

108TH CONGRESS  
2D SESSION

# S. 2642

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 SENATE OF THE UNITED STATES

JULY 13, 2004

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on Finance

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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       “Smuggled Tobacco Prevention Act of 2004”.

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; EXPORT**  
12 **BONDS.**

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

15 (1) by striking “, if any,” and

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

19 “(1) IDENTIFICATION.—Each person who is a  
20 manufacturer or importer of tobacco products shall  
21 (in accordance with regulations prescribed by the  
22 Secretary) legibly print a unique serial number on  
23 all packages of tobacco products manufactured or  
24 imported by such person for sale or distribution.  
25 Such serial number shall be designed to enable the

1 Secretary to identify the manufacturer of the prod-  
2 uct (and, in the case of importation, the manufac-  
3 turer and importer of the product), the location and  
4 date of manufacture (and, if imported, the location  
5 and date of importation), and any other information  
6 the Secretary determines necessary or appropriate  
7 for the proper administration of the chapter. The  
8 Secretary shall determine the size and location of  
9 the serial number.

10 “(2) MARKING REQUIREMENTS FOR EX-  
11 PORTS.—Each package of a tobacco product that is  
12 exported shall be marked for export from the United  
13 States and shall be marked as to the foreign country  
14 which is to be the final destination of such product.  
15 Such marking shall be visible and prominent and  
16 shall be in English and in the primary language of  
17 such foreign country. The Secretary shall promul-  
18 gate regulations to determine the size and location  
19 of the mark.”.

20 (b) SALES ON INDIAN RESERVATIONS; PACKAGE DE-  
21 FINED.—Section 5723 is amended by adding at the end  
22 the following new subsections:

23 “(f) SALES ON INDIAN RESERVATIONS.—Each pack-  
24 age of a tobacco product that is sold on an Indian reserva-  
25 tion (as defined in section 403(9) of the Indian Child Pro-

1 tection and Family Violence Prevention Act (25 U.S.C.  
 2 3202(9)) shall be visibly and prominently labeled as such.  
 3 The Secretary, in consultation with the Secretary of the  
 4 Interior, shall promulgate regulations with respect to such  
 5 labeling, including requirements for the size and location  
 6 of the label.

7 “(g) DEFINITION OF PACKAGE.—For purposes of  
 8 this section, the term ‘package’ means the innermost  
 9 sealed container visible from the outside of the individual  
 10 container irrespective of the material from which such con-  
 11 tainer is made, in which a tobacco product is placed by  
 12 the manufacturer and in which such tobacco product is  
 13 offered for sale to a member of the general public.”.

14 (c) REQUIREMENTS FOR TRACKING OF TOBACCO  
 15 PRODUCTS.—

16 (1) IN GENERAL.—Subchapter B of chapter 52  
 17 is amended by adding at the end the following new  
 18 section:

19 **“SEC. 5714. EXPORT BONDS.**

20 “(a) POSTING OF BOND.—

21 “(1) IN GENERAL.—It shall be unlawful for any  
 22 person to export any tobacco product unless such  
 23 person—

24 “(A) has posted with the Secretary a to-  
 25 bacco product bond in accordance with this sec-

1           tion for such product that contains a disclosure  
2           of the country to which such product will be ex-  
3           ported; and

4           “(B) receives a written statement from the  
5           recipient of the tobacco products involved that  
6           such person—

7           “(i) will not knowingly and willfully  
8           violate or cause to be violated any law or  
9           regulation of such country, the United  
10          States, any State, the District of Colum-  
11          bia, or any possession of the United States  
12          with respect to such products; and

13          “(ii) has never been convicted of any  
14          offense with respect to tobacco products.

15          “(2) REGULATIONS.—The Secretary shall pro-  
16          mulgate regulations that determine the frequency  
17          and the amount of each bond that must be posted  
18          under paragraph (1), but in no case shall such  
19          amount be less than an amount equal to the tax im-  
20          posed under this chapter on the value of the ship-  
21          ment of the products involved if such products were  
22          consumed within the United States.

23          “(3) EXPORT.—For purposes of this subsection,  
24          property shall be treated as exported if it is shipped  
25          to a foreign country, Puerto Rico, the Virgin Is-

1 lands, or a possession of the United States, or for  
 2 consumption beyond the jurisdiction of the internal  
 3 revenue laws of the United States.

