

statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 258) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 258

Whereas the Russian Federation is now a member of the family of democratic countries;

Whereas the United States supports the development of democracy, free markets, and civil society in the Russian Federation and in other states of the former Soviet Union;

Whereas the rule of law, the impartial application of the law, and equal justice for all in courts of law are pillars of all democratic societies;

Whereas investment, both foreign and domestic, in the economy of Russia is necessary for the growth of the economy and raising the standard of living of the citizens of the Russian Federation;

Whereas property rights are a bulwark of civil society against encroachment by the state, and a fundamental building block of democracy; and

Whereas reports of the arrest of Mikhail B. Khodorkovsky and the freezing of shares of the oil conglomerate YUKOS have raised questions about the possible selective application of the law in the Russian Federation and may have compromised investor confidence in business conditions there: Now, therefore, be it

*Resolved*, That it is the sense of the Senate that—

(1) the law enforcement and judicial authorities of the Russian Federation should ensure that Mikhail B. Khodorkovsky is accorded the full measure of his rights under the Russian Constitution to defend himself against any and all charges that may be brought against him, in a fair and transparent process, so that individual justice may be done, but also so that the efforts the Russian Federation has been making to reform its system of justice may be seen to be moving forward; and

(2) such authorities of the Russian Federation should make every effort to dispel growing international concerns that—

(A) the cases against Mikhail B. Khodorkovsky and other business leaders are politically motivated; and

(B) the potential remains for misuse of the justice system in the Russian Federation.

CONGRATULATING THE SAN JOSE EARTHQUAKES

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 280, submitted earlier today by Senators BOXER and FEINSTEIN.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 280) congratulating the San Jose Earthquakes for winning the 2003 Major League Soccer Cup.

There being no objection, the Senate proceeded to consider the resolution.

Mrs. BOXER. Mr. President, on November 23, the San Jose Earthquakes became only the second team in Major League Soccer, MLS, history to win

the MLS Cup more than once, beating the Chicago Fire 4-2 in a well-fought match.

In the championship game against Chicago, San Jose delighted a capacity crowd in Carson, CA by scoring four goals and saving one penalty kick. The game matched the excitement of the Western Conference final game, in which Landon Donovan—the two-time recipient of the U.S. National Team Player of the Year award—secured the Earthquakes' place in the Championship by netting a dramatic golden goal in the 117th minute.

Californians should take great pride in this impressive accomplishment by the San Jose Earthquakes. The Earthquakes' success on the field was earned through the hard work of their outstanding athletes and coaches, and the encouragement of their fans. I congratulate them on their win and their second MLS Cup.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to, en bloc; that the motion to reconsider be laid upon the table; and that any statements relating to the resolution be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 280) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 280

Whereas on November 23, 2003, the San Jose Earthquakes defeated the Chicago Fire to win the 2003 Major League Soccer Cup;

Whereas the San Jose Earthquakes achieved a 14-7-9 regular season record to finish first in the Major League Soccer Western Conference;

Whereas the San Jose Earthquakes finished an extraordinary season by overcoming injuries, adversity, and multiple-goal deficits to reach the Major League Soccer Cup championship match;

Whereas in the championship match, the San Jose Earthquakes and the Chicago Fire scored 6 goals combined, breaking the Major League Soccer Cup championship match scoring record;

Whereas head coach Frank Yallop led the San Jose Earthquakes to victory;

Whereas the San Jose Earthquakes is a team of world-class players, including Jeff Agoos, Arturo Alvarez, Brian Ching, Jon Conway, Ramiro Corrales, Troy Dayak, Dwayne De Rosario, Landon Donovan, Todd Dunivant, Ronnie Ekelund, Rodrigo Faria, Manny Lagos, Roger Levesque, Brain Mullan, Richard Mulrooney, Pat Onstad, Eddie Robinson, Chris Roner, Ian Russell, Josh Saunders, Craig Waibel, and Jamil Walker, all of whom contributed extraordinary performances throughout the regular season, playoffs and Major League Soccer Cup;

Whereas San Jose Earthquakes midfielder Ronnie Ekelund scored in the fifth minute of play, tying Eduardo Hurtado for the fastest goal scored in a Major League Soccer Cup championship match;

Whereas with the victory, San Jose Earthquakes captain Jeff Agoos won his second Major League Soccer Cup for the San Jose Earthquakes and his fifth Major League Soccer Cup overall;

Whereas San Jose Earthquakes forward Landon Donovan, who has been named United States National Team Player of the Year twice, scored 2 goals on 2 shots in the championship match, earning the Honda Major League Soccer Cup Most Valuable Player Award;

Whereas by winning the 2003 Major League Soccer Cup, the San Jose Earthquakes join DC United to become the second team in Major League Soccer history to win the Major League Soccer Cup more than once;

Whereas the San Jose Earthquakes have brought great pride to the City of San Jose and to the State of California;

Whereas Major League Soccer has become extremely popular in only 8 seasons; and

Whereas the success of Major League Soccer has contributed to the growing popularity of soccer in the United States in recent years: Now, therefore, be it

*Resolved*, That the Senate—

(1) congratulates the San Jose Earthquakes for winning the 2003 Major League Soccer Cup;

(2) recognizes the achievement of the players, coaches, staff, and supporters of the San Jose Earthquakes in bringing the 2003 Major League Soccer Cup to San Jose;

(3) commends the San Jose community for its enthusiastic support of the San Jose Earthquakes; and

(4) expresses the hope that Major League Soccer will continue to inspire fans and young players in the United States and around the world by producing teams of the high caliber of the San Jose Earthquakes.

PREVENT ALL CIGARETTE TRAFFICKING ACT

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 241, S. 1177.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1177) to ensure the collection of all cigarette taxes, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on the Judiciary with an amendment and an amendment to the title, as follows:

[Strike the part in black brackets and insert the part printed in italic.]

S. 1177

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

**SECTION 1. SHORT TITLE.**

[This Act may be cited as the "Prevent All Cigarette Trafficking Act" or "PACT Act".]

**SEC. 2. COLLECTION OF STATE CIGARETTE TAXES.**

[(a) DEFINITIONS.—Section 1 of the Act of October 19, 1949 (15 U.S.C. 375; commonly referred to as the "Jenkins Act"), is amended—

[(1) in paragraph (1), by inserting "and other legal entities" after "individuals";

[(2) by striking paragraph (3);

[(3) by redesignating paragraphs (4) through (7) as paragraphs (3) through (6), respectively; and

[(4) by adding at the end the following new paragraphs:

[(7) The term 'delivery sale' means any sale of cigarettes 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

“(B) the cigarettes are delivered by use of a common carrier.

“(8) The term ‘common carrier’ means any person (other than a local messenger service or the United States Postal Service (as defined in section 102 of title 39, United States Code)) that holds itself out to the general public as a provider for hire of the transportation by water, land, or air of merchandise, whether or not the person actually operates the vessel, vehicle, or aircraft by which the transportation is provided, between a port or place and a port or place in the United States.”.

【(b) REPORTS TO STATE TOBACCO TAX ADMINISTRATORS.—Section 2 of that Act (15 U.S.C. 376) is amended—

【(1) in subsection (a)—

【(A) by striking “or transfers” and inserting “, transfers, or ships”; and

【(B) by striking “to other than a distributor licensed by or located in such State,”; and

【(2) in subsection (b)—

【(A) by striking “(1)”; and

【(B) by striking “, and (2)” and all that follow and inserting a period.

【(c) REQUIREMENTS FOR DELIVERY SALES.—That Act is further amended by inserting after section 2 the following new section:

“SEC. 2A. (a) Each person making a delivery sale into a State shall comply with—

【“(1) the shipping requirements set forth in subsection (b);

【“(2) the recordkeeping requirements set forth in subsection (c); and

【“(3) all laws of the State generally applicable to sales of cigarettes that occur entirely within the State, including laws imposing—

【“(A) excise taxes;

【“(B) sales taxes;

【“(C) licensing and tax-stamping requirements; and

【“(D) other payment obligations.

【“(b)(1) Each person who takes a delivery sale order shall include on the bill of lading included with the shipping package containing cigarettes sold pursuant to such order a clear and conspicuous statement providing as follows: ‘CIGARETTES: FEDERAL LAW REQUIRES THE PAYMENT OF ALL APPLICABLE EXCISE AND SALES TAXES, AND COMPLIANCE WITH APPLICABLE LICENSING AND TAX-STAMPING OBLIGATIONS’.

【“(2) Any shipping package described in paragraph (1) that is not labeled in accordance with that paragraph shall be treated as non-deliverable matter by common carriers.

【“(c)(1) Each person making delivery sales into a State shall keep a record of all delivery sales so made, organized by State into which such delivery sales are so made.

【“(2) Records of delivery sales shall be kept under paragraph (1) in the year in which made and for the next four years.

【“(3) Records kept under paragraph (1) shall be made available to tobacco tax administrators of the States in order to ensure the compliance of persons making delivery sales with the requirements of this Act.

【“(d) Each State shall have the authority to require any person making a delivery sale of cigarettes into such State—

【“(1) to collect or pay the taxes referred to in subsection (a)(3); and

【“(2) to provide evidence that the manufacturer of the cigarettes sold in such State is in compliance with all Federal, State, or local laws generally applicable to the sale or distribution of cigarettes.”.

【(d) PENALTIES.—Section 3 of that Act (15 U.S.C. 377) is amended—

【(1) by inserting “(a)” before “Whoever”;

【(2) in subsection (a), as so designated, by striking “shall be guilty of a misdemeanor and shall be fined not more than \$1,000, or imprisoned not more than 6 months” and inserting “shall be fined not more than \$100,000, imprisoned not more than 2 years”; and

【(3) by adding at the end the following new subsection:

【“(b)(1) Whoever violates any provision of this Act shall be subject to a civil penalty in an amount not to exceed 2 percent of the gross sales of cigarettes of such person during the one-year period ending on the date of the violation.

【“(2) A civil penalty under paragraph (1) for a violation of this Act is in addition to any criminal penalty under subsection (a) for the violation.”.

【(e) INJUNCTIONS.—Section 4 of that Act (15 U.S.C. 378) is amended—

【(1) by inserting “(a)” before “The United States district courts”; and

【(2) by adding at the end the following new subsections:

【“(b)(1) A State, through its attorney general, or any person who holds a permit under section 5712 of the Internal Revenue Code of 1986, may bring an action in the United States district courts to prevent and restrain violations of this Act by any person (or by any person controlling such person).

【“(2) Nothing in this section shall be construed to prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of State law.

【“(c) The Attorney General, acting through the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, shall administer and enforce the provisions of this Act.”.

【SEC. 3. TREATMENT OF CIGARETTES AS NON-MAILABLE MATTER.

