

Administration would terminate the pilot program and revoke the authority of participating carriers—unless compelled to do so by Congress.

We were right. On August 4, 2008, on the first day of the Congressional recess, DOT announced that it would extend the program for an additional two years, through 2010.

Since last February, I have expressed my strong concerns over whether safety on U.S. roads would be adversely impacted and whether DOT was ready to enforce all Federal motor carrier laws and regulations. I have also expressed my amazement with the careless way that the Administration has violated the will of Congress and the spirit of the law over the last 18 months.

Today, I repeat these sentiments and say enough is enough. It is time for DOT to be held accountable for its actions and made to keep its own promises.

The House has already voiced strong, bipartisan opposition to the implementation of this pilot program in three separate pieces of legislation, each of which DOT has strongly opposed:

The House passed H.R. 1773, the Safe American Roads Act of 2007, on May 15 by a vote of 411–3.

On May 25, 2007, the House passed the U.S. Troop Readiness, Veterans Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (P.L. 110–28), which was signed by the President, and which included a number of safety prerequisites regarding the proposed pilot program. DOT glossed over these requirements and moved ahead without fully taking them into account.

On July 24, 2007, the House passed the FY 2008 Transportation, Housing and Urban Development, and Related Agencies Appropriations bill (H.R. 3074) with a provision to bar DOT from using any funds to implement its proposed pilot program. A similar provision was included in the Consolidated Appropriations Act of 2008 (P.L. 110–161), approved by the House on December 17, 2007. DOT found a technical “out” to avoid compliance with this provision.

DOT pushed past Congressional concerns in establishing this program. The Department has pushed on despite strong opposition to extend the program, and they will continue to push on. Carriers participating in the pilot program have been granted provisional operating authority for 18 months, after which DOT could allow the authority to become permanent.

Without further Congressional action, this “experiment” will turn into what opponents of this program have feared all along—a sea change in surface transportation policy.

To date, participation in the pilot program has been underwhelming. According to Federal Motor Carrier Safety Association (“FMCSA”) data, 27 Mexican carriers operating 107 trucks and 10 U.S. carriers operating 55 trucks are participating in the pilot program. Pilot program participants from Mexico crossed into the United States 9,776 times. Only 1,337 of these crossings, or 14 percent, resulted in carriers traveling beyond the border zones.

To accommodate a small fraction of trips taken by these 37 carriers, the Federal Government has spent more than \$500 million since 1995 to prepare for opening of the U.S.–Mexico border to motor carrier traffic.

This is more than the entire FMCSA budget for all Federal motor carrier safety programs in all 50 States for FY 2008.

While spending thousands of hours of staff resources to implement the Administration’s cross-border operations, FMCSA has yet to finalize 14 Congressionally mandated rulemakings—some of which have been pending since 1999—on critical motor carrier safety issues such as medical certification of drivers, commercial drivers license testing standards, hours of service, and revocation of operating authority from a carrier with a pattern of safety violations. Several reports are also overdue—including a report on whistleblower protections required in 1998.

There is nothing in the North American Free Trade Agreement, or any other trade agreement, that abrogates the authority of Congress to exercise its power under the Constitution to change domestic law. It is time for Congress to reclaim its ability to have some bearing on the obligations contained in the surface transportation provisions of NAFTA.

I thank the Chairman of the Subcommittee on Highways and Transit, Mr. DeFAZIO, for introducing the bill, and Ranking Member MICA and Subcommittee Ranking Member DUNCAN for joining with us in this effort.

I urge my colleagues to join me in supporting H.R. 6630.

Mr. DeFAZIO. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Oregon (Mr. DeFAZIO) that the House suspend the rules and pass the bill, H.R. 6630, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. DeFAZIO. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair’s prior announcement, further proceedings on this motion will be postponed.

PREVENT ALL CIGARETTE TRAFFICKING ACT OF 2008

Mr. SCOTT of Virginia. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4081) to prevent tobacco smuggling, to ensure the collection of all tobacco taxes, and for other purposes, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 4081

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

SECTION 1. SHORT TITLE; FINDINGS; PURPOSES.

(a) SHORT TITLE.—This Act may be cited as the “Prevent All Cigarette Trafficking Act of 2008” or “PACT Act”.

(b) FINDINGS.—Congress finds that—

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

(2) Hezbollah, Hamas, al Qaeda, and other terrorist organizations have profited from

trafficking in illegal cigarettes or counterfeit cigarette tax stamps;

(3) terrorist involvement in illicit cigarette trafficking will continue to grow because of the large profits such organizations can earn;

(4) the sale of illegal cigarettes and smokeless tobacco over the Internet, and through mail, fax, or phone orders, make it cheaper and easier for children to obtain tobacco products;

(5) the majority of Internet and other remote sales of cigarettes and smokeless tobacco are being made without adequate precautions to protect against sales to children, without the payment of applicable taxes, and without complying with the nominal registration and reporting requirements in existing Federal law;

(6) unfair competition from illegal sales of cigarettes and smokeless tobacco is taking billions of dollars of sales away from law-abiding retailers throughout the United States;

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

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

(9) the number of Internet vendors in the United States and in foreign countries that sell cigarettes and smokeless tobacco to buyers in the United States increased from only about 40 in 2000 to more than 500 in 2005; and

(10) the intrastate sale of illegal cigarettes and smokeless tobacco over the Internet has a substantial effect on interstate commerce.

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

(1) require Internet and other remote sellers of cigarettes and smokeless tobacco to comply with the same laws that apply to law-abiding tobacco retailers;

(2) create strong disincentives to illegal smuggling of tobacco products;

(3) provide government enforcement officials with more effective enforcement tools to combat tobacco smuggling;

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

(5) increase collections of Federal, State, and local excise taxes on cigarettes and smokeless tobacco; and

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

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

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

“SECTION 1. DEFINITIONS.

“As used in this Act, the following definitions apply:

“(1) ATTORNEY GENERAL.—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) CIGARETTE.—

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

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

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

“(B) EXCEPTION.—For purposes of this Act, the term ‘cigarette’ does not include a

'cigar', as that term is defined in section 5702 of the Internal Revenue Code of 1986.

"(3) COMMON CARRIER.—The term 'common carrier' means any person (other than a local messenger service or the United States Postal Service) 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.

"(4) CONSUMER.—The term 'consumer' means any person that purchases cigarettes or smokeless tobacco, but does not include any person lawfully operating as a manufacturer, distributor, wholesaler, or retailer of cigarettes or smokeless tobacco.

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

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

"(B) the cigarettes or smokeless tobacco are delivered to the buyer by common carrier, private delivery service, or other method of remote delivery, or the seller is not in the physical presence of the buyer when the buyer obtains possession of the cigarettes or smokeless tobacco.

"(6) DELIVERY SELLER.—The term 'delivery seller' means a person who makes a delivery sale.

"(7) INDIAN COUNTRY.—The term 'Indian country' means—

"(A) Indian country as defined 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

"(B) any other land held by the United States in trust or restricted status for one or more Indian tribes.

"(8) INDIAN TRIBE.—The term 'Indian tribe', 'tribe', or 'tribal' refers to an Indian tribe as defined in section 4(e) of 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 (25 U.S.C. 479a-1).

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

"(10) PERSON.—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.

"(11) STATE.—The term 'State' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

"(12) SMOKELESS TOBACCO.—The term 'smokeless tobacco' means any finely cut, ground, powdered, or leaf tobacco, or other product containing tobacco, that is intended to be placed in the oral or nasal cavity or otherwise consumed without being combusted.

"(13) TOBACCO TAX ADMINISTRATOR.—The term 'tobacco tax administrator' means the State, local, or tribal official duly authorized to collect the tobacco tax or administer the tax law of a State, locality, or tribe, respectively.

