

110TH CONGRESS  
2D SESSION

# H. R. 5689

To amend the Internal Revenue Code of 1986 and title 18, United States Code, to deter the smuggling of tobacco products into the United States, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 3, 2008

Mr. DOGGETT (for himself, Mr. ABERCROMBIE, Mr. ACKERMAN, Mr. ALLEN, Mr. ANDREWS, Mr. ARCURI, Ms. BALDWIN, Mr. BECERRA, Mr. BERMAN, Mr. BLUMENAUER, Mr. BRALEY of Iowa, Ms. GINNY BROWN-WAITE of Florida, Mrs. CAPPS, Mr. CAPUANO, Ms. CLARKE, Mr. CUMMINGS, Mr. DAVIS of Illinois, Mrs. DAVIS of California, Mr. DEFazio, Ms. DEGETTE, Mr. DELAHUNT, Ms. DELAURO, Mr. ELLISON, Mr. EMANUEL, Ms. ESHOO, Mr. FARR, Mr. FILNER, Mr. FRANK of Massachusetts, Mr. GENE GREEN of Texas, Mr. GRIJALVA, Mr. HARE, Mr. HINCHEY, Mr. HINOJOSA, Ms. HIRONO, Mr. HOLT, Mr. HONDA, Ms. HOOLEY, Mr. ISRAEL, Mr. JACKSON of Illinois, Ms. JACKSON-LEE of Texas, Ms. EDDIE BERNICE JOHNSON of Texas, Ms. KAPTUR, Mr. KENNEDY, Mr. KIND, Mr. KUCINICH, Mr. LANGEVIN, Ms. LEE, Mr. LEVIN, Mr. LEWIS of Georgia, Mr. LIPINSKI, Mr. LOEBSACK, Ms. ZOE LOFGREN of California, Mrs. LOWEY, Mr. LYNCH, Mrs. MALONEY of New York, Mr. MARKEY, Mr. MATHESON, Ms. MATSUI, Mrs. MCCARTHY of New York, Mr. McDERMOTT, Mr. McGOVERN, Mr. McNULTY, Mr. MEEKS of New York, Mr. GEORGE MILLER of California, Mr. NADLER, Mrs. NAPOLITANO, Mr. NEAL of Massachusetts, Mr. OBERSTAR, Mr. OLVER, Mr. PALLONE, Mr. PASCRELL, Mr. PAYNE, Mr. PLATTS, Ms. RICHARDSON, Mr. ROTHMAN, Ms. ROYBAL-ALLARD, Mr. RUSH, Mr. RYAN of Ohio, Ms. LINDA T. SÁNCHEZ of California, Ms. LORETTA SANCHEZ of California, Mr. SARBANES, Ms. SCHAKOWSKY, Mr. SERRANO, Mr. SESTAK, Mr. SHERMAN, Ms. SLAUGHTER, Mr. SMITH of Washington, Mr. SNYDER, Ms. SOLIS, Mr. STARK, Ms. SUTTON, Mrs. TAUSCHER, Mr. THOMPSON of California, Mr. TIERNEY, Ms. TSONGAS, Mr. UDALL of New Mexico, Mr. VAN HOLLEN, Mr. WALZ of Minnesota, Ms. WATERS, Ms. WATSON, Mr. WAXMAN, Mr. WEINER, Mr. WELCH of Vermont, Ms. WOOLSEY, and Mr. WU) 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

# A BILL

To amend the Internal Revenue Code of 1986 and title 18, United States Code, to deter the smuggling of tobacco products into the United States, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Smuggled Tobacco Prevention Act of 2008”.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title and table of contents.

### TITLE I—AMENDMENTS TO INTERNAL REVENUE CODE OF 1986

- Sec. 101. Amendment of 1986 code.
- Sec. 102. Improved marking and labeling; export bonds.
- Sec. 103. Wholesalers required to have permit.
- Sec. 104. Conditions of permit.
- Sec. 105. Records to be maintained.
- Sec. 106. Reports.
- Sec. 107. Fraudulent offenses.
- Sec. 108. Civil penalties.
- Sec. 109. Definitions.
- Sec. 110. Effective date.