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

【(1) by redesignating subsection (j) as subsection (k); and

【(2) by inserting after subsection (i) the following new subsection (j):

【“(j) The transmission in the mails of cigarettes (as that term is defined in section 2341(1) of this title) for purposes of sale is prohibited, and cigarettes for such purposes are nonmailable and shall not be deposited in or carried through the mails.”.

【SEC. 4. PENAL PROVISIONS REGARDING TRAFFICKING IN CONTRABAND CIGARETTES.

【(a) THRESHOLD QUANTITY FOR TREATMENT AS CONTRABAND.—(1) Section 2341(2) of title 18, United States Code, is amended by striking “60,000 cigarettes” and inserting “10,000 cigarettes”.

【(2) Section 2342(b) of that title is amended by striking “60,000” and inserting “10,000”.

【(3) Section 2343 of that title is amended—

【(A) in subsection (a), by striking “60,000” and inserting “10,000”; and

【(B) in subsection (b), by striking “60,000” and inserting “10,000”.

【(b) RECORDKEEPING, REPORTING, AND INSPECTION.—Section 2343 of that title, as amended by subsection (a)(3) of this section, is further amended—

(1) in subsection (a)—

【(A) in the matter preceding paragraph (1), by striking “only—” and inserting “such information as the Attorney General considers appropriate for purposes of enforcement of this chapter, including—”; and

【(B) in the flush matter following paragraph (3), by striking the second sentence;

【(2) by redesignating subsection (b) as subsection (c);

【(3) by inserting after subsection (a) the following new subsection (b):

【“(b) Any person who engages in a delivery sale, and who ships, sells, distributes, or receives any quantity in excess of 10,000 cigarettes within a single month, shall submit to the Attorney General, pursuant to rules or regulations prescribed by the Attorney General, a report that sets forth the following:

【“(1) The person’s beginning and ending inventory of cigarettes (in total) for such month.

【“(2) The total quantity of cigarettes that the person received within such month from each other person (itemized by name and address).

【“(3) The total quantity of cigarettes that the person distributed within such month to each person (itemized by name and address) other than a retail purchaser.”; and

【(4) by adding at the end the following new subsections:

【“(d) Any report required to be submitted under this chapter to the Attorney General shall also be submitted to the Secretary of the Treasury.

【“(e) In this section:

【“(1) The term ‘delivery sale’ means any sale of cigarettes 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

【“(B) the cigarettes are delivered by use of a common carrier.

【“(2) The term ‘common carrier’ means any person (other than a local messenger service or the United States Postal Service (as defined in section 102 of title 39, United States Code)) that holds itself out to the general public as a provider for hire of the transportation by water, land, or air of merchandise, whether or not the person actually operates the vessel, vehicle, or aircraft by which the transportation is provided, between a port or place and a port or place in the United States.”.

【(c) DISPOSAL OR USE OF FORFEITED CIGARETTES.—Section 2344(c) of that title is amended by striking “seizure and forfeiture,” and all that follows and inserting “seizure and forfeiture, and any cigarettes so seized and forfeited shall be either—

【“(1) destroyed and not resold; or

【“(2) used for undercover investigative operations for the detection and prosecution of crimes, and then destroyed and not resold.”.

【(d) ENFORCEMENT.—Section 2346 of that title is amended—

【(1) by inserting “(a)” before “The Attorney General”; and

【(2) by adding at the end the following new subsection:

【“(b) A State, through its attorney general, or any person who holds a permit under section 5712 of the Internal Revenue Code of 1986, may bring an action in the United States district courts to prevent and restrain violations of this chapter by any person (or by any person controlling such person).”.

【(e) CONFORMING AND CLERICAL AMENDMENTS.—(1) The section heading for section 2343 of that title is amended to read as follows:

【“§ 2343. Recordkeeping, reporting, and inspection”.

【(2) The table of sections at the beginning of chapter 114 of that title is amended by striking the item relating to section 2343 and inserting the following new item:

【“2343. Recordkeeping, reporting, and inspection.”.

【SEC. 5. COMPLIANCE WITH MODEL STATUTE OR QUALIFYING STATUTE.

【(a) IN GENERAL.—An interstate tobacco seller may not sell in, deliver to, or place for delivery to a State that is a party to the

Master Settlement Agreement any cigarette manufactured by a Tobacco Product Manufacturer that is not in full compliance with the terms of the Model Statute or Qualifying Statute enacted by such State requiring funds to be placed into a qualified escrow account under specified conditions, or any regulations promulgated pursuant to such statute.

[(b) PENALTIES.—(1) Whoever shall knowingly and willfully violate subsection (a) shall be fined not more than \$100,000, imprisoned not more than 2 years, or both.

[(2) Whoever shall violate subsection (a) shall be subject to a civil penalty in an amount not to exceed 2 percent of the gross sales of cigarettes of such person during the one-year period ending on the date of the violation.

[(3) A civil penalty under paragraph (2) for a violation of subsection (a) is in addition to any criminal penalty under paragraph (1) for the violation.

[(c) JURISDICTION TO PREVENT AND RESTRAIN VIOLATIONS.—(1) The United States district courts shall have jurisdiction to prevent and restrain violations of subsection (a).

[(2) A State, through its attorney general, or any person who holds a permit under section 5712 of the Internal Revenue Code of 1986, may bring an action in the United States district courts to prevent and restrain violations of subsection (a) by any person (or by any person controlling such person).

[(3) Nothing in this subsection shall be construed to prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of State law.

[(4) The Attorney General, acting through the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, shall administer and enforce subsection (a).

[(d) DEFINITIONS.—In this section:

[(1) MASTER SETTLEMENT AGREEMENT.—The term “Master Settlement Agreement” means the agreement executed November 23, 1998, by the Attorneys General of 46 States, the District of Columbia, the Commonwealth of Puerto Rico, and four Territories of the United States, on the one hand, and certain tobacco manufacturers on the other hand.

[(2) TOBACCO PRODUCT MANUFACTURER.—The term “Tobacco Product Manufacturer” has the meaning given that term in section II(uu) of the Master Settlement Agreement.

[(3) MODEL STATUTE; QUALIFYING STATUTE.—The terms “Model Statute” and “Qualifying Statute” means a statute as defined in section IX(d)(2)(e) of the Master Settlement Agreement.

[SEC. 6. UNDERCOVER CRIMINAL INVESTIGATIONS OF THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES.

[(a) IN GENERAL.—(1) Commencing as of the date of the enactment of this Act and without fiscal year limitation, the authorities in section 102(b) of the Department of Justice and Related Agencies Appropriations Act, 1993 (title I of Public Law 102-395; 106 Stat. 1838) shall be available to the Bureau of Alcohol, Tobacco, Firearms, and Explosives for undercover investigative operations of the Bureau which are necessary for the detection and prosecution of crimes against the United States.

[(2) For purposes of the exercise of the authorities referred to in paragraph (1) by the Bureau, a reference in such section 102(b) to the Federal Bureau of Investigation shall be deemed to be a reference to the Bureau of Alcohol, Tobacco, Firearms, and Explosives, and a reference to the Director of the Federal Bureau of Investigation shall be deemed to be a reference to the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

[(b) LIMITATIONS IN APPROPRIATIONS ACTS.—The exercise of the authorities referred to in subsection (a)(1) by the Bureau of Alcohol, Tobacco, Firearms, and Explosives shall be subject to the provisions of appropriations Acts.

[SEC. 7. INSPECTION BY BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES OF RECORDS OF CERTAIN CIGARETTE SELLERS.

[(a) IN GENERAL.—Any officer of the Bureau of Alcohol, Tobacco, Firearms, and Explosives may, during normal business hours, enter the premises of any person described in subsection (b) for the purposes of inspecting—

[(1) any records or information required to be maintained by such person under the provisions of law referred to in subsection (c); or

[(2) any cigarettes kept or stored by such person at such premises.

[(b) COVERED PERSONS.—A person described in this subsection is any person who engages in a delivery sale, and who ships, sells, distributes, or receives any quantity in excess of 10,000 cigarettes within a single month.

[(c) COVERED PROVISIONS OF LAW.—The provisions of law referred to in this subsection are as follows:

[(1) The Act of October 19, 1949 (15 U.S.C. 375; commonly referred to as the “Jenkins Act”).

[(2) Chapter 114 of title 18, United States Code.

[(3) This Act.

[(d) DELIVERY SALE DEFINED.—In this section, the term “delivery sale” has the meaning given that term in 2343(e)(1) of title 18, United States Code, as amended by section 4(b)(3) of this Act.

[SEC. 8. EFFECTIVE DATE.

[(a) IN GENERAL.—Except as provided in subsection (b), this Act shall take effect 90 days after the date of the enactment of this Act.

[(b) ATFE AUTHORITY.—

[(1) IN GENERAL.—Sections 6 and 7 shall take effect on the date of the enactment of this Act.

[(2) DEFINITION.—For purposes of section 7, the definition of delivery sale in section 2343(e)(1) of title 18, United States Code, as amended by section 4(b)(3) of this Act, shall take effect on the date of the enactment of this Act.]

[SECTION 1. SHORT TITLE.

*This Act may be cited as the “Prevent All Cigarette Trafficking Act” or “PACT Act”.*

[SEC. 2. COLLECTION OF STATE CIGARETTE AND SMOKELESS TOBACCO TAXES.

(a) DEFINITIONS.—Section 1 of the Act of October 19, 1949 (15 U.S.C. 375; commonly referred to as the “Jenkins Act”), is amended—

(1) by striking paragraphs (1), (2), and (3) and inserting the following new paragraphs:

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

“(2) The term ‘cigarette’ means—

“(A) any roll of tobacco wrapped in paper or in any substance not containing tobacco which is to be heated or burned;

“(B) any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging or labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (A);

“(C) any roll of tobacco wrapped in any substance that because of its appearance, the type of tobacco used in the filler, or its packaging or labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or

“(D) loose rolling tobacco that, because of its appearance, type, packaging, or labeling, is

likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

“(3) The term ‘smokeless tobacco’ means any finely cut, ground, powdered, or leaf tobacco that is intended to be placed in the oral or nasal cavity or otherwise consumed without being combusted.”;

(2) by striking paragraph (6) and inserting the following new paragraph (6):

“(6) The term ‘delivery sale’ means any sale of cigarettes or smokeless tobacco in interstate commerce 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, private delivery service, or the mails, or the seller is not in the physical presence of the buyer when the buyer obtains personal possession of the delivered cigarettes or smokeless tobacco.”; and

(3) by adding at the end the following new paragraphs:

“(8) The term ‘delivery seller’ means a person who makes a delivery sale.

“(9) The term ‘common carrier’ means any person (other than a local messenger service or the United States Postal Service (as defined in section 102 of title 39, United States Code)) that holds itself out to the general public as a provider for hire of the transportation by water, land, or air of merchandise, whether or not the person actually operates the vessel, vehicle, or aircraft by which the transportation is provided, between a port or place and a port or place in the United States.

