

106TH CONGRESS  
1ST SESSION

# H. R. 2503

To amend the Internal Revenue Code of 1986 to deter the smuggling of tobacco products into the United States, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 14, 1999

Mr. DOGGETT (for himself, Mr. WAXMAN, Mr. MATSUI, Mr. HANSEN, Mr. MEEHAN, Mr. PALLONE, Ms. PELOSI, Mrs. LOWEY, Mr. BROWN of Ohio, Mr. LaFALCE, Ms. DeGETTE, and Ms. JACKSON-LEE of Texas) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Internal Revenue Code of 1986 to deter the smuggling of tobacco products into the United States, 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; AMENDMENT OF 1986 CODE.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Tobacco Smuggling Eradication Act of 1999”.

1 **TITLE I—AMENDMENTS TO IN-**  
2 **TERNAL REVENUE CODE OF**  
3 **1986**

4 **SEC. 101. AMENDMENT OF 1986 CODE.**

5 Except as otherwise expressly provided, whenever in  
6 this title an amendment or repeal is expressed in terms  
7 of an amendment to, or repeal of, a section or other provi-  
8 sion, the reference shall be considered to be made to a  
9 section or other provision of the Internal Revenue Code  
10 of 1986.

11 **SEC. 102. IMPROVED MARKING AND LABELING.**

12 (a) IN GENERAL.—Subsection (b) of section 5723  
13 (relating to marks, labels, and notices) is amended—

14 (1) by striking “, if any,” and

15 (2) by adding at the end the following: “Such  
16 marks, labels, and notices shall include marks and  
17 notices relating to the following:

18 “(1) IDENTIFICATION.—The Secretary shall  
19 promulgate regulations that require each manufac-  
20 turer or importer of tobacco products to legibly print  
21 a unique serial number on all packages of tobacco  
22 products manufactured or imported for sale or dis-  
23 tribution. Such serial number shall be designed to  
24 enable the Secretary to identify the manufacturer or  
25 importer of the product, and the location and date

1 of manufacture or importation. The Secretary shall  
2 determine the size and location of the serial number.

3 “(2) MARKING REQUIREMENTS FOR EX-  
4 PORTS.—Each package of a tobacco product that is  
5 exported shall be marked for export from the United  
6 States. The Secretary shall promulgate regulations  
7 to determine the size and location of the mark and  
8 under what circumstances a waiver of this para-  
9 graph shall be granted.”.

10 (b) SALES ON INDIAN RESERVATIONS.—Section  
11 5723 is amended by adding at the end the following new  
12 subsections:

13 “(f) SALES ON INDIAN RESERVATIONS.—The Sec-  
14 retary, in consultation with the Secretary of the Interior,  
15 shall promulgate regulations that require that each pack-  
16 age of a tobacco product that is sold on an Indian reserva-  
17 tion (as defined in section 403(9) of the Indian Child Pro-  
18 tection and Family Violence Prevention Act (25 U.S.C.  
19 3202(9)) be labeled as such. Such regulations shall include  
20 requirements for the size and location of the label.

21 “(g) DEFINITION OF PACKAGE.—For purposes of  
22 this section, the term ‘package’ means the innermost  
23 sealed container irrespective of the material from which  
24 such container is made, in which a tobacco product is  
25 placed by the manufacturer and in which such tobacco

1 product is offered for sale to a member of the general pub-  
2 lic.”.

3 **SEC. 103. WHOLESALERS REQUIRED TO HAVE PERMIT.**

4 Section 5712 (relating to application for permit) is  
5 amended by inserting “, wholesaler,” after “manufac-  
6 turer”.

7 **SEC. 104. CONDITIONS OF PERMIT.**

8 Subsection (a) of section 5713 (relating to issuance  
9 of permit) is amended to read as follows:

10 “(a) ISSUANCE.—

11 “(1) IN GENERAL.—A person shall not engage  
12 in business as a manufacturer, wholesaler, or im-  
13 porter of tobacco products or as an export ware-  
14 house proprietor without a permit to engage in such  
15 business. Such permit shall be issued in such form  
16 and in such manner as the Secretary shall by regula-  
17 tion prescribe, to every person properly qualified  
18 under sections 5711 and 5712. A new permit may  
19 be required at such other time as the Secretary shall  
20 by regulation prescribe.