### TITLE II—AMENDMENTS RELATING TO CONTRABAND CIGARETTE TRAFFICKING

- Sec. 201. Expanding scope of penal provisions relating to trafficking in contraband tobacco products.
- Sec. 202. Creating right of action for State tobacco tax administrator for failure to report.

### TITLE III—WHISTLEBLOWER PROTECTION PROVISIONS

- Sec. 301. Whistleblower protection.

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.—

14 (1) Section 5723 (relating to marks, labels, and  
15 notices) is amended—

16 (A) by striking “, if any,” in subsection  
17 (b),

18 (B) by adding at the end of subsection (b)  
19 the following: “Such marks, labels, and notices  
20 shall include marks and notices relating to the  
21 following:

22 “(1) IDENTIFICATION.—Each person who is a  
23 manufacturer or importer of tobacco products shall  
24 (in accordance with regulations prescribed by the  
25 Secretary) legibly print a unique serial number on

1 all packages of tobacco products manufactured or  
2 imported by such person for sale or distribution.  
3 Such serial number shall be designed to enable the  
4 Secretary to identify the manufacturer of the prod-  
5 uct (and, in the case of importation, the manufac-  
6 turer and importer of the product), the location and  
7 date of manufacture (and, if imported, the location  
8 and date of importation), and any other information  
9 the Secretary determines necessary or appropriate  
10 for the proper administration of the chapter. The  
11 Secretary shall determine the size and location of  
12 the serial number.

13 “(2) MARKING REQUIREMENTS FOR EX-  
14 PORTS.—Each package of a tobacco product that is  
15 exported, or sold for export, shall be marked for ex-  
16 port from the United States and shall be marked as  
17 to the foreign country which is to be the final des-  
18 tination of such product. Such marking shall be visi-  
19 ble and prominent and shall be in English and in the  
20 primary language of such foreign country. The Sec-  
21 retary shall promulgate regulations to determine the  
22 size and location of the mark.

23 “(3) ADDITIONAL METHODS OF IDENTIFICA-  
24 TION OR MARKING.—The Secretary may by regula-  
25 tion authorize such additional secure methods of

1 identification or marking as may be, taking into ac-  
2 count available technology, necessary or appropriate  
3 to carry out the purposes of this subsection.”, and

4 (C) by adding at the end the following new  
5 subsection:

6 “(f) ADDITIONAL MARKS.—

7 “(1) IN GENERAL.—Not later than 180 days  
8 after the date of the enactment of the Smuggled To-  
9 bacco Prevention Act of 2008, the Secretary shall  
10 prescribe a system of tobacco tax stamps, meter im-  
11 pressions, or other Federal tax-payment indicia to be  
12 affixed by manufacturers and importers of tobacco  
13 products on all tobacco products subject to tax  
14 under this chapter.

15 “(2) SYSTEM SPECIFICATIONS.—

16 “(A) The Secretary shall design such sys-  
17 tem to coordinate and avoid interference with  
18 State and local tax stamps or markings, facili-  
19 tate collection of the tax under this chapter, im-  
20 pede contraband tobacco trafficking, minimize  
21 counterfeit stamping or meter impressions,  
22 allow for more effective tracking and tracing of  
23 tobacco products, facilitate the enforcement of  
24 related Federal laws, and utilize such available

1 technology as may promote the purposes of this  
2 chapter.

3 “(B) The Secretary shall prescribe the  
4 method and manner in which such stamps,  
5 meter impressions, or indicia are to be distrib-  
6 uted, purchased, and affixed to tobacco product  
7 packages, and may provide for the cancellation  
8 of such stamps, meter impressions, or indicia.

9 “(C) Any such tax stamp, meter impres-  
10 sion, or indicia must provide the following infor-  
11 mation:

12 “(i) The denominated value of the  
13 stamp, meter impression, or indicia.

