

## Calendar No. 351

110TH CONGRESS  
1ST SESSION

## S. 1027

[Report No. 110-153]

To prevent tobacco smuggling, to ensure the collection of all tobacco taxes,  
and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 29, 2007

Mr. KOHL (for himself, Mr. SPECTER, Mr. LEAHY, Mr. KYL, Mr. SCHUMER, and Ms. COLLINS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

SEPTEMBER 11, 2007

Reported by Mr. LEAHY, without amendment

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**A BILL**

To prevent tobacco smuggling, to ensure the collection of all tobacco taxes, 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; FINDINGS; PURPOSES.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Prevent All Cigarette Trafficking Act of 2007” or  
6       “PACT Act”.

1 (b) FINDINGS.—Congress finds that—

2                   (1) the sale of illegal cigarettes and smokeless  
3 tobacco products significantly reduces Federal,  
4 State, and local government revenues, with Internet  
5 sales alone accounting for billions of dollars of lost  
6 Federal, State, and local tobacco tax revenue each  
7 year;

8                   (2) Hezbollah, Hamas, al Qaeda, and other ter-  
9 rrorist organizations have profited from trafficking in  
10 illegal cigarettes or counterfeit cigarette tax stamps;

11                   (3) terrorist involvement in illicit cigarette traf-  
12 ficking will continue to grow because of the large  
13 profits such organizations can earn;

14                   (4) the sale of illegal cigarettes and smokeless  
15 tobacco over the Internet, and through mail, fax, or  
16 phone orders, make it cheaper and easier for chil-  
17 dren to obtain tobacco products;

18                   (5) the majority of Internet and other remote  
19 sales of cigarettes and smokeless tobacco are being  
20 made without adequate precautions to protect  
21 against sales to children, without the payment of ap-  
22 plicable taxes, and without complying with the nomi-  
23 nal registration and reporting requirements in exist-  
24 ing Federal law;

16 (10) the intrastate sale of illegal cigarettes and  
17 smokeless tobacco over the Internet has a substan-  
18 tial effect on interstate commerce.

19 (c) PURPOSES.—It is the purpose of this Act to—

20 (1) require Internet and other remote sellers of  
21 cigarettes and smokeless tobacco to comply with the  
22 same laws that apply to law-abiding tobacco retail-  
23 ers;

24 (2) create strong disincentives to illegal smug-  
25 gling of tobacco products;

4 (4) make it more difficult for cigarette and  
5 smokeless tobacco traffickers to engage in and profit  
6 from their illegal activities;

10 (6) prevent and reduce youth access to inexpensive cigarettes and smokeless tobacco through illegal  
11 Internet or contraband sales.

13 SEC. 2. COLLECTION OF STATE CIGARETTE AND SMOKE-  
14 LESS TOBACCO TAXES.

15 (a) DEFINITIONS.—The Act of October 19, 1949 (15  
16 U.S.C. 375 et seq.; commonly referred to as the “Jenkins  
17 Act”) (referred to in this Act as the “Jenkins Act”), is  
18 amended by striking the first section and inserting the fol-  
19 lowing:

## 20 "SECTION 1. DEFINITIONS.

21 "As used in this Act, the following definitions apply:

22                   “(1) ATTORNEY GENERAL.—The term ‘attorney  
23 general’, with respect to a State, means the attorney  
24 general or other chief law enforcement officer of the  
25 State, or the designee of that officer.

1               “(2) CIGARETTE.—

2               “(A) IN GENERAL.—For purposes of this  
3               Act, the term ‘cigarette’ shall—

4               “(i) have the same meaning given that  
5               term in section 2341 of title 18, United  
6               States Code; and

7               “(ii) include ‘roll-your-own tobacco’  
8               (as that term is defined in section 5702 of  
9               the Internal Revenue Code of 1986).

10               “(B) EXCEPTION.—For purposes of this  
11               Act, the term ‘cigarette’ does not include a  
12               ‘cigar,’ as that term is defined in section 5702  
13               of the Internal Revenue Code of 1986.

14               “(3) COMMON CARRIER.—The term ‘common  
15               carrier’ means any person (other than a local mes-  
16               senger service or the United States Postal Service)  
17               that holds itself out to the general public as a pro-  
18               vider for hire of the transportation by water, land,  
19               or air of merchandise, whether or not the person ac-  
20               tually operates the vessel, vehicle, or aircraft by  
21               which the transportation is provided, between a port  
22               or place and a port or place in the United States.

23               “(4) CONSUMER.—The term ‘consumer’ means  
24               any person that purchases cigarettes or smokeless  
25               tobacco, but does not include any person lawfully op-

1 erating as a manufacturer, distributor, wholesaler,  
2 or retailer of cigarettes or smokeless tobacco.

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

6 “(A) the consumer submits the order for  
7 such sale by means of a telephone or other  
8 method of voice transmission, the mails, or the  
9 Internet or other online service, or the seller is  
10 otherwise not in the physical presence of the  
11 buyer when the request for purchase or order is  
12 made; or

13 “(B) the cigarettes or smokeless tobacco  
14 are delivered by use of a common carrier, pri-  
15 vate delivery service, or the mails, or the seller  
16 is not in the physical presence of the buyer  
17 when the buyer obtains possession of the ciga-  
18 rettes or smokeless tobacco.

19 “(6) DELIVERY SELLER.—The term ‘delivery  
20 seller’ means a person who makes a delivery sale.

21 “(7) INDIAN COUNTRY.—The term ‘Indian  
22 country’ has the meaning given that term in section  
23 1151 of title 18, United States Code, except that  
24 within the State of Alaska that term applies only to

1 the Metlakatla Indian Community, Annette Island  
2 Reserve.

3 “(8) INDIAN TRIBE.—The term ‘Indian tribe’,  
4 ‘tribe’, or ‘tribal’ refers to an Indian tribe as defined  
5 in section 4(e) of the Indian Self-Determination and  
6 Education Assistance Act (25 U.S.C. 450b(e)) or as  
7 listed pursuant to section 104 of the Federally Rec-  
8 cognized Indian Tribe List Act of 1994 (25 U.S.C.  
9 479a–1).

10 “(9) INTERSTATE COMMERCE.—The term  
11 ‘interstate commerce’ means commerce between a  
12 State and any place outside the State, commerce be-  
13 tween a State and any Indian country in the State,  
14 or commerce between points in the same State but  
15 through any place outside the State or through any  
16 Indian country.

17 “(10) PERSON.—The term ‘person’ means an  
18 individual, corporation, company, association, firm,  
19 partnership, society, State government, local govern-  
20 ment, Indian tribal government, governmental orga-  
21 nization of such government, or joint stock company.

22 “(11) STATE.—The term ‘State’ means each of  
23 the several States of the United States, the District  
24 of Columbia, the Commonwealth of Puerto Rico, or  
25 any territory or possession of the United States.