“(10) The term ‘interstate commerce’ means commerce between a State and any place outside the State, commerce between a State and any Indian lands in the State, or commerce between points in the same State but through any place outside the State or through any Indian lands.

“(11) The term ‘person’ means an individual, corporation, company, association, firm, partnership, society, State government, local government, Indian tribal government, governmental organization of such government, or joint stock company.

“(12) The term ‘State’ means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.”.

(b) REPORTS TO STATE TOBACCO TAX ADMINISTRATORS.—Section 2 of that Act (15 U.S.C. 376) is amended—

(1) by striking “cigarettes” each place it appears and inserting “cigarettes or smokeless tobacco”;

(2) in subsection (a)—

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

(i) by striking “or transfers” and inserting “, transfers, or ships”; and

(ii) by striking “to other than a distributor

licensed by or located in such State.”;

(B) in paragraph (1), by inserting before the semicolon the following: “, as well as telephone numbers for each place of business, a principal electronic mail address, any website addresses, and the name, address, and telephone number of an agent in the State authorized to accept service on behalf of such person”; and

(C) in paragraph (2), by striking “and the quantity thereof” and inserting “the quantity thereof, and the name, address, and phone number of the person delivering the shipment to the recipient on behalf of the delivery seller”; and

(3) in subsection (b)—

(A) by striking “(1)”; and

(B) by striking “, and (2)” and all that follows and inserting a period.

(c) REQUIREMENTS FOR DELIVERY SALES.—That Act is further amended by inserting after section 2 the following new section:

“SEC. 2A. (a) Each delivery seller shall comply with—

“(1) the shipping requirements set forth in subsection (b);

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

“(3) all State and other laws generally applicable to sales of cigarettes or smokeless tobacco that occur entirely within the State, including laws imposing—

“(A) excise taxes;

“(B) sales taxes;

“(C) licensing and tax-stamping requirements; and

“(D) other payment obligations or legal requirements relating to the sale, distribution, or delivery of cigarettes or smokeless tobacco; and

“(4) the tax collection requirements set forth in subsection (d).

“(b)(1) Each delivery seller shall include on the bill of lading included with the shipping package containing cigarettes or smokeless tobacco sold pursuant to such order a clear and conspicuous statement providing as follows: ‘CIGARETTES/SMOKELESS TOBACCO: FEDERAL LAW REQUIRES THE PAYMENT OF ALL APPLICABLE EXCISE AND SALES TAXES, AND COMPLIANCE WITH APPLICABLE LICENSING AND TAX-STAMPING OBLIGATIONS’.

“(2) Any shipping package described in paragraph (1) that is not labeled in accordance with that paragraph shall be treated as non-deliverable matter by a common carrier or the United States Postal Service if the common carrier or the United States Postal Service, as the case may be, knows or should know the contents of the package.

“(c)(1) Each delivery seller shall keep a record of all delivery sales so made, including all of the information described in section 2(a)(2), organized by State into which such delivery sales are so made.

“(2) Records of delivery sales shall be kept under paragraph (1) in the year in which made and for the next four years.

“(3) Records kept under paragraph (1) shall be made available to tobacco tax administrators of the States, attorneys general of the States, and the Attorney General of the United States in order to ensure the compliance of persons making delivery sales with the requirements of this Act.

“(d) Unless the law of the State and place in which cigarettes or smokeless tobacco are delivered pursuant to a delivery sale in interstate commerce requires otherwise for the payment to the government of an excise tax imposed on the delivery sale, or provides, for delivery sales of smokeless tobacco, for the delivery seller to collect the excise tax from the consumer and remit the excise tax to the government, the cigarettes or smokeless tobacco may not be delivered to the buyer unless in advance of the delivery—

“(1) the excise tax has been paid to the government; and

“(2) any required stamps or other indicia that the excise tax has been paid are properly affixed or applied to the cigarettes or smokeless tobacco.

“(e)(1) Each State may compile a list of delivery sellers who are in compliance with this Act with respect to such State. If a State posts a list pursuant to this subsection that specifically refers to this subsection, no common carrier or other person may knowingly deliver cigarettes or smokeless tobacco to consumers in such State unless the delivery seller is on the list at the time of delivery.

“(2)(A) Each State may compile a list of delivery sellers who are not in compliance with this Act with respect to such State.

“(B) A State may provide such a list to a common carrier, the United States Postal Service, or other person. Such a list shall be confidential, and a common carrier, the United States Postal Service, or other person that receives such a list shall maintain the confidentiality of such list.

“(C) If a State provides such a list pursuant to this subsection that specifically refers to this

subsection, no common carrier, the United States Postal Service, or other person may knowingly deliver any item to a consumer in such State for a delivery seller on such list unless the common carrier, the United States Postal Service, or person in good faith determines that the item does not include cigarettes or smokeless tobacco.

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

(d) PENALTIES.—Section 3 of that Act (15 U.S.C. 377) is amended—

(1) by inserting “(a)” before “Whoever”;

(2) in subsection (a), as so designated, by striking “shall be guilty of a misdemeanor and shall be fined not more than \$1,000, or imprisoned not more than 6 months” and inserting “shall be guilty of a felony, fined under subchapter C of chapter 227 of title 18, imprisoned not more than three years, or both”; and

(3) by adding at the end the following new subsection:

“(b)(1) Whoever violates any provision of this Act shall be subject to a civil penalty in an amount not to exceed the greater of—

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

“(B) for any violation, 2 percent of the gross sales of cigarettes or smokeless tobacco of such person during the one-year period ending on the date of the violation.

“(2) A civil penalty under paragraph (1) for a violation of this Act is in addition to any criminal penalty under subsection (a) for the violation.”.

(e) ENFORCEMENT.—Section 4 of that Act (15 U.S.C. 378) is amended—

(1) by inserting “(a)” before “The United States district courts”;

(2) in subsection (a), as so designated, by inserting before the period the following: “, and to provide other appropriate injunctive or equitable relief, including money damages, for such violations”; and

(3) by adding at the end the following new subsections:

“(b)(1) A State, through its attorney general, or any person who holds a permit under section 5712 of the Internal Revenue Code of 1986, may bring an action in the United States district courts to prevent and restrain violations of this Act by any person (or by any person controlling such person).

“(2) A State, through its attorney general, may in a civil action under this Act obtain any other appropriate relief for violations of this Act by any person (or from any person controlling such person), including civil penalties, money damages, and injunctive or other equitable relief.

“(3) The remedies available under paragraphs (1) and (2) are in addition to any other remedies available under Federal, State, or other law.

“(4) Nothing in this Act shall be construed to prohibit an authorized State official from proceeding in State court, or taking other enforcement actions, on the basis of an alleged violation of State or other law.

“(c) The Attorney General shall administer and enforce the provisions of this Act.

“(d)(1) Any person who holds a permit under section 5712 of the Internal Revenue Code of 1986 who commences a civil action under paragraph (1) shall inform the Attorney General of the United States of the action.

“(2) It is the sense of Congress that any attorney general of a State who commences a civil action under paragraph (1) or (2) should inform the Attorney General of the United States of the action.

“(e) The Attorney General of the United States shall make available to the public infor-

mation about all actions under subsection (a), and the resolution of such actions, including by posting such information on the Internet and by other means.”.

### SEC. 3. TREATMENT OF CIGARETTES AND SMOKELESS TOBACCO AS NONMAILABLE MATTER.

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

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

(2) by inserting after subsection (i) the following new subsection (j):

“(j) The transmission in the mails of any tobacco product, including cigarettes (as that term is defined in section 1(2) of the Act of October 19, 1949 (15 U.S.C. 375; commonly referred to as the ‘Jenkins Act’)) and smokeless tobacco (as that term is defined in section 1(3) of that Act), is prohibited, and tobacco products are non-mailable and shall not be deposited in or carried through the mails.”.

### SEC. 4. PENAL PROVISIONS REGARDING TRAFFICKING IN CONTRABAND CIGARETTES OR SMOKELESS TOBACCO.

(a) THRESHOLD QUANTITY FOR TREATMENT AS CONTRABAND CIGARETTES.—(1) Section 2341(2) of title 18, United States Code, is amended by striking “60,000 cigarettes” and inserting “10,000 cigarettes”.

(2) Section 2342(b) of that title is amended by striking “60,000” and inserting “10,000”.

(3) Section 2343 of that title is amended—

(A) in subsection (a), by striking “60,000” and inserting “10,000”; and

(B) in subsection (b), by striking “60,000” and inserting “10,000”.

(b) CONTRABAND SMOKELESS TOBACCO.—(1) Section 2341 of that title is amended—

(A) in paragraph (4), by striking “and” at the end;

(B) in paragraph (5), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following new paragraphs:

“(6) the term ‘smokeless tobacco’ means any finely cut, ground, powdered, or leaf tobacco that is intended to be placed in the oral or nasal cavity or otherwise consumed without being combusted; and

“(7) the term ‘contraband smokeless tobacco’ means a quantity in excess of 500 single-unit consumer-sized cans or packages of smokeless tobacco, or their equivalent, that are in the possession of any person other than—

“(A) a person holding a permit issued pursuant to chapter 52 of the Internal Revenue Code of 1986 as manufacturer of tobacco products or as an export warehouse proprietor, a person operating a customs bonded warehouse pursuant to section 311 or 555 of the Tariff Act of 1930 (19 U.S.C. 1311, 1555), or an agent of such person;

“(B) a common carrier transporting such smokeless tobacco under a proper bill of lading or freight bill which states the quantity, source, and designation of such smokeless tobacco;

“(C) a person who—

“(i) is licensed or otherwise authorized by the State where such smokeless tobacco is found to engage in the business of selling or distributing tobacco products; and

“(ii) has complied with the accounting, tax, and payment requirements relating to such license or authorization with respect to such smokeless tobacco; or

“(D) an officer, employee, or agent of the United States or a State, or any department, agency, or instrumentality of the United States or a State (including any political subdivision of a State), having possession of such smokeless tobacco in connection with the performance of official duties.”.

(2) Section 2342(a) of that title is amended by inserting “or contraband smokeless tobacco” after “contraband cigarettes”.

(3) Section 2343(a) of that title is amended by inserting “, or any quantity of smokeless tobacco in excess of 500 single-unit consumer-sized

cans or packages," before "in a single transaction".

(4) Section 2344(c) of that title is amended by inserting "or contraband smokeless tobacco" after "contraband cigarettes".

(5) Section 2345 of that title is amended by inserting "or smokeless tobacco" after "cigarettes" each place it appears.

