to a
24 permitted government agency or business and

1 may not be delivered to any residence or indi-
2 vidual person.

3 “(F) The mailings shall be delivered only
4 to verified adult employees of the recipient busi-
5 nesses or government agencies who shall be re-
6 quired to sign for the mailing.

7 “(4) CERTAIN INDIVIDUALS.—Tobacco products
8 mailed by individual adult people for noncommercial,
9 nonbusiness and non-money making purposes, in-
10 cluding the return of a damaged or unacceptable to-
11 bacco product to its manufacturer, if the Postal
12 Service issues a final rule establishing the standards
13 and requirements that applies to all such mailings
14 and which includes the following:

15 “(A) The Postal Service shall verify that
16 any person submitting an otherwise nonmailable
17 tobacco product into the mails as authorized by
18 this section is the individual person identified
19 on the return address label of the package and
20 is an adult.

21 “(B) For mailings to individual persons
22 the Postal Service shall require the person sub-
23 mitting the otherwise nonmailable tobacco prod-
24 uct into the mails as authorized by this sub-
25 section to affirm that the recipient is an adult.

1 “(C) The package shall not weigh more
2 than 10 ounces.

3 “(D) The mailings shall be sent through
4 the Postal Service’s systems that provide for
5 the tracking and confirmation of the delivery.

6 “(E) No package shall be delivered or
7 placed in the possession of any individual per-
8 son who is not a verified adult. For mailings to
9 individual persons, the Postal Service shall de-
10 liver the package only to the verified adult re-
11 cipient at the recipient address or transfer it
12 for delivery to an Air/Army Postal Office
13 (APO) or Fleet Postal Office (FPO) number
14 designated in the recipient address.

15 “(F) No person shall initiate more than
16 ten such mailings in any thirty-day period.

17 “(5) DEFINITION OF ADULT.—For the purposes
18 of paragraphs (3) and (4), the term ‘adult’ means
19 an individual person of at least the minimum age re-
20 quired for the legal sale or purchase of tobacco prod-
21 ucts as determined by the applicable law at the place
22 the individual person is located.

23 “(c) SEIZURE AND FORFEITURE.—Any cigarettes or
24 smokeless tobacco made nonmailable by this subsection
25 that are deposited in the mails shall be subject to seizure

1 and forfeiture, pursuant to the procedures set forth in
2 chapter 46 of this title. Any tobacco products so seized
3 and forfeited shall either be destroyed or retained by Gov-
4 ernment officials for the detection or prosecution of crimes
5 or related investigations and then destroyed.

6 “(d) ADDITIONAL PENALTIES.—In addition to any
7 other fines and penalties imposed by this chapter for viola-
8 tions of this section, any person violating this section shall
9 be subject to an additional civil penalty in the amount of
10 10 times the retail value of the nonmailable cigarettes or
11 smokeless tobacco, including all Federal, State, and local
12 taxes.

13 “(e) CRIMINAL PENALTY.—Whoever knowingly de-
14 posits for mailing or delivery, or knowingly causes to be
15 delivered by mail, according to the direction thereon, or
16 at any place at which it is directed to be delivered by the
17 person to whom it is addressed, anything that this section
18 declares to be nonmailable matter shall be fined under this
19 title, imprisoned not more than 1 year, or both.

20 “(f) DEFINITION.—As used in this section, the term
21 ‘State’ has the meaning given that term in section
22 1716(k).

23 “(g) USE OF PENALTIES.—There is established a
24 separate account in the Treasury of the United States,
25 to be known as the ‘PACT Postal Service Fund’. Notwith-

1 standing any other provision of law, an amount equal to
2 50 percent of any criminal and civil fines or monetary pen-
3 alties collected by the United States Government in en-
4 forcing the provisions of this subsection shall be trans-
5 ferred into the PACT Postal Service Fund and shall be
6 available to the Postmaster General for the purpose of en-
7 forcing the provisions of this subsection.

8 “(h) COORDINATION OF EFFORTS.—In the enforce-
9 ment of this section, the Postal Service shall cooperate and
10 coordinate its efforts with related enforcement activities
11 of any other Federal agency or of any State, local, or trib-
12 al government, whenever appropriate.”.