21 “(2) CONDITIONS.—The issuance of a permit  
22 under this section shall be conditioned upon the  
23 compliance with the requirements of this chapter  
24 and the Contraband Cigarette Trafficking Act (28

1 U.S.C. chapter 114), and any regulations issued  
2 pursuant to such statutes.”.

3 **SEC. 105. RECORDS TO BE MAINTAINED.**

4 Section 5741 (relating to records to be maintained)  
5 is amended—

6 (1) by inserting “(a) IN GENERAL.—” before  
7 “Every manufacturer”,

8 (2) by inserting “every wholesaler,” after  
9 “every importer,”,

10 (3) by striking “such records” and inserting  
11 “records concerning the chain of custody of the to-  
12 bacco products and such other records”, and

13 (4) by adding at the end the following new sub-  
14 section:

15 “(b) RETAILERS.—Retailers shall maintain records  
16 of receipt of tobacco products, and such records shall be  
17 available to the Secretary for inspection and audit. An or-  
18 dinary commercial record or invoice shall satisfy the re-  
19 quirements of this subsection if such record shows the date  
20 of receipt, from whom tobacco products were received, and  
21 the quantity of tobacco products received.”.

22 **SEC. 106. REPORTS.**

23 Section 5722 (relating to reports) is amended—

24 (1) by inserting “(a) IN GENERAL.—” before  
25 “Every manufacturer”, and

1           (2) by adding at the end the following new sub-  
2       section:

3       “(b) REPORTS BY EXPORT WAREHOUSE PROPRI-  
4       ETORS.—

5           “(1) IN GENERAL.—Prior to exportation of to-  
6       bacco products from the United States, the export  
7       warehouse proprietor shall submit a report (in such  
8       manner and form as the Secretary may by regula-  
9       tion prescribe) to enable the Secretary to identify  
10      the shipment and assure that it reaches its intended  
11      destination.

12          “(2) AGREEMENTS WITH FOREIGN GOVERN-  
13      MENTS.—Notwithstanding section 6103 of this title,  
14      the Secretary is authorized to enter into agreements  
15      with foreign governments to exchange or share infor-  
16      mation contained in reports received from export  
17      warehouse proprietors of tobacco products if—

18           “(A) the Secretary believes that such  
19      agreement will assist in—

20                  “(i) ensuring compliance with the pro-  
21                  visions of this chapter or regulations pro-  
22                  mulgated thereunder, or

23                  “(ii) preventing or detecting violations  
24                  of the provisions of this chapter or regula-  
25                  tions promulgated thereunder, and

1           “(B) the Secretary obtains assurances  
 2           from such government that the information will  
 3           be held in confidence and used only for the pur-  
 4           poses specified in clauses (i) and (ii) of sub-  
 5           paragraph (A).

6           No information may be exchanged or shared with  
 7           any government that has violated such assurances.”.

8   **SEC. 107. FRAUDULENT OFFENSES.**

9           (a) IN GENERAL.—Subsection (a) of section 5762  
 10          (relating to fraudulent offenses) is amended by striking  
 11          paragraph (1) and redesignating paragraphs (2) through  
 12          (6) as paragraphs (1) through (5), respectively.

13          (b) OFFENSES RELATING TO DISTRIBUTION OF TO-  
 14          BACCO PRODUCTS.—Section 5762 is amended—

15               (1) by redesignating subsection (b) as sub-  
 16               section (c),

17               (2) in subsection (c) (as so redesignated), by in-  
 18               serting “or (b)” after “(a)”, and

19               (3) by inserting after subsection (a) the fol-  
 20               lowing new subsection:

21           “(b) OFFENSES RELATING TO DISTRIBUTION OF TO-  
 22          BACCO PRODUCTS.—It shall be unlawful—

23               “(1) for any person to engage in the business  
 24               as a manufacturer or importer of tobacco products  
 25               or cigarette papers and tubes, or to engage in the

1 business as a wholesaler or an export warehouse pro-  
2 prietor, without filing the bond and obtaining the  
3 permit where required by this chapter or regulations  
4 thereunder;

5 “(2) for an importer, manufacturer, or whole-  
6 saler permitted under this chapter intentionally to  
7 ship, transport, deliver, or receive any tobacco prod-  
8 ucts from or to any person other than a person per-  
9 mitted under this chapter or a retailer, except a per-  
10 mitted importer may receive foreign tobacco prod-  
11 ucts from a foreign manufacturer or a foreign dis-  
12 tributor that have not previously entered the United  
13 States;

14 “(3) for any person, except a manufacturer or  
15 an export warehouse proprietor permitted under this  
16 chapter to receive any tobacco products that have  
17 previously been exported and returned to the United  
18 States;

19 “(4) for any export warehouse proprietor inten-  
20 tionally to ship, transport, sell, or deliver for sale  
21 any tobacco products to any person other than a  
22 permitted manufacturer or foreign purchaser;

23 “(5) for any person other than an export ware-  
24 house proprietor permitted under this chapter inten-  
25 tionally to ship, transport, receive, or possess, for