4 “(b) RETURN OF BOND.—The Secretary shall return  
 5 a bond posted under subsection (a)—

6 “(1) upon a determination by the Secretary  
 7 (based on documentation provided by the person who  
 8 posted the bond in accordance with regulations pro-  
 9 mulgated by the Secretary) that the items to which  
 10 the bond applies have been received in the country  
 11 of final destination as designated in the bond, or

12 “(2) under such other circumstance as the Sec-  
 13 retary may specify.”.

14 (2) CLERICAL AMENDMENT.—The table of sec-  
 15 tions for such subchapter B is amended by adding  
 16 at the end the following new item:

“Sec. 5714. Export bonds.”.

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

18 Section 5712 (relating to application for permit) is  
 19 amended by inserting “, wholesaler,” after “manufac-  
 20 turer”.

21 **SEC. 104. CONDITIONS OF PERMIT.**

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

24 “(a) ISSUANCE.—

1           “(1) IN GENERAL.—A person shall not engage  
2           in business as a manufacturer, wholesaler, or im-  
3           porter of tobacco products or as an export ware-  
4           house proprietor without a permit to engage in such  
5           business. Such permit shall be issued in such form  
6           and in such manner as the Secretary shall by regula-  
7           tion prescribe, to every person properly qualified  
8           under sections 5711 and 5712. A new permit may  
9           be required at such other time as the Secretary shall  
10          by regulation prescribe.

11          “(2) CONDITIONS.—The issuance of a permit  
12          under this section shall be conditioned upon the  
13          compliance with the requirements of—

14                 “(A) this chapter,

15                 “(B) the Contraband Cigarette Trafficking  
16                 Act (18 U.S.C. chapter 114),

17                 “(C) the Act of October 19, 1949 (15  
18                 U.S.C. chapter 10A),

19                 “(D) any regulations issued pursuant to  
20                 such statutes, and

21                 “(E) any other federal laws or regulations  
22                 relating to the taxation, sale, or transportation  
23                 of tobacco products.”.

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

2 Section 5741 (relating to records to be maintained)  
3 is amended—

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

6 (2) by inserting “every wholesaler,” after  
7 “every importer,”,

8 (3) by striking “such records” and inserting  
9 “records concerning the chain of custody of the to-  
10 bacco products (including the foreign country of  
11 final destination for packages marked for export)  
12 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. The preceding  
22 provisions of this subsection shall not be construed to limit  
23 or preclude other recordkeeping requirements imposed on  
24 any retailer.”.

25 **SEC. 106. REPORTS.**

26 Section 5722 (relating to reports) is amended—

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

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

5           “(b) REPORTS BY EXPORT WAREHOUSE PROPRI-  
6           ETORS.—

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

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

20                  “(A) the Secretary believes that such  
21                  agreement will assist in—

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

1                   “(ii) preventing or detecting violations  
2                   of the provisions of this chapter or regula-  
3                   tions promulgated thereunder, and

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

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

11 **SEC. 107. FRAUDULENT OFFENSES.**

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

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

18                   (1) by redesignating subsection (b) as sub-  
19                   section (c),

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

22                   (3) by inserting after subsection (a) the fol-  
23                   lowing new subsection:

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

1           “(1) for any person to engage in the business  
2           as a manufacturer or importer of tobacco products  
3           or cigarette papers and tubes, or to engage in the  
4           business as a wholesaler or an export warehouse pro-  
5           prietor, without filing the bond and obtaining the  
6           permit where required by this chapter or regulations  
7           thereunder;

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

17          “(3) for any person (other than the original  
18          manufacturer of such tobacco products or an export  
19          warehouse proprietor authorized to receive any to-  
20          bacco products that have previously been exported  
21          and returned to the United States) to receive any to-  
22          bacco products that have previously been exported  
23          and returned to the United States;

24          “(4) for any export warehouse proprietor inten-  
25          tionally to ship, transport, sell, or deliver for sale

1 any tobacco products to any person other than the  
2 original manufacturer of such tobacco products, an-  
3 other export warehouse proprietor, or a foreign pur-  
4 chaser;

5 “(5) for any person (other than a manufacturer  
6 or an export warehouse proprietor permitted under  
7 this chapter) intentionally to ship, transport, receive,  
8 or possess, for purposes of resale, any tobacco prod-  
9 uct in packages marked pursuant to regulations  
10 issued under section 5723, other than for direct re-  
11 turn to a manufacturer for repacking or for re-ex-  
12 portation or to an export warehouse proprietor for  
13 re-exportation;