14 “(ii) A unique serial number or track-  
15 ing code.

16 “(iii) The name and address of the  
17 person purchasing (and, if different, of the  
18 person affixing) the stamp, meter impres-  
19 sion, or indicia.

20 “(iv) The date the stamp, meter im-  
21 pression, or indicia was purchased and  
22 when it was affixed.

23 “(v) The name and address of the  
24 person purchasing or otherwise receiving  
25 the tobacco product from the person who

1 affixes the tax stamp, meter impression, or  
2 indicia, and the date of such purchase or  
3 transfer.

4 “(vi) Such other information as the  
5 Secretary may prescribe to carry out the  
6 purposes of this chapter.

7 “(D) The information described in sub-  
8 paragraph (C) shall, to the extent practicable,  
9 be cryptographically encrypted and readable by  
10 a portable scanning device (or similar device) at  
11 the time and place of inspection, and shall oth-  
12 erwise be accessible remotely by such a device  
13 at such time and place.

14 “(E) The Secretary may establish different  
15 stamps, meter impressions, or indicia for the  
16 same type of tobacco product to correspond to  
17 different jurisdictions of manufacture, distribu-  
18 tion, or sale.

19 “(F) The Secretary may by regulation au-  
20 thorize such additional secure methods of iden-  
21 tification or marking as may be, taking into ac-  
22 count available technology, necessary or appro-  
23 priate to carry out the purposes of this sub-  
24 section.

1           “(G) No tobacco product may be sold, dis-  
2           tributed, or otherwise delivered to any consumer  
3           in the United States unless the tax stamp,  
4           meter impression, or indicia required under reg-  
5           ulations prescribed pursuant to this section is  
6           affixed to the tobacco product packaging in ac-  
7           cordance with such regulations.”.

8           (b) SALES ON INDIAN RESERVATIONS; PACKAGE DE-  
9   FINED.—Section 5723, as amended by subsection (a), is  
10   amended by adding at the end the following new sub-  
11   sections:

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

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



1 the manufacturer and in which such tobacco product is  
 2 offered for sale to a member of the general public.”.

3 (c) REQUIREMENTS FOR TRACKING OF TOBACCO  
 4 PRODUCTS.—

5 (1) IN GENERAL.—Subchapter B of chapter 52  
 6 is amended by adding at the end the following new  
 7 section:

8 **“SEC. 5714. EXPORT BONDS.**

9 **“(a) POSTING OF BOND.—**

10 **“(1) IN GENERAL.—**It shall be unlawful for any  
 11 person to export any tobacco product unless such  
 12 person—

13 **“(A)** has posted with the Secretary a to-  
 14 bacco product bond in accordance with this sec-  
 15 tion for such product that contains a disclosure  
 16 of the country to which such product will be ex-  
 17 ported; and

18 **“(B)** receives a written statement from the  
 19 recipient of the tobacco products involved that  
 20 such person—

21 **“(i)** will not knowingly and willfully  
 22 violate or cause to be violated any law or  
 23 regulation of such country, the United  
 24 States, any State, the District of Colum-

1                   bia, or any possession of the United States  
2                   with respect to such products; and

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

5                   “(2) REGULATIONS.—The Secretary shall pro-  
6                   mulgate regulations that determine the frequency  
7                   and the amount of each bond that must be posted  
8                   under paragraph (1), but in no case shall such  
9                   amount be less than an amount equal to the tax im-  
10                  posed under this chapter on the value of the ship-  
11                  ment of the products involved if such products were  
12                  consumed within the United States.

13                  “(3) EXPORT.—For purposes of this subsection,  
14                  property shall be treated as exported if it is shipped  
15                  to a foreign country, Puerto Rico, the Virgin Is-  
16                  lands, or a possession of the United States, or for  
17                  consumption beyond the jurisdiction of the internal  
18                  revenue laws of the United States.

