

108TH CONGRESS
2D SESSION

H. R. 3749

To revise and reform the Act commonly called the Jenkins Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 28, 2004

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

A BILL

To revise and reform the Act commonly called the Jenkins Act, 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.**

4 This Act may be cited as the “Local Government
5 Internet Tobacco Sales Enforcement Act of 2004”.

6 **SEC. 2. REVISION OF ACT OF OCTOBER 19, 1949.**

7 The Act of October 19, 1949, entitled “An Act to
8 assist States in collecting sales and use taxes on ciga-
9 rettes” (15 U.S.C. 375 et seq.) is amended by striking

1 “That for the purposes of this Act” and all that follows
2 through the end of the Act and inserting the following:

3 **“SECTION 1. SHORT TITLE.**

4 “This Act may be cited as the ‘Jenkins Act’.

5 **“SEC. 2. INTERSTATE SALES OF CIGARETTES AND SMOKE-**
6 **LESS TOBACCO.**

7 “(a) COMPLIANCE WITH LAWS.—

8 “(1) Each person who engages in an interstate
9 sale of cigarettes or smokeless tobacco or in an
10 interstate distribution of cigarettes or smokeless to-
11 bacco shall comply with all the excise, sales, and use
12 tax laws applicable to the sale or other transfer of
13 cigarettes or smokeless tobacco in the State and
14 place in which the cigarettes or smokeless tobacco
15 are delivered as though the person were physically
16 located in that State or place.

17 “(2) Unless State law requires otherwise, no
18 cigarettes or smokeless tobacco may be delivered
19 pursuant to an interstate sale unless in advance of
20 delivery—

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 imposed by the local government of
3 the place in which the cigarettes or smokeless
4 tobacco are to be delivered has been paid to the
5 local or tribal government; and

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

10 “(3) The provisions of paragraph (2) do not
11 apply to an interstate sale or distribution of smoke-
12 less tobacco when the law of the State or place
13 where the smokeless tobacco is to be delivered re-
14 quires or otherwise provides that interstate sellers of
15 smokeless tobacco collect the excise tax from the
16 consumer and remit the excise tax to the State or
17 place, and the interstate seller complies with such
18 requirement.

19 “(4)(A) Each State may compile a list of inter-
20 state sellers of cigarettes or smokeless tobacco who
21 are in compliance with this Act with respect to that
22 State. If a State posts a list pursuant to this sub-
23 section that specifically refers to this subsection, no
24 person may knowingly make an interstate distribu-
25 tion of cigarettes or smokeless tobacco into that

1 State other than to a person licensed or otherwise
2 authorized by the State to engage in the business of
3 manufacturing, distributing or selling cigarettes or
4 smokeless tobacco unless the person initiating or or-
5 dering the delivery is on the list at the time of deliv-
6 ery.

7 “(B) Each State may also compile a list of
8 interstate sellers of cigarettes or smokeless tobacco
9 who are not in compliance with this Act with respect
10 to that State. A State may provide such a list to a
11 common carrier, the United States Postal Service, or
12 to any other person, and make public the availability
13 of the list to any person engaged in the delivery
14 business in or into the State or who delivers ciga-
15 rettes or smokeless tobacco in or into the State.
16 Such list shall be confidential, and any person re-
17 ceiving such a list from a State shall maintain the
18 confidentiality of the list. If a State, pursuant to
19 this subsection, provides such a list to any person
20 and makes public its availability to persons who de-
21 liver cigarettes or smokeless tobacco in or into the
22 State, no person who receives the list and no person
23 who delivers cigarettes or smokeless tobacco in or
24 into the State may knowingly make an interstate

1 distribution of any item in or into that State for a
2 person on the list unless—

3 “(i) the person in good faith determines
4 that the item does not include cigarettes or
5 smokeless tobacco; or

6 “(ii) the delivery is made to a person li-
7 censed or otherwise authorized by the State to
8 engage in the business of manufacturing, dis-
9 tributing or selling cigarettes or smokeless to-
10 bacco.

