

109TH CONGRESS
1ST SESSION

H. R. 4281

To amend the Tariff Act of 1930 and the Internal Revenue Code of 1986
relating to importation of tobacco products.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 9, 2005

Mr. NUNES introduced the following bill; which was referred to the Committee
on Ways and Means

A BILL

To amend the Tariff Act of 1930 and the Internal Revenue
Code of 1986 relating to importation of tobacco products.

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. COMPLIANCE WITH TARIFF ACT OF 1930.**

4 (a) DEFINITIONS.—Section 801 of the Tariff Act of
5 1930 (19 U.S.C. 1681) is amended by adding at the end
6 the following:

7 “(3) DELIVERY SALE.—The term ‘delivery sale’
8 means any sale of cigarettes or a smokeless tobacco
9 product to a consumer if—

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

8 “(B) the cigarettes or smokeless tobacco
9 product is delivered by use of a common carrier,
10 private delivery service, or the mail, or the sell-
11 er is not in the physical presence of the buyer
12 when the buyer obtains personal possession of
13 the delivered cigarettes or smokeless tobacco
14 product.

15 “(4) INDIAN TRIBE.—The terms ‘Indian tribe’
16 and ‘tribal’ refer to an Indian tribe as defined in the
17 Indian Self-Determination and Education Assistance
18 Act (25 U.S.C. 450b(e)) or as listed pursuant to sec-
19 tion 104 of the Federally Recognized Indian Tribe
20 List Act of 1994 (25 U.S.C. 479a–1).”.

21 (b) INAPPLICABILITY OF EXEMPTIONS FROM RE-
22 QUIREMENTS FOR ENTRY OF CERTAIN CIGARETTES AND
23 SMOKELESS TOBACCO PRODUCTS.—Section 802(b)(1) of
24 the Tariff Act of 1930 (19 U.S.C. 1681a(b)(1)) is amend-
25 ed by adding at the end the following new sentence: “The

1 preceding sentence shall not apply to any cigarettes or
2 smokeless tobacco products sold in connection with a deliv-
3 ery sale.”.

4 (c) STATE ACCESS TO CUSTOMS CERTIFICATIONS.—
5 Section 802 of that Act is further amended by adding at
6 the end the following new subsection:

7 “(d) STATE ACCESS TO CUSTOMS CERTIFI-
8 CATIONS.—A State, through its Attorney General, shall be
9 entitled to obtain copies of any certification required under
10 subsection (c) directly—

11 “(1) upon request to the agency of the United
12 States responsible for collecting such certification; or

13 “(2) upon request to the importer, manufac-
14 turer, or authorized official of such importer or
15 manufacturer.”.

16 (d) ENFORCEMENT PROVISIONS.—Section 803 of
17 that Act (19 U.S.C. 1681b) is amended—

18 (1) in subsection (b)—

19 (A) in the first sentence, by inserting be-
20 fore the period the following: “, or to any State
21 in which such tobacco product, cigarette papers,
22 or tube is found”; and

23 (B) in the second sentence, by inserting “,
24 or to any State,” after “the United States”;
25 and

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

3 “(c) ACTIONS BY STATES AND OTHERS.—

4 “(1) IN GENERAL.—Any person who holds a
5 permit under chapter 52 of the Internal Revenue
6 Code of 1986 may bring an action in the United
7 States district courts against any person, other than
8 a State, local, or tribal government, to prevent and
9 restrain violations of this title—

10 “(A) by that person; or

11 “(B) by another person controlled by that
12 person.

13 “(2) RELIEF FOR STATE AND LOCAL GOVERN-
14 MENTS.—A State, acting through its attorney gen-
15 eral, or a local government, acting through its chief
16 law enforcement officer (or a designee thereof), may
17 bring a civil action under this title against any per-
18 son—

19 “(A) to prevent and restrain violations of
20 this title—

21 “(i) by that person; or

22 “(ii) by another person controlled by
23 that person; or

24 “(B) to obtain any other appropriate relief
25 for violations of this title—

1 “(i) by that person, or

2 “(ii) by another person controlled by

3 that person,

4 including civil penalties, money damages, and

5 injunctive or other equitable relief.

6 “(3) CONSTRUCTION GENERALLY.—

7 “(A) IN GENERAL.—Nothing in this sub-

8 section shall be deemed to abrogate or con-

9 stitute a waiver of any sovereign immunity of a

10 State or local government or an Indian tribe

11 against any unconsented lawsuit under this title

12 or to otherwise restrict, expand, or modify any

13 sovereign immunity of a State or local govern-

14 ment or an Indian tribe.

15 “(B) CONSTRUCTION WITH OTHER RE-

16 LIEF.—The remedies available under this sub-

17 section are in addition to any other remedies

18 available under Federal, State, local, or other

19 law.

20 “(4) CONSTRUCTION WITH FORFEITURE PROVI-

21 SIONS.—Nothing in this subsection shall be con-

22 strued to require a State to first bring an action

23 under paragraph (2) when pursuing relief under

24 subsection (b).

1 “(d) CONSTRUCTION WITH STATE AUTHORITIES.—
 2 Nothing in this title shall be construed to expand, restrict,
 3 or otherwise modify the right of an authorized State offi-
 4 cial from proceeding in any State court, or taking other
 5 enforcement actions, on the basis of alleged violation of
 6 State or other law.”.

7 (e) INCLUSION OF SMOKELESS TOBACCO.—

8 (1) Sections 802 and 803(a) of that Act (other
 9 than the last sentence of section 802(b)(1), as added
 10 by subsection (b) of this section) are further amend-
 11 ed by inserting “or smokeless tobacco products”
 12 after “cigarettes” each place it appears.