1               “(12) SMOKELESS TOBACCO.—The term  
2       ‘smokeless tobacco’ means any finely cut, ground,  
3       powdered, or leaf tobacco, or other product con-  
4       taining tobacco, that is intended to be placed in the  
5       oral or nasal cavity or otherwise consumed without  
6       being combusted.

7               “(13) TOBACCO TAX ADMINISTRATOR.—The  
8       term ‘tobacco tax administrator’ means the State,  
9       local, or tribal official duly authorized to collect the  
10      tobacco tax or administer the tax law of a State, lo-  
11      cality, or tribe, respectively.

12               “(14) USE.—The term ‘use’, in addition to its  
13       ordinary meaning, means the consumption, storage,  
14       handling, or disposal of cigarettes or smokeless to-  
15       bacco.”.

16               (b) REPORTS TO STATE TOBACCO TAX ADMINISTRA-  
17      TORS.—Section 2 of the Jenkins Act (15 U.S.C. 376) is  
18      amended—

19               (1) by striking “cigarettes” each place it ap-  
20       pears and inserting “cigarettes or smokeless to-  
21       bacco”;

22               (2) in subsection (a)—

23                       (A) in the matter preceding paragraph  
24                       (1)—

1 (i) by inserting "CONTENTS.—" after  
2 "(a)"

3 (ii) by striking “or transfers” and in-  
4 serting “, transfers, or ships”;

5 (iii) by inserting “, locality, or Indian  
6 country of an Indian tribe” after “a  
7 State”;

11 (v) by striking “or transfer and ship-  
12 ment” and inserting “, transfer, or ship-  
13 ment”;

14 (B) in paragraph (1)—

15 (i) by striking “with the tobacco tax  
16 administrator of the State” and inserting  
17 “with the Attorney General of the United  
18 States and with the tobacco tax adminis-  
19 trators of the State and place”; and

20 (ii) by striking “; and” and inserting  
21 the following: “, as well as telephone num-  
22 bers for each place of business, a principal  
23 electronic mail address, any website ad-  
24 dresses, and the name, address, and tele-  
25 phone number of an agent in the State au-

3 (C) in paragraph (2), by striking “and the  
4 quantity thereof.” and inserting “the quantity  
5 thereof, and the name, address, and phone  
6 number of the person delivering the shipment to  
7 the recipient on behalf of the delivery seller,  
8 with all invoice or memoranda information re-  
9 lating to specific customers to be organized by  
10 city or town and by zip code; and”; and

11 (D) by adding at the end the following:

12                 “(3) with respect to each memorandum or in-  
13                 voice filed with a State under paragraph (2), also  
14                 file copies of such memorandum or invoice with the  
15                 tobacco tax administrators and chief law enforce-  
16                 ment officers of the local governments and Indian  
17                 tribes operating within the borders of the State that  
18                 apply their own local or tribal taxes on cigarettes or  
19                 smokeless tobacco.”;

20 (3) in subsection (b)—

(A) by inserting “PRESUMPTIVE EVIDENCE.—” after “(b);

23 (B) by striking “(1) that” and inserting  
24 “that”; and

1 (C) by striking “, and (2)” and all that  
2 follows and inserting a period; and  
3 (4) by adding at the end the following:  
4 “(c) USE OF INFORMATION.—A tobacco tax adminis-  
5 trator or chief law enforcement officer who receives a  
6 memorandum or invoice under paragraph (2) or (3) of  
7 subsection (a) shall use such memorandum or invoice sole-  
8 ly for the purposes of the enforcement of this Act and the  
9 collection of any taxes owed on related sales of cigarettes  
10 and smokeless tobacco, and shall keep confidential any  
11 personal information in such memorandum or invoice not  
12 otherwise required for such purposes.”.

13 (c) REQUIREMENTS FOR DELIVERY SALES.—The  
14 Jenkins Act is amended by inserting after section 2 the  
15 following:

## 16 "SEC. 2A. DELIVERY SALES.

17        "(a) IN GENERAL.—With respect to delivery sales  
18 into a specific State and place, each delivery seller shall  
19 comply with—

20               “(1) the shipping requirements set forth in sub-  
21               section (b);

22               “(2) the recordkeeping requirements set forth  
23               in subsection (c);

24                   “(3) all State, local, tribal, and other laws gen-  
25                   erally applicable to sales of cigarettes or smokeless

1       tobacco as if such delivery sales occurred entirely  
2       within the specific State and place, including laws  
3       imposing—

4               “(A) excise taxes;

5               “(B) licensing and tax-stamping require-  
6       ments;

7               “(C) restrictions on sales to minors; and

8               “(D) other payment obligations or legal re-  
9       quirements relating to the sale, distribution, or  
10      delivery of cigarettes or smokeless tobacco; and  
11      “(4) the tax collection requirements set forth in  
12      subsection (d).

13     “(b) SHIPPING AND PACKAGING.—

14       “(1) REQUIRED STATEMENT.—For any ship-  
15      ping package containing cigarettes or smokeless to-  
16      bacco, the delivery seller shall include on the bill of  
17      lading, if any, and on the outside of the shipping  
18      package, on the same surface as the delivery ad-  
19      dress, a clear and conspicuous statement providing  
20      as follows: ‘CIGARETTES/SMOKELESS TO-  
21      BACCO: FEDERAL LAW REQUIRES THE PAY-  
22      MENT OF ALL APPLICABLE EXCISE TAXES,  
23      AND COMPLIANCE WITH APPLICABLE LI-  
24      CENSING AND TAX-STAMPING OBLIGA-  
25      TIONS’.

1           “(2) FAILURE TO LABEL.—Any shipping pack-  
2       age described in paragraph (1) that is not labeled in  
3       accordance with that paragraph shall be treated as  
4       nondeliverable matter by a common carrier or other  
5       delivery service, if the common carrier or other deliv-  
6       ery service knows or should know the package con-  
7       tains cigarettes or smokeless tobacco. If a common  
8       carrier or other delivery service believes a package is  
9       being submitted for delivery in violation of para-  
10      graph (1), it may require the person submitting the  
11      package for delivery to establish that it is not being  
12      sent in violation of paragraph (1) before accepting  
13      the package for delivery. Nothing in this paragraph  
14      shall require the common carrier or other delivery  
15      service to open any package to determine its con-  
16      tents.

17           “(3) WEIGHT RESTRICTION.—A delivery seller  
18      shall not sell, offer for sale, deliver, or cause to be  
19      delivered in any single sale or single delivery any  
20      cigarettes or smokeless tobacco weighing more than  
21      10 pounds.