"(14) TRIBAL ENTERPRISE.—The term 'tribal enterprise' means any business enterprise, incorporated or unincorporated under federal or tribal law, of an Indian tribe or group of Indian tribe.

"(15) USE.—The term 'use', in addition to its ordinary meaning, means the consumption, storage, handling, or disposal of cigarettes or smokeless tobacco."

(b) REPORTS TO STATE TOBACCO TAX ADMINISTRATORS.—Section 2 of the Jenkins 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 inserting "CONTENTS.—" after "(a)"

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

(iii) by inserting "locality, or Indian country of an Indian tribe" after "a State";

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

(v) by striking "or transfer and shipment" and inserting "transfer, or shipment";

(B) in paragraph (1)—

(i) by striking "with the tobacco tax administrator of the State" and inserting "with the Attorney General of the United States and with the tobacco tax administrators of the State and place"; and

(ii) by striking "and" and inserting 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";

(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:

"(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 inserting "PRESUMPTIVE EVIDENCE.—" after "(b)";

(B) by striking "(1) that" and inserting "that"; and

(C) by striking "and (2)" and all that follows and inserting a period; and

(4) by adding at the end the following:

"(c) USE OF INFORMATION.—A tobacco tax administrator or chief law enforcement officer who receives a memorandum or invoice under paragraph (2) or (3) of subsection (a) shall use such memorandum or invoice solely for the purposes of the enforcement of this Act and the collection of any taxes owed on related sales of cigarettes and smokeless tobacco, and shall keep confidential any personal information in such memorandum or invoice not otherwise required for such purposes."

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

"SEC. 2A. DELIVERY SALES.

"(a) IN GENERAL.—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;

"(C) restrictions on sales to minors; 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) SHIPPING AND PACKAGING.—

"(1) REQUIRED STATEMENT.—For any shipping package containing cigarettes or smokeless tobacco, the delivery seller shall include on the bill of lading, if any, and on the outside of the shipping package, on the same surface as the delivery address, 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) FAILURE TO LABEL.—Any shipping package described in paragraph (1) that is not labeled in accordance with that paragraph shall be treated as nondeliverable matter by a common carrier or other delivery service, if the common carrier or other delivery service knows or should know the package contains cigarettes or smokeless tobacco. If a common carrier or other delivery service believes a package is being submitted for delivery in violation of paragraph (1), it may require the person submitting the package for delivery to establish that it is not being sent in violation of paragraph (1) before accepting the package for delivery. Nothing in this paragraph shall require the common carrier or other delivery service to open any package to determine its contents.

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

"(4) AGE VERIFICATION.—

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

"(i) shall not sell, deliver, or cause to be delivered any tobacco products to a person under the minimum age required for the legal sale or purchase of tobacco products, as determined by the applicable law at the place of delivery;

"(ii) shall use a method of mailing or shipping that requires—

"(I) the purchaser placing the delivery sale order, or an adult who is at least the minimum age required for the legal sale or purchase of tobacco products, as determined by the applicable law at the place of delivery, to sign to accept delivery of the shipping container at the delivery address; and

"(II) the person who signs to accept delivery of the shipping container to provide proof, in the form of a valid, government-issued identification bearing a photograph of the individual, that the person is at least the minimum age required for the legal sale or purchase of tobacco products, as determined by the applicable law at the place of delivery; and

"(iii) shall not accept a delivery sale order from a person without—

"(I) obtaining the full name, birth date, and residential address of that person; and

“(II) verifying the information provided in subclause (I), through the use of a commercially available database or aggregate of databases, consisting primarily of data from government sources, that are regularly used by government and businesses for the purpose of age and identity verification and authentication, to ensure that the purchaser is at least the minimum age required for the legal sale or purchase of tobacco products, as determined by the applicable law at the place of delivery.

“(B) LIMITATION.—No database being used for age and identity verification under subparagraph (A)(iii) shall be in the possession or under the control of the delivery seller, or be subject to any changes or supplementation by the delivery seller.

“(c) RECORDS.—

“(1) IN GENERAL.—Each delivery seller shall keep a record of any delivery sale, 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 sale is so made.

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

“(3) ACCESS FOR OFFICIALS.—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) DELIVERY.—

“(1) IN GENERAL.—Except as provided in paragraph (2), no delivery seller may sell or deliver to any consumer, or tender to any common carrier or other delivery service, any cigarettes or smokeless tobacco pursuant to a delivery sale unless, in advance of the sale, delivery, or tender—

“(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 cigarettes 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) EXCEPTION.—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) LIST OF UNREGISTERED OR NONCOMPLIANT DELIVERY SELLERS.—

“(1) IN GENERAL.—

“(A) INITIAL LIST.—Not later than 90 days after this subsection goes into effect under the Prevent All Cigarette Trafficking Act of 2008, the Attorney General of the United States shall compile a list of delivery sellers of cigarettes or smokeless tobacco that have not registered with the Attorney General, pursuant to section 2(a) or that are otherwise not in compliance with this Act, and—

“(i) distribute the list to—

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

“(II) common carriers and other persons that deliver small packages to consumers in interstate commerce, including the United States Postal Service; and

“(III) at the discretion of the Attorney General of the United States, to any other persons; and

“(ii) publicize and make the list available to any other person engaged in the business of interstate deliveries or who delivers cigarettes or smokeless tobacco in or into any State.

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

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

“(ii) all addresses from which the delivery seller does business or ships cigarettes or smokeless tobacco;

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

“(iv) any other information that the Attorney General determines would facilitate compliance with this subsection by recipients of the list.

“(C) UPDATING.—The Attorney General of the United States shall update and distribute the list at least once every 4 months, and may distribute the list and any updates by regular mail, electronic mail, or any other reasonable means, or by providing recipients with access to the list through a nonpublic website that the Attorney General of the United States regularly updates.

“(D) STATE, LOCAL, OR TRIBAL ADDITIONS.—The Attorney General of the United States shall include in the list under subparagraph (A) any noncomplying delivery sellers identified by any State, local, or tribal government under paragraph (5), and shall distribute the list to the attorney general or chief law enforcement official and the tax administrator of any government submitting any such information and to any common carriers or other persons who deliver small packages to consumers identified by any government pursuant to paragraph (5).

“(E) ACCURACY AND COMPLETENESS OF LIST OF NONCOMPLYING DELIVERY SELLERS.—In preparing and revising the list required by subparagraph (A), the Attorney General shall—

“(i) use reasonable procedures to ensure maximum possible accuracy and completeness of the records and information relied on for the purpose of determining that such delivery seller is noncomplying;

“(ii) not later than 14 days prior to including any delivery seller on the list under paragraph (1), make a reasonable attempt to send notice to the delivery seller by letter, electronic mail, or other means that the delivery seller is being placed on such list or update, with that notice citing the relevant provisions of this Act and the specific reasons for being placed on such list;

“(iii) provide an opportunity to such delivery seller to challenge placement on such list;

“(iv) investigate each such challenge by contacting the relevant Federal, State, tribal, and local law enforcement officials, and provide the specific findings and results of such investigation to such delivery seller not later than 30 days after the challenge is made; and

“(v) upon finding that any placement is inaccurate, incomplete, or cannot be verified, promptly delete such delivery seller from the list as appropriate and notify each appropriate Federal, State, tribal, and local authority of such finding.

“(F) CONFIDENTIALITY.—The list distributed pursuant to subparagraph (A) shall be confidential, and any person receiving the

list shall maintain the confidentiality of the list but may deliver the list, for enforcement purposes, to any government official or to any common carrier or other person that delivers tobacco products or small packages to consumers. Nothing in this section shall prohibit a common carrier, the United States Postal Service, or any other person receiving the list from discussing with the listed delivery sellers the delivery sellers' inclusion on the list and the resulting effects on any services requested by such listed delivery seller.