13 (2) Section 802 of such Act is further amend-
 14 ed—

15 (A) in subsection (a)—

16 (i) in paragraph (1), by inserting “or
 17 section 4 of the Comprehensive Smokeless
 18 Tobacco Health Education Act of 1986
 19 (15 U.S.C. 4403), as the case may be”
 20 after “section 7 of the Federal Cigarette
 21 Labeling and Advertising Act (15 U.S.C.
 22 1335a)”;

23 (ii) in paragraph (2), by inserting “or
 24 section 3 of the Comprehensive Smokeless
 25 Tobacco Health Education Act of 1986

(15 U.S.C. 4402), as the case may be,”
after “section 4 of the Federal Cigarette
Labeling and Advertising Act (15 U.S.C.
1333)”; and

(iii) in paragraph (3), by inserting “or
section 3(d) of the Comprehensive Smoke-
less Tobacco Health Education Act of
1986 (15 U.S.C. 4402(d)), as the case
may be,” after “section 4(c) of the Federal
Cigarette Labeling and Advertising Act
(15 U.S.C. 1333(c))”;

(B) in subsection (b)—

(i) in the paragraph caption of para-
graph (1), by inserting “OR SMOKELESS
TOBACCO” after “CIGARETTES”; and

(ii) in the paragraph caption of para-
graphs (2) and (3), by inserting “OR
SMOKELESS TOBACCO” after “CIGA-
RETTES”; and

(C) in subsection (c)—

(i) in the subsection caption, by in-
serting “OR SMOKELESS TOBACCO” after
“CIGARETTE”;

(ii) in paragraph (1), by inserting “or
section 4 of the Comprehensive Smokeless

1 Tobacco Health Education Act of 1986
2 (15 U.S.C. 4403), as the case may be”
3 after “section 7 of the Federal Cigarette
4 Labeling and Advertising Act (15 U.S.C.
5 1335a)”;

6 (iii) in paragraph (2)(A), by inserting
7 “or section 3 of the Comprehensive Smoke-
8 less Tobacco Health Education Act of
9 1986 (15 U.S.C. 4402), as the case may
10 be,” after “section 4 of the Federal Ciga-
11 rette Labeling and Advertising Act (15
12 U.S.C. 1333)”;

13 (iv) in paragraph (2)(B), by inserting
14 “or section 3(d) of the Comprehensive
15 Smokeless Tobacco Health Education Act
16 of 1986 (15 U.S.C. 4402(d)), as the case
17 may be” after “section 4(c) of the Federal
18 Cigarette Labeling and Advertising Act
19 (15 U.S.C. 1333(c))”.

20 (3) Section 803(b) of that Act, as amended by
21 subsection (d)(1) of this section, is further amended
22 by inserting “, or any smokeless tobacco product,”
23 after “or tube” the first place it appears.

1 (4)(A) The heading of title VIII of such Act is
 2 amended by inserting “**AND SMOKELESS TO-**
 3 **BACCO**” after “**CIGARETTES**”.

4 (B) The heading of section 802 of such Act is
 5 amended by inserting “**AND SMOKELESS TO-**
 6 **BACCO**” after “**CIGARETTES**”.

7 **SEC. 2. APPLICATION OF CIVIL PENALTIES TO RE-**
 8 **LANDINGS OF TOBACCO PRODUCTS SOLD IN**
 9 **A DELIVERY SALE.**

10 (a) IN GENERAL.—Section 5761 of the Internal Rev-
 11 enue Code of 1986 (relating to civil penalties) is amended
 12 by redesignating subsections (d) and (e) as subsections (e)
 13 and (f), respectively, and inserting after subsection (c) the
 14 following new subsection:

15 “(d) PERSONAL USE QUANTITIES.—

16 “(1) IN GENERAL.—No quantity of tobacco
 17 products other than the quantity referred to in para-
 18 graph (2) may be relanded or received as a personal
 19 use quantity.

20 “(2) EXCEPTION FOR PERSONAL USE QUAN-
 21 TITY.—Subsection (c) and section 5754 shall not
 22 apply to any person who relands or receives tobacco
 23 products in the quantity allowed entry free of tax
 24 and duty under chapter 98 of the Harmonized Tariff
 25 Schedule of the United States, and such person may

1 voluntarily relinquish to the Secretary at the time of
2 entry any excess of such quantity without incurring
3 the penalty under subsection (c).

4 “(3) SPECIAL RULE FOR DELIVERY SALES.—

5 “(A) IN GENERAL.—Paragraph (2) shall
6 not apply to any tobacco product sold in con-
7 nection with a delivery sale.

8 “(B) DELIVERY SALE.—For purposes of
9 subparagraph (A), the term ‘delivery sale’
10 means any sale of a tobacco product to a con-
11 sumer if—

12 “(i) the consumer submits the order
13 for such sale by means of a telephone or
14 other method of voice transmission, the
15 mail, or the Internet or other online serv-
16 ice, or the seller is otherwise not in the
17 physical presence of the buyer when the re-
18 quest for purchase or order is made, or

19 “(ii) the tobacco product is delivered
20 by use of a common carrier, private deliv-
21 ery service, or the mail, or the seller is not
22 in the physical presence of the buyer when
23 the buyer obtains personal possession of
24 the tobacco product.”.

25 (b) CONFORMING AMENDMENTS.—

1 (1) Subsection (c) of section 5761 of such Code
2 is amended by striking the last two sentences.

3 (2) Paragraph (1) of section 5754(c) of such
4 Code is amended by striking “section 5761(c)” and
5 inserting “section 5761(d)”.

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