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

21                  “(1) upon a determination by the Secretary  
22                  (based on documentation provided by the person who  
23                  posted the bond in accordance with regulations pro-  
24                  mulgated by the Secretary) that the items to which

1 the bond applies have been received in the country  
 2 of final destination as designated in the bond, or

3 “(2) under such other circumstance as the Sec-  
 4 retary may specify which is consistent with the pur-  
 5 poses of this chapter.”.

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

“Sec. 5714. Export bonds.”.

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

10 Section 5712 (relating to application for permit) is  
 11 amended by inserting “, wholesaler,” after “manufac-  
 12 turer”.

13 **SEC. 104. CONDITIONS OF PERMIT.**

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

16 “(a) ISSUANCE.—

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

1 be required at such other time as the Secretary shall  
2 by regulation prescribe.

3 “(2) CONDITIONS.—The issuance of a permit  
4 under this section shall be conditioned upon the  
5 compliance with the requirements of—

6 “(A) this chapter,

7 “(B) chapter 114 of title 18, United States  
8 Code,

9 “(C) the Act of October 19, 1949 (15  
10 U.S.C. 375 et seq.),

11 “(D) any regulations issued pursuant to  
12 such statutes, and

13 “(E) any other federal laws or regulations  
14 relating to the taxation, manufacture, distribu-  
15 tion, marketing, sale, or transportation of to-  
16 bacco products.”.

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

18 Section 5741 (relating to records to be maintained)  
19 is amended—

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

22 (2) by inserting “every wholesaler,” after  
23 “every importer,”,

24 (3) by striking “such records” and inserting  
25 “records concerning the chain of custody of the to-

1       bacco products (including the foreign country of  
 2       final destination for packages marked for export)  
 3       and such other records”, and

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

6       “(b) RETAILERS.—Retailers shall maintain records  
 7       of receipt of tobacco products, and such records shall be  
 8       available to the Secretary for inspection and audit. An or-  
 9       dinary commercial record or invoice shall satisfy the re-  
 10      quirements of this subsection if such record shows the date  
 11      of receipt, from whom tobacco products were received, and  
 12      the quantity of tobacco products received. The preceding  
 13      provisions of this subsection shall not be construed to limit  
 14      or preclude other recordkeeping requirements imposed on  
 15      any retailer.”.

16   **SEC. 106. REPORTS.**

17       Section 5722 (relating to reports) is amended—

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

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

22       “(b) REPORTS BY EXPORT WAREHOUSE PROPRI-  
 23      ETORS.—

24               “(1) IN GENERAL.—Prior to exportation of to-  
 25      bacco products from the United States, the export

1 warehouse proprietor shall submit a report (in such  
2 manner and form as the Secretary may by regula-  
3 tion prescribe) to enable the Secretary to identify  
4 the shipment and assure that it reaches its intended  
5 destination.

6 “(2) AGREEMENTS WITH FOREIGN GOVERN-  
7 MENTS.—Notwithstanding section 6103 of this title,  
8 the Secretary is authorized to enter into agreements  
9 with foreign governments to exchange or share infor-  
10 mation contained in reports received from export  
11 warehouse proprietors of tobacco products if—

12 “(A) the Secretary believes that such  
13 agreement will assist in—

14 “(i) ensuring compliance with the pro-  
15 visions of this chapter or regulations pro-  
16 mulgated thereunder, or

17 “(ii) preventing or detecting violations  
18 of the provisions of this chapter or regula-  
19 tions promulgated thereunder, and

20 “(B) the Secretary obtains assurances  
21 from such government that the information will  
22 be held in confidence and used only for the pur-  
23 poses specified in clauses (i) and (ii) of sub-  
24 paragraph (A).