“(2) PROHIBITION ON DELIVERY.—

“(A) IN GENERAL.—Commencing on the date that is 60 days after the date of the initial distribution or availability of the list under paragraph (1)(A), no person who receives the list under paragraph (1), and no person who delivers cigarettes or smokeless tobacco to consumers, shall knowingly complete, cause to be completed, or complete its portion of a delivery of any package for any person whose name and address are on the list, unless—

“(i) the person making the delivery knows or believes in good faith that the item does not include cigarettes or smokeless tobacco;

“(ii) the delivery is made to a person lawfully engaged in the business of manufacturing, distributing, or selling cigarettes or smokeless tobacco; or

“(iii) the package being delivered weighs more than 100 pounds and the person making the delivery does not know or have reasonable cause to believe that the package contains cigarettes or smokeless tobacco.

“(B) IMPLEMENTATION OF UPDATES.—Commencing on the date that is 30 days after the date of the distribution or availability of any updates or corrections to the list under paragraph (1), all recipients and all common carriers or other persons that deliver cigarettes or smokeless tobacco to consumers shall be subject to subparagraph (A) in regard to such corrections or updates.

“(C) EXEMPTIONS.—Subparagraphs (A) and (B), subsection (b)(2), and any other requirements or restrictions placed directly on common carriers elsewhere in this subsection, shall not apply to a common carrier that is subject to a settlement agreement relating to tobacco product deliveries to consumers. For the purposes of this section, ‘settlement agreement’ shall be defined to include the Assurance of Discontinuance entered into by the Attorney General of New York and DHL Holdings USA, Inc. and DHL Express (USA), Inc. on or about July 1, 2005, the Assurance of Discontinuance entered into by the Attorney General of New York and United Parcel Service, Inc. on or about October 21, 2005, and the Assurance of Compliance entered into by the Attorney General of New York and Federal Express Corporation and Fed Ex Ground package Systems, Inc. on or about February 3, 2006, so long as each is honored nationwide to block illegal deliveries of cigarettes or smokeless tobacco to consumers, and also includes any other active agreement between a common carrier and the states that operates nationwide to ensure that no deliveries of cigarettes and smokeless tobacco shall be made to consumers for illegally operating Internet or mail-order sellers and that any such deliveries to consumers shall not be made to minors or without payment to the states and localities where the consumers are located of all taxes on the tobacco products.

“(3) SHIPMENTS FROM PERSONS ON LIST.—

“(A) IN GENERAL.—In the event that a common carrier or other delivery service delays or interrupts the delivery of a package it has in its possession because it determines or has reason to believe that the person ordering the delivery is on a list distributed under paragraph (1)—

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

“(I) the common carrier or other delivery service as if the delivery of the package had been timely completed; and

“(II) if the package is not deliverable, any reasonable additional fee or charge levied by the common carrier or other delivery service to cover its extra costs and inconvenience and to serve as a disincentive against such noncomplying delivery orders; and

“(ii) if the package is determined not to be deliverable, the common carrier or other delivery service shall, in its discretion, either provide the package and its contents to a Federal, State, or local law enforcement agency or destroy the package and its contents.

“(B) RECORDS.—A common carrier or other delivery service shall maintain, for a period of 5 years, any records kept in the ordinary course of business relating to any deliveries interrupted pursuant to this paragraph and provide that information, upon request, to the Attorney General of the United States or to the attorney general or chief law enforcement official or tax administrator of any State, local, or tribal government.

“(C) CONFIDENTIALITY.—Any person receiving records under subparagraph (B) shall use such records solely for the purposes of the enforcement of this Act and the collection of any taxes owed on related sales of cigarettes and smokeless tobacco, and the person receiving records under subparagraph (B) shall keep confidential any personal information in such records not otherwise required for such purposes.

“(4) PREEMPTION.—

“(A) IN GENERAL.—No State, local, or tribal government, nor any political authority of 2 or more State, local, or tribal governments, may enact or enforce any law or regulation relating to delivery sales that restricts deliveries of cigarettes or smokeless tobacco to consumers by common carriers or other delivery services on behalf of delivery sellers by—

“(i) requiring that the common carrier or other delivery service verify the age or identity of the consumer accepting the delivery by requiring the person who signs to accept delivery of the shipping container to provide proof, in the form of a valid, government-issued identification bearing a photograph of the individual, that such person is at least the minimum age required for the legal sale or purchase of tobacco products, as determined by either State or local law at the place of delivery;

“(ii) requiring that the common carrier or other delivery service obtain a signature from the consumer accepting the delivery;

“(iii) requiring that the common carrier or other delivery service verify that all applicable taxes have been paid;

“(iv) requiring that packages delivered by the common carrier or other delivery service contain any particular labels, notice, or markings; or

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

“(B) RELATIONSHIP TO OTHER LAWS.—Except as provided in subparagraph (C), nothing in this paragraph shall be construed to prohibit, expand, restrict, or otherwise amend or modify—

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

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

“(iii) any provision of State, local, or tribal law regulating common carriers that falls

within the provisions of sections 14501(c)(2) or 41713(b)(4)(B) of title 49 of the United States Code.

“(C) STATE LAWS PROHIBITING DELIVERY SALES.—Nothing in the Prevent All Cigarette Trafficking Act of 2008, the amendments made by that Act, or in any other Federal statute shall be construed to preempt, supersede, or otherwise limit or restrict State laws prohibiting the delivery sale, or the shipment or delivery pursuant to a delivery sale, of cigarettes or other tobacco products to individual consumers or personal residences.

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

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

“(i) all known names, addresses, website addresses, and other primary contact information of any delivery seller that offers for sale or makes sales of cigarettes or smokeless tobacco in or into the State, locality, or tribal land but has failed to register with or make reports to the respective tax administrator, as required by this Act, or that has been found in a legal proceeding to have otherwise failed to comply with this Act; and

“(ii) a list of common carriers and other persons who make deliveries of cigarettes or smokeless tobacco in or into the State, locality, or tribal lands.

“(B) UPDATES.—Any government providing a list to the Attorney General of the United States under subparagraph (A) shall also provide updates and corrections every 4 months until such time as such government notifies the Attorney General of the United States in writing that such government no longer desires to submit such information to supplement the list maintained and distributed by the Attorney General of the United States under paragraph (1).

“(C) REMOVAL AFTER WITHDRAWAL.—Upon receiving written notice that a government no longer desires to submit information under subparagraph (A), the Attorney General of the United States shall remove from the list under paragraph (1) any persons that are on the list solely because of such government's prior submissions of its list of non-complying delivery sellers of cigarettes or smokeless tobacco or its subsequent updates and corrections.

“(6) DEADLINE TO INCORPORATE ADDITIONS.—The Attorney General of the United States shall—

“(A) include any delivery seller identified and submitted by a State, local, or tribal government under paragraph (5) in any list or update that is distributed or made available under paragraph (1) on or after the date that is 30 days after the date on which the information is received by the Attorney General of the United States; and

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

“(7) NOTICE TO DELIVERY SELLERS.—Not later than 14 days prior to including any delivery seller on the initial list distributed or made available under paragraph (1), or on any subsequent list or update for the first time, the Attorney General of the United States shall make a reasonable attempt to send notice to the delivery seller by letter, electronic mail, or other means that the delivery seller is being placed on such list or update, with that notice citing the relevant provisions of this Act.

“(8) LIMITATIONS.—

“(A) IN GENERAL.—Any common carrier or other person making a delivery subject to this subsection shall not be required or otherwise obligated to—

“(i) determine whether any list distributed or made available under paragraph (1) is complete, accurate, or up-to-date;

“(ii) determine whether a person ordering a delivery is in compliance with this Act; or

“(iii) open or inspect, pursuant to this Act, any package being delivered to determine its contents.