22           “(4) AGE VERIFICATION.—

23           “(A) IN GENERAL.—Notwithstanding any  
24      other provision of law, a delivery seller who  
25      mails or ships tobacco products—

1                     “(i) shall not sell, deliver, or cause to  
2                     be delivered any tobacco products to a per-  
3                     son under the minimum age required for  
4                     the legal sale or purchase of tobacco prod-  
5                     ucts, as determined by the applicable law  
6                     at the place of delivery;

7                     “(ii) shall use a method of mailing or  
8                     shipping that requires—

9                         “(I) the purchaser placing the  
10                     delivery sale order, or an adult who is  
11                     at least the minimum age required for  
12                     the legal sale or purchase of tobacco  
13                     products, as determined by the appli-  
14                     cable law at the place of delivery, to  
15                     sign to accept delivery of the shipping  
16                     container at the delivery address; and

17                         “(II) the person who signs to ac-  
18                     cept delivery of the shipping container  
19                     to provide proof, in the form of a  
20                     valid, government-issued identification  
21                     bearing a photograph of the indi-  
22                     vidual, that the person is at least the  
23                     minimum age required for the legal  
24                     sale or purchase of tobacco products,

1 as determined by the applicable law at  
2 the place of delivery; and

22                             “(B) LIMITATION.—No database being  
23                             used for age and identity verification under  
24                             subparagraph (A)(iii) shall be in the possession  
25                             or under the control of the delivery seller, or be

3        "(c) RECORDS.—

4                   “(1) IN GENERAL.—Each delivery seller shall  
5                   keep a record of any delivery sale, including all of  
6                   the information described in section 2(a)(2), orga-  
7                   nized by the State, and within such State, by the  
8                   city or town and by zip code, into which such deliv-  
9                   ery sale is so made.

10       “(2) RECORD RETENTION.—Records of a deliv-  
11       ery sale shall be kept as described in paragraph (1)  
12       in the year in which the delivery sale is made and  
13       for the next 4 years.

14                     “(3) ACCESS FOR OFFICIALS.—Records kept  
15                     under paragraph (1) shall be made available to to-  
16                     bacco tax administrators of the States, to local gov-  
17                     ernments and Indian tribes that apply their own  
18                     local or tribal taxes on cigarettes or smokeless to-  
19                     bacco, to the attorneys general of the States, to the  
20                     chief law enforcement officers of such local govern-  
21                     ments and Indian tribes, and to the Attorney Gen-  
22                     eral of the United States in order to ensure the com-  
23                     pliance of persons making delivery sales with the re-  
24                     quirements of this Act.

25                    "(d) DELIVERY.—

1           “(1) IN GENERAL.—Except as provided in para-  
2       graph (2), no delivery seller may sell or deliver to  
3       any consumer, or tender to any common carrier or  
4       other delivery service, any cigarettes or smokeless to-  
5       bacco pursuant to a delivery sale unless, in advance  
6       of the sale, delivery, or tender—

7           “(A) any cigarette or smokeless tobacco ex-  
8       cise tax that is imposed by the State in which  
9       the cigarettes or smokeless tobacco are to be  
10      delivered has been paid to the State;

11          “(B) any cigarette or smokeless tobacco  
12       excise tax that is imposed by the local govern-  
13       ment of the place in which the cigarettes or  
14       smokeless tobacco are to be delivered has been  
15       paid to the local government; and

16          “(C) any required stamps or other indicia  
17       that such excise tax has been paid are properly  
18       affixed or applied to the cigarettes or smokeless  
19       tobacco.

20          “(2) EXCEPTION.—Paragraph (1) does not  
21       apply to a delivery sale of smokeless tobacco if the  
22       law of the State or local government of the place  
23       where the smokeless tobacco is to be delivered re-  
24       quires or otherwise provides that delivery sellers col-  
25       lect the excise tax from the consumer and remit the

1       excise tax to the State or local government, and the  
2       delivery seller complies with the requirement.

3       “(e) LIST OF UNREGISTERED OR NONCOMPLIANT  
4       DELIVERY SELLERS.—

5           “(1) IN GENERAL.—

6              “(A) INITIAL LIST.—Not later than 90  
7       days after this subsection goes into effect under  
8       the Prevent All Cigarette Trafficking Act of  
9       2007, the Attorney General of the United  
10      States shall compile a list of delivery sellers of  
11      cigarettes or smokeless tobacco that have not  
12      registered with the Attorney General, pursuant  
13      to section 2(a) or that are otherwise not in  
14      compliance with this Act, and—

15              “(i) distribute the list to—

16                  “(I) the attorney general and tax  
17       administrator of every State;

18                  “(II) common carriers and other  
19       persons that deliver small packages to  
20       consumers in interstate commerce, in-  
21       cluding the United States Postal Serv-  
22       ice; and

23                  “(III) at the discretion of the At-  
24       torney General of the United States,  
25       to any other persons; and

1                         “(ii) publicize and make the list avail-  
2                         able to any other person engaged in the  
3                         business of interstate deliveries or who de-  
4                         livers cigarettes or smokeless tobacco in or  
5                         into any State.

6                         “(B) LIST CONTENTS.—To the extent  
7                         known, the Attorney General of the United  
8                         States shall include, for each delivery seller on  
9                         the list described in subparagraph (A)—

10                         “(i) all names the delivery seller uses  
11                         in the transaction of its business or on  
12                         packages delivered to customers;

13                         “(ii) all addresses from which the de-  
14                         livery seller does business or ships ciga-  
15                         rettes or smokeless tobacco;

16                         “(iii) the website addresses, primary  
17                         e-mail address, and phone number of the  
18                         delivery seller; and

19                         “(iv) any other information that the  
20                         Attorney General determines would facili-  
21                         tate compliance with this subsection by re-  
22                         cipients of the list.

23                         “(C) UPDATING.—The Attorney General of  
24                         the United States shall update and distribute  
25                         the list at least once every 4 months, and may

1           distribute the list and any updates by regular  
2           mail, electronic mail, or any other reasonable  
3           means, or by providing recipients with access to  
4           the list through a nonpublic website that the  
5           Attorney General of the United States regularly  
6           updates.

7           “(D) STATE, LOCAL, OR TRIBAL ADDI-  
8           TIONS.—The Attorney General of the United  
9           States shall include in the list under subpara-  
10           graph (A) any noncomplying delivery sellers  
11           identified by any State, local, or tribal govern-  
12           ment under paragraph (5), and shall distribute  
13           the list to the attorney general or chief law en-  
14           forcement official and the tax administrator of  
15           any government submitting any such informa-  
16           tion and to any common carriers or other per-  
17           sons who deliver small packages to consumers  
18           identified by any government pursuant to para-  
19           graph (5).

20           “(E) CONFIDENTIALITY.—The list distrib-  
21           uted pursuant to subparagraph (A) shall be  
22           confidential, and any person receiving the list  
23           shall maintain the confidentiality of the list but  
24           may deliver the list, for enforcement purposes,  
25           to any government official or to any common

1 carrier or other person that delivers tobacco  
2 products or small packages to consumers. Noth-  
3 ing in this section shall prohibit a common car-  
4 rier, the United States Postal Service, or any  
5 other person receiving the list from discussing  
6 with the listed delivery sellers the delivery sell-  
7 ers' inclusion on the list and the resulting ef-  
8 fects on any services requested by such listed  
9 delivery seller.