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

3 **SEC. 107. FRAUDULENT OFFENSES.**

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

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

10 (1) by redesignating subsection (b) as sub-  
11 section (c),

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

14 (3) by inserting after subsection (a) the fol-  
15 lowing new subsection:

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

18 “(1) for any person to engage in the business  
19 as a manufacturer or importer of tobacco products  
20 or cigarette papers and tubes, or to engage in the  
21 business as a wholesaler or an export warehouse pro-  
22 prietor, without filing the bond and obtaining the  
23 permit where required by this chapter or regulations  
24 thereunder;

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

10           “(3) for any person (other than the original  
11           manufacturer of such tobacco products or an export  
12           warehouse proprietor authorized to receive any to-  
13           bacco products that have previously been exported  
14           and returned to the United States) to receive any to-  
15           bacco products that have previously been exported  
16           and returned to the United States;

17           “(4) for any export warehouse proprietor inten-  
18           tionally to ship, transport, sell, or deliver for sale  
19           any tobacco products to any person other than the  
20           original manufacturer of such tobacco products, an-  
21           other export warehouse proprietor, or a foreign pur-  
22           chaser;

23           “(5) for any person (other than a manufacturer  
24           or an export warehouse proprietor permitted under  
25           this chapter) intentionally to ship, transport, receive,



1 or possess, for purposes of resale, any tobacco prod-  
2 uct in packages marked pursuant to regulations  
3 issued under section 5723, other than for direct re-  
4 turn to a manufacturer for repacking or for re-ex-  
5 portation or to an export warehouse proprietor for  
6 re-exportation;

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

15 “(7) for any person to alter, mutilate, destroy,  
16 obliterate, or remove any mark or label required  
17 under this chapter upon a tobacco product held for  
18 sale, except pursuant to regulations of the Secretary  
19 authorizing relabeling for purposes of compliance  
20 with the requirements of this section or of State law,  
21 or to create, possess, or apply on any tobacco prod-  
22 uct or its packaging any counterfeit versions of any  
23 such marks or labels; and

24 “(8) for any person to sell at retail more than  
25 5,000 cigarettes in a single transaction or in a series

1 of related transactions, or, in the case of other to-  
 2 bacco products, an equivalent quantity as deter-  
 3 mined by regulation.

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

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

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

16 **SEC. 108. CIVIL PENALTIES.**

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

19 (1) by striking “willfully” and inserting “inten-  
 20 tionally”, and

21 (2) by striking “\$1,000” and inserting  
 22 “\$10,000”.

23 **SEC. 109. DEFINITIONS.**

24 (a) EXPORT WAREHOUSE PROPRIETOR.—Subsection  
 25 (i) of section 5702 (relating to definition of export ware-

1 house proprietor) is amended by inserting before the pe-  
2 riod the following: “or any person engaged in the business  
3 of exporting tobacco products from the United States for  
4 purposes of sale or distribution. Any duty free store that  
5 sells, offers for sale, or otherwise distributes to any person  
6 in any single transaction more than 30 packages of ciga-  
7 rettes, or its equivalent for other tobacco products as the  
8 Secretary shall by regulation prescribe, shall be deemed  
9 an export warehouse proprietor under this chapter”.

10 (b) RETAILER; WHOLESALER.—Section 5702 is  
11 amended by adding at the end the following new sub-  
12 sections:

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

19 “(q) WHOLESALER.—The term ‘wholesaler’ means  
20 any person engaged in the business of purchasing tobacco  
21 products for resale at wholesale, or any person acting as  
22 an agent or broker for any person engaged in the business  
23 of purchasing tobacco products for resale at wholesale.”.

1 **SEC. 110. EFFECTIVE DATE.**

2 (a) IN GENERAL.—Except as provided in subsection  
3 (b), the amendments made by this title shall take effect  
4 on January 1, 2009.

5 (b) ADDITIONAL TOBACCO MARK SYSTEM.—The  
6 amendments made by subparagraph (C) of section  
7 102(a)(1) of this Act shall take effect on the date of the  
8 enactment of this Act.