13 (b) ACTIONS BY STATE, LOCAL OR TRIBAL GOVERN-
14 MENTS RELATING TO CERTAIN TOBACCO PRODUCTS.—

15 (1) A State, through its attorney general (or a
16 designee thereof), or a local government or Indian
17 tribe that levies an excise tax on tobacco products,
18 through its chief law enforcement officer (or a des-
19 ignee thereof), may in a civil action in a United
20 States district court obtain appropriate relief with
21 respect to a violation of section 1716E of title 18,
22 United States Code. Appropriate relief includes in-
23 junctive and equitable relief and damages equal to
24 the amount of unpaid taxes on tobacco products

1 mailed in violation of that section to addressees in
2 that State.

3 (2) Nothing in this section shall be deemed to
4 abrogate or constitute a waiver of any sovereign im-
5 munity of a State or local government or Indian
6 tribe against any unconsented lawsuit under para-
7 graph (1), or otherwise to restrict, expand, or mod-
8 ify any sovereign immunity of a State or local gov-
9 ernment or Indian tribe.

10 (3) Nothing in this section shall be construed to
11 prohibit an authorized State official from proceeding
12 in State court on the basis of an alleged violation of
13 any general civil or criminal statute of such State.

14 (4) A State, through its attorney general, or a
15 local government or Indian tribe that levies an excise
16 tax on tobacco products, through its chief law en-
17 forcement officer (or a designee thereof), may pro-
18 vide evidence of a violation of paragraph (1) for
19 commercial, business or money-making purposes by
20 any person not subject to State, local, or tribal gov-
21 ernment enforcement actions for violations of para-
22 graph (1) to the Attorney General of the United
23 States or a United States attorney, who shall take
24 appropriate actions to enforce the provisions of this
25 subsection.

1 (5) The remedies available under this sub-
2 section are in addition to any other remedies avail-
3 able under Federal, State, local, tribal, or other law.
4 Nothing in this subsection shall be construed to ex-
5 pand, restrict, or otherwise modify any right of an
6 authorized State, local, or tribal government official
7 to proceed in a State, tribal, or other appropriate
8 court, or take other enforcement actions, on the
9 basis of an alleged violation of State, local, tribal, or
10 other law.

11 (c) CLERICAL AMENDMENT.—The table of sections
12 at the beginning of chapter 83 of title 18 is amended by
13 adding after the item relating to section 1716D the fol-
14 lowing new item:

“1716E. Tobacco products as nonmailable.”.

15 **SEC. 4. COMPLIANCE WITH MODEL STATUTE OR QUALI-**
16 **FYING STATUTE.**

17 (a) IN GENERAL.—A Tobacco Product Manufacturer
18 or importer may not sell in, deliver to, or place for delivery
19 sale, or cause to be sold in, delivered to, or placed for deliv-
20 ery sale in a State that is a party to the Master Settlement
21 Agreement, any cigarette manufactured by a Tobacco
22 Product Manufacturer that is not in full compliance with
23 the terms of the Model Statute or Qualifying Statute en-
24 acted by such State requiring funds to be placed into a

1 qualified escrow account under specified conditions, or any
2 regulations promulgated pursuant to such statute.

3 (b) JURISDICTION TO PREVENT AND RESTRAIN VIO-
4 LATIONS.—

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

9 (2) INITIATION OF ACTION.—A State, through
10 its attorney general, may bring an action in the
11 United States district courts to prevent and restrain
12 violations of subsection (a) by any person (or by any
13 person controlling such person).

14 (3) ATTORNEY FEES.—In any action under
15 paragraph (2), a State, through its attorney general,
16 shall be entitled to reasonable attorney fees from a
17 person found to have willfully and knowingly violated
18 subsection (a).