(c) RECORDKEEPING, REPORTING, AND INSPECTION.—Section 2343 of that title, as amended by this section, is further amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking "only—" and inserting "such information as the Attorney General considers appropriate for purposes of enforcement of this chapter, including—"; and

(B) in the flush matter following paragraph (3), by striking the second sentence;

(2) by redesignating subsection (b) as subsection (c);

(3) by inserting after subsection (a) the following new subsection (b):

"(b) Any person who engages in a delivery sale, and who ships, sells, or distributes any quantity in excess of 10,000 cigarettes, or any quantity in excess of 500 single-unit consumer-sized cans or packages of smokeless tobacco, or their equivalent, within a single month, shall submit to the Attorney General, pursuant to rules or regulations prescribed by the Attorney General, a report that sets forth the following:

"(1) The person's beginning and ending inventory of cigarettes and cans or packages of smokeless tobacco (in total) for such month.

"(2) The total quantity of cigarettes and cans or packages of smokeless tobacco that the person received within such month from each other person (itemized by name and address).

"(3) The total quantity of cigarettes and cans or packages of smokeless tobacco that the person distributed within such month to each person (itemized by name and address) other than a retail purchaser.";

(4) by adding at the end the following new subsections:

"(d) Any report required to be submitted under this chapter to the Attorney General shall also be submitted to the Secretary of the Treasury and to the attorneys general and the tax administrators of the States from where the shipments, deliveries, or distributions both originated and concluded.

"(e) In this section, the term 'delivery sale' means any sale of cigarettes or smokeless tobacco in interstate commerce 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 by any other means where the consumer is not in the same physical location as the seller when the purchase or offer of sale is made; or

"(B) the cigarettes or smokeless tobacco are delivered by use of the mails, common carrier, private delivery service, or any other means where the consumer is not in the same physical location as the seller when the consumer obtains physical possession of the cigarettes or smokeless tobacco.

"(f) In this section, the term 'interstate commerce' means commerce between a State and any place outside the State, commerce between a State and any Indian lands in the State, or commerce between points in the same State but through any place outside the State or through any Indian lands."

(d) DISPOSAL OR USE OF FORFEITED CIGARETTES AND SMOKELESS TOBACCO.—Section 2344(c) of that title, as amended by this section, is further amended by striking "seizure and forfeiture," and all that follows and inserting "seizure and forfeiture, and any cigarettes or smokeless tobacco so seized and forfeited shall be either—

"(1) destroyed and not resold; or

"(2) used for undercover investigative operations for the detection and prosecution of crimes, and then destroyed and not resold."

(e) ENFORCEMENT.—Section 2346 of that title is amended—

(1) by inserting "(a)" before "The Attorney General"; and

(2) by adding at the end the following new subsection:

"(b)(1) A State, through its attorney general, or any person who holds a permit under section 5712 of the Internal Revenue Code of 1986, may bring an action in the United States district courts to prevent and restrain violations of this chapter by any person (or by any person controlling such person).

"(2) A State, through its attorney general, may in a civil action under paragraph (1) also obtain any other appropriate relief for violations of this chapter from any person (or by any person controlling such person), including civil penalties, money damages, and injunctive or other equitable relief.

"(3) The remedies under paragraphs (1) and (2) are in addition to any other remedies under Federal, State, or other law.

"(4) Nothing in this subsection shall be construed to prohibit an authorized State official from proceeding in State court, or taking other enforcement actions, on the basis of an alleged violation of State or other law."

(f) CONFORMING AND CLERICAL AMENDMENTS.—(1) The section heading for section 2343 of that title is amended to read as follows:

**"§2343. Recordkeeping, reporting, and inspection."**

(2) The table of sections at the beginning of chapter 114 of that title is amended by striking the item relating to section 2343 and inserting the following new item:

"2343. Recordkeeping, reporting, and inspection."

(3)(A) The heading for chapter 114 of that title is amended to read as follows:

**"CHAPTER 114—TRAFFICKING IN CONTRABAND CIGARETTES AND SMOKELESS TOBACCO."**

(B) The table of chapters at the beginning of part I of that title is amended by striking the item relating to section 114 and inserting the following new item:

**"114. Trafficking in contraband cigarettes and smokeless tobacco ..... 2341".**

**SEC. 5. COMPLIANCE WITH MODEL STATUTE OR QUALIFYING STATUTE.**

(a) IN GENERAL.—An interstate tobacco seller may not sell, deliver to, or place for delivery sale in a State that is a party to the Master Settlement Agreement any cigarette manufactured by a Tobacco Product Manufacturer that is not in full compliance with the terms of the Model Statute or Qualifying Statute enacted by such State requiring funds to be placed into a qualified escrow account under specified conditions, or any regulations promulgated pursuant to such terms.

(b) PENALTIES.—(1) Whoever shall knowingly and willfully violate subsection (a) shall be fined not more than \$100,000, imprisoned not more than 2 years, or both.

(2) Whoever shall violate subsection (a) shall be subject to a civil penalty in an amount not to exceed 2 percent of the gross sales of cigarettes of such person during the one-year period ending on the date of the violation.

(3) A civil penalty under paragraph (2) for a violation of subsection (a) is in addition to any criminal penalty under paragraph (1) for the violation and in addition to any other damages or relief available under law.

(c) JURISDICTION TO PREVENT AND RESTRAIN VIOLATIONS.—(1) The United States district courts shall have jurisdiction to prevent and restrain violations of subsection (a).

(2) A State, through its attorney general, or any person who holds a permit under section 5712 of the Internal Revenue Code of 1986, may

bring an action in the United States district courts to prevent and restrain violations of subsection (a) by any person (or by any person controlling such person).

(3) A State, through its attorney general, may in a civil action against any person violating subsection (a) obtain any appropriate relief for violations of this section from any person (or by any person controlling such person), including civil penalties, money damages, and injunctive or other equitable relief.

(4) The remedies available under paragraphs (2) and (3) are in addition to any other remedies available under Federal, State, or other law.

(5) Nothing in this subsection shall be construed to prohibit an authorized State official from proceeding in State court or taking other enforcement actions on the basis of an alleged violation of State or other law.

(6) The Attorney General shall administer and enforce subsection (a).

(d) DEFINITIONS.—In this section:

(1) MASTER SETTLEMENT AGREEMENT.—The term "Master Settlement Agreement" means the agreement executed November 23, 1998, by the Attorneys General of 46 States, the District of Columbia, the Commonwealth of Puerto Rico, and four Territories of the United States, on the one hand, and certain tobacco manufacturers on the other hand.

(2) TOBACCO PRODUCT MANUFACTURER.—The term "Tobacco Product Manufacturer" has the meaning given that term in section II(uu) of the Master Settlement Agreement.

(3) MODEL STATUTE; QUALIFYING STATUTE.—The terms "Model Statute" and "Qualifying Statute" means a statute as defined in section IX(d)(2)(e) of the Master Settlement Agreement.

(4) DELIVERY SALE.—The term "delivery sale" means any sale of cigarettes or smokeless tobacco in interstate commerce 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, private delivery service, or the mails, or the seller is not in the physical presence of the buyer when the buyer obtains personal possession of the delivered cigarettes or smokeless tobacco.

(5) INTERSTATE COMMERCE.—The term "interstate commerce" means commerce between a State and any place outside the State, commerce between a State and any Indian lands in the State, or commerce between points in the same State but through any place outside the State or through any Indian lands.

**SEC. 6. UNDERCOVER CRIMINAL INVESTIGATIONS OF THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES.**

(a) IN GENERAL.—(1) Commencing as of the date of the enactment of this Act and without fiscal year limitation, the authorities in section 102(b) of the Department of Justice and Related Agencies Appropriations Act, 1993 (title I of Public Law 102-395; 106 Stat. 1838) shall be available to the Bureau of Alcohol, Tobacco, Firearms, and Explosives for undercover investigative operations of the Bureau which are necessary for the detection and prosecution of crimes against the United States.

(2) For purposes of the exercise of the authorities referred to in paragraph (1) by the Bureau, a reference in such section 102(b) to the Federal Bureau of Investigation shall be deemed to be a reference to the Bureau of Alcohol, Tobacco, Firearms, and Explosives, and a reference to the Director of the Federal Bureau of Investigation shall be deemed to be a reference to the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

(b) LIMITATIONS IN APPROPRIATIONS ACTS.—The exercise of the authorities referred to in

subsection (a)(1) by the Bureau of Alcohol, Tobacco, Firearms, and Explosives shall be subject to the provisions of appropriations Acts.

**SEC. 7. INSPECTION BY BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES OF RECORDS OF CERTAIN CIGARETTE AND SMOKELESS TOBACCO SELLERS.**

(a) *IN GENERAL.*—Any officer of the Bureau of Alcohol, Tobacco, Firearms, and Explosives may, during normal business hours, enter the premises of any person described in subsection (b) for the purposes of inspecting—

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

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

(b) *COVERED PERSONS.*—A person described in this subsection is any person who engages in a delivery sale, and who ships, sells, distributes, or receives any quantity in excess of 10,000 cigarettes, or any quantity in excess of 500 single-unit consumer-sized cans or packages of smokeless tobacco, within a single month.

(c) *RELIEF.*—(1) The district courts of the United States shall have the authority in a civil action under this subsection to compel inspections authorized by subsection (a).

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

(d) *COVERED PROVISIONS OF LAW.*—The provisions of law referred to in this subsection are as follows:

(1) The Act of October 19, 1949 (15 U.S.C. 375; commonly referred to as the “Jenkins Act”).

(2) Chapter 114 of title 18, United States Code.

(3) This Act.

(e) *DELIVERY SALE DEFINED.*—In this section, the term “delivery sale” has the meaning given that term in 2343(e)(1) of title 18, United States Code, as amended by section 4(b)(3) of this Act.

**SEC. 8. EFFECTIVE DATE.**

(a) *IN GENERAL.*—Except as provided in subsection (b), this Act shall take effect 90 days after the date of the enactment of this Act.

(b) *BATFE AUTHORITY.*—

(1) *IN GENERAL.*—Sections 6 and 7 shall take effect on the date of the enactment of this Act.

(2) *DEFINITION.*—For purposes of section 7, the definition of delivery sale in section 2343(e)(1) of title 18, United States Code, as amended by section 4(b)(3) of this Act, shall take effect on the date of the enactment of this Act.

Amend the title so as to read: “A bill to prevent tobacco smuggling, to ensure the collection of all tobacco taxes, and for other purposes.”.

Mr. LEAHY. Mr. President, I am pleased that today the Senate is taking up and passing the Prevent All Cigarette Trafficking, PACT, Act, S. 1177. I commend Chairman HATCH and Senator KOHL for introducing this legislation and thank them for working with me, among others, to craft the compromise language that we will consider today to crack down on the growing problem of cigarette smuggling, both interstate and international, as well as to address the connection between cigarette smuggling activities and terrorist funding. I am proud to join Senator HATCH, Senator KOHL and others as a cosponsor of the underlying bill.