14 “(6) for any manufacturer, importer, export  
15 warehouse proprietor, or wholesaler permitted under  
16 this chapter to make intentionally any false entry in,  
17 to fail willfully to make appropriate entry in, or to  
18 fail willfully to maintain properly any record or re-  
19 port that such person is required to keep as required  
20 by this chapter or the regulations promulgated  
21 thereunder;

22 “(7) for any person to alter, mutilate, destroy,  
23 obliterate, or remove any mark or label required  
24 under this chapter upon a tobacco product held for  
25 sale, except pursuant to regulations of the Secretary

1 authorizing relabeling for purposes of compliance  
2 with the requirements of this section or of State law;  
3 and

4 “(8) for any person to sell at retail more than  
5 5,000 cigarettes in a single transaction or in a series  
6 of related transactions, or, in the case of other to-  
7 bacco products, an equivalent quantity as deter-  
8 mined by regulation.

9 Any person violating any of the provisions of this sub-  
10 section shall, upon conviction, be fined as provided in sec-  
11 tion 3571 of title 18, United States Code, imprisoned for  
12 not more than 5 years, or both.”.

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

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

21 **SEC. 108. CIVIL PENALTIES.**

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

24 (1) by striking “willfully” and inserting “inten-  
25 tionally”, and

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

3 **SEC. 109. DEFINITIONS.**

4           (a) EXPORT WAREHOUSE PROPRIETOR.—Subsection  
5 (i) of section 5702 (relating to definition of export ware-  
6 house proprietor) is amended by inserting before the pe-  
7 riod the following: “or any person engaged in the business  
8 of exporting tobacco products from the United States for  
9 purposes of sale or distribution. Any duty free store that  
10 sells, offers for sale, or otherwise distributes to any person  
11 in any single transaction more than 30 packages of ciga-  
12 rettes, or its equivalent for other tobacco products as the  
13 Secretary shall by regulation prescribe, shall be deemed  
14 an export warehouse proprietor under this chapter”.

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

17           “(p) RETAILER.—The term ‘retailer’ means any deal-  
18 er who sells, or offers for sale, any tobacco product at re-  
19 tail. The term ‘retailer’ includes any duty-free store that  
20 sells, offers for sale, or otherwise distributes at retail in  
21 any single transaction 30 or fewer packages of cigarettes,  
22 or its equivalent for other tobacco products.

23           “(q) WHOLESALER.—The term ‘wholesaler’ means  
24 any person engaged in the business of purchasing tobacco  
25 products for resale at wholesale, or any person acting as

1 an agent or broker for any person engaged in the business  
2 of purchasing tobacco products for resale at wholesale.”.

3 **SEC. 110. EFFECTIVE DATE.**

4 The amendments made by this title shall take effect  
5 on January 1, 2005.

6 **TITLE II—AMENDMENTS TO THE**  
7 **CONTRABAND CIGARETTE**  
8 **TRAFFICKING ACT**

9 **SEC. 201. AMENDMENTS TO THE CONTRABAND CIGARETTE**  
10 **TRAFFICKING ACT.**

11 (a) EXPANSION OF ACT TO COVER OTHER TOBACCO  
12 PRODUCTS.—

13 (1) Paragraphs (1) through (2) of section 2341  
14 of title 18, United States Code, are amended to read  
15 as follows:

16 “(1) the term ‘tobacco product’ has the mean-  
17 ing given to such term by section 5702 of the Inter-  
18 nal Revenue Code of 1986;

19 “(2) the term ‘contraband tobacco product’  
20 means any tobacco product if—

21 “(A)(i) in the case of cigarettes, such ciga-  
22 rettes are in a quantity in excess of 2,000 ciga-  
23 rettes; or

24 “(ii) in the case of a tobacco product other  
25 than a cigarette, such product is in a quantity

1 in excess of the equivalent of 2,000 cigarettes  
2 as determined under rules made by the Attor-  
3 ney General;

4 “(B)(i) if the State in which such tobacco  
5 product is found requires a stamp, impression,  
6 or other indication to be placed on packages or  
7 other containers of product to evidence payment  
8 of tobacco taxes, such tobacco product bears no  
9 evidence of such payment; or

10 “(ii) if such State has no such require-  
11 ment, applicable tobacco taxes are found to be  
12 not paid; and

13 “(C) such tobacco product is in the posses-  
14 sion of any person other than—