19 (4) NONEXCLUSIVITY OF REMEDIES.—The rem-
20 edy available under paragraph (2) is in addition to
21 any other remedies available under Federal, State,
22 or other law. No provision of this Act or any other
23 Federal law shall be held or construed to prohibit or
24 preempt the Master Settlement Agreement, the
25 Model Statute (as defined in the Master Settlement

1 Agreement), any legislation amending or complemen-
2 tary to the Model Statute in effect as of June 1,
3 2006, or any legislation substantially similar to such
4 existing, amending, or complementary legislation
5 hereinafter enacted.

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

11 (6) AUTHORITY OF THE ATTORNEY GEN-
12 ERAL.—The Attorney General of the United States
13 may administer and enforce subsection (a).

14 (c) DEFINITIONS.—In this section the following defi-
15 nitions apply:

16 (1) DELIVERY SALE.—The term “delivery sale”
17 means any sale of cigarettes or smokeless tobacco to
18 a consumer if—

19 (A) the consumer submits the order for
20 such sale by means of a telephone or other
21 method of voice transmission, the mails, or the
22 Internet or other online service, or the seller is
23 otherwise not in the physical presence of the
24 buyer when the request for purchase or order is
25 made; or

1 (B) the cigarettes or smokeless tobacco are
2 delivered to the buyer by common carrier, pri-
3 vate delivery service, or other method of remote
4 delivery, or the seller is not in the physical pres-
5 ence of the buyer when the buyer obtains pos-
6 session of the cigarettes or smokeless tobacco.

7 (2) IMPORTER.—The term “importer” means
8 each of the following:

9 (A) SHIPPING OR CONSIGNING.—Any per-
10 son in the United States to whom nontaxpaid
11 tobacco products manufactured in a foreign
12 country, Puerto Rico, the Virgin Islands, or a
13 possession of the United States are shipped or
14 consigned.

15 (B) MANUFACTURING WAREHOUSES.—Any
16 person who removes cigars or cigarettes for sale
17 or consumption in the United States from a
18 customs-bonded manufacturing warehouse.

19 (C) UNLAWFUL IMPORTING.—Any person
20 who smuggles or otherwise unlawfully brings to-
21 bacco products into the United States.

22 (3) MASTER SETTLEMENT AGREEMENT.—The
23 term “Master Settlement Agreement” means the
24 agreement executed November 23, 1998, between
25 the attorneys general of 46 States, the District of

1 Columbia, the Commonwealth of Puerto Rico, and 4
2 territories of the United States and certain tobacco
3 manufacturers.

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

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

12 **SEC. 5. INSPECTION BY BUREAU OF ALCOHOL, TOBACCO,**
13 **FIREARMS, AND EXPLOSIVES OF RECORDS**
14 **OF CERTAIN CIGARETTE AND SMOKELESS**
15 **TOBACCO SELLERS; CIVIL PENALTY.**

16 Section 2343(c) of title 18, United States Code, is
17 amended to read as follows:

18 “(c)(1) Any officer of the Bureau of Alcohol, To-
19 bacco, Firearms, and Explosives may, during normal busi-
20 ness hours, enter the premises of any person described in
21 subsection (a) or (b) for the purposes of inspecting—

22 “(A) any records or information required to be
23 maintained by such person under the provisions of
24 law referred to in this chapter; or

1 “(B) any cigarettes or smokeless tobacco kept
2 or stored by such person at such premises.

3 “(2) The district courts of the United States shall
4 have the authority in a civil action under this subsection
5 to compel inspections authorized by paragraph (1).”

6 “(3) Whoever violates paragraph (1), or an order
7 issued under paragraph (2), shall be subject to a civil pen-
8 alty in an amount not to exceed \$10,000 for each viola-
9 tion.”