I also thank the National Association of Attorneys General and the Campaign for Tobacco-Free Kids, for working with us and contributing to the substitute language. I want to say a

special thanks to Vermont Attorney General Bill Sorrell, who also serves as the current Chair of the NAAG Tobacco Committee, for his valuable input on the problems with cigarette smuggling that States are facing and his support for this compromise measure. I also want to thank the Vermont Grocers Association, the Vermont Retail Association, the Vermont Association of Chiefs of Police, and the National Conference of State Legislatures for their support for this measure.

The movement of cigarettes from low-tax areas to high-tax areas in order to avoid the payment of taxes when the cigarettes are resold has become a public health problem in recent years. As State after State chooses to raise its tobacco excise taxes as a means of reducing tobacco use and as a source of revenue, many smokers have sought cheaper means by which to purchase cigarettes. Smokers can often purchase cigarettes and tobacco from remote sellers, Internet or mail order at substantial discounts due to avoidance of State taxes. These sellers, however, are evading their tax obligations because they neither collect nor pay the proper State and local excise taxes for cigarette and other tobacco product sales.

We have the ability to dramatically reduce smuggling without imposing undue burdens on manufacturers or law abiding citizens. By reducing smuggling, we will also increase government revenues by minimizing tax avoidance. My friend General Sorrell has told me that this has become a rapidly growing problem in Vermont as more and more tobacco product manufacturers fail to collect and pay cigarette taxes. Criminals are getting away with smuggling and not paying tobacco taxes because of weak punishments, products that are often poorly labeled, the lack of tax stamps and the inability of the current distribution system to track sales from State to State. These lapses point to a need for uniform rules governing group sales to individuals.

The PACT Act will give States the authority to collect millions of dollars in lost State tax revenue resulting from online and other remote sales of cigarette and smokeless tobacco. It also ensures that every tobacco retailer, whether a brick-and-mortar or remote retailer of tobacco products, play by the same rules by equalizing the tax burdens.

Moreover, the PACT Act gives States the authority necessary to enforce the Jenkins Act, a law passed in 1949, which requires cigarette vendors to report interstate sales of cigarettes. This legislation enhances States’ abilities to collect all excise taxes and verify the deposit of all required escrow payments for cigarette and smokeless tobacco sales in interstate commerce, including internet sales. In addition, it provides Federal and State law enforcement with additional resources to enforce State tobacco excise tax laws.

Finally, at the request of the National Association of attorneys general

and many State attorneys general, we have added a new section to provide the States with authority to enforce the Imported Cigarette Compliance Act to crack down on international tobacco smuggling. This additional authority should further reduce tax evasion and eliminate a lucrative funding source for terrorist organizations.

We must not turn a blind eye to the problem of illegal tobacco smuggling. Those who smuggle cigarettes are criminals. I look forward to the Senate approving the bipartisan PACT Act today to close the loopholes that allow cigarette smuggling to continue. I urge the leaders of the House to follow our lead and pass this legislation.

Mr. KOHL. Mr. President, the proceeds of cigarette smuggling from low tax States has developed into a popular means of generating revenue for organized crime and even terrorist organizations. A recent investigation by the Bureau of Alcohol, Tobacco, Firearms, and Explosives, BATFE, disrupted a smuggling scheme between North Carolina and Michigan, where the revenue generated was being funneled to Hezbollah, a terrorist organization. It is evident that the consequences of permitting this behavior to continue unchecked cannot be underestimated.

To make matters worse, this problem is on the rise. According to the BATFE, 10 cigarette smuggling cases were initiated in 1998. That has grown to approximately 160 in 2002.

Moreover, the sale of tobacco products over the Internet facilitates the avoidance of State cigarette taxes, denying States the ability to collect tax dollars they are owed—money the States need now more than ever.

The PACT Act take a commonsense approach to addressing these problems. It increases penalties, provides more tools for enforcement, and closes loopholes in current law. These moderate, but important, changes will further enable Federal, State, local, and tribal officials to crack down on tobacco smugglers and ensure that Internet tobacco sellers pay applicable taxes.

Despite being passed unanimously by the Judiciary Committee, some raised concerns over the legislation, particularly with respect to its effect on Indian Tribal sovereignty. After intensive negotiations with numerous interested parties, including the Campaign for Tobacco Free Kids, the National Association of Attorneys General, the Department of Justice and various tribal groups, we have been able to craft language that will achieve the goals we set out to attain—to put an end to both cigarette trafficking and tobacco tax avoidance—while leaving the important principles of Indian Tribal sovereignty unaffected.

Tobacco companies and antitobacco groups, State law enforcement and Federal law enforcement, and Republicans and Democrats all agree that this is an issue begging to be addressed. Today, we begin to provide the relevant law enforcement authorities

with the tools they need to put an end to these dangerous practices.

Mr. FRIST. Mr. President, I ask unanimous consent that the Hatch amendment, which is at the desk, be agreed to; that the committee substitute amendment, as amended, be agreed to; that the bill, as amended, be read the third time and passed; that the title amendment be agreed to; that the motions to reconsider be laid upon the table, en bloc; and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 2231) was agreed to.

(The amendment is printed in today's RECORD under "Text of Amendments.")

The committee amendment in the nature of a substitute, as amended, was agreed to.

The title amendment was agreed to.

The bill (S. 1177), as amended, was read the third time and passed, as follows:

S. 1177

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

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Prevent All Cigarette Trafficking Act" or "PACT Act".

#### SEC. 2. COLLECTION OF STATE CIGARETTE AND SMOKELESS TOBACCO TAXES.

(a) DEFINITIONS.—Section 1 of the Act of October 19, 1949 (15 U.S.C. 375; commonly referred to as the "Jenkins Act"), is amended—

(1) by striking paragraphs (1), (2), and (3) and inserting the following new paragraphs:

"(1) The term 'attorney general', with respect to a State, means the attorney general or other chief law enforcement officer of the State, or the designee of that officer.

"(2) The term 'cigarette' means—

"(A) any roll of tobacco wrapped in paper or in any substance not containing tobacco which is to be heated or burned;

"(B) any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging or labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (A);

"(C) any roll of tobacco wrapped in any substance that because of its appearance, the type of tobacco used in the filler, or its packaging or labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or

"(D) loose rolling tobacco that, because of its appearance, type, packaging, or labeling, is likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

"(3) The term 'smokeless tobacco' means any finely cut, ground, powdered, or leaf tobacco that is intended to be placed in the oral or nasal cavity or otherwise consumed without being combusted.";

(2) in paragraph (5)—

(A) by inserting ", local, or Tribal" after "the State";

(B) by striking "administer the cigarette tax law" and inserting "collect the tobacco tax or administer the tax law"; and

(C) by inserting ", locality, or Tribe, respectively" after "a State".

(3) by striking paragraph (6) and inserting the following new paragraph (6):

"(6) The term 'delivery sale' means any sale of cigarettes or smokeless tobacco in interstate commerce 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, private delivery service, or the mails, or the seller is not in the physical presence of the buyer when the buyer obtains personal possession of the delivered cigarettes or smokeless tobacco.";

(4) by adding at the end the following new paragraphs:

"(8) The term 'delivery seller' means a person who makes a delivery sale.

"(9) The term 'common carrier' means any person (other than a local messenger service or the United States Postal Service (as defined in section 102 of title 39, United States Code)) that holds itself out to the general public as a provider for hire of the transportation by water, land, or air of merchandise, whether or not the person actually operates the vessel, vehicle, or aircraft by which the transportation is provided, between a port or place and a port or place in the United States.

"(10) The term 'interstate commerce' means commerce between a State and any place outside the State, commerce between a State and any Indian lands in the State, or commerce between points in the same State but through any place outside the State or through any Indian lands.

"(11) The term 'person' means an individual, corporation, company, association, firm, partnership, society, State government, local government, Indian tribal government, governmental organization of such government, or joint stock company.

"(12) The term 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

"(13) 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 the Metlakatla Indian Community, Annette Island Reserve.

"(14) The term 'Indian Tribe', 'Tribe', or 'Tribal' refers to an Indian tribe as defined in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) or as listed pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (Public Law 103-454; 25 U.S.C. 479a-1).

"(15) The term 'tobacco tax administrator', in the case of a State, local, or Tribal government, means the official of the government duly authorized to collect the tobacco tax or administer the tax law of the government.".

(b) REPORTS TO STATE TOBACCO TAX ADMINISTRATORS.—Section 2 of that Act (15 U.S.C. 376) is amended—

(1) by striking "cigarettes" each place it appears and inserting "cigarettes or smokeless tobacco";

(2) in subsection (a)—

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

(i) by striking "or transfers" and inserting "transfers, or ships";

(ii) by inserting ", locality, or Indian Country of an Indian Tribe" after "a State"; and

(iii) by striking "to other than a distributor licensed by or located in such State,";

(B) in paragraph (1)—

(i) by striking "administrator of the State" and inserting "administrators of the State and place"; and

(ii) by striking "and" and inserting the following: "and", as well as telephone numbers

for each place of business, a principal electronic mail address, any website addresses, and the name, address, and telephone number of an agent in the State authorized to accept service on behalf of such person";

(C) in paragraph (2), by striking "and the quantity thereof." and inserting "the quantity thereof, and the name, address, and phone number of the person delivering the shipment to the recipient on behalf of the delivery seller, with all invoice or memoranda information relating to specific customers to be organized by city or town and by zip code; and"; and

(D) by adding at the end the following new paragraph:

"(3) with respect to each memorandum or invoice filed with a State under paragraph (2), also file copies of such memorandum or invoice with the tobacco tax administrators and chief law enforcement officers of the local governments and Indian Tribes operating within the borders of the State that apply their own local or Tribal taxes on cigarettes or smokeless tobacco.";

(3) in subsection (b)—

(A) by striking "(1)"; and

(B) by striking "and (2)" and all that follows and inserting a period.

(c) REQUIREMENTS FOR DELIVERY SALES.—That Act is further amended by inserting after section 2 the following new section:

"SEC. 2A. (a) With respect to delivery sales into a specific State and place, each delivery seller shall comply with—

"(1) the shipping requirements set forth in subsection (b);

"(2) the recordkeeping requirements set forth in subsection (c);

"(3) all State, local, Tribal, and other laws generally applicable to sales of cigarettes or smokeless tobacco as if such delivery sales occurred entirely within the specific State and place, including laws imposing—

"(A) excise taxes;

"(B) licensing and tax-stamping requirements; and

"(C) other payment obligations or legal requirements relating to the sale, distribution, or delivery of cigarettes or smokeless tobacco; and

"(4) the tax collection requirements set forth in subsection (d).