15 “(i) a person holding a permit issued  
16 pursuant to chapter 52 of the Internal  
17 Revenue Code of 1986 as a manufacturer  
18 or importer of tobacco products or as an  
19 export warehouse proprietor, or a person  
20 operating a customs bonded warehouse  
21 pursuant to section 311 or 555 of the Tar-  
22 iff Act of 1930 (19 U.S.C. 1311 or 1555)  
23 or an agent of such person;

24 “(ii) a common or contract carrier  
25 transporting the tobacco product involved

1 under a proper bill of lading or freight bill  
2 which states the quantity, source, and des-  
3 tination of such product;

4 “(iii) a person—

5 “(I) who is licensed or otherwise  
6 authorized by the State where the to-  
7 bacco product is found to account for  
8 and pay tobacco taxes imposed by  
9 such State; and

10 “(II) who has complied with the  
11 accounting and payment requirements  
12 relating to such license or authoriza-  
13 tion with respect to the tobacco prod-  
14 uct involved; or

15 “(iv) an officer, employee, or other  
16 agent of the United States or a State, or  
17 any department, agency, or instrumentality  
18 of the United States or a State (including  
19 any political subdivision of a State) having  
20 possession of such tobacco product in con-  
21 nection with the performance of official du-  
22 ties;”.

23 (2) Section 2345 of title 18, United States  
24 Code, is amended—

1 (A) by striking “cigarette tax laws” each  
2 place it appears and inserting “tobacco tax  
3 laws”, and

4 (B) by striking “cigarettes” and inserting  
5 “tobacco products”.

6 (b) UNLAWFUL ACTS.—Section 2342 of title 18,  
7 United States Code, is amended to read as follows:

8 **“§ 2342. Unlawful acts**

9 “(a) It shall be unlawful for any person knowingly  
10 to ship, transport, receive, possess, sell, distribute, or pur-  
11 chase contraband tobacco products.

12 “(b)(1) It shall be unlawful for any person know-  
13 ingly—

14 “(A) to make any false statement or represen-  
15 tation with respect to the information required by  
16 this chapter to be kept in the records or reports of  
17 any person who ships, sells, or distributes (in a sin-  
18 gle transaction or in a series of related transactions)  
19 any quantity of tobacco product in excess of the  
20 quantity specified in or pursuant to section  
21 2341(2)(A) with respect to such product, or

22 “(B) to fail to maintain records or reports,  
23 alter or obliterate required markings, or interfere  
24 with any inspection, required under this chapter,  
25 with respect to such quantity of tobacco product.

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

4       (c) CONFORMING AMENDMENTS RELATING TO REC-  
5 ORDKEEPING.—

6           (1) Subsections (a) and (b) of section 2343 of  
7 title 18, United States Code, are each amended by  
8 striking “any quantity of cigarettes in excess of  
9 60,000 in a single transaction” and inserting “(in a  
10 single transaction or in a series of related trans-  
11 actions) any quantity of tobacco product in excess of  
12 the quantity specified in or pursuant to section  
13 2341(2)(A) with respect to such product”.

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

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

18           (2) by striking subsection (c) and inserting the  
19 following new subsection:

20       “(c) Any contraband tobacco products involved in any  
21 violation of this chapter shall be subject to seizure and  
22 forfeiture, and all provisions of section 9703(o) of title 31,  
23 United States Code, shall, so far as applicable, extend to  
24 seizures and forfeitures under this chapter.”.

25       (e) JENKINS ACT AMENDMENTS.—

1           (1) Section 4 of the Act of October 19, 1949  
2           (15 U.S.C. 378) is amended by adding at the end  
3           the following: “A State tobacco tax authority may  
4           commence a civil action to obtain appropriate relief  
5           with respect to a violation of this Act.”.

6           (2) Paragraph (2) of section 1 of such Act is  
7           amended to read as follows:

8           “(2) The term ‘tobacco product’ has the mean-  
9           ing given to such term by section 5702 of the Inter-  
10          nal Revenue Code of 1986.”.

11          (3) Such Act is further amended by striking  
12          “cigarette” and “cigarettes” each place either ap-  
13          pears and inserting “tobacco product” and “tobacco  
14          products” respectively.

15          (f) NON-PREEMPTION.—Nothing in this title or the  
16          amendments made by this title shall be construed to pro-  
17          hibit an authorized State official from proceeding in State  
18          court on the basis of an alleged violation of State law.