11 “(b) RECORDKEEPING AND REPORTING.—Each per-
12 son who engages in an interstate sale of cigarettes or
13 smokeless tobacco, or who advertises, or offers to engage
14 in, such a sale, shall—

15 “(1) first file with the tobacco tax adminis-
16 trator of the State and place in which the cigarettes
17 or smokeless tobacco are to be offered, advertised, or
18 delivered, a statement setting forth the person’s
19 name and trade name (if any), and the address of
20 that person’s principal place of business and any
21 other place of business, as well as telephone numbers
22 for each place of business, a principal electronic mail
23 address, any website addresses, and the name, ad-
24 dress and telephone number of an agent authorized

1 to accept service in the State on behalf of that per-
2 son;

3 “(2) not later than the 10th day of each cal-
4 endar month, file with that tobacco tax adminis-
5 trator a memorandum or copy of the invoice cov-
6 ering each and every interstate sale of cigarettes or
7 smokeless tobacco by the filer into that State or
8 place, and each interstate distribution of cigarettes
9 or smokeless tobacco pursuant to that sale, during
10 the previous calendar month, and such memorandum
11 or invoice shall include the name and address of the
12 person to whom the cigarettes or smokeless tobacco
13 are delivered, the brand, and the type, the quantity
14 delivered, and the name, address, and phone number
15 of the person delivering; and

16 “(3) maintain records, including the informa-
17 tion specified in paragraph (2), for not less than 5
18 years after the date of an interstate sale of ciga-
19 rettes or smokeless tobacco and of each interstate
20 distribution of cigarettes or smokeless tobacco pur-
21 suant to that sale, and make those records available
22 for inspection upon the lawful demand of the Attor-
23 ney General of the United States, an attorney gen-
24 eral of a State, the Commissioner of Internal Rev-
25 enue, or the chief tax collection official of a State or

1 place that levies an excise tax on cigarettes or
2 smokeless tobacco.

3 “(c) Personally identifiable information—

4 “(1) relating to an individual to whom
5 cigarettes or smokeless tobacco are delivered; and

6 “(2) filed, or maintained in records, under
7 paragraph (2) or (3) of subsection (b);

8 shall not be made available to the public and shall be used
9 solely for the purposes of tax collection or law enforce-
10 ment.

11 “(d) DEEMING RULE.—For the purposes of this sec-
12 tion—

13 “(1) an interstate sale or delivery of cigarettes
14 or smokeless tobacco shall be deemed to have oc-
15 curred in the State and place where the buyer ob-
16 tains personal possession of the cigarettes or smoke-
17 less tobacco; and

18 “(2) a delivery pursuant to an interstate sale is
19 deemed to have been initiated or ordered by the sell-
20 er.

21 **“SEC. 3. CIVIL ACTION.**

22 “(a) IN GENERAL.—In addition to any other rem-
23 edies available under other Federal or State or local law,
24 the attorney general of a State or the chief law enforce-
25 ment officer of a local government that imposes an excise

1 tax on cigarettes or smokeless tobacco may in a civil action
2 obtain any appropriate relief, including money damages,
3 civil penalties, and injunctive or other equitable relief
4 where appropriate, against—

5 “(1) any person who violates, or is about to en-
6 gage in a violation of, section 2; or

7 “(2) any person who knowingly assists or par-
8 ticipates, or knowingly is about to engage, in such
9 a violation.

10 “(b) NOTICE.—No attorney general of a State or
11 chief law enforcement officer of a local government may
12 commence an action pursuant to subsection (a) prior to
13 60 days after the State attorney general has given notice
14 of his intent to commence the action to the Attorney Gen-
15 eral of the United States. If the Attorney General of the
16 United States has commenced and is diligently pros-
17 ecuting a civil action against the persons named in the
18 notice for the violation described in the notice, then the
19 State attorney general may not commence an action
20 against that defendant for that violation but may join the
21 United States Attorney General’s action solely for the pur-
22 pose of establishing and collecting State damages.

23 “(c) LIMITATIONS ON CIVIL ACTIONS BY LOCAL
24 GOVERNMENTS.—The chief law enforcement officer of a
25 local government may not bring any unconsented suit pur-

1 suant to this Act against any Federal, State, local, or trib-
2 al governmental entity.

3 “(d) REFERRALS OF LOCAL VIOLATIONS FOR EN-
4 FORCEMENT.—The chief law enforcement officer of a local
5 government may provide evidence of a violation of its ex-
6 cise tax on cigarettes or smokeless tobacco under section
7 2(a) of this Act to the Attorney General of the United
8 States, the United States Attorney with jurisdiction over
9 the locality, or the attorney general of the State in which
10 the local government is located. Upon referral, the Attor-
11 ney General of the United States or the United States At-
12 torney shall take appropriate actions to enforce this Act.