"(b)(1) Each delivery seller shall include on the bill of lading included with the shipping package containing cigarettes or smokeless tobacco sold pursuant to such order a clear and conspicuous statement providing as follows: 'CIGARETTES/SMOKELESS TOBACCO: FEDERAL LAW REQUIRES THE PAYMENT OF ALL APPLICABLE EXCISE TAXES, AND COMPLIANCE WITH APPLICABLE LICENSING AND TAX-STAMPING OBLIGATIONS'.

"(2) Any shipping package described in paragraph (1) that is not labeled in accordance with that paragraph shall be treated as non-deliverable matter by a common carrier or the United States Postal Service if the common carrier or the United States Postal Service, as the case may be, knows or should know the contents of the package.

"(c)(1) Each delivery seller shall keep a record of all delivery sales so made, including all of the information described in section 2(a)(2), organized by the State, and within such State, by the city or town and by zip code, into which such delivery sales are so made.

"(2) Records of delivery sales shall be kept under paragraph (1) in the year in which made and for the next four years.

"(3) Records kept under paragraph (1) shall be made available to tobacco tax administrators of the States, to local governments and Indian Tribes that apply their own local or Tribal taxes on cigarettes or smokeless tobacco, to the attorneys general of the States,

to the chief law enforcement officers of such local governments and Indian Tribes, and to the Attorney General of the United States in order to ensure the compliance of persons making delivery sales with the requirements of this Act.

“(d)(1) Except as provided in paragraph (2), no cigarettes or smokeless tobacco may be delivered pursuant to a delivery sale in interstate commerce unless in advance of the delivery—

“(A) any cigarette or smokeless tobacco excise tax that is imposed by the State in which the cigarettes or smokeless tobacco are to be delivered has been paid to the State;

“(B) any cigarette or smokeless tobacco excise tax that is imposed by the local government of the place in which the cigarette or smokeless tobacco are to be delivered has been paid to the local government; and

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

“(2) Paragraph (1) does not apply to a delivery sale of smokeless tobacco if the law of the State or local government of the place where the smokeless tobacco is to be delivered requires or otherwise provides that delivery sellers collect the excise tax from the consumer and remit the excise tax to the State or local government, and the delivery seller complies with the requirement.

“(e)(1) Each State, and each local government or Indian Tribal government that levies a tax subject to subsection (a)(3), may compile a list of delivery sellers who are in compliance with this Act with respect to such State, locality, or Indian Tribe. If a State, local government, or Indian Tribe posts a list pursuant to this subsection that specifically refers to this subsection, no common carrier or other person may knowingly deliver cigarettes or smokeless tobacco to consumers in such State or locality or in the Indian Country of such Indian Tribe unless the delivery seller is on the list at the time of delivery.

“(2)(A) Each State, and each local government or Indian Tribal government that levies a tax subject to subsection (a)(3), may compile a list of delivery sellers who are not in compliance with this Act with respect to such State, locality, or Indian Tribe.

“(B) A State, locality, or Indian Tribal government may provide such a list to a common carrier, the United States Postal Service, or other person. Such a list shall be confidential, and a common carrier, the United States Postal Service, or other person that receives such a list shall maintain the confidentiality of such list.

“(C) If a State, local government, or Indian Tribal government provides such a list pursuant to this subsection that specifically refers to this subsection, no common carrier, the United States Postal Service, or other person may knowingly deliver any item to a consumer in such State or locality or in the Indian Country of such Indian Tribe for a delivery seller on such list unless the common carrier, the United States Postal Service, or person in good faith determines that the item does not include cigarettes or smokeless tobacco.

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

(d) PENALTIES.—Section 3 of that Act (15 U.S.C. 377) is amended—

(1) by inserting “(a)” before “Whoever”;

(2) in subsection (a), as so designated—

(A) by inserting “(except for a State, local, or Tribal government)” after “this Act”; and

(B) by striking “shall be guilty of a misdemeanor and shall be fined not more than \$1,000, or imprisoned not more than 6 months” and inserting “shall be guilty of a felony, fined under subchapter C of chapter 227 of title 18, United States Code, imprisoned not more than three years, or both”; and

(3) by adding at the end the following new subsection:

“(b)(1) Whoever violates any provision of this Act shall be subject to a civil penalty in an amount not to exceed the greater of—

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

“(B) for any violation, 2 percent of the gross sales of cigarettes or smokeless tobacco of such person during the one-year period ending on the date of the violation.

“(2) A civil penalty under paragraph (1) for a violation of this Act is in addition to any criminal penalty under subsection (a) for the violation.”

(e) ENFORCEMENT.—Section 4 of that Act (15 U.S.C. 378) is amended—

(1) by inserting “(a)” before “The United States district courts”;

(2) in subsection (a), as so designated, by inserting before the period the following: “, and to provide other appropriate injunctive or equitable relief, including money damages, for such violations”; and

(3) by adding at the end the following new subsections:

“(b) The Attorney General of the United States shall administer and enforce the provisions of this Act.

“(c)(1)(A) A State, through its attorney general (or a designee thereof), or a local government or Indian Tribe that levies a tax subject to section 2A(a)(3), through its chief law enforcement officer (or a designee thereof), may bring an action in the United States district courts to prevent and restrain violations of this Act by any person (or by any person controlling such person) or to obtain any other appropriate relief from any person (or from any person controlling such person) for violations of this Act, including civil penalties, money damages, and injunctive or other equitable relief.

“(B) Nothing in this Act shall be deemed to abrogate or constitute a waiver of any sovereign immunity of a State or local government or Indian Tribe against any unconsented lawsuit under this Act, or otherwise to restrict, expand, or modify any sovereign immunity of a State or local government or Indian Tribe.

“(2) A State, through its attorney general, or a local government or Indian Tribe that levies a tax subject to section 2A(a)(3), through its chief law enforcement officer (or a designee thereof), may provide evidence of a violation of this Act by any person not subject to State, local, or Tribal government enforcement actions for violations of this Act to the Attorney General of the United States or a United States Attorney, who shall take appropriate actions to enforce the provisions of this Act.

“(3)(A) Notwithstanding any other provision of law and subject to subparagraph (B), an amount equal to 50 percent of any criminal and civil penalties collected by the United States Government in enforcing the provisions of this Act shall be available to the Department of Justice for purposes of enforcing the provisions of this Act and other laws relating to contraband tobacco products.

“(B) Of the amount available to the Department under subparagraph (A), not less than 50 percent shall be made available only to the agencies and offices within the Department that were responsible for the enforcement actions in which the penalties concerned were imposed.

“(4) The remedies available under this subsection are in addition to any other remedies available under Federal, State, local, Tribal, or other law.

“(5) Nothing in this Act shall be construed to expand, restrict, or otherwise modify any right of an authorized State official to proceed in State court, or take other enforcement actions, on the basis of an alleged violation of State or other law.

“(6) Nothing in this Act shall be construed to expand, restrict, or otherwise modify any right of an authorized Indian Tribal government official to proceed in Tribal court, or take other enforcement actions, on the basis of an alleged violation of Tribal law.

“(7) Nothing in this Act shall be construed to expand, restrict, or otherwise modify any right of an authorized local government official to proceed in State court, or take other enforcement actions, on the basis of an alleged violation of local or other law.

“(d) Any person who holds a permit under section 5712 of the Internal Revenue Code of 1986 may bring an action in the United States district courts to prevent and restrain violations of this Act by any person (or by any person controlling such person) other than a State, local, or Tribal government.

“(e)(1) Any person who commences a civil action under subsection (d) shall inform the Attorney General of the United States of the action.

“(2) It is the sense of Congress that any attorney general of a State, or chief law enforcement officer of a locality or Tribe, who commences a civil action under this section should inform the Attorney General of the United States of the action.

“(f)(1) The Attorney General of the United States shall make available to the public, by posting such information on the Internet and by other means, information about all enforcement actions undertaken by the Attorney General or United States Attorneys, or reported to the Attorney General, under this section, including information on the resolution of such actions and, in particular, information on how the Attorney General and the United States Attorney have responded to referrals of evidence of violations pursuant to subsection (b)(2).

“(2) The Attorney General shall submit to Congress each year a report containing the information described in paragraph (1).”

### SEC. 3. TREATMENT OF CIGARETTES AND SMOKELESS TOBACCO AS NONMAILABLE MATTER.

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

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

(2) by inserting after subsection (i) the following new subsection (j):

“(j)(1) Except as provided in paragraph (2), the transmission in the mails of any tobacco product, including cigarettes (as that term is defined in section 1(2) of the Act of October 19, 1949 (15 U.S.C. 375; commonly referred to as the ‘Jenkins Act’)) and smokeless tobacco (as that term is defined in section 1(3) of that Act), is prohibited, and tobacco products are nonmailable and shall not be deposited in or carried through the mails.

“(2) Paragraph (1) shall apply only to States that are contiguous with at least one other State of the United States.”

### SEC. 4. PENAL PROVISIONS REGARDING TRAFFICKING IN CONTRABAND CIGARETTES OR SMOKELESS TOBACCO.

(a) THRESHOLD QUANTITY FOR TREATMENT AS CONTRABAND CIGARETTES.—(1) Section 2341(2) of title 18, United States Code, is amended by striking “60,000 cigarettes” and inserting “10,000 cigarettes”.

(2) Section 2342(b) of that title is amended by striking “60,000” and inserting “10,000”.

(3) Section 2343 of that title is amended—

(A) in subsection (a), by striking “60,000” and inserting “10,000”; and

(B) in subsection (b), by striking “60,000” and inserting “10,000”.

(b) CONTRABAND SMOKELESS TOBACCO.—(1) Section 2341 of that title is amended—

(A) in paragraph (4), by striking “and” at the end;

(B) in paragraph (5), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following new paragraphs:

“(6) the term ‘smokeless tobacco’ means any finely cut, ground, powdered, or leaf tobacco that is intended to be placed in the oral or nasal cavity or otherwise consumed without being combusted;

“(7) the term ‘contraband smokeless tobacco’ means a quantity in excess of 500 single-unit consumer-sized cans or packages of smokeless tobacco, or their equivalent, that are in the possession of any person other than—

“(A) a person holding a permit issued pursuant to chapter 52 of the Internal Revenue Code of 1986 as manufacturer of tobacco products or as an export warehouse proprietor, a person operating a customs bonded warehouse pursuant to section 311 or 555 of the Tariff Act of 1930 (19 U.S.C. 1311, 1555), or an agent of such person;

“(B) a common carrier transporting such smokeless tobacco under a proper bill of lading or freight bill which states the quantity, source, and designation of such smokeless tobacco;

“(C) a person who—

“(i) is licensed or otherwise authorized by the State where such smokeless tobacco is found to engage in the business of selling or distributing tobacco products or, for smokeless tobacco found in Indian Country, is licensed or otherwise authorized by the Tribal government of such Indian Country to account for and pay smokeless tobacco taxes imposed by the Tribal government; and

“(ii) has complied with the accounting, tax, and payment requirements relating to such license or authorization with respect to such smokeless tobacco; or

“(D) an officer, employee, or agent of the United States or a State or a Tribe, or any department, agency, or instrumentality of the United States, a State (including any political subdivision of a State), or a Tribe (including any political subdivision of a Tribe), having possession of such smokeless tobacco in connection with the performance of official duties.”.