## 19           **TITLE III—WHISTLEBLOWER** 20           **PROTECTION PROVISIONS**

### 21           **SEC. 301. WHISTLEBLOWER PROTECTION.**

22          (a) IN GENERAL.—Chapter 73 of title 18, United  
23          States Code, is amended by inserting after section 1514  
24          the following:

1 **“§ 1514B. Civil action to protect against retaliation in**  
2 **contraband tobacco cases**

3 “(a) WHISTLEBLOWER PROTECTION FOR CONTRA-  
4 BAND TOBACCO.—No person may discharge, demote, sus-  
5 pend, threaten, harass, or in any other manner discrimi-  
6 nate against an employee in the terms and conditions of  
7 employment because of any lawful act done by the em-  
8 ployee—

9 “(1) to provide information, cause information  
10 to be provided, or otherwise assist in an investiga-  
11 tion regarding any conduct which the employee rea-  
12 sonably believes constitutes a violation of section  
13 2342 or any other provision of Federal law relating  
14 to contraband tobacco, when the information or as-  
15 sistance is provided to or the investigation is con-  
16 ducted by—

17 “(A) a Federal regulatory or law enforce-  
18 ment agency;

19 “(B) any Member of Congress or any com-  
20 mittee of Congress; or

21 “(C) a person with supervisory authority  
22 over the employee (or such other person work-  
23 ing for the employer who has the authority to  
24 investigate, discover, or terminate misconduct);  
25 or

1           “(2) to file, cause to be filed, testify, participate  
2 in, or otherwise assist in a proceeding filed or about  
3 to be filed (with any knowledge of the employer) re-  
4 lating to an alleged violation of section 2342, or any  
5 provision of Federal law relating to contraband to-  
6 bacco.

7           “(b) ENFORCEMENT ACTION.—

8           “(1) IN GENERAL.—A person who alleges dis-  
9 charge or other discrimination by any person in vio-  
10 lation of subsection (a) may seek relief under sub-  
11 section (c), by—

12                   “(A) filing a complaint with the Secretary  
13 of Labor; or

14                   “(B) if the Secretary has not issued a final  
15 decision within 180 days of the filing of the  
16 complaint and there is no showing that such  
17 delay is due to the bad faith of the claimant,  
18 bringing an action at law or equity for de novo  
19 review in the appropriate district court of the  
20 United States, which shall have jurisdiction  
21 over such an action without regard to the  
22 amount in controversy.

23           “(2) PROCEDURE.—

24                   “(A) IN GENERAL.—An action under para-  
25 graph (1)(A) shall be governed under the rules

1 and procedures set forth in section 42121(b) of  
2 title 49, United States Code.

3 “(B) EXCEPTION.—Notification made  
4 under section 42121(b)(1) of title 49, United  
5 States Code, shall be made to the person named  
6 in the complaint and to the employer.

7 “(C) BURDENS OF PROOF.—An action  
8 brought under paragraph (1)(B) shall be gov-  
9 erned by the legal burdens of proof set forth in  
10 section 42121(b) of title 49, United States  
11 Code.

12 “(D) STATUTE OF LIMITATIONS.—An ac-  
13 tion under paragraph (1) shall be commenced  
14 not later than 90 days after the date on which  
15 the violation occurs.

16 “(c) REMEDIES.—

17 “(1) IN GENERAL.—An employee prevailing in  
18 any action under subsection (b)(1) shall be entitled  
19 to all relief necessary to make the employee whole.

20 “(2) COMPENSATORY DAMAGES.—Relief for any  
21 action under paragraph (1) shall include—

22 “(A) reinstatement with the same seniority  
23 status that the employee would have had, but  
24 for the discrimination;

1           “(B) the amount of back pay, with inter-  
2           est; and

3           “(C) compensation for any special damages  
4           sustained as a result of the discrimination, in-  
5           cluding litigation costs, expert witness fees, and  
6           reasonable attorney fees.

7           “(d) RIGHTS RETAINED BY EMPLOYEE.—Nothing in  
8           this section shall be deemed to diminish the rights, privi-  
9           leges, or remedies of any employee under any Federal or  
10          State law, or under any collective bargaining agreement.”.

11          (b) CLERICAL AMENDMENT.—The table of sections  
12          at the beginning of chapter 73 of title 18, United States  
13          Code, is amended by inserting after the item relating to  
14          section 1514 the following new item:

          “1514B. Civil action to protect against retaliation in contraband tobacco  
          cases.”.

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