“(B) ALTERNATE NAMES.—Any common carrier or other person making a delivery subject to this subsection shall not be required or otherwise obligated to make any inquiries or otherwise determine whether a person ordering a delivery is a delivery seller on the list under paragraph (1) who is using a different name or address in order to evade the related delivery restrictions, but shall not knowingly deliver any packages to consumers for any such delivery seller who the common carrier or other delivery service knows is a delivery seller who is on the list under paragraph (1) but is using a different name or address to evade the delivery restrictions of paragraph (2).

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

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

“(ii) not, as a matter of regular practice and procedure, making any deliveries, or any deliveries in certain States, of any cigarettes or smokeless tobacco for any person or for any person not in the business of manufacturing, distributing, or selling cigarettes or smokeless tobacco; or

“(iii) delaying or not making a delivery for any person because of reasonable efforts to comply with this Act.

“(D) OTHER LIMITS.—Section 2 and subsections (a), (b), (c), and (d) of this section shall not be interpreted to impose any responsibilities, requirements, or liability on common carriers.

“(f) PRESUMPTION.—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.—The Jenkins Act is amended by striking section 3 and inserting the following:

“SEC. 3. PENALTIES.

“(a) CRIMINAL PENALTIES.—

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

“(2) EXCEPTIONS.—

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

“(B) DELIVERY VIOLATIONS.—A common carrier or independent delivery service, or employee of a common carrier or independent delivery service, shall be subject to criminal penalties under paragraph (1) for a violation of section 2A(e) only if the violation is committed intentionally—

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

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

“(b) CIVIL PENALTIES.—

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

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

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

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

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

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

“(3) EXCEPTIONS.—

“(A) DELIVERY VIOLATIONS.—An employee of a common carrier or independent delivery service shall be subject to civil penalties under paragraph (1) for a violation of section 2A(e) only if the violation is committed intentionally—

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

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

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

“(i) the common carrier or independent delivery service has implemented and enforces effective policies and practices for complying with that section; or

“(ii) an employee of the common carrier or independent delivery service who physically receives and processes orders, picks up packages, processes packages, or makes deliveries, takes actions that are outside the scope of employment of the employee in the course of the violation, or that violate the implemented and enforced policies of the common carrier or independent delivery service described in clause (i).”

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

“SEC. 4. ENFORCEMENT.

“(a) IN GENERAL.—The United States district courts shall have jurisdiction to prevent and restrain violations of this Act and to provide other appropriate injunctive or equitable relief, including money damages, for such violations.

“(b) AUTHORITY OF THE ATTORNEY GENERAL.—The Attorney General of the United States shall administer and enforce the provisions of this Act.

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

“(1) IN GENERAL.—

“(A) STANDING.—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 a United States district court 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) SOVEREIGN IMMUNITY.—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) PROVISION OF INFORMATION.—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) USE OF PENALTIES COLLECTED.—

“(A) IN GENERAL.—There is established a separate account in the Treasury known as the ‘PACT Anti-Trafficking Fund’. 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 transferred into the PACT Anti-Trafficking Fund and shall be available to the Attorney General of the United States for purposes of enforcing the provisions of this Act and other laws relating to contraband tobacco products.

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

“(4) NONEXCLUSIVITY OF REMEDY.—

“(A) IN GENERAL.—The remedies available under this section and section 3 are in addition to any other remedies available under Federal, State, local, tribal, or other law.

“(B) STATE COURT PROCEEDINGS.—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.

“(C) TRIBAL COURT PROCEEDINGS.—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.

“(D) LOCAL GOVERNMENT ENFORCEMENT.—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) PERSONS DEALING IN TOBACCO PRODUCTS.—Any person who holds a permit under section 5712 of the Internal Revenue Code of 1986 (regarding permitting of manufacturers and importers of tobacco products and export warehouse proprietors) may bring an action in a United States district court 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) NOTICE.—

“(1) PERSONS DEALING IN TOBACCO PRODUCTS.—Any person who commences a civil action under subsection (d) shall inform the Attorney General of the United States of the action.

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

“(f) PUBLIC NOTICE.—

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

“(2) REPORTS TO CONGRESS.—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.

(a) IN GENERAL.—Chapter 83 of title 18, United States Code, is amended by inserting after section 1716D the following:

“§ 1716E. Tobacco products as nonmailable

“(a) PROHIBITION.—All cigarettes (as that term is defined in section 1 of the Act of October 19, 1949, commonly referred to as the Jenkins Act) and smokeless tobacco (as that term is defined in section 1 of the Act of October 19, 1949, commonly referred to as the Jenkins Act) are nonmailable and shall not be deposited in or carried through the mails.

“(b) ORDERS.—

“(1) If the Postal Service has reasonable cause to believe that any person is engaged in the sending of mail matter which is nonmailable under this section, the Postal Service may issue an order which—

“(A) directs any postmaster, to whom any mailing originating with such person or his representative is tendered for transmission through the mails (other than a mailing that consists only of one or more sealed letters), to refuse to accept any such mailing, unless such person or his representative first establishes to the satisfaction of the postmaster that the mailing does not contain any matter which is nonmailable under this section; and

“(B) requires the person or his representative to cease and desist from mailing any mail matter which is nonmailable under this section.

“(2) For the purposes of paragraph (1) reasonable cause includes—

“(A) a statement on a publicly available website, or an advertisement, by any person that such person will mail matter which is nonmailable under this section in return for payment; and

“(B) the placement of the person on the list created under section 2A(e) of the Jenkins Act.

“(3) Whoever fails to comply with an order issued under this subsection shall be liable to the United States for a civil penalty—

“(A) not to exceed \$10,000 for each mailing of fewer than 10 pieces;

“(B) not to exceed \$50,000 for each mailing of 10 to 50 pieces; and

“(C) not to exceed \$100,000 for each mailing of more than 50 pieces.

“(4) An order under this subsection may be enforced in the same manner as an order under section 3005 of title 39.

“(c) EXCEPTIONS.—This section shall not apply to the following:

“(1) CIGARS.—Cigars (as that term is defined in section 5702(a) of the Internal Revenue Code of 1986).

“(2) GEOGRAPHIC EXCEPTION.—Mailings within the State of Alaska or within the State of Hawaii.

“(3) BUSINESS PURPOSES.—Tobacco products mailed only for business purposes between legally operating businesses that have all applicable State and Federal government licenses or permits and are engaged in tobacco product manufacturing, distribution, wholesale, export, import, testing, investigation, or research, or for regulatory purposes between any such businesses and State or Federal Government regulatory agencies, if the Postal Service issues a final rule establishing the standards and requirements that apply to all such mailings and which includes the following:

“(A) The Postal Service shall verify that any person submitting an otherwise non-mailable tobacco product into the mails as authorized by this paragraph is a business or government agency permitted to make such mailings pursuant to this section and the related final rule.

“(B) The Postal Service shall ensure that any recipient of an otherwise nonmailable tobacco product sent through the mails pursuant to this paragraph is a business or government agency that may lawfully receive such product.

“(C) The mailings shall be sent through the Postal Service's systems that provide for the tracking and confirmation of the delivery.

“(D) The identities of the business or government entity submitting the mailing containing otherwise nonmailable tobacco products for delivery and the business or government entity receiving the mailing shall be clearly set forth on the package and such information shall be kept in Postal Service records and made available to the Postal Service, the Attorney General, and to persons eligible to bring enforcement actions pursuant to section 3(d) of the Prevent All Cigarette Trafficking Act of 2008 for a period of at least three years.

“(E) The mailings shall be marked with a Postal Service label or marking that makes it clear to Postal Service employees that it is a permitted mailing of otherwise nonmailable tobacco products that may be delivered only to a permitted government agency or business and may not be delivered to any residence or individual person.

“(F) The mailings shall be delivered only to verified adult employees of the recipient businesses or government agencies who shall be required to sign for the mailing.