(2) Section 2342(a) of that title is amended by inserting “or contraband smokeless tobacco” after “contraband cigarettes”.

(3) Section 2343(a) of that title is amended by inserting “, or any quantity of smokeless tobacco in excess of 500 single-unit consumer-sized cans or packages,” before “in a single transaction”.

(4) Section 2344(c) of that title is amended by inserting “or contraband smokeless tobacco” after “contraband cigarettes”.

(5) Section 2345 of that title is amended by inserting “or smokeless tobacco” after “cigarettes” each place it appears.

(c) ADDITIONAL DEFINITIONAL MATTERS.—Section 2341 of such title is further amended—

(1) in paragraph (2), as amended by subsection (a)(1) of this section—

(A) in the matter preceding subparagraph (A), by striking “State cigarette taxes in the State where such cigarettes are found, if the State” and inserting “State, local, or Tribal cigarette taxes in the State, locality, or Indian Country where such cigarettes are found, if the State, local or Tribal government”;

(B) in subparagraph (C)(i), by inserting before the semicolon the following: “, or, for

cigarettes found in Indian County, is licensed or otherwise authorized by the Tribal government of such Indian Country to account for and pay cigarette taxes imposed by the Tribal government”; and

(C) in subparagraph (D)—

(i) by inserting “or a Tribe” after “a State” the first place it appears; and

(ii) by striking “or a State (or any political subdivision of a State)” and inserting “, a State (or any political subdivision of a State), or a Tribe (including any political subdivision of a Tribe)”;

(2) in paragraph (3), by inserting before the semicolon the following: “, or, for a carrier making a delivery entirely within Indian Country, under equivalent operating authority from the Indian Tribal government of such Indian Country”; and

(3) by adding at the end the following new paragraphs:

“(8) 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 the Metlakatla Indian Community, Annette Island Reserve; and

“(9) the term ‘Indian Tribe’, ‘Tribe’, or ‘Tribal’ refers to an Indian tribe as defined in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) or as listed pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (Public Law 103-454; 25 U.S.C. 479a-1).”.

(d) RECORDKEEPING, REPORTING, AND INSPECTION.—Section 2343 of that title, as amended by this section, is further amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking “only—” and inserting “such information as the Attorney General considers appropriate for purposes of enforcement of this chapter, including—”; and

(B) in the flush matter following paragraph (3), by striking the second sentence;

(2) by redesignating subsection (b) as subsection (c);

(3) by inserting after subsection (a) the following new subsection (b):

“(b) Any person who engages in a delivery sale, and who ships, sells, or distributes any quantity in excess of 10,000 cigarettes, or any quantity in excess of 500 single-unit consumer-sized cans or packages of smokeless tobacco, or their equivalent, within a single month, shall submit to the Attorney General, pursuant to rules or regulations prescribed by the Attorney General, a report that sets forth the following:

“(1) The person’s beginning and ending inventory of cigarettes and cans or packages of smokeless tobacco (in total) for such month.

“(2) The total quantity of cigarettes and cans or packages of smokeless tobacco that the person received within such month from each other person (itemized by name and address).

“(3) The total quantity of cigarettes and cans or packages of smokeless tobacco that the person distributed within such month to each person (itemized by name and address) other than a retail purchaser.”; and

(4) by adding at the end the following new subsections:

“(d) Any report required to be submitted under this chapter to the Attorney General shall also be submitted to the Secretary of the Treasury and to the attorneys general and the tax administrators of the States from where the shipments, deliveries, or distributions both originated and concluded, and to the chief law enforcement officer and tax administrator of the Tribe for shipments, deliveries or distributions that originated or concluded on the Indian Country of the Indian Tribe.

“(e) In this section, the term ‘delivery sale’ means any sale of cigarettes or smokeless to-

bacco in interstate commerce 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 by any other means where the consumer is not in the same physical location as the seller when the purchase or offer of sale is made; or

“(B) the cigarettes or smokeless tobacco are delivered by use of the mails, common carrier, private delivery service, or any other means where the consumer is not in the same physical location as the seller when the consumer obtains physical possession of the cigarettes or smokeless tobacco.

“(f) In this section, the term ‘interstate commerce’ means commerce between a State and any place outside the State, commerce between a State and any Indian lands in the State, or commerce between points in the same State but through any place outside the State or through any Indian lands.”.

(e) DISPOSAL OR USE OF FORFEITED CIGARETTES AND SMOKELESS TOBACCO.—Section 2344(c) of that title, as amended by this section, is further amended by striking “seizure and forfeiture,” and all that follows and inserting “seizure and forfeiture, and any cigarettes or smokeless tobacco so seized and forfeited shall be either—

“(1) destroyed and not resold; or

“(2) used for undercover investigative operations for the detection and prosecution of crimes, and then destroyed and not resold.”.

(f) EFFECT ON STATE, LOCAL, AND TRIBAL LAW.—Section 2345 of that title is amended—

(1) in subsection (a), by striking “a State to enact and enforce” and inserting “a State, local government, or Tribe to enact and enforce its own”; and

(2) in subsection (b), by striking “of States, through interstate compact or otherwise, to provide for the administration of State” and inserting “of State, local, or Tribal governments, through interstate compact or otherwise, to provide for the administration of State, local, or Tribal”.

(g) ENFORCEMENT.—Section 2346 of that title is amended—

(1) by inserting “(a)” before “The Attorney General”; and

(2) by adding at the end the following new subsection:

“(b)(1) A State, through its attorney general, a local government or Indian Tribe, through its chief law enforcement officer (or a designee thereof), or any person who holds a permit under section 5712 of the Internal Revenue Code of 1986, may bring an action in the United States district courts to prevent and restrain violations of this chapter by any person (or by any person controlling such person), except that any person who holds a permit under section 5712 of the Internal Revenue Code of 1986 may not bring such an action against a State, local, or Tribal government.

“(2) A State, through its attorney general, or a local government or Indian Tribe, through its chief law enforcement officer (or a designee thereof), may in a civil action under paragraph (1) also obtain any other appropriate relief for violations of this chapter from any person (or by any person controlling such person), including civil penalties, money damages, and injunctive or other equitable relief. Nothing in this chapter shall be deemed to abrogate or constitute a waiver of any sovereign immunity of a State or local government or Indian Tribe against any unconsented lawsuit under this chapter, or otherwise to restrict, expand, or modify any sovereign immunity of a State or local government or Indian Tribe.

“(3) The remedies under paragraphs (1) and (2) are an addition to any other remedies under Federal, State, local, Tribal, or other law.

“(4) Nothing in this chapter shall be construed to expand, restrict, or otherwise modify any right of an authorized State official to proceed in State court, or take other enforcement actions, on the basis of an alleged violation of State or other law.

“(5) Nothing in this chapter shall be construed to expand, restrict, or otherwise modify any right of an authorized Indian Tribal government official to proceed in Tribal court, or take other enforcement actions, on the basis of an alleged violation of Tribal law.

“(6) Nothing in this chapter shall be construed to expand, restrict, or otherwise modify any right of an authorized local government official to proceed in State court, or take other enforcement actions, on the basis of an alleged violation of local or other law.”.

(h) CONFORMING AND CLERICAL AMENDMENTS.—(1) The section heading for section 2343 of that title is amended to read as follows:

“§2343. Recordkeeping, reporting, and inspection”.

(2) The section heading for section 2345 of such title is amended to read as follows:

“§2345. Effect on State, Tribal, and local law”.

(3) The table of sections at the beginning of chapter 114 of that title is amended—

(A) by striking the item relating to section 2343 and inserting the following new item:

“2343. Recordkeeping, reporting, and inspection.”;

and

(B) by striking the item relating to section 2345 and insert the following new item:

“2345. Effect on State, Tribal, and local law.”.

(4)(A) The heading for chapter 114 of that title is amended to read as follows:

“CHAPTER 114—TRAFFICKING IN CONTRABAND CIGARETTES AND SMOKELESS TOBACCO”.

(B) The table of chapters at the beginning of part I of that title is amended by striking the item relating to section 114 and inserting the following new item:

“114. Trafficking in contraband cigarettes and smokeless tobacco ..... 2341”.

SEC. 5. COMPLIANCE WITH MODEL STATUTE OR QUALIFYING STATUTE.

(a) IN GENERAL.—A Tobacco Product Manufacturer or importer may not sell in, deliver to, or place for delivery sale, or cause to be sold in, delivered to, or placed for delivery sale in, a State that is a party to the Master Settlement Agreement any cigarette manufactured by a Tobacco Product Manufacturer that is not in full compliance with the terms of the Model Statute or Qualifying Statute enacted by such State requiring funds to be placed into a qualified escrow account under specified conditions, or any regulations promulgated pursuant to such terms.

(b) JURISDICTION TO PREVENT AND RESTRAIN VIOLATIONS.—(1) The United States district courts shall have jurisdiction to prevent and restrain violations of subsection (a) in accordance with this subsection.

(2) A State, through its attorney general, may bring an action in the United States district courts to prevent and restrain violations of subsection (a) by any person (or by any person controlling such person).

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

(4) The remedy available under paragraph (2) is in addition to any other remedies available under Federal, State, or other law.

(5) Nothing in this subsection shall be construed to prohibit an authorized State offi-

cial from proceeding in State court or taking other enforcement actions on the basis of an alleged violation of State or other law.

(6) The Attorney General may administer and enforce subsection (a).

(c) DEFINITIONS.—In this section:

(1) MASTER SETTLEMENT AGREEMENT.—The term “Master Settlement Agreement” means the agreement executed November 23, 1998, by the Attorneys General of 46 States, the District of Columbia, the Commonwealth of Puerto Rico, and four Territories of the United States, on the one hand, and certain tobacco manufacturers on the other hand.

(2) TOBACCO PRODUCT MANUFACTURER.—The term “Tobacco Product Manufacturer” has the meaning given that term in section II(uu) of the Master Settlement Agreement.

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

(A) Any person in the United States to whom non-tax-paid tobacco products manufactured in a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States are shipped or consigned.

(B) Any person who removes cigars or cigarettes for sale or consumption in the United States from a customs bonded manufacturing warehouse.

(C) Any person who smuggles or otherwise unlawfully brings tobacco products into the United States.