13 “(e) AVAILABILITY OF INFORMATION.—The Attorney
14 General of the United States shall make information about
15 Federal, State, and other efforts to enforce this Act pub-
16 licly available, through posting the information on the
17 Internet and through other means.

18 **“SEC. 4. CIVIL PENALTY.**

19 “Whoever violates section 2 is subject to a civil pen-
20 alty not to exceed \$5,000 in the case of a first violation,
21 and, in any other case, not to exceed \$10,000 or, if it is
22 higher, 5 percent of the gross revenue from interstate
23 sales or distributions of cigarettes or smokeless tobacco
24 by such person during the 1-year period ending on the
25 date of the violation.

1 **“SEC. 5. CRIMINAL PENALTIES.**

2 “(a) SECTION 2(a) VIOLATIONS.—Whoever violates
3 section 2(a) shall be fined under title 18, United States
4 Code, or imprisoned not more than 3 years, or both.

5 “(b) SECTION 2(b) VIOLATIONS.—Whoever violates
6 section 2(b) shall be guilty, fined under title 18, United
7 States Code, or imprisoned not more than 6 months, or
8 both.

9 **“SEC. 6. NONPREEMPTION.**

10 “This Act does not limit the remedies provided by
11 State, tribal, Federal, or other law with respect to alleged
12 violations of State, tribal, Federal, or other law relating
13 to a sale or distribution of cigarettes or smokeless tobacco
14 in connection with an interstate sale or distribution of
15 cigarettes or smokeless tobacco. Nothing in this Act shall
16 be construed to prohibit an authorized State or local gov-
17 ernment official from proceeding in State court or taking
18 other enforcement actions on the basis of alleged violations
19 of State or other law, or an authorized tribal government
20 official from proceeding in tribal court or taking other en-
21 forcement action, on the basis of alleged violations of trib-
22 al or other law.

23 **“SEC. 7. EXCLUSIONS REGARDING INDIAN TRIBES AND**
24 **TRIBAL MATTERS.**

25 “(a) INDIAN COUNTRY.—The provisions of this Act
26 relating to State tax collection do not apply to a sale of

1 cigarettes or smokeless tobacco that occurs exclusively in
2 Indian country (as defined in section 1151 of title 18,
3 United States Code) owned or occupied by an Indian tribe
4 to a consumer located in that Indian Country who is an
5 individual member of the same Indian tribe.

6 “(b) INTERGOVERNMENTAL ARRANGEMENTS.—
7 Nothing in this Act is intended nor shall be construed to
8 affect, amend, or modify—

9 “(1) any agreement, compact, or other intergov-
10 ernmental arrangement between any State or local
11 government and any Indian tribe relating to the col-
12 lection of taxes on cigarettes or smokeless tobacco
13 sold on tribal lands; or

14 “(2) any State law that pertains to any such
15 intergovernmental arrangement or creates special
16 rules or procedures for the collection of State, local,
17 or tribal taxes on cigarettes or smokeless tobacco
18 sold on tribal lands.

19 “(c) COORDINATED LAW ENFORCEMENT EF-
20 FORTS.—Nothing in this Act shall be construed to inhibit
21 or otherwise affect any coordinated law enforcement effort
22 by one or more States or other jurisdictions, including In-
23 dian tribes, through interstate compact or otherwise,
24 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 prod-
5 ucts or other property related to a violation of such
6 laws; or

7 “(3) establishes cooperative programs for the
8 administration of such laws.