10 “(2) PROHIBITION ON DELIVERY.—

11 “(A) IN GENERAL.—Commencing on the  
12 date that is 60 days after the date of the initial  
13 distribution or availability of the list under  
14 paragraph (1)(A), no person who receives the  
15 list under paragraph (1), and no person who  
16 delivers cigarettes or smokeless tobacco to con-  
17 sumers, shall knowingly complete, cause to be  
18 completed, or complete its portion of a delivery  
19 of any package for any person whose name and  
20 address are on the list, unless—

21 “(i) the person making the delivery  
22 knows or believes in good faith that the  
23 item does not include cigarettes or smoke-  
24 less tobacco;

1                     “(ii) the delivery is made to a person  
2                     lawfully engaged in the business of manu-  
3                     facturing, distributing, or selling cigarettes  
4                     or smokeless tobacco; or

5                     “(iii) the package being delivered  
6                     weighs more than 100 pounds and the per-  
7                     son making the delivery does not know or  
8                     have reasonable cause to believe that the  
9                     package contains cigarettes or smokeless  
10                    tobacco.

11                    “(B) IMPLEMENTATION OF UPDATES.—  
12                    Commencing on the date that is 30 days after  
13                    the date of the distribution or availability of  
14                    any updates or corrections to the list under  
15                    paragraph (1), all recipients and all common  
16                    carriers or other persons that deliver cigarettes  
17                    or smokeless tobacco to consumers shall be sub-  
18                    ject to subparagraph (A) in regard to such cor-  
19                    rections or updates.

20                    “(3) SHIPMENTS FROM PERSONS ON LIST.—

21                    “(A) IN GENERAL.—In the event that a  
22                    common carrier or other delivery service delays  
23                    or interrupts the delivery of a package it has in  
24                    its possession because it determines or has rea-  
25                    son to believe that the person ordering the de-

1 livery is on a list distributed under paragraph  
2 (1)—

3 “(i) the person ordering the delivery  
4 shall be obligated to pay—

5 “(I) the common carrier or other  
6 delivery service as if the delivery of  
7 the package had been timely com-  
8 pleted; and

9 “(II) if the package is not deliv-  
10 erable, any reasonable additional fee  
11 or charge levied by the common car-  
12 rier or other delivery service to cover  
13 its extra costs and inconvenience and  
14 to serve as a disincentive against such  
15 noncomplying delivery orders; and

16 “(ii) if the package is determined not  
17 to be deliverable, the common carrier or  
18 other delivery service shall, in its discre-  
19 tion, either provide the package and its  
20 contents to a Federal, State, or local law  
21 enforcement agency or destroy the package  
22 and its contents.

23 “(B) RECORDS.—A common carrier or  
24 other delivery service shall maintain, for a pe-  
25 riod of 5 years, any records kept in the ordi-

1                 nary course of business relating to any deliveries interrupted pursuant to this paragraph  
2                 and provide that information, upon request, to  
3                 the Attorney General of the United States or to  
4                 the attorney general or chief law enforcement  
5                 official or tax administrator of any State, local,  
6                 or tribal government.  
7

8                 “(C) CONFIDENTIALITY.—Any person re-  
9                 ceiving records under subparagraph (B) shall  
10                use such records solely for the purposes of the  
11                enforcement of this Act and the collection of  
12                any taxes owed on related sales of cigarettes  
13                and smokeless tobacco, and the person receiving  
14                records under subparagraph (B) shall keep con-  
15                fidential any personal information in such  
16                records not otherwise required for such pur-  
17                poses.

18                 “(4) PREEMPTION.—

19                 “(A) IN GENERAL.—No State, local, or  
20                tribal government, nor any political authority of  
21                2 or more State, local, or tribal governments,  
22                may enact or enforce any law or regulation re-  
23                lating to delivery sales that restricts deliveries  
24                of cigarettes or smokeless tobacco to consumers

1 by common carriers or other delivery services  
2 on behalf of delivery sellers by—

3 “(i) requiring that the common carrier  
4 or other delivery service verify the age or  
5 identity of the consumer accepting the de-  
6 livery by requiring the person who signs to  
7 accept delivery of the shipping container to  
8 provide proof, in the form of a valid, gov-  
9 ernment-issued identification bearing a  
10 photograph of the individual, that such  
11 person is at least the minimum age re-  
12 quired for the legal sale or purchase of to-  
13 bacco products, as determined by either  
14 State or local law at the place of delivery;

15 “(ii) requiring that the common car-  
16 rier or other delivery service obtain a sig-  
17 nature from the consumer accepting the  
18 delivery;

19 “(iii) requiring that the common car-  
20 rier or other delivery service verify that all  
21 applicable taxes have been paid;

22 “(iv) requiring that packages delivered  
23 by the common carrier or other delivery  
24 service contain any particular labels, no-  
25 tice, or markings; or

1                         “(v) prohibiting common carriers or  
2                         other delivery services from making deliveries on the basis of whether the delivery  
3                         seller is or is not identified on any list of  
4                         delivery sellers maintained and distributed  
5                         by any entity other than the Federal Government.  
6  
7

8                         “(B) RELATIONSHIP TO OTHER LAWS.—  
9                         Nothing in this paragraph shall be construed to  
10                         prohibit, expand, restrict, or otherwise amend  
11                         or modify—

12                         “(i) section 14501(c)(1) or  
13                         41713(b)(4) of title 49, United States  
14                         Code;

15                         “(ii) any other restrictions in Federal  
16                         law on the ability of State, local, or tribal  
17                         governments to regulate common carriers;  
18                         or

19                         “(iii) any provision of State, local, or  
20                         tribal law regulating common carriers that  
21                         falls within the provisions of chapter 49 of  
22                         the United States Code, sections  
23                         14501(c)(2) or 41713(b)(4)(B).

24                         “(C) STATE LAWS PROHIBITING DELIVERY  
25                         SALES.—Nothing in the Prevent All Cigarette

1 Trafficking Act of 2007, or the amendments  
2 made by that Act, may be construed to preempt  
3 or supersede State laws prohibiting the delivery  
4 sale, or the shipment or delivery pursuant to a  
5 delivery sale, of cigarettes or smokeless tobacco  
6 to individual consumers.

7                   “(5) STATE, LOCAL, AND TRIBAL ADDITIONS.—

1                         “(B) UPDATES.—Any government pro-  
2                         viding a list to the Attorney General of the  
3                         United States under subparagraph (A) shall  
4                         also provide updates and corrections every 4  
5                         months until such time as such government no-  
6                         tifies the Attorney General of the United States  
7                         in writing that such government no longer de-  
8                         sires to submit such information to supplement  
9                         the list maintained and distributed by the At-  
10                         torney General of the United States under  
11                         paragraph (1).

12                         “(C) REMOVAL AFTER WITHDRAWAL.—  
13                         Upon receiving written notice that a govern-  
14                         ment no longer desires to submit information  
15                         under subparagraph (A), the Attorney General  
16                         of the United States shall remove from the list  
17                         under paragraph (1) any persons that are on  
18                         the list solely because of such government’s  
19                         prior submissions of its list of noncomplying de-  
20                         livery sellers of cigarettes or smokeless tobacco  
21                         or its subsequent updates and corrections.