“(4) CERTAIN INDIVIDUALS.—Tobacco products mailed by individual adult people for noncommercial, nonbusiness and non-money making purposes, including the return of a damaged or unacceptable tobacco product to its manufacturer, if the Postal Service issues a final rule establishing the standards and requirements that applies to all such mailings and which includes the following:

“(A) The Postal Service shall verify that any person submitting an otherwise nonmailable tobacco product into the mails as authorized by this section is the individual person identified on the return address label of the package and is an adult.

“(B) For mailings to individual persons the Postal Service shall require the person submitting the otherwise nonmailable tobacco product into the mails as authorized by this subsection to affirm that the recipient is an adult.

“(C) The package shall not weigh more than 10 ounces.

“(D) The mailings shall be sent through the Postal Service's systems that provide for the tracking and confirmation of the delivery.

“(E) No package shall be delivered or placed in the possession of any individual

person who is not a verified adult. For mailings to individual persons, the Postal Service shall deliver the package only to the verified adult recipient at the recipient address or transfer it for delivery to an Air/Army Postal Office (APO) or Fleet Postal Office (FPO) number designated in the recipient address.

“(F) No person shall initiate more than ten such mailings in any thirty-day period.

“(5) DEFINITION OF ADULT.—For the purposes of paragraphs (3) and (4), the term ‘adult’ means an individual person of at least the minimum age required for the legal sale or purchase of tobacco products as determined by the applicable law at the place the individual person is located.

“(d) SEIZURE AND FORFEITURE.—Any cigarettes or smokeless tobacco made nonmailable by this subsection that are deposited in the mails shall be subject to seizure and forfeiture, pursuant to the procedures set forth in chapter 46 of this title. Any tobacco products so seized and forfeited shall either be destroyed or retained by Government officials for the detection or prosecution of crimes or related investigations and then destroyed.

“(e) ADDITIONAL PENALTIES.—In addition to any other fines and penalties imposed by this chapter for violations of this section, any person violating this section shall be subject to an additional civil penalty in the amount of 10 times the retail value of the nonmailable cigarettes or smokeless tobacco, including all Federal, State, and local taxes.

“(f) CRIMINAL PENALTY.—Whoever knowingly deposits for mailing or delivery, or knowingly causes to be delivered by mail, according to the direction thereon, or at any place at which it is directed to be delivered by the person to whom it is addressed, anything that this section declares to be nonmailable matter shall be fined under this title, imprisoned not more than 1 year, or both.

“(g) DEFINITION.—As used in this section, the term ‘State’ has the meaning given that term in section 1716(k).”

(b) USE OF PENALTIES.—There is established a separate account in the Treasury of the United States, to be known as the “PACT Postal Service Fund”. Notwithstanding any other provision of law, an amount equal to 50 percent of any criminal and civil fines or monetary penalties collected by the United States Government in enforcing the provisions of this subsection shall be transferred into the PACT Postal Service Fund and shall be available to the Postmaster General for the purpose of enforcing the provisions of this subsection.

(c) COORDINATION OF EFFORTS.—In the enforcement of this section, the Postal Service shall cooperate and coordinate its efforts with related enforcement activities of any other Federal agency or of any State, local, or tribal government, whenever appropriate.

(d) ACTIONS BY STATE, LOCAL OR TRIBAL GOVERNMENTS RELATING TO CERTAIN TOBACCO PRODUCTS.—

(1) A State, through its attorney general (or a designee thereof), or a local government or Indian tribe that levies an excise tax on tobacco products, through its chief law enforcement officer (or a designee thereof), may in a civil action in a United States district court obtain appropriate relief with respect to a violation of section 1716E of title 18, United States Code. Appropriate relief includes injunctive and equitable relief and damages equal to the amount of unpaid taxes on tobacco products mailed in violation of that section to addressees in that State.

(2) The State (or designee) shall serve prior written notice of any action under paragraph (1) upon the Postal Service and provide the Postal Service with a copy of its complaint, except in any case where such prior notice is

not feasible, in which case the State (or designee) shall serve such notice immediately upon instituting such action. The Postal Service, in accordance with section 409(g)(2) of title 39, United States Code, shall have the right (A) to intervene in the action, (B) upon so intervening, to be heard on all matters arising therein, and (C) to file petitions for appeal.

(3) Nothing contained 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 any general civil or criminal statute of such State.

(4) Whenever the Postal Service institutes a civil action for violation of section 1716E of title 18, United States Code, no State may, during the pendency of such action instituted by the Postal Service, subsequently institute a separate civil action for any violation of such section against any defendant named in the Postal Service's complaint.

(5) Nothing in this section 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 paragraph (1), or otherwise to restrict, expand, or modify any sovereign immunity of a State or local government or Indian tribe.

(6) A State, through its attorney general, or a local government or Indian tribe that levies an excise tax on tobacco products, through its chief law enforcement officer (or a designee thereof), may provide evidence of a violation of paragraph (1) for commercial, business or money-making purposes by any person not subject to State, local, or tribal government enforcement actions for violations of paragraph (1) to the Attorney General of the United States or a United States attorney, who shall take appropriate actions to enforce the provisions of this subsection.

(7) The remedies available under this subsection are in addition to any other remedies available under Federal, State, local, tribal, or other law. Nothing in this subsection shall be construed to expand, restrict, or otherwise modify any right of an authorized State, local, or tribal government official to proceed in a State, tribal, or other appropriate court, or take other enforcement actions, on the basis of an alleged violation of State, local, tribal, or other law.

(e) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 83 of title 18 is amended by adding after the item relating to section 1716D the following new item:

“1716E. Tobacco products as nonmailable.”.

SEC. 4. 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 statute.

(b) JURISDICTION TO PREVENT AND RESTRAIN VIOLATIONS.—

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

(2) INITIATION OF ACTION.—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) **ATTORNEY FEES.**—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) **NONEXCLUSIVITY OF REMEDIES.**—The remedy available under paragraph (2) is in addition to any other remedies available under Federal, State, or other law. No provision of this Act or any other Federal law shall be held or construed to prohibit or preempt the Master Settlement Agreement, the Model Statute (as defined in the Master Settlement Agreement), any legislation amending or complementary to the Model Statute in effect as of June 1, 2006, or any legislation substantially similar to such existing, amending, or complementary legislation hereinafter enacted.

(5) **OTHER ENFORCEMENT ACTIONS.**—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) **AUTHORITY OF THE ATTORNEY GENERAL.**—The Attorney General of the United States may administer and enforce subsection (a).

(c) **DEFINITIONS.**—In this section the following definitions apply:

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

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

(B) the cigarettes or smokeless tobacco are delivered to the buyer by common carrier, private delivery service, or other method of remote delivery, or the seller is not in the physical presence of the buyer when the buyer obtains possession of the cigarettes or smokeless tobacco.

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

(A) **SHIPPING OR CONSIGNING.**—Any person in the United States to whom nontaxpaid tobacco products manufactured in a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States are shipped or consigned.

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

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

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

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

SEC. 5. INSPECTION BY BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES OF RECORDS OF CERTAIN CIGARETTE AND SMOKELESS TOBACCO SELLERS; CIVIL PENALTY.

Section 2343(c) of title 18, United States Code, is amended to read as follows:

“(c)(1) 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 (a) or (b) for the purposes of inspecting—

“(A) any records or information required to be maintained by such person under the provisions of law referred to in this chapter; or

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

“(2) The district courts of the United States shall have the authority in a civil action under this subsection to compel inspections authorized by paragraph (1).”

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

SEC. 6. 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 section 4(e) of 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;

(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 Federal or State 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, tribal members, tribal enterprises, or in Indian country;

(4) any Federal law, including Federal common law and treaties, regarding State jurisdiction, or lack thereof, over any tribe, tribal members, tribal enterprises, tribal reservations, or other lands held by the United States in trust for one or more Indian tribes; and

(5) any 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.**—Nothing in this Act or the amendments made by this Act is 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. 7. SENSE OF CONGRESS CONCERNING THE PRECEDENTIAL EFFECT OF THIS ACT.