1 purposes of resale, any tobacco product in packages  
2 marked pursuant to regulations issued under section  
3 5723, other than for direct return to a manufacturer  
4 or export warehouse proprietor for repacking or for  
5 re-exportation;

6 “(6) for any manufacturer, export warehouse  
7 proprietor, importer, or wholesaler permitted under  
8 this chapter to make intentionally any false entry in,  
9 to fail willfully to make appropriate entry in, or to  
10 fail willfully to maintain properly any record or re-  
11 port that such person is required to keep as required  
12 by this chapter or the regulations promulgated  
13 thereunder; and

14 “(7) for any person to alter, mutilate, destroy,  
15 obliterate, or remove any mark or label required  
16 under this chapter upon a tobacco product held for  
17 sale, except pursuant to regulations of the Secretary  
18 authorizing relabeling for purposes of compliance  
19 with the requirements of this section or of State law.  
20 Any person violating any of the provisions of this sub-  
21 section shall, upon conviction, be fined as provided in sec-  
22 tion 3571 of title 18, United States Code, imprisoned for  
23 not more than 5 years, or both.”.

24 (c) INTENTIONALLY DEFINED.—Section 5762 is  
25 amended by adding at the end the following:

1       “(d) DEFINITION OF INTENTIONALLY.—For pur-  
2 poses of this section and section 5761, the term ‘inten-  
3 tionally’ means doing an act, or omitting to do an act,  
4 deliberately, and not due to accident, inadvertence, or mis-  
5 take, regardless of whether the person knew that the act  
6 or omission constituted an offense.”.

7 **SEC. 108. CIVIL PENALTIES.**

8       Subsection (a) of section 5761 (relating to civil pen-  
9 alties) is amended—

10           (1) by striking “willfully” and inserting “inten-  
11 tionally”, and

12           (2) by striking “\$1,000” and inserting  
13 “\$10,000”.

14 **SEC. 109. DEFINITIONS.**

15       (a) EXPORT WAREHOUSE PROPRIETOR.—Subsection  
16 (j) of section 5702 (relating to definition of export ware-  
17 house proprietor) is amended by inserting before the pe-  
18 riod the following: “or any person engaged in the business  
19 of exporting tobacco products from the United States for  
20 purposes of sale or distribution. Any duty free store that  
21 sells, offers for sale, or otherwise distributes to any person  
22 in any single transaction more than 30 packages of ciga-  
23 rettes, or its equivalent for other tobacco products as the  
24 Secretary shall by regulation prescribe, shall be deemed  
25 an export warehouse proprietor under this chapter”.

1 (b) RETAILER; WHOLESALER.—Section 5702 is  
 2 amended by adding at the end the following:

3 “(q) RETAILER.—The term ‘retailer’ means any deal-  
 4 er who sells, or offers for sale, any tobacco product at re-  
 5 tail. The term ‘retailer’ includes any duty-free store that  
 6 sells, offers for sale, or otherwise distributes at retail in  
 7 any single transaction 30 or less packages, or its equiva-  
 8 lent for other tobacco products.

9 “(r) WHOLESALER.—The term ‘wholesaler’ means  
 10 any person engaged in the business of purchasing tobacco  
 11 products for resale at wholesale, or any person acting as  
 12 an agent or broker for any person engaged in the business  
 13 of purchasing tobacco products for resale at wholesale.”.

14 **SEC. 110. EFFECTIVE DATE.**

15 The amendments made by this title shall take effect  
 16 on January 1, 2000.

17 **TITLE II—AMENDMENTS TO THE**  
 18 **CONTRABAND CIGARETTE**  
 19 **TRAFFICKING ACT**

20 **SEC. 201. AMENDMENTS TO THE CONTRABAND CIGARETTE**  
 21 **TRAFFICKING ACT.**

22 (a) DEFINITIONS.—Section 2341 of title 18, United  
 23 States Code, is amended—

24 (1) in paragraph (2), by striking “60,000” and  
 25 inserting “30,000”;

1           (2) in paragraph (4), by striking “and” at the  
2       end;

3           (3) in paragraph (5), by striking the period and  
4       inserting a semicolon; and

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

6           “(6) the term ‘tobacco product’ means cigars,  
7       cigarettes, smokeless tobacco, and pipe tobacco (as  
8       such terms are defined in section 5701 of the Inter-  
9       nal Revenue Code of 1986); and

10          “(7) the term ‘contraband tobacco product’  
11       means a quantity of tobacco product that is equiva-  
12       lent to or more than 30,000 cigarettes as determined  
13       by regulation, which bear no evidence of the pay-  
14       ment of applicable State tobacco taxes in the State  
15       where such tobacco products are found, if such State  
16       requires a stamp, impression, or other indication to  
17       be placed on packages or other containers of product  
18       to evidence payment of tobacco taxes.