22                         “(6) DEADLINE TO INCORPORATE ADDI-  
23                         TIONS.—The Attorney General of the United States  
24                         shall—

1                   “(A) include any delivery seller identified  
2                   and submitted by a State, local, or tribal gov-  
3                   ernment under paragraph (5) in any list or up-  
4                   date that is distributed or made available under  
5                   paragraph (1) on or after the date that is 30  
6                   days after the date on which the information is  
7                   received by the Attorney General of the United  
8                   States; and

9                   “(B) distribute any such list or update to  
10                  any common carrier or other person who makes  
11                  deliveries of cigarettes or smokeless tobacco  
12                  that has been identified and submitted by an-  
13                  other government, pursuant to paragraph (5).

14                  “(7) NOTICE TO DELIVERY SELLERS.—Not  
15                  later than 14 days prior to including any delivery  
16                  seller on the initial list distributed or made available  
17                  under paragraph (1), or on any subsequent list or  
18                  update for the first time, the Attorney General of  
19                  the United States shall make a reasonable attempt  
20                  to send notice to the delivery seller by letter, elec-  
21                  tronic mail, or other means that the delivery seller  
22                  is being placed on such list or update, with that no-  
23                  tice citing the relevant provisions of this Act.

24                  “(8) LIMITATIONS.—

1                     “(A) IN GENERAL.—Any common carrier  
2                     or other person making a delivery subject to  
3                     this subsection shall not be required or other-  
4                     wise obligated to—

5                         “(i) determine whether any list dis-  
6                     tributed or made available under para-  
7                     graph (1) is complete, accurate, or up-to-  
8                     date;

9                         “(ii) determine whether a person or-  
10                     dering a delivery is in compliance with this  
11                     Act; or

12                         “(iii) open or inspect, pursuant to this  
13                     Act, any package being delivered to deter-  
14                     mine its contents.

15                     “(B) ALTERNATE NAMES.—Any common  
16                     carrier or other person making a delivery sub-  
17                     ject to this subsection shall not be required or  
18                     otherwise obligated to make any inquiries or  
19                     otherwise determine whether a person ordering  
20                     a delivery is a delivery seller on the list under  
21                     paragraph (1) who is using a different name or  
22                     address in order to evade the related delivery  
23                     restrictions, but shall not knowingly deliver any  
24                     packages to consumers for any such delivery  
25                     seller who the common carrier or other delivery

1 service knows is a delivery seller who is on the  
2 list under paragraph (1) but is using a different  
3 name or address to evade the delivery restric-  
4 tions of paragraph (2).

5 “(C) PENALTIES.—Any common carrier or  
6 person in the business of delivering packages on  
7 behalf of other persons shall not be subject to  
8 any penalty under section 14101(a) of title 49,  
9 United States Code, or any other provision of  
10 law for—

11 “(i) not making any specific delivery,  
12 or any deliveries at all, on behalf of any  
13 person on the list under paragraph (1);

14 “(ii) not, as a matter of regular prac-  
15 tice and procedure, making any deliveries,  
16 or any deliveries in certain States, of any  
17 cigarettes or smokeless tobacco for any  
18 person or for any person not in the busi-  
19 ness of manufacturing, distributing, or  
20 selling cigarettes or smokeless tobacco; or

21 “(iii) delaying or not making a deliv-  
22 ery for any person because of reasonable  
23 efforts to comply with this Act.

24 “(D) OTHER LIMITS.—Section 2 and sub-  
25 sections (a), (b), (c), and (d) of this section

1 shall not be interpreted to impose any responsibilities, requirements, or liability on common  
2 carriers.

4 “(f) PRESUMPTION.—For purposes of this Act, a delivery sale shall be deemed to have occurred in the State  
5 and place where the buyer obtains personal possession of  
6 the cigarettes or smokeless tobacco, and a delivery pursuant  
7 to a delivery sale is deemed to have been initiated or  
8 ordered by the delivery seller.”.

10 (d) PENALTIES.—The Jenkins Act is amended by  
11 striking section 3 and inserting the following:

12 **“SEC. 3. PENALTIES.**

13 “(a) CRIMINAL PENALTIES.—

14 “(1) IN GENERAL.—Except as provided in paragraph (2), whoever violates any provision of this Act  
15 shall be guilty of a felony and shall be imprisoned  
16 not more than 3 years, fined under title 18, United  
17 States Code, or both.

19 “(2) EXCEPTIONS.—

20 “(A) GOVERNMENTS.—Paragraph (1) shall  
21 not apply to a State, local, or tribal government.

23 “(B) DELIVERY VIOLATIONS.—A common  
24 carrier or independent delivery service, or employee  
25 of a common carrier or independent de-

1 livery service, shall be subject to criminal pen-  
2 alties under paragraph (1) for a violation of  
3 section 2A(e) only if the violation is committed  
4 intentionally—

5 “(i) as consideration for the receipt  
6 of, or as consideration for a promise or  
7 agreement to pay, anything of pecuniary  
8 value; or

9 “(ii) for the purpose of assisting a de-  
10 livery seller to violate, or otherwise evading  
11 compliance with, section 2A.

12 “(b) CIVIL PENALTIES.—

13 “(1) IN GENERAL.—Except as provided in para-  
14 graph (3), whoever violates any provision of this Act  
15 shall be subject to a civil penalty in an amount not  
16 to exceed—

17 “(A) in the case of a delivery seller, the  
18 greater of—

19 “(i) \$5,000 in the case of the first  
20 violation, or \$10,000 for any other viola-  
21 tion; or

22 “(ii) for any violation, 2 percent of  
23 the gross sales of cigarettes or smokeless  
24 tobacco of such person during the 1-year  
25 period ending on the date of the violation.

1               “(B) in the case of a common carrier or  
2               other delivery service, \$2,500 in the case of a  
3               first violation, or \$5,000 for any violation within  
4               1 year of a prior violation.

5               “(2) RELATION TO OTHER PENALTIES.—A civil  
6               penalty under paragraph (1) for a violation of this  
7               Act shall be imposed in addition to any criminal  
8               penalty under subsection (a) and any other damages,  
9               equitable relief, or injunctive relief awarded by the  
10               court, including the payment of any unpaid taxes to  
11               the appropriate Federal, State, local, or tribal gov-  
12               ernments.

13               “(3) EXCEPTIONS.—

14               “(A) DELIVERY VIOLATIONS.—An em-  
15               ployee of a common carrier or independent de-  
16               livery service shall be subject to civil penalties  
17               under paragraph (1) for a violation of section  
18               2A(e) only if the violation is committed inten-  
19               tionally—

20               “(i) as consideration for the receipt  
21               of, or as consideration for a promise or  
22               agreement to pay, anything of pecuniary  
23               value; or

1                         “(ii) for the purpose of assisting a de-  
2                         livery seller to violate, or otherwise evading  
3                         compliance with, section 2A.