It is the sense of Congress that unique harms are associated with online cigarette sales, including problems with verifying the ages of consumers in the digital market and the long-term health problems associated with the use of certain tobacco products. This Act was introduced recognizing the longstanding interest of Congress in urging compliance with States' laws regulating remote sales of certain tobacco products to citizens of those States, including the passage of the Jenkins Act over 50 years ago, which established reporting requirements for out-of-State companies that sell certain tobacco products to citizens of the taxing States, and which gave authority to the Department of Justice and the Bureau of Alcohol, Tobacco and Firearms to enforce the Jenkins Act. In light of the unique harms and circumstances surrounding the online sale of certain tobacco products, this Act is intended to help collect cigarette excise taxes, to stop tobacco sales to underage youth, and to help the States enforce their laws that target the online sales of certain tobacco products only. This Act is in no way meant to create a precedent regarding the collection of State sales or use taxes by, or the validity of efforts to impose other types of taxes on, out-of-State entities that do not have a physical presence within the taxing State.

SEC. 8. EFFECTIVE DATE.

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

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

SEC. 9. SEVERABILITY.

If any provision of this, or an amendment made by this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of it to any other person or circumstance shall not be affected thereby.

The **SPEAKER** pro tempore. Pursuant to the rule, the gentleman from Virginia (Mr. SCOTT) and the gentleman from Texas (Mr. SMITH) each will control 20 minutes.

The Chair recognizes the gentleman from Virginia.

GENERAL LEAVE

Mr. SCOTT of Virginia. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks and include extraneous material on the bill under consideration.

The **SPEAKER** pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. SCOTT of Virginia. I yield myself such time as I may consume.

Mr. Speaker, the Prevent All Cigarette Trafficking Act, or PACT Act, introduced by the gentleman from New York (Mr. WEINER), strengthens our law enforcement capabilities against the illegal smuggling of tobacco products.

Every year, billions of cigarettes are illegally smuggled across State lines. This fraudulent activity not only harms the public health but deprives State and local governments of sorely needed tax revenues.

In fact, tax evasion is a chief motivator for cigarette smuggling. Buying cigarettes in a State where the cigarette tax is low and selling them in a State where the cigarette tax is high allows the trafficker to sell the cigarettes at a discount and still turn an illicit profit.

States lose \$1 billion in uncollected taxes each year as a result of illegal cigarette smuggling. The illicit profit also helps finance other criminal activity which creates a revenue stream for organized crime.

Because of the scope and interstate nature of this activity, States cannot adequately address it on their own. It has long been recognized as a Federal concern.

With the existing Federal statutes, the Jenkins Act, which requires reporting interstate cigarette sales to tax officials in the buyer's State, and the Contraband Cigarette Trafficking Act, which prohibits knowingly dealing in contraband cigarettes or smokeless tobacco, those two statutes are simply not up to the task in the Internet age.

The Internet, in particular, makes it possible for today's tobacco smugglers to be even more mobile and invisible and to operate with near impunity. Even when the smugglers can be identified and pursued, they can simply shut down operations and quickly reappear under a new name and Web site.

The PACT Act addresses the shortcomings in the current law by targeting the delivery systems for illegal Internet tobacco sales: the postal system and commercial delivery services.

With limited exceptions, sending tobacco products through the United States mail will be criminally prohibited. And vendors using commercial delivery services for retail sales will be required to notify the tax authorities in the receiving State, conspicuously label all tobacco products, verify the purchaser's age, and keep careful records of all sales.

The bill raises cigarette trafficking from a misdemeanor to a felony. And it authorizes the Bureau of Alcohol, Tobacco, Firearms and Explosives to inspect the premises and files of sellers of significant quantities of cigarettes or smokeless tobacco.

□ 1800

H.R. 4081 enjoys support from a diverse spectrum of entities, including the National Association of Convenience Stores, Altria—the parent company of Phillip Morris—the Campaign for Tobacco-Free Kids, the American Wholesale Marketers Association, and the National Association of Attorneys General, among others.

I commend my colleague, Mr. WEINER, for his leadership on this important legislation. I also commend the

chairman of the Judiciary Committee, Mr. CONYERS, and the ranking member, Mr. SMITH, for their leadership in making this a bipartisan effort.

I also want to thank the other committees whose jurisdiction has touched on this bill for working with us to bring it to the floor today.

I urge my colleagues to support this important legislation.

HOUSE OF REPRESENTATIVES, COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,

Washington, DC, September 8, 2008.

Hon. JOHN CONYERS, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR CHAIRMAN CONYERS: I write to you regarding H.R. 4081, the "Prevent All Cigarette Trafficking Act of 2008".

H.R. 4081 contains provisions that fall within the jurisdiction of the Committee on Transportation and Infrastructure. I recognize and appreciate your desire to bring this legislation before the House in an expeditious manner and, accordingly, I will not seek a sequential referral of the bill. However, I agree to waive consideration of this bill with the mutual understanding that my decision to forego a sequential referral of the bill does not waive, reduce, or otherwise affect the jurisdiction of the Committee on Transportation and Infrastructure over H.R. 4081.

Further, the Committee on Transportation and Infrastructure reserves the right to seek the appointment of conferees during any House-Senate conference convened on this legislation on provisions of the bill that are within the Committee's jurisdiction. I ask for your commitment to support any request by the Committee on Transportation and Infrastructure for the appointment of conferees on H.R. 4081 or similar legislation.

Please place a copy of this letter and your response acknowledging the Committee on Transportation and Infrastructure's jurisdictional interest in the Congressional Record during consideration of the measure on the House Floor.

I look forward to working with you as we prepare to pass this important legislation.

Sincerely,

JAMES L. OBERSTAR,
Chairman.

HOUSE OF REPRESENTATIVES, COMMITTEE ON THE JUDICIARY,
Washington, DC, September 9, 2008.

Hon. JAMES L. OBERSTAR,
Chairman, Committee on Transportation and Infrastructure, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter regarding your Committee's jurisdictional interest in H.R. 4081, the Prevent All Cigarette Trafficking Act of 2008.

I appreciate your willingness to support expediting floor consideration of this important legislation today. I understand and agree that this is without prejudice to your Committee's jurisdictional interests in this or similar legislation in the future. In the event a House-Senate conference on this or similar legislation is convened, I would support your request for an appropriate number of conferees.

I will include a copy of your letter and this response in the Congressional Record in the debate on the bill. Thank you for your cooperation as we work towards enactment of this legislation.

Sincerely,

JOHN CONYERS, Jr.,
Chairman.

HOUSE OF REPRESENTATIVES, COMMITTEE ON NATURAL RESOURCES,
Washington, DC, September 9, 2008.

Hon. JOHN CONYERS,
Chairman, Committee on the Judiciary, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for the opportunity to work with you on H.R. 4081, the Prevent All Cigarette Trafficking Act, concerning provisions on tribal jurisdiction and enforcement which are within the jurisdiction of the Committee on Natural Resources.

Because of the continued cooperation and consideration that you have afforded me and my staff in developing these provisions, I will not seek a sequential referral of H.R. 4081. Of course, this waiver is not intended to prejudice any future jurisdictional claims over these provisions or similar language. I also reserve the right to seek to have conferees named from the Committee on Natural Resources on these provisions, and request your support if such a request is made.

Please place this letter into the Congressional Record during consideration of H.R. 4081 on the House floor.

With warm regards, I am

Sincerely,

NICK J. RAHALL, II,
Chairman, Committee on Natural Resources.

HOUSE OF REPRESENTATIVES, COMMITTEE ON THE JUDICIARY,
Washington, DC, September 9, 2008.