9 **TITLE II—AMENDMENTS RELAT-**  
10 **ING TO CONTRABAND CIGA-**  
11 **RETTE TRAFFICKING**

12 **SEC. 201. EXPANDING SCOPE OF PENAL PROVISIONS RE-**  
13 **LATING TO TRAFFICKING IN CONTRABAND**  
14 **TOBACCO PRODUCTS.**

15 (a) PROVISIONS RELATING TO DEFINITION OF TO-  
16 BACCO PRODUCTS.—

17 (1) IN GENERAL.—Paragraphs (1) and (2) of  
18 section 2341 of title 18, United States Code, are  
19 amended to read as follows:

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

23 “(2) the term ‘contraband tobacco product’  
24 means any tobacco product if—

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

4           “(ii) in the case of a tobacco product other  
5 than a cigarette, such product is in a quantity  
6 in excess of the equivalent of 2,000 cigarettes  
7 as determined under rules made by the Attor-  
8 ney General;

9           “(B) such tobacco product is not marked  
10 with a Federal tax stamp, meter impression, or  
11 other Federal tax-payment indicia as required  
12 by law;

13           “(C) such tobacco product is marked with  
14 a counterfeit, stolen, or unauthorized Federal  
15 or State tax stamp, meter impression, or other  
16 tax-payment indicia;

17           “(D) such tobacco product is a counterfeit  
18 tobacco product, including tobacco products  
19 having any counterfeit markings, labels, or  
20 packaging or bearing any unauthorized trade-  
21 marks;

22           “(E) such tobacco product has been  
23 brought into the United States illegally;

24           “(F)(i) if the State or other jurisdiction in  
25 which such tobacco product is found requires a

1 stamp, impression, or other indication to be  
2 placed on packages or other containers of prod-  
3 uct to evidence payment of tobacco taxes, such  
4 tobacco product bears no evidence of such pay-  
5 ment; or

6 “(ii) if such State or other such jurisdic-  
7 tion has no such requirement, applicable to-  
8 bacco taxes are found to be not paid; and

9 “(G) such tobacco product is in the posses-  
10 sion of any person other than—

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

20 “(ii) a common or contract carrier  
21 transporting the tobacco product involved  
22 under a proper bill of lading or freight bill  
23 which states the quantity, source, and des-  
24 tination of such product;

25 “(iii) a person—

1 “(I) who is licensed or otherwise  
2 authorized by the State where the to-  
3 bacco product is found to account for  
4 and pay tobacco taxes imposed by  
5 such State; and

6 “(II) who has complied with the  
7 accounting and payment requirements  
8 relating to such license or authoriza-  
9 tion with respect to the tobacco prod-  
10 uct involved; or

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

19 (2) CIGARETTES.—Section 2341 of title 18,  
20 United States Code, is amended by adding at the  
21 end the following new paragraph:

22 “(8) the term ‘cigarette’ has the meaning given  
23 such term by section 5702 of the Internal Revenue  
24 Code of 1986.”.

1           (3) CONFORMING AMENDMENTS.—Section 2341  
2           of title 18, United States Code, as amended by para-  
3           graph (2), is amended—

4                   (A) by inserting “and” at the end of para-  
5                   graph (5);

6                   (B) by striking paragraphs (6) and (7);  
7                   and

8                   (C) by redesignating paragraph (8) as  
9                   paragraph (6).

10          (b) PROVISIONS RELATING TO UNLAWFUL ACTS.—  
11          Section 2342 of title 18, United States Code, is amended  
12          to read as follows:

13          **“§ 2342. Unlawful acts**

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

17               “(b) It shall be unlawful for any person knowingly—

18                   “(1) to make any false statement or representa-  
19                   tion with respect to the information required by this  
20                   chapter to be kept in the records or reports of any  
21                   person who ships, sells, or distributes (in a single  
22                   transaction or in a series of related transactions)  
23                   any quantity of tobacco product in excess of the  
24                   quantity specified in or pursuant to section  
25                   2341(2)(A) with respect to such product; or



1           “(2) to fail to maintain records or reports, alter  
2           or obliterate required markings, or interfere with  
3           any inspection, required under this chapter, with re-  
4           spect to such quantity of tobacco product.