19       (b) UNLAWFUL ACTS.—Section 2342 of title 18,  
20   United States Code, is amended—

21           (1) in subsection (a), by inserting “or contra-  
22       band tobacco products” before the period;

23           (2) by amending subsection (b) to read as fol-  
24       lows:

25       “(b)(1) It shall be unlawful for any person—

1           “(A) knowingly to make any false statement or  
2           representation with respect to the information re-  
3           quired by this chapter to be kept in the records or  
4           reports of any person who ships, sells, or distributes  
5           any quantity of cigarettes in excess of 30,000 in a  
6           single transaction or tobacco products in such equiv-  
7           alent quantities as shall be determined by regulation,  
8           or

9           “(B) knowingly to fail to maintain records or  
10          reports, alter or obliterate required markings, or  
11          interfere with any inspection, required under this  
12          chapter, with respect to such quantity of cigarettes  
13          or other tobacco products.”; and

14               (3) by adding at the end the following:

15          “(c) It shall be unlawful for any person knowingly  
16          to transport tobacco products under a false bill of lading  
17          or without any bill of lading.”.

18          (c) RECORDKEEPING.—Section 2343 of title 18,  
19          United States Code, is amended—

20               (1) in subsection (a), by inserting after “trans-  
21          action” the following: “, or, in the case of other to-  
22          bacco products an equivalent quantity as determined  
23          by regulation,”;

24               (2) in subsection (a), by striking “60,000” and  
25          inserting “30,000”;

1           (3) by amending the last sentence of subsection  
2           (a) to read as follows: “Except as provided in sub-  
3           section (c) of this section, nothing contained herein  
4           shall authorize the Secretary to require reporting  
5           under this section.”;

6           (4) in subsection (b), by striking “60,000” and  
7           inserting “30,000”; and

8           (5) in subsection (b), by inserting after “trans-  
9           action” the following: “, or, in the case of other to-  
10          bacco products an equivalent quantity as determined  
11          by regulation,”;

12          (6) by adding at the end the following:

13          “(c)(1) Any person who ships, sells, or distributes  
14          cigarettes or tobacco products for resale in interstate com-  
15          merce, whereby such cigarettes or tobacco products are  
16          shipped into a State taxing the sale or use of such ciga-  
17          rettes or tobacco products or who advertises or offers ciga-  
18          rettes or tobacco products for such sale or transfer and  
19          shipment shall—

20                 “(A) first file with the tobacco tax adminis-  
21          trator of the State into which such shipment is made  
22          or in which such advertisement or offer is dissemi-  
23          nated, a statement setting for the person’s name,  
24          and trade name (if any), and the address of the per-

1 son's principal place of business and of any other  
2 place of business; and

3 “(B) not later than the 10th of each calendar  
4 month, file with the tobacco tax administrator of the  
5 State into which such shipment is made a memo-  
6 randum or a copy of the invoice covering each and  
7 every shipment of cigarettes or tobacco products  
8 made during the previous calendar month into such  
9 State; the memorandum or invoice in each case to  
10 include the name and address of the person to whom  
11 the shipment was made, the brand, and the quantity  
12 thereof.

13 “(2) The fact that any person ships or delivers for  
14 shipment any cigarettes or tobacco products shall, if such  
15 shipment is into a State in which such person has filed  
16 a statement with the tobacco tax administrator under  
17 paragraph (1)(A) of this subsection, be presumptive evi-  
18 dence that such cigarettes or tobacco products were sold,  
19 shipped, or distributed for resale by such person.

20 “(3) For purposes of this subsection—

21 “(A) the term ‘use’ in addition to its ordinary  
22 meaning, means consumption, storage, handling, or  
23 disposal of cigarettes or tobacco products; and

1           “(B) the term ‘tobacco tax administrator’  
2       means the State official authorized to administer to-  
3       bacco tax laws of the State.”.

4       (d) PENALTIES.—Section 2344 of title 18, United  
5 States Code, is amended—

6           (1) in subsection (b), by inserting “or (c)” after  
7       “section 2342(b)”; and

8           (2) in subsection (c), by inserting “or contra-  
9       band tobacco products” after “cigarettes”.

10       (e) REPEAL.—Chapter 10A of title 15, United States  
11 Code, is repealed.

12       (f) CIVIL FORFEITURE.—Section 981(a)(1)(C) is  
13 amended by striking “or 1344” and inserting “1344, or  
14 2344”.

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