Hon. NICK J. RAHALL, II,
Chairman, Committee on Natural Resources, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter regarding your Committee's jurisdictional interest in H.R. 4081, the Prevent All Cigarette Trafficking Act of 2008.

I appreciate your willingness to support expediting floor consideration of this important legislation today. I understand and agree that this is without prejudice to your Committee's jurisdictional interests in this or similar legislation in the future. In the event a House-Senate conference on this or similar legislation is convened, I would support your request for an appropriate number of conferees.

I will include a copy of your letter and this response in the CONGRESSIONAL RECORD in the debate on the bill. Thank you for your cooperation as we work towards enactment of this legislation.

Sincerely,

JOHN CONYERS JR.,
Chairman.

HOUSE OF REPRESENTATIVES, COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC, September 9, 2008.

Hon. JOHN CONYERS, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR CHAIRMAN CONYERS: I write regarding H.R. 4081, the "Prevent All Cigarette Trafficking Act of 2008", or the "PACT" Act.

H.R. 4081 amends a law commonly referred to as the Jenkins Act, which primarily concerns the collection by the States of taxes on cigarettes. The bill, however, would amend the Jenkins Act to prohibit "delivery sales" of cigarettes and smokeless tobacco to minors. (As you know, these are sales in which the seller is not in the physical presence of the purchaser but rather communicates with the purchaser through electronic means, through the mails, or through other methods.) The bill would further preempt certain State laws that relate to such sales to minors. The regulation of sales of tobacco products to minors is a matter within the jurisdiction of the Committee on Energy and Commerce.

Another jurisdictional concern is that the bill regulates the labeling of cigarettes and

smokeless tobacco. H.R. 4081 would require specific wording on the shipping packages of such products.

I support H.R. 4081 and do not intend to seek a sequential referral of the bill. My understanding is that you agree with me that my decision to forgo a sequential referral does not in any way prejudice the Committee with respect to any of its jurisdictional prerogatives, including the appointment of conferees, on this bill or similar legislation in the future.

I request that you send a letter to me confirming my understanding regarding the bill, and that you include our letters on this matter in the CONGRESSIONAL RECORD during consideration of the bill on the House floor. I appreciate your cooperation.

Sincerely,

JOHN D. DINGELL,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC, September 9, 2008.

Hon. JOHN D. DINGELL,
*Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for your letter regarding your Committee's jurisdictional interest in H.R. 4081, the Prevent All Cigarette Trafficking Act of 2008.

I appreciate your willingness to support expediting floor consideration of this important legislation today. I understand and agree that this is without prejudice to your Committee's jurisdictional interests in this or similar legislation in the future. In the event a House-Senate conference on this or similar legislation is convened, I would support your request for an appropriate number of conferees.

I will include a copy of your letter and this response in the Congressional Record in the debate on the bill. Thank you for your cooperation as we work towards enactment of this legislation.

Sincerely,

JOHN CONYERS, Jr.,
Chairman.

HOUSE OF REPRESENTATIVES, COM-
MITTEE ON OVERSIGHT AND GOV-
ERNMENT REFORM,
Washington, DC, September 9, 2008.

Hon. JOHN CONYERS,
*Chairman, Committee on the Judiciary,
Washington, DC.*

DEAR CHAIRMAN CONYERS: I am writing about H.R. 4081, the Prevent All Cigarette Trafficking Act of 2007. The Judiciary Committee approved this measure, as amended, on July 16, 2008.

I appreciate your effort to consult with the Committee on Oversight and Government Reform regarding those provisions of H.R. 4081 that fall within the Oversight Committee's jurisdiction. Thank you for your willingness to modify certain provisions related to the treatment of cigarettes and smokeless tobacco as nonmailable matter in response to my concerns. Although I still have concerns about provisions in this legislation, I look forward to working with you to resolve these issues.

In the interest of expediting consideration of H.R. 4081, the Oversight Committee will not separately consider relevant provisions of this bill. I would, however, request your support for the appointment of conferees from the Oversight Committee should H.R. 4081 or a similar Senate bill be considered in conference with the Senate. Moreover, this letter should not be construed as a waiver of the Oversight Committee's legislative jurisdiction over subjects addressed in H.R. 4081 that fall within the jurisdiction of the Oversight Committee.

Please include our exchange of letters on this matter in the Congressional Record during consideration of this legislation on the House floor.

Again, I appreciate your willingness to consult the Committee on these matters.

Sincerely,

HENRY A. WAXMAN,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC, September 9, 2008.

Hon. HENRY A. WAXMAN,
*Chairman, Committee on Oversight and Govern-
ment Reform, House of Representatives,
Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for your letter regarding your committee's jurisdictional interest in H.R. 4081, the Prevent All Cigarette Trafficking Act of 2008.

I appreciate your willingness to support expediting floor consideration of this important legislation today. I understand and agree that this is without prejudice to your Committee's jurisdictional interests in this or similar legislation in the future. In the event a House-Senate conference on this or similar legislation is convened, I would support your request for an appropriate number of conferees.

I will include a copy of your letter and this response in the Congressional Record in the debate on the bill. Thank you for your cooperation as we work towards enactment of this legislation.

Sincerely,

JOHN CONYERS, Jr.,
Chairman.

Mr. Speaker, I reserve the balance of my time.

Mr. SMITH of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am an original cosponsor of H.R. 4081, the Prevent All Cigarette Trafficking (PACT) Act. And I want to thank Congressman WEINER from New York for working hard to bring this legislation to the floor today.

This bipartisan bill will help combat cigarette trafficking, which is a growing problem in America. Combating cigarette trafficking is an issue both Congress and the manufacturers want to address together.

Taxes on cigarettes vary greatly from State to State. This difference in tax rates creates a market for criminals and organized crime syndicates to purchase cigarettes from one State and smuggle them to another State to resell them below market value and without paying local taxes.

The PACT Act closes loopholes in current tobacco trafficking laws and provides law enforcement officials with ways to combat the deceptive methods being used by cigarette traffickers to distribute their products. First, the legislation strengthens the Jenkins Act, a long-standing law that requires vendors who sell cigarettes to out-of-State buyers to report these sales to the buyer's State tobacco tax administrator. The PACT Act makes it a Federal felony for anyone to sell cigarettes by telephone, the mail, or the Internet and not comply with all relevant State tax laws.

The PACT Act requires Internet cigarette sellers to verify the purchaser's

age and identity through easily accessible databases. This measure protects children and ensures that they cannot anonymously purchase cigarettes from the Internet.

The PACT Act also empowers the Attorney General to compile a list of delivery sellers who fail to comply with State tax laws. Any seller who lands on that list will be prohibited from using the U.S. Postal Service or common carriers like FedEx or DHL to deliver their products.

The PACT Act creates reasonable procedures to ensure that the Attorney General's list of noncompliant tobacco delivery sellers is both accurate and complete.

In summary, Mr. Speaker, the PACT Act prevents the loss of tax revenue, combats cigarette smuggling, and limits children's access to cigarettes; all worthy goals.

I urge my colleagues to support this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. SCOTT of Virginia. Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. WEINER), who is a distinguished member of the Judiciary Committee and sponsor of the legislation.

Mr. WEINER. I thank the chairman of the subcommittee and the ranking member of the full committee for not only his sponsorship of the legislation, but the great work of him and his staff to try to bring this to the floor. It's kind of a complicated issue.

You know, we accept it as an article of faith that cigarette smoking is down in this country. We believe that because, as you look at the taxes paid in the 50 States and the various cities, there has been a decline. But a lot of information really leads us to believe that that might not be true at all, that all we're really seeing a reduction of is a reduction of the amount of taxes that are getting paid to the various States. And that is because, as both Mr. SMITH and Mr. SCOTT have pointed out, more and more States are levying more and more State taxes on cigarettes. It's almost an easy thing to do. You know, some have commented that State governments are addicted to tobacco taxes. It has gotten to be so much that in New York City, for example, if you are a smoker—which I'm not—you pay an additional \$4.25 per pack compared to South Carolina, where you pay an additional 7 cents a pack in State taxes.