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

8           (c) PROVISIONS RELATING TO RECORDKEEPING, RE-  
9           PORTING, AND INSPECTION REQUIREMENTS.—

10           (1) IN GENERAL.—Section 2343 of title 18,  
11           United States Code, is amended—

12                   (A) in subsection (a), by striking “any  
13                   quantity of cigarettes in excess of 10,000, or”  
14                   and all that follows through “cans or packages,  
15                   in a single transaction” and inserting “(in a  
16                   single transaction or in a series of related  
17                   transactions) any quantity of tobacco product in  
18                   excess of the quantity specified in or pursuant  
19                   to section 2341(2)(A) with respect to such  
20                   product”;

21                   (B) in subsection (b), by striking “any  
22                   quantity in excess of 10,000 cigarettes, or” and  
23                   all that follows through “smokeless tobacco, or  
24                   their equivalent” and inserting “any quantity of  
25                   tobacco product in excess of the quantity speci-

1           fied in or pursuant to section 2341(2)(A) with  
2           respect to such product”; and

3           (C) in subsection (c), by striking “any  
4           quantity of cigarettes in excess of 10,000 in a  
5           single transaction” and inserting “(in a single  
6           transaction or in a series of related trans-  
7           actions) any quantity of tobacco product in ex-  
8           cess of the quantity specified in or pursuant to  
9           section 2341(2)(A) with respect to such prod-  
10          uct”.

11          (2) CONFORMING AMENDMENTS.—Section 2343  
12          of title 18, United States Code, as amended by para-  
13          graph (1) of this subsection, is amended—

14               (A) in paragraph (2) of subsection (e), by  
15               striking “are” and inserting “is”; and

16               (B) by striking—

17                     (i) “cigarettes” each place it appears  
18                     in subsections (a) and (c);

19                     (ii) “cigarettes and cans or packages  
20                     of smokeless tobacco” each place it ap-  
21                     pears in subsection (b); and

22                     (iii) “cigarettes or smokeless tobacco”  
23                     each place it appears in subsection (e);  
24               and inserting “tobacco product”.

1 (d) PROVISIONS RELATING TO MACHINES USED TO  
2 MANUFACTURE OR PACKAGE CIGARETTES OR OTHER TO-  
3 BACCO PRODUCTS.—Chapter 114 of title 18, United State  
4 Code, is amended by inserting after section 2343 the fol-  
5 lowing:

6 **“§ 2343A. Machines used to manufacture or package**  
7 **cigarettes or other tobacco products**

8 “(a) Any machine used to manufacture or package  
9 tobacco products shall be sold, leased, or delivered only  
10 to persons lawfully engaged in the sale, lease, or delivery  
11 of such machines or lawfully engaged in the manufacture  
12 of tobacco products, and that have all permits or licenses  
13 required to engage in such activities by the laws of the  
14 country and other jurisdictions where the person is lo-  
15 cated.

16 “(b) Any machine used to apply or affix tax stamps,  
17 meter impressions, or other tax-payment indicia to pack-  
18 ages of tobacco products shall be sold, leased, or delivered  
19 only to persons lawfully engaged in the sale, lease, or deliv-  
20 ery of such machines or lawfully engaged in the applica-  
21 tion of such stamps, meter impressions or other tax-pay-  
22 ment indicia onto tobacco product packages, and that have  
23 all permits or licenses required to engage in such activities  
24 by the laws of the country and other jurisdictions where  
25 the person is located.

1       “(c) No machine used in the manufacture or pack-  
2 aging of tobacco products or in the application of tax  
3 stamps, meter impressions, or other tax-payment indicia  
4 to packages of tobacco products shall knowingly be manu-  
5 factured for or be sold, leased, delivered, directly or indi-  
6 rectly, or otherwise made available to any person engaged  
7 in the manufacture, distribution or sale of counterfeit or  
8 contraband tobacco products or counterfeit tax stamps,  
9 meter impressions, or other tax-payment indicia.

10       “(d) Any machine used to manufacture or package  
11 tobacco products or to apply or affix tax stamps, meter  
12 impressions, or other tax-payment indicia to packages of  
13 tobacco products that is no longer being used or offered  
14 for that purpose shall be made irreparably inoperable for  
15 those purposes before being disposed of or put to any  
16 other use. This paragraph shall not apply to any such ma-  
17 chines being kept solely for display or for historical pur-  
18 poses.