10 **SEC. 6. EXCLUSIONS REGARDING INDIAN TRIBES AND**
11 **TRIBAL MATTERS.**

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

15 (1) any agreements, compacts, or other inter-
16 governmental arrangements between any State or
17 local government and any government of an Indian
18 tribe (as that term is defined in section 4(e) of the
19 Indian Self-Determination and Education Assistance
20 Act (25 U.S.C. 450b(e)) relating to the collection of
21 taxes on cigarettes or smokeless tobacco sold in In-
22 dian country;

23 (2) any State laws that authorize or otherwise
24 pertain to any such intergovernmental arrangements
25 or create special rules or procedures for the collec-

1 tion of State, local, or tribal taxes on cigarettes or
2 smokeless tobacco sold in Indian country;

3 (3) any limitations under Federal or State law,
4 including Federal common law and treaties, on
5 State, local, and tribal tax and regulatory authority
6 with respect to the sale, use, or distribution of ciga-
7 rettes and smokeless tobacco by or to Indian tribes,
8 tribal members, tribal enterprises, or in Indian coun-
9 try;

10 (4) any Federal law, including Federal common
11 law and treaties, regarding State jurisdiction, or
12 lack thereof, over any tribe, tribal members, tribal
13 enterprises, tribal reservations, or other lands held
14 by the United States in trust for one or more Indian
15 tribes; and

16 (5) any State or local government authority to
17 bring enforcement actions against persons located in
18 Indian country.

19 (b) COORDINATION OF LAW ENFORCEMENT.—Noth-
20 ing in this Act or the amendments made by this Act shall
21 be construed to inhibit or otherwise affect any coordinated
22 law enforcement effort by 1 or more States or other juris-
23 dictions, including Indian tribes, through interstate com-
24 pact or otherwise, that—

1 (1) provides for the administration of tobacco
2 product laws or laws pertaining to interstate sales or
3 other sales of tobacco products;

4 (2) provides for the seizure of tobacco products
5 or other property related to a violation of such laws;
6 or

7 (3) establishes cooperative programs for the ad-
8 ministration of such laws.

9 (c) **TREATMENT OF STATE AND LOCAL GOVERN-**
10 **MENTS.**—Nothing in this Act or the amendments made
11 by this Act is intended, and shall not be construed to, au-
12 thorize, deputize, or commission States or local govern-
13 ments as instrumentalities of the United States.

14 (d) **ENFORCEMENT WITHIN INDIAN COUNTRY.**—
15 Nothing in this Act or the amendments made by this Act
16 is intended to prohibit, limit, or restrict enforcement by
17 the Attorney General of the United States of the provi-
18 sions herein within Indian country.

19 (e) **AMBIGUITY.**—Any ambiguity between the lan-
20 guage of this section or its application and any other pro-
21 vision of this Act shall be resolved in favor of this section.

22 **SEC. 7. ENHANCED CONTRABAND TOBACCO ENFORCE-**
23 **MENT.**

24 (a) **REQUIREMENTS.**—The Director of the Bureau of
25 Alcohol, Tobacco, Firearms and Explosives shall—

1 (1) create 6 regional contraband tobacco traf-
2 ficking teams over a 3-year period in New York
3 City, Washington DC, Detroit, Los Angeles, Seattle,
4 and Miami,

5 (2) create a new Tobacco Intelligence Center to
6 oversee investigations and monitor and coordinate
7 ongoing investigations and to serve as a nerve center
8 for all on going tobacco diversion investigations in
9 the United States, and where applicable with law en-
10 forcement organizations around the world within the
11 Bureau of Alcohol, Tobacco, Firearms, and Explo-
12 sives,

13 (3) establish covert national warehouse for un-
14 dercover operations, and

15 (4) create a computer database that will track
16 and analyze information from retail sellers of to-
17 bacco products that sell through the internet, mail
18 order or make other non face to face sales.

19 (b) AUTHORIZATION OF APPROPRIATIONS.—The is
20 authorized to be appropriated to carry out subsection (a)
21 \$8,500,000 for each of 5 fiscal years.

22 **SEC. 8. EFFECTIVE DATE.**

23 (a) IN GENERAL.—Except as provided in subsection
24 (b), this Act shall take effect on the date that is 90 days
25 after the date of enactment of this Act.

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

3 **SEC. 9. SEVERABILITY.**

4 If any provision of this, or an amendment made by
5 this Act or the application thereof to any person or cir-
6 cumstance is held invalid, the remainder of the Act and
7 the application of it to any other person or circumstance
8 shall not be affected thereby.

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