4                         “(B) OTHER LIMITATIONS.—No common  
5                         carrier or independent delivery service shall be  
6                         subject to civil penalties under paragraph (1)  
7                         for a violation of section 2A(e) if—

8                         “(i) the common carrier or inde-  
9                         pendent delivery service has implemented  
10                         and enforces effective policies and practices  
11                         for complying with that section; or

12                         “(ii) an employee of the common car-  
13                         rier or independent delivery service who  
14                         physically receives and processes orders,  
15                         picks up packages, processes packages, or  
16                         makes deliveries, takes actions that are  
17                         outside the scope of employment of the em-  
18                         ployee in the course of the violation, or  
19                         that violate the implemented and enforced  
20                         policies of the common carrier or inde-  
21                         pendent delivery service described in clause  
22                         (i).”.

23                         (e) ENFORCEMENT.—The Jenkins Act is amended by  
24                         striking section 4 and inserting the following:

1   **“SEC. 4. ENFORCEMENT.**

2       “(a) IN GENERAL.—The United States district  
3   courts shall have jurisdiction to prevent and restrain viola-  
4   tions of this Act and to provide other appropriate injunc-  
5   tive or equitable relief, including money damages, for such  
6   violations.

7       “(b) AUTHORITY OF THE ATTORNEY GENERAL.—  
8   The Attorney General of the United States shall admin-  
9   ister and enforce the provisions of this Act.

10     “(c) STATE, LOCAL, AND TRIBAL ENFORCEMENT.—

11       “(1) IN GENERAL.—

12           “(A) STANDING.—A State, through its at-  
13       torney general (or a designee thereof), or a  
14       local government or Indian tribe that levies a  
15       tax subject to section 2A(a)(3), through its  
16       chief law enforcement officer (or a designee  
17       thereof), may bring an action in a United  
18       States district court to prevent and restrain viola-  
19       tions of this Act by any person (or by any  
20       person controlling such person) or to obtain any  
21       other appropriate relief from any person (or  
22       from any person controlling such person) for  
23       violations of this Act, including civil penalties,  
24       money damages, and injunctive or other equi-  
25       table relief.

1                     “(B) SOVEREIGN IMMUNITY.—Nothing in  
2                     this Act shall be deemed to abrogate or con-  
3                     stitute a waiver of any sovereign immunity of a  
4                     State or local government or Indian tribe  
5                     against any unconsented lawsuit under this Act,  
6                     or otherwise to restrict, expand, or modify any  
7                     sovereign immunity of a State or local govern-  
8                     ment or Indian tribe.

9                     “(2) PROVISION OF INFORMATION.—A State,  
10                    through its attorney general, or a local government  
11                    or Indian tribe that levies a tax subject to section  
12                    2A(a)(3), through its chief law enforcement officer  
13                    (or a designee thereof), may provide evidence of a  
14                    violation of this Act by any person not subject to  
15                    State, local, or tribal government enforcement ac-  
16                    tions for violations of this Act to the Attorney Gen-  
17                    eral of the United States or a United States attor-  
18                    ney, who shall take appropriate actions to enforce  
19                    the provisions of this Act.

20                     “(3) USE OF PENALTIES COLLECTED.—

21                     “(A) IN GENERAL.—There is established a  
22                    separate account in the Treasury known as the  
23                    ‘PACT Anti-Trafficking Fund’. Notwith-  
24                    standing any other provision of law and subject  
25                    to subparagraph (B), an amount equal to 50

1 percent of any criminal and civil penalties col-  
2 lected by the United States Government in en-  
3 forcing the provisions of this Act shall be trans-  
4 ferred into the PACT Anti-Trafficking Fund  
5 and shall be available to the Attorney General  
6 of the United States for purposes of enforcing  
7 the provisions of this Act and other laws relat-  
8 ing to contraband tobacco products.

9 “(B) ALLOCATION OF FUNDS.—Of the  
10 amount available to the Attorney General under  
11 subparagraph (A), not less than 50 percent  
12 shall be made available only to the agencies and  
13 offices within the Department of Justice that  
14 were responsible for the enforcement actions in  
15 which the penalties concerned were imposed or  
16 for any underlying investigations.

17 “(4) NONEXCLUSIVITY OF REMEDY.—

18 “(A) IN GENERAL.—The remedies avail-  
19 able under this section and section 3 are in ad-  
20 dition to any other remedies available under  
21 Federal, State, local, tribal, or other law.

22 “(B) STATE COURT PROCEEDINGS.—Noth-  
23 ing in this Act shall be construed to expand, re-  
24 strict, or otherwise modify any right of an au-  
25 thorized State official to proceed in State court,

1           or take other enforcement actions, on the basis  
2           of an alleged violation of State or other law.

3           “(C) TRIBAL COURT PROCEEDINGS.—  
4           Nothing in this Act shall be construed to ex-  
5           pand, restrict, or otherwise modify any right of  
6           an authorized Indian tribal government official  
7           to proceed in tribal court, or take other enforce-  
8           ment actions, on the basis of an alleged viola-  
9           tion of tribal law.

10           “(D) LOCAL GOVERNMENT ENFORCE-  
11           MENT.—Nothing in this Act shall be construed  
12           to expand, restrict, or otherwise modify any  
13           right of an authorized local government official  
14           to proceed in State court, or take other enforce-  
15           ment actions, on the basis of an alleged viola-  
16           tion of local or other law.

17           “(d) PERSONS DEALING IN TOBACCO PRODUCTS.—  
18           Any person who holds a permit under section 5712 of the  
19           Internal Revenue Code of 1986 (regarding permitting of  
20           manufacturers and importers of tobacco products and ex-  
21           port warehouse proprietors) may bring an action in a  
22           United States district court to prevent and restrain viola-  
23           tions of this Act by any person (or by any person control-  
24           ling such person) other than a State, local, or tribal gov-  
25           ernment.

1       “(e) NOTICE.—

2           “(1) PERSONS DEALING IN TOBACCO PROD-  
3       UCTS.—Any person who commences a civil action  
4       under subsection (d) shall inform the Attorney Gen-  
5       eral of the United States of the action.

6           “(2) STATE, LOCAL, AND TRIBAL ACTIONS.—It  
7       is the sense of Congress that the attorney general of  
8       any State, or chief law enforcement officer of any lo-  
9       cality or tribe, that commences a civil action under  
10      this section should inform the Attorney General of  
11      the United States of the action.

12       “(f) PUBLIC NOTICE.—

13           “(1) IN GENERAL.—The Attorney General of  
14       the United States shall make available to the public,  
15       by posting such information on the Internet and by  
16       other appropriate means, information regarding all  
17       enforcement actions undertaken by the Attorney  
18       General or United States attorneys, or reported to  
19       the Attorney General, under this section, including  
20       information regarding the resolution of such actions  
21       and how the Attorney General and the United States  
22       attorney have responded to referrals of evidence of  
23       violations pursuant to subsection (c)(2).

24           “(2) REPORTS TO CONGRESS.—The Attorney  
25       General shall submit to Congress each year a report

1 containing the information described in paragraph  
2 (1).”.