19       “(e) Any person manufacturing, selling, leasing, de-  
20 livering, or disposing of a machine used to manufacture  
21 or package tobacco products or to apply or affix tax  
22 stamps, meter impressions, or other tax-payment indicia  
23 to packages of tobacco products shall maintain and keep  
24 records relating to any transfers of deliveries of the ma-  
25 chine, including the name, address, and other contact in-

1 formation of any person ordering, buying, leasing, or re-  
2 ceiving delivery of the machine. Such reports shall be  
3 made available to the Secretary and other federal and  
4 state government law enforcement officials for inspection  
5 and audit upon request. An ordinary commercial record  
6 or invoice shall satisfy the requirements of this subsection  
7 if such record describes the transaction and the related  
8 machine and provides the date of the transaction and the  
9 name and contact information of all persons parties to the  
10 transaction or acting as agents for those parties in regard  
11 to the transaction.

12 “(f) This section shall not apply to machines meant  
13 and expected for use only by individual consumers of to-  
14 bacco products for personal use.”.

15 (e) PROVISIONS RELATING TO PENALTIES.—Section  
16 2344 of title 18, United States Code, is amended—

17 (1) in subsection (a), by inserting “or sub-  
18 section (a), (b), or (c) of section 2343A” after “sec-  
19 tion 2342(a)”, and

20 (2) in subsection (b), by striking “section  
21 2342(b)” and inserting “subsection (b) or (c) of sec-  
22 tion 2342 or subsection (d) or (e) of section  
23 2343A”.

1 (f) PROVISIONS RELATING TO EFFECT ON STATE  
 2 AND LOCAL LAW.—Section 2345 of title 18, United States  
 3 Code, is amended—

4 (1) by striking “cigarette tax laws” each place  
 5 it appears and inserting “tobacco product tax laws”;  
 6 and

7 (2) by striking “cigarettes or smokeless to-  
 8 bacco” and inserting “tobacco products”.

9 (g) CLERICAL AMENDMENTS.—(1) The heading for  
 10 chapter 114 of title 18, United States Code, is amended  
 11 to read as follows:

12 **“CHAPTER 114—TRAFFICKING IN**  
 13 **CONTRABAND TOBACCO PRODUCTS”.**

14 (2) The table of chapters at the beginning of part  
 15 I of title 18, United States Code, is amended by striking  
 16 the item relating to section 114 and inserting the following  
 17 new item:

**“114. Trafficking in contraband tobacco products ..... 2341”.**

18 (3) The table of sections for chapter 114 of title 18,  
 19 United States Code, is amended by inserting after the  
 20 item relating to section 2343 the following new item:

“2343A. Machines used to manufacture or package cigarettes or other tobacco  
 products.”.

1 **SEC. 202. CREATING RIGHT OF ACTION FOR STATE TO-**  
 2 **BACCO TAX ADMINISTRATOR FOR FAILURE**  
 3 **TO REPORT.**

4 (a) IN GENERAL.—(1) Section 4 of the Act of Octo-  
 5 ber 19, 1949 (15 U.S.C. 378) is amended by adding at  
 6 the end the following: “A State tobacco tax administrator  
 7 may commence a civil action to obtain appropriate relief  
 8 with respect to a violation of this Act.”.

9 (2) Section 1 of such Act is amended by striking  
 10 paragraph (2) and inserting following new paragraph:

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

14 (b) CONFORMING AMENDMENT.—Such Act is further  
 15 amended by striking “cigarette” and “cigarettes” each  
 16 place either appears and inserting “tobacco product” and  
 17 “tobacco products”, respectively.

18 **TITLE III—WHISTLEBLOWER**  
 19 **PROTECTION PROVISIONS**

20 **SEC. 301. WHISTLEBLOWER PROTECTION.**

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

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

