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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.

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

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 rorist 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;

1 (6) unfair competition from illegal sales of ciga-
2 rettes and smokeless tobacco is taking billions of dol-
3 lars of sales away from law-abiding retailers
4 throughout the United States;

5 (7) with rising State and local tobacco tax
6 rates, the incentives for the illegal sale of cigarettes
7 and smokeless tobacco have increased;

8 (8) the number of active tobacco investigations
9 being conducted by the Bureau of Alcohol, Tobacco,
10 Firearms, and Explosives rose to 452 in 2005;

11 (9) the number of Internet vendors in the
12 United States and in foreign countries that sell ciga-
13 rettes and smokeless tobacco to buyers in the United
14 States has increased from only about 40 in 2000 to
15 more than 500 in 2005; and

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;

1 (3) provide government enforcement officials
2 with more effective enforcement tools to combat to-
3 bacco smuggling;

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

7 (5) increase collections of Federal, State, and
8 local excise taxes on cigarettes and smokeless to-
9 bacco; and

10 (6) prevent and reduce youth access to inexpen-
11 sive cigarettes and smokeless tobacco through illegal
12 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-

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

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

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

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

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

“(7) INDIAN COUNTRY.—The term ‘Indian
country’ has the meaning given that term in section
1151 of title 18, United States Code, except that
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 ognized 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”;

8 (iv) by striking “to other than a dis-
9 tributor licensed by or located in such
10 State,”; and

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-

1 thorized to accept service on behalf of such
2 person;”;

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”;

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)—

21 (A) by inserting “PRESUMPTIVE EVI-
22 DENCE.—” 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

3 “(iii) shall not accept a delivery sale
4 order from a person without—

5 “(I) obtaining the full name,
6 birth date, and residential address of
7 that person; and

8 “(II) verifying the information
9 provided in subclause (I), through the
10 use of a commercially available data-
11 base or aggregate of databases, con-
12 sisting primarily of data from govern-
13 ment sources, that are regularly used
14 by government and businesses for the
15 purpose of age and identity
16 verification and authentication, to en-
17 sure that the purchaser is at least the
18 minimum age required for the legal
19 sale or purchase of tobacco products,
20 as determined by the applicable law at
21 the place of delivery.

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

1 subject to any changes or supplementation by
2 the delivery seller.

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

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

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

“(B) RELATIONSHIP TO OTHER LAWS.—

Nothing in this paragraph shall be construed to prohibit, expand, restrict, or otherwise amend or modify—

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

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

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

“(C) STATE LAWS PROHIBITING DELIVERY 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.—

8 “(A) IN GENERAL.—Any State, local, or
9 tribal government shall provide the Attorney
10 General of the United States with—

11 “(i) all known names, addresses,
12 website addresses, and other primary con-
13 tact information of any delivery seller that
14 offers for sale or makes sales of cigarettes
15 or smokeless tobacco in or into the State,
16 locality, or tribal land but has failed to
17 register with or make reports to the re-
18 spective tax administrator, as required by
19 this Act, or that has been found in a legal
20 proceeding to have otherwise failed to com-
21 ply with this Act; and

22 “(ii) a list of common carriers and
23 other persons who make deliveries of ciga-
24 rettes or smokeless tobacco in or into the
25 State, locality, or tribal lands.

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 respon-
 2 sibilities, requirements, or liability on common
 3 carriers.

4 “(f) PRESUMPTION.—For purposes of this Act, a de-
 5 livery sale shall be deemed to have occurred in the State
 6 and place where the buyer obtains personal possession of
 7 the cigarettes or smokeless tobacco, and a delivery pursu-
 8 ant to a delivery sale is deemed to have been initiated or
 9 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 para-
 15 graph (2), whoever violates any provision of this Act
 16 shall be guilty of a felony and shall be imprisoned
 17 not more than 3 years, fined under title 18, United
 18 States Code, or both.

19 “(2) EXCEPTIONS.—

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

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

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

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

“(ii) for the purpose of assisting a delivery seller to violate, or otherwise evading compliance with, section 2A.

“(b) CIVIL PENALTIES.—

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

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

“(i) \$5,000 in the case of the first violation, or \$10,000 for any other violation; or

“(ii) for any violation, 2 percent of the gross sales of cigarettes or smokeless tobacco of such person during the 1-year 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 with-
4 in 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 vio-
19 lations 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.

1 (6) AUTHORITY OF THE ATTORNEY GEN-
2 ERAL.—The Attorney General of the United States
3 may administer and enforce subsection (a).

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

6 (1) DELIVERY SALE.—The term “delivery sale”
7 means any sale of cigarettes or smokeless tobacco to
8 a consumer if—

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.

22 (2) IMPORTER.—The term “importer” means
23 each of the following:

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.—Noth-
2 ing in this Act or the amendments made by this Act shall
3 be construed to inhibit or otherwise affect any coordinated
4 law enforcement effort by 1 or more States or other juris-
5 dictions, including Indian tribes, through interstate com-
6 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.

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S. 1027

[Report No. 110-153]

A BILL

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

SEPTEMBER 11, 2007

Reported without amendment