3 **SEC. 3. TREATMENT OF CIGARETTES AND SMOKELESS TO-**  
4 **BACCO AS NONMAILABLE MATTER.**

5 Section 1716 of title 18, United States Code, is  
6 amended—

7 (1) by redesignating subsections (j) and (k) as  
8 subsections (k) and (l), respectively; and

9 (2) by inserting after subsection (i) the fol-  
10 lowing:

11 “(j) TOBACCO PRODUCTS.—

12 “(1) PROHIBITION.—

13 “(A) IN GENERAL.—Except as provided in  
14 subparagraphs (C) and (D), all cigarettes (as  
15 that term is defined in section 1(2) of the Act  
16 of October 19, 1949 (15 U.S.C. 375; commonly  
17 referred to as the ‘Jenkins Act’)) and smokeless  
18 tobacco (as that term is defined in section  
19 1(12) of that Act), are nonmailable and shall  
20 not be deposited in or carried through the  
21 mails. The United States Postal Service shall  
22 not accept for delivery or transmit through the  
23 mails any package that it knows or has reason-  
24 able cause to believe contains any cigarettes or

1 smokeless tobacco made nonmailable by this  
2 subsection.

3           “(B) REASONABLE CAUSE TO BELIEVE.—  
4 For purposes of this section, notification to the  
5 United States Postal Service by the Attorney  
6 General, a United States attorney, or a State  
7 Attorney General that an individual or entity is  
8 primarily engaged in the business of transmit-  
9 ting cigarettes or smokeless tobacco made non-  
10 mailable by this section shall constitute reason-  
11 able cause to believe that any packages pre-  
12 sented to the United States Postal Service by  
13 such individual or entity contain nonmailable  
14 cigarettes or smokeless tobacco.

15           “(C) CIGARS.—Subparagraph (A) shall not  
16 apply to cigars (as that term is defined in sec-  
17 tion 5702(a) of the Internal Revenue Code of  
18 1986).

19           “(D) GEOGRAPHIC EXCEPTION.—Subpara-  
20 graph (A) shall not apply to mailings within or  
21 into any State that is not contiguous with at  
22 least 1 other State of the United States. For  
23 purposes of this paragraph, ‘State’ means any  
24 of the 50 States or the District of Columbia.

1           “(2) PACKAGING EXCEPTIONS INAPPLICABLE.—

2       Subsection (b) shall not apply to any tobacco prod-  
3       uct made nonmailable by this subsection.

4           “(3) SEIZURE AND FORFEITURE.—Any ciga-  
5       rettes or smokeless tobacco made nonmailable by  
6       this subsection that are deposited in the mails shall  
7       be subject to seizure and forfeiture, and any tobacco  
8       products so seized and forfeited shall either be de-  
9       stroyed or retained by Government officials for the  
10      detection or prosecution of crimes or related inves-  
11      tigations and then destroyed.

12           “(4) ADDITIONAL PENALTIES.—In addition to  
13       any other fines and penalties imposed by this chap-  
14       ter for violations of this section, any person violating  
15       this subsection shall be subject to an additional pen-  
16       alty in the amount of 10 times the retail value of the  
17       nonmailable cigarettes or smokeless tobacco, includ-  
18       ing all Federal, State, and local taxes.

19           “(5) USE OF PENALTIES.—There is established  
20       a separate account in the Treasury known as the  
21       ‘PACT Postal Service Fund’. Notwithstanding any  
22       other provision of law, an amount equal to 50 per-  
23       cent of any criminal and civil fines or monetary pen-  
24       alties collected by the United States Government in  
25       enforcing the provisions of this subsection shall be

1 transferred into the PACT Postal Service Fund and  
2 shall be available to the Postmaster General for the  
3 purpose of enforcing the provisions of this sub-  
4 section.”.

5 **SEC. 4. COMPLIANCE WITH MODEL STATUTE OR QUALI-  
6 FYING STATUTE.**

7 (a) **IN GENERAL.**—A Tobacco Product Manufacturer  
8 or importer may not sell in, deliver to, or place for delivery  
9 sale, or cause to be sold in, delivered to, or placed for deliv-  
10 ery sale in a State that is a party to the Master Settlement  
11 Agreement, any cigarette manufactured by a Tobacco  
12 Product Manufacturer that is not in full compliance with  
13 the terms of the Model Statute or Qualifying Statute en-  
14 acted by such State requiring funds to be placed into a  
15 qualified escrow account under specified conditions, or any  
16 regulations promulgated pursuant to such statute.

17 (b) **JURISDICTION TO PREVENT AND RESTRAIN VIO-  
18 LATIONS.**—

19 (1) **IN GENERAL.**—The United States district  
20 courts shall have jurisdiction to prevent and restrain  
21 violations of subsection (a) in accordance with this  
22 subsection.

23 (2) **INITIATION OF ACTION.**—A State, through  
24 its attorney general, may bring an action in the  
25 United States district courts to prevent and restrain

1 violations of subsection (a) by any person (or by any  
2 person controlling such person).

3 (3) ATTORNEY FEES.—In any action under  
4 paragraph (2), a State, through its attorney general,  
5 shall be entitled to reasonable attorney fees from a  
6 person found to have willfully and knowingly violated  
7 subsection (a).

8 (4) NONEXCLUSIVITY OF REMEDIES.—The rem-  
9 edy available under paragraph (2) is in addition to  
10 any other remedies available under Federal, State,  
11 or other law. No provision of this Act or any other  
12 Federal law shall be held or construed to prohibit or  
13 preempt the Master Settlement Agreement, the  
14 Model Statute (as defined in the Master Settlement  
15 Agreement), any legislation amending or complemen-  
16 tary to the Model Statute in effect as of June 1,  
17 2006, or any legislation substantially similar to such  
18 existing, amending, or complementary legislation  
19 hereinafter enacted.

20 (5) OTHER ENFORCEMENT ACTIONS.—Nothing  
21 in this subsection shall be construed to prohibit an  
22 authorized State official from proceeding in State  
23 court or taking other enforcement actions on the  
24 basis of an alleged violation of State or other law.

4 (c) DEFINITIONS.—In this section the following defi-  
5 nitions apply:

9 (A) the consumer submits the order for  
10 such sale by means of a telephone or other  
11 method of voice transmission, the mails, or the  
12 Internet or other online service, or the seller is  
13 otherwise not in the physical presence of the  
14 buyer when the request for purchase or order is  
15 made; or

16 (B) the cigarettes or smokeless tobacco are  
17 delivered by use of a common carrier, private  
18 delivery service, or the mails, or the seller is not  
19 in the physical presence of the buyer when the  
20 buyer obtains possession of the cigarettes or  
21 smokeless tobacco.

24 (A) SHIPPING OR CONSIGNING.—Any per-  
25 son in the United States to whom nontaxpaid

1           tobacco products manufactured in a foreign  
2           country, Puerto Rico, the Virgin Islands, or a  
3           possession of the United States are shipped or  
4           consigned.