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

(5) DELIVERY SALE.—The term “delivery sale” means any sale of cigarettes or smokeless tobacco in interstate commerce 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, private delivery service, or the mails, or the seller is not in the physical presence of the buyer when the buyer obtains personal possession of the delivered cigarettes or smokeless tobacco.

(6) INTERSTATE COMMERCE.—The term “interstate commerce” means commerce between a State and any place outside the State, commerce between a State and any Indian lands in the State, or commerce between points in the same State but through any place outside the State or through any Indian lands.

SEC. 6. UNDERCOVER CRIMINAL INVESTIGATIONS OF THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES.

(a) IN GENERAL.—(1) Commencing as of the date of the enactment of this Act and without fiscal year limitation, the authorities in section 102(b) of the Department of Justice and Related Agencies Appropriations Act, 1993 (title I of Public Law 102-395; 106 Stat. 1838) shall be available to the Bureau of Alcohol, Tobacco, Firearms, and Explosives for undercover investigative operations of the Bureau which are necessary for the detection and prosecution of crimes against the United States.

(2) For purposes of the exercise of the authorities referred to in paragraph (1) by the Bureau, a reference in such section 102(b) to the Federal Bureau of Investigation shall be deemed to be a reference to the Bureau of Alcohol, Tobacco, Firearms, and Explosives, and a reference to the Director of the Federal Bureau of Investigation shall be deemed to be a reference to the Director of the Bu-

reau of Alcohol, Tobacco, Firearms, and Explosives.

(b) LIMITATIONS IN APPROPRIATIONS ACTS.—The exercise of the authorities referred to in subsection (a)(1) by the Bureau of Alcohol, Tobacco, Firearms, and Explosives shall be subject to the provisions of appropriations Acts.

SEC. 7. INSPECTION BY BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES OF RECORDS OF CERTAIN CIGARETTE AND SMOKELESS TOBACCO SELLERS.

(a) IN GENERAL.—Any officer of the Bureau of Alcohol, Tobacco, Firearms, and Explosives may, during normal business hours, enter the premises of any person described in subsection (b) for the purposes of inspecting—

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

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

(b) COVERED PERSONS.—A person described in this subsection is any person who engages in a delivery sale, and who ships, sells, distributes, or receives any quantity in excess of 10,000 cigarettes, or any quantity in excess of 500 single-unit consumer-sized cans or packages of smokeless tobacco, within a single month.

(c) RELIEF.—(1) The district courts of the United States shall have the authority in a civil action under this subsection to compel inspections authorized by subsection (a).

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

(d) COVERED PROVISIONS OF LAW.—The provisions of law referred to in this subsection are as follows:

(1) The Act of October 19, 1949 (15 U.S.C. 375; commonly referred to as the “Jenkins Act”).

(2) Chapter 114 of title 18, United States Code.

(3) This Act.

(e) DELIVERY SALE DEFINED.—In this section, the term “delivery sale” has the meaning given that term in 2343(e)(1) of title 18, United States Code, as amended by section 4(b)(3) of this Act.

SEC. 8. COMPLIANCE WITH TARIFF ACT OF 1930.

(a) INAPPLICABILITY OF EXEMPTIONS FROM REQUIREMENTS FOR ENTRY OF CERTAIN CIGARETTES.—Subsection (b)(1) of section 802 of the Tariff Act of 1930 (19 U.S.C. 1681a) is amended by adding at the end the following new sentence: “The preceding sentence shall not apply to any cigarettes sold in connection with a delivery sale (as that term is defined in section 1 of the Act of October 19, 1949 (15 U.S.C. 375; commonly referred to as the ‘Jenkins Act’)).”.

(b) STATE AND TRIBAL ACCESS TO CUSTOMS CERTIFICATIONS.—Section 802 of that Act is further amended by adding at the end the following new subsection:

“(d) STATE AND TRIBAL ACCESS TO CUSTOMS CERTIFICATIONS.—A State, through its attorney general, and an Indian tribe (as that term is defined in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e))) through its chief law enforcement officer, shall be entitled to obtain copies of any certification required pursuant to subsection (c) directly—

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

“(2) upon request to the importer, manufacturer, or authorized official of such importer or manufacturer.”.

(c) ENFORCEMENT PROVISIONS.—Section 803 of such Act (19 U.S.C. 1681b) is amended—

(1) in subsection (b)—

(A) in the first sentence—

(i) by inserting “any of” before “the United States” the first and second places it appears; and

(ii) by inserting before the period the following: “, to any State in which such tobacco product, cigarette papers, or tube was imported, or to the Indian Tribe of any Indian Country (as that term is defined in section 1151 of title 18, United States Code) in which such tobacco product, cigarette papers, or tube was imported”; and

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

(2) by adding at the end the following new subsection:

“(C) ACTIONS BY STATES AND OTHERS.—

“(1) IN GENERAL.—Any person who holds a permit under section 5712 of the Internal Revenue Code of 1986 may bring an action in the United States district courts to prevent and restrain violations of this title by any person (or by any person controlling such person), other than by a State, local, or Tribal government.

“(2) RELIEF FOR STATE, LOCAL, AND TRIBAL GOVERNMENTS.—A State, through its attorney general, or a local government or Tribe through its chief law enforcement officer (or a designee thereof), may in a civil action under this title to prevent and restrain violations of this title by any person (or by any person controlling such person) or to obtain any other appropriate relief for violations of this title by any person (or from any person controlling such person), including civil penalties, money damages, and injunctive or other equitable relief.

“(3) CONSTRUCTION GENERALLY.—

“(A) IN GENERAL.—Nothing in this subsection shall be deemed to abrogate or constitute a waiver of any sovereign immunity of a State or local government or Indian Tribe against any unconsented lawsuit under this title or to otherwise restrict, expand, or modify any sovereign immunity of a State local government or Indian Tribe.

“(B) CONSTRUCTION WITH OTHER RELIEF.—The remedies available under this subsection are in addition to any other remedies available under Federal, State, local, Tribal, or other law.

“(4) CONSTRUCTION WITH FORFEITURE PROVISIONS.—Nothing in this subsection shall be construed to require a State or Indian Tribe to first bring an action pursuant to paragraph (1) when pursuing relief under subsection (b).

“(d) CONSTRUCTION WITH OTHER AUTHORITIES.—

“(1) STATE AUTHORITIES.—Nothing in this title shall be construed to expand, restrict, or otherwise modify the right of an authorized State official from proceeding in State court, or taking other enforcement actions, on the basis of alleged violation of State or other law.

“(2) TRIBAL AUTHORITIES.—Nothing in this title shall be construed to expand, restrict, or otherwise modify the right of an authorized Indian Tribal government official from proceeding in Tribal court, or taking other enforcement actions, on the basis of alleged violation of Tribal law.

(d) INCLUSION OF SMOKELESS TOBACCO.—(1) Sections 802 and 803(a) of such Act are further amended by inserting “or smokeless tobacco products” after “cigarettes” each place it appears.

(2) Section 802 of such Act is further amended—

(A) in subsection (a)—

(i) in paragraph (1), by inserting “or section 4 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4403), respectively” after “section 7 of the

Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1335a)”;

(ii) in paragraph (2), by inserting “or section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402), respectively,” after “section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333)”;

(iii) in paragraph (3), by inserting “or section 3(c) of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402(c)), respectively,” after “section 4(c) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333(c))”;

(B) in subsection (b)—

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

(ii) in the paragraph caption of paragraphs (2) and (3), by inserting “OR SMOKELESS TOBACCO” after “CIGARETTES”;

(C) in subsection (c)—

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

(ii) in paragraph (1), by inserting “or section 4 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4403), respectively” after “section 7 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1335a)”;

(iii) in paragraph (2)(A), “or section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402), respectively,” after “section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333)”;

(iv) in paragraph (2)(B), by inserting “or section 3(c) of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402(c)), respectively” after “section 4(c) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333(c))”.

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

(4)(A) The heading of title VIII of such Act is amended by inserting “AND SMOKELESS TOBACCO” after “CIGARETTES”.

(B) The heading of section 802 of such Act is amended by inserting “AND SMOKELESS TOBACCO” after “CIGARETTES”.

#### SEC. 9. EXCLUSIONS REGARDING INDIAN TRIBES AND TRIBAL MATTERS.

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

(1) any agreements, compacts, or other intergovernmental arrangements between any State or local government and any government of an Indian tribe (as that term is defined in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e))) relating to the collection of taxes on cigarettes or smokeless tobacco sold in Indian Country (as that term is defined section 1151 of title 18, United States Code);

(2) any State laws that authorize or otherwise pertain to any such intergovernmental arrangements or create special rules or procedures for the collection of State, local, or tribal taxes on cigarettes or smokeless tobacco sold in Indian Country;

(3) any limitations under existing Federal law, including Federal common law and treaties, on State, local, and tribal tax and regulatory authority with respect to the sale, use, or distribution of cigarettes and smokeless tobacco by or to Indian Tribes or tribal members or in Indian Country;

(4) any existing Federal law, including Federal common law and treaties, regarding State jurisdiction, or lack thereof, over any Tribe, tribal members or tribal reservations; and

(5) any existing State or local government authority to bring enforcement actions against persons located in Indian Country.

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

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

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

(3) establishes cooperative programs for the administration of such laws.

(c) TREATMENT OF STATE AND LOCAL GOVERNMENTS.—Notwithstanding any other provision of this Act, the provisions of this Act are not intended and shall not be construed to authorize, deputize, or commission States or local governments as instrumentalities of the United States.

(d) ENFORCEMENT WITHIN INDIAN COUNTRY.—Nothing in this Act or the amendments made by this Act is intended to prohibit, limit, or restrict enforcement by the Attorney General of the United States of the provisions herein within Indian Country.

(e) AMBIGUITY.—Any ambiguity between the language of this section or its application, and any other provision of this Act shall be resolved in favor of this section.

#### SEC. 10. EFFECTIVE DATE.

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

(b) BATFEE AUTHORITY.—

(1) IN GENERAL.—Sections 6 and 7 shall take effect on the date of the enactment of this Act.

(2) DEFINITION.—For purposes of section 7, the definition of delivery sale in section 2343(e)(1) of title 18, United States Code, as amended by section 4(b)(3) of this Act, shall take effect on the date of the enactment of this Act.

Passed the Senate December 9, 2003.

#### MAKING FURTHER CONTINUING APPROPRIATIONS FOR FISCAL YEAR 2004

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.J. Res. 82, making technical corrections to the continuing resolution. I further ask unanimous consent that the joint resolution be read the third time and passed and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The joint resolution (H.J. Res. 82) was read the third time and passed.

#### FUNDING TO ASSIST IN MEETING OFFICIAL EXPENSES

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 282, submitted earlier today by Senator STEVENS.

The PRESIDING OFFICER. The clerk will report the resolution by title.