9 **“SEC. 8. DEFINITIONS.**

10 “As used in this Act—

11 “(1) the term ‘attorney general’, with respect to
12 a State, means the chief law enforcement officer of
13 that State, or the designee of that officer;

14 “(2) the term ‘cigarette’ means—

15 “(A) any roll of tobacco wrapped in paper
16 or in any substance not containing tobacco
17 which is to be heated or burned;

18 “(B) any roll of tobacco wrapped in any
19 substance containing tobacco that, because of
20 its appearance, the type of tobacco used in the
21 filler, or its packaging or labeling is likely to be
22 offered to, or purchased by consumers as a cig-
23 arette described in subparagraph (A);

24 “(C) any roll of tobacco wrapped in any
25 substance that because of its appearance, the

1 type of tobacco used in the filler, or its pack-
2 aging or labeling is likely to be offered to, or
3 purchased by consumers as a cigarette; or

4 “(D) loose rolling tobacco that, because of
5 its appearance, type, packaging, or labeling, is
6 likely to be offered to, or purchased by, con-
7 sumers as tobacco for making cigarettes;

8 “(3) the term ‘smokeless tobacco’ means any
9 product intended or marketed for human consump-
10 tion containing finely cut, ground, powdered, leaf, or
11 other tobacco that is intended to be placed in the
12 oral or nasal cavity or otherwise consumed without
13 being combusted;

14 “(4) the term ‘interstate sale of cigarettes or
15 smokeless tobacco’ means any sale of cigarettes or
16 smokeless tobacco in interstate or foreign commerce
17 to a person, other than a person licensed or other-
18 wise authorized as a distributor, wholesaler, or re-
19 tailer in the State where the cigarettes or smokeless
20 tobacco is delivered, in which—

21 “(A) the buyer submits the order for such
22 sale by means of a telephone or other method
23 of voice transmission, the mails, or the Internet
24 or other online service, or the seller is not in

1 the physical presence of the buyer when the re-
2 quest for purchase or order is made; or

3 “(B) the cigarettes or smokeless tobacco
4 are delivered by use of a common carrier, pri-
5 vate delivery service, or the mails, or the seller
6 is not in the physical presence of the buyer
7 when the buyer obtains physical possession of
8 the delivered cigarettes or smokeless tobacco;

9 “(5) the term ‘interstate or foreign commerce’
10 means commerce between a State and any place out-
11 side that State, commerce between a State and any
12 Indian lands in that State, or commerce between
13 points in the same State but through any place out-
14 side that State;

15 “(6) the term ‘interstate distribution of ciga-
16 rettes or smokeless tobacco’ means a delivery or
17 other distribution of cigarettes or smokeless tobacco
18 pursuant to an interstate sale of cigarettes or
19 smokeless tobacco;

20 “(7) the term ‘State’ means a State of the
21 United States, the District of Columbia, the Com-
22 monwealth of Puerto Rico, or any territory or pos-
23 session of the United States;

24 “(8) the term ‘person’ means an individual, a
25 corporation, company, association, firm, partnership,

1 society, joint stock company, an Indian tribal organi-
2 zation, or an Indian tribal government;

3 “(9) the term ‘tribal organization’ has the
4 meaning given that term in section 4 of the Indian
5 Self-Determination and Education Assistance Act
6 (25 U.S.C. 450b); and

7 “(10) the term ‘Indian lands’ has the meaning
8 given that term in section 3 of the Archaeological
9 Resources Protection Act of 1979 (16 U.S.C.
10 470bb).”.

11 **SEC. 3. SENSE OF CONGRESS CONCERNING THE PRECE-**
12 **DENTIAL EFFECT OF THIS ACT.**

13 It is the sense of Congress that unique harms are
14 associated with the remote interstate sales of cigarette and
15 smokeless tobacco, including problems associated with
16 verifying the legal age of consumers and long-term nega-
17 tive health effects associated with the continued use of
18 these products. This Act further affirms Congress’ long-
19 standing interest in encouraging compliance and enforce-
20 ment of State laws that relate to the remote sales, includ-
21 ing internet sales, of these specific harmful products. En-
22 acted more than 50 years ago, the Jenkins Act established
23 reporting requirements for remote interstate sellers of
24 cigarettes in order to reduce incentives for smuggling and
25 to help states enforce tobacco taxes. In light of the unique

1 federal policy and historic distinctions between cigarettes
2 and smokeless tobacco and other products, the require-
3 ments of this Act are in no way meant to create, and ought
4 not be considered, precedent regarding the collection of
5 State sales or use taxes by out-of-state entities that lack
6 a physical presence within the taxing State.

7 **SEC. 4. EFFECTIVE DATE.**

8 The amendment made by this Act shall take effect
9 on the first day of the first month beginning on or after
10 60 days after the date of the enactment of this Act.

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