5           (B) MANUFACTURING WAREHOUSES.—Any  
6           person who removes cigars or cigarettes for sale  
7           or consumption in the United States from a  
8           customs-bonded manufacturing warehouse.

9           (C) UNLAWFUL IMPORTING.—Any person  
10          who smuggles or otherwise unlawfully brings to-  
11          bacco products into the United States.

12          (3) MASTER SETTLEMENT AGREEMENT.—The  
13          term “Master Settlement Agreement” means the  
14          agreement executed November 23, 1998, between  
15          the attorneys general of 46 States, the District of  
16          Columbia, the Commonwealth of Puerto Rico, and 4  
17          territories of the United States and certain tobacco  
18          manufacturers.

19          (4) MODEL STATUTE; QUALIFYING STATUTE.—  
20          The terms “Model Statute” and “Qualifying Stat-  
21          ute” means a statute as defined in section  
22          IX(d)(2)(e) of the Master Settlement Agreement.

23          (5) TOBACCO PRODUCT MANUFACTURER.—The  
24          term “Tobacco Product Manufacturer” has the

1 meaning given that term in section II(uu) of the  
2 Master Settlement Agreement.

3 **SEC. 5. INSPECTION BY BUREAU OF ALCOHOL, TOBACCO,**  
4 **FIREARMS, AND EXPLOSIVES OF RECORDS**  
5 **OF CERTAIN CIGARETTE AND SMOKELESS**  
6 **TOBACCO SELLERS.**

7 (a) IN GENERAL.—Any officer of the Bureau of Alco-  
8 hol, Tobacco, Firearms, and Explosives may, during nor-  
9 mal business hours, enter the premises of any person de-  
10 scribed in subsection (b) for the purposes of inspecting—

11 (1) any records or information required to be  
12 maintained by such person under the provisions of  
13 law referred to in subsection (d); or

14 (2) any cigarettes or smokeless tobacco kept or  
15 stored by such person at such premises.

16 (b) COVERED PERSONS.—Subsection (a) applies to  
17 any person who engages in a delivery sale, and who ships,  
18 sells, distributes, or receives any quantity in excess of  
19 10,000 cigarettes, or any quantity in excess of 500 single-  
20 unit consumer-sized cans or packages of smokeless to-  
21 bacco, within a single month.

22 (c) RELIEF.—

23 (1) IN GENERAL.—The district courts of the  
24 United States shall have the authority in a civil ac-

1       tion under this subsection to compel inspections au-  
2       thorized by subsection (a).

3                   (2) VIOLATIONS.—Whoever violates subsection  
4       (a) or an order issued pursuant to paragraph (1)  
5       shall be subject to a civil penalty in an amount not  
6       to exceed \$10,000 for each violation.

7                   (d) COVERED PROVISIONS OF LAW.—The provisions  
8       of law referred to in this subsection are—

9                   (1) the Act of October 19, 1949 (15 U.S.C.  
10       375; commonly referred to as the “Jenkins Act”);  
11                   (2) chapter 114 of title 18, United States Code;  
12       and  
13                   (3) this Act.

14                   (e) DELIVERY SALE DEFINED.—In this section, the  
15       term “delivery sale” has the meaning given that term in  
16       2343(e) of title 18, United States Code, as amended by  
17       this Act.

18       **SEC. 6. EXCLUSIONS REGARDING INDIAN TRIBES AND**  
19                   **TRIBAL MATTERS.**

20                   (a) IN GENERAL.—Nothing in this Act or the amend-  
21       ments made by this Act is intended nor shall be construed  
22       to affect, amend, or modify—

23                   (1) any agreements, compacts, or other inter-  
24       governmental arrangements between any State or  
25       local government and any government of an Indian

1       tribe (as that term is defined in section 4(e) of the  
2       Indian Self-Determination and Education Assistance  
3       Act (25 U.S.C. 450b(e)) relating to the collection of  
4       taxes on cigarettes or smokeless tobacco sold in In-  
5       dian country (as that term is defined in section  
6       1151 of title 18, United States Code);

7               (2) any State laws that authorize or otherwise  
8       pertain to any such intergovernmental arrangements  
9       or create special rules or procedures for the collec-  
10       tion of State, local, or tribal taxes on cigarettes or  
11       smokeless tobacco sold in Indian country;

12               (3) any limitations under existing Federal law,  
13       including Federal common law and treaties, on  
14       State, local, and tribal tax and regulatory authority  
15       with respect to the sale, use, or distribution of ciga-  
16       rettes and smokeless tobacco by or to Indian tribes  
17       or tribal members or in Indian country;

18               (4) any existing Federal law, including Federal  
19       common law and treaties, regarding State jurisdic-  
20       tion, or lack thereof, over any tribe, tribal members,  
21       or tribal reservations; and

22               (5) any existing State or local government au-  
23       thority to bring enforcement actions against persons  
24       located in Indian country.

1       (b) COORDINATION OF LAW ENFORCEMENT.—Nothing in this Act or the amendments made by this Act shall  
2       be construed to inhibit or otherwise affect any coordinated  
3       law enforcement effort by 1 or more States or other jurisdictions, including Indian tribes, through interstate com-  
4       pact or otherwise, that—

7               (1) provides for the administration of tobacco  
8       product laws or laws pertaining to interstate sales or  
9       other sales of tobacco products;

10              (2) provides for the seizure of tobacco products  
11       or other property related to a violation of such laws;  
12       or

13              (3) establishes cooperative programs for the ad-  
14       ministration of such laws.

15       (c) TREATMENT OF STATE AND LOCAL GOVERN-  
16       MENTS.—Nothing in this Act or the amendments made  
17       by this Act is intended, and shall not be construed to, au-  
18       thorize, deputize, or commission States or local govern-  
19       ments as instrumentalities of the United States.

20       (d) ENFORCEMENT WITHIN INDIAN COUNTRY.—  
21       Nothing in this Act or the amendments made by this Act  
22       is intended to prohibit, limit, or restrict enforcement by  
23       the Attorney General of the United States of the provi-  
24       sions herein within Indian country.

1       (e) AMBIGUITY.—Any ambiguity between the lan-  
2 guage of this section or its application and any other pro-  
3 vision of this Act shall be resolved in favor of this section.

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

5       (a) IN GENERAL.—Except as provided in subsection  
6 (b), this Act shall take effect on the date that is 90 days  
7 after the date of enactment of this Act.

8       (b) BATFE AUTHORITY.—Section 5 shall take effect  
9 on the date of enactment of this Act.

10 **SEC. 8. SEVERABILITY.**

11       If any provision of this, or an amendment made by  
12 this Act or the application thereof to any person or cir-  
13 cumstance is held invalid, the remainder of the Act and  
14 the application of it to any other person or circumstance  
15 shall not be affected thereby.



Calendar No. 351

110<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION  
**S. 1027**

[Report No. 110-153]

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**A BILL**

To prevent tobacco smuggling, to ensure the collection of all tobacco taxes, and for other purposes.

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SEPTEMBER 11, 2007

Reported without amendment