Well, what I just described is, in a nutshell, the incentive for smugglers. They can buy cigarettes at a very low tax rate, sell them in a higher tax rate locality and be able to make money on the vig. Well, you might say to yourself, isn't that against the law? It is. It is against the law for anyone to buy cigarettes and not pay the tax of their locality. But there is no way for authorities to know that for sure. But we have some signs and some statistics that show that it's happening in record numbers.

I will give you an example. In just my State of New York, 280 million packs of cigarettes were sold on Native American reservations. In 2006, it's 360 million. If you take the number of residents on Native American reservations and do the math and assume that those cigarettes are being smoked just on the reservation, that would mean 44 cigarettes an hour for every Native American in the country over the age of 18, or basically a cigarette a minute. So that's not happening.

What is really happening is that more and more people are buying cigarettes on the Internet, they're not reporting that they're buying them on these Web sites, which are by and large on Native American lands, and they're not paying taxes on it. And that's what's happened. Now, not only is this a great source of great revenue loss to States—my home State of New York estimates anywhere from hundreds of millions to as much as a billion dollars of lost revenue—but according to the Government Accountability Office, it might be used, as so many other smuggling operations are, for things more than just illicit activity, but terrorism.

It was found in a GAO investigation that there was a group that was buying cigarettes in North Carolina, smuggling them to Michigan, taking the money that they were making by selling them on the streets of Michigan, and then using the money to fund Hezbollah operations. That was just one investigation, one prosecution.

Now, as I've said earlier, it's already against the law to do many of these things, so why aren't there more prosecutions? Well, right now violations of the Jenkins Act, which is the prosecution that this would be under that say this type of activity is illegal, are misdemeanors. So even if you are a U.S. attorney and you say I really want to crack down on this and you wait outside and you try to do a sting, really the most you can hope for is a misdemeanor prosecution. One of the things this legislation does is makes it a felony.

A second thing that it does is it closes perhaps the largest truck-size loophole in the law, it allows people to buy cigarettes on the Internet. Now, because of the actions of New York, DHL, FedEx, UPS, they all say we no longer are going to allow anyone to transport cigarettes.

The only entity that still transports cigarettes is the United States Postal Service. They have come to Congress and said, if you want to ban us transporting tobacco, you've got to tell us by law. We can't do it. Effectively, that's what this legislation does.

Now, just to make it very clear, if you want to purchase cigarettes online, what is supposed to happen is the Internet carrier is supposed to then take a document, mail it to your home State and say that Anthony Weiner purchased X number of cases, then you're supposed to pay taxes on it. That never happens. States that have

done stings know it has never happened and the ATF says it doesn't happen. Now that is going to be required, otherwise, you're not going to be able to do any transporting of tobacco at all. And finally, it requires the same type of age verification that we have for other things on the Internet.

This is a commonsense thing that I think is going to mean that we can really make sure States get the revenues, we can make sure that the black market in tobacco is eliminated, and frankly, we can make sure that the ATF has the tools they need to crack down on this.

This legislation is a long time in coming. It would not have been possible, as I said earlier, if it were not for the help of the ranking minority member of the full committee, the Chair of the subcommittee, the members and the staff who have done a remarkable job; on the full committee side, Perry Apfelbaum and Ted Kalo, on the minority side, Sean McLaughlin, the chief of staff and general counsel on the minority side; Ameer Gopalani, who is the counsel on the subcommittee, Jesselyn McCurdy, who is another counsel. And on the minority side, Kimani Little and Caroline Lynch. Also, towards the end, to help us deal with many of the jurisdictional matters that we had, Congressman WAXMAN and the ranking member of the Government Oversight and Reform Committee, his staff director, Phil Barnett, Naomi Seiler, the counsel, Robin Appleberry, folks who worked very late into the night last night to help to make this happen. Congressman McHUGH's staff, who has been very active on this, Rob Taub, his Chief of staff; Joe Dunn, Jonathan Schleifer and Dori Friedberg of my staff. These are all people who helped make this happen.

Now, I would say, before I yield back, as with so many things, this is a relatively easy fix that we were able to work in a bipartisan fashion to make happen. None of this is worth anything unless the folks on the other side of this building finally start to legislate, finally start to take some of these things that passed by overwhelming margins, things like the COPS bill we passed in our committee, and others, that we've managed to cross the partisan divide and do good government. And I would hope that my colleagues in the Senate at some point awaken and decide to start passing some of this legislation. If they do that, it would be greatly appreciated.

I also want to point out that, to all of the groups that have been so active in trying to make this a reality, and it's a disparate bunch, Altria—I guess previously Phillip Morris—Sara and John—I can't read their last name—the Campaign for Tobacco-Free Kids, National Association of Attorneys General, the American Wholesale Marketers, New York State Association of Wholesale Marketers—Artie Katz with them, these are disparate groups who don't agree on very much. And we have

worked out a bill that I think passes not only bipartisan muster, but has enlightened elements of the industry involved.

And I should make one final point. There is a good deal of byplay going on in the 50 States about the rights of Native Americans dealing with their State governments. We say very clearly in this legislation, we are not seeking to litigate that at this time. There are two contradictory Supreme Court decisions that are out there, there are many different interpretations. We make it very clear here that what we're seeking to do is to empower the Federal authorities to operate where they're allowed to, the State authorities only to operate where they are. But I think that because of the support of the National Association of Attorneys General, folks like my State and the active advocacy of organizations and journalists like those at the New York Post, who have been beating the drum on this, we are going to finally get this done.

Mr. SMITH of Texas. Mr. Speaker, I yield back the balance of my time.

Mr. SCOTT of Virginia. Mr. Speaker, I thank the gentleman from New York for his hard work on this bill. He mentioned many others that have been working on this. He has worked so well; he had broad bipartisan support. So I hope it will be the pleasure of the House to pass the bill.

Mr. WAXMAN. Mr. Speaker, I rise in support of H.R. 4081 because of the important difference it will make in reducing young people's access to cigarettes.

The tobacco industry has long targeted the nation's youth. As this Committee learned in 1998 when I released documents from inside the board room of RJR, tobacco executives had an explicit strategy of hooking our children to create lifelong, addicted consumers.

Recently, states have begun to fight back with stronger laws to prevent teenagers from buying tobacco products. These laws require photo IDs to be shown at the point of purchase.

But these efforts haven't been successful in addressing the traffic of cigarettes through our newest, and least controlled, market: the internet.

Today, a young person anywhere in the country can go online and find a site that sells cigarettes. He or she can find a site that doesn't require any kind of meaningful age verification. And then the teenager can order cigarettes and have them delivered right to his or her home.

Despite the efforts of public health advocates, the flow of cigarettes to minors—and the evasion of state and local taxes—continues.

The majority of online cigarettes are shipped through the U.S. mails. So I am particularly supportive of this bill's inclusion of a provision to make cigarettes, smokeless tobacco, and roll-your-own tobacco nonmailable products.

The bill has incorporated important provisions from H.R. 2932, a bill on tobacco nonmailability introduced by Congressman McHUGH.

I thank Congressman McHUGH and Congressman WEINER for their leadership on this

important issue, and look forward to ongoing collaboration in reducing smoking among America's youth.

Mr. SCOTT of Virginia. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. CUELLAR). The question is on the motion offered by the gentleman from Virginia (Mr. SCOTT) that the House suspend the rules and pass the bill, H.R. 4081, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the yeas have it.

Mr. SMITH of Texas. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, proceedings will resume on motions to suspend the rules previously postponed.

Votes will be taken in the following order:

H. Res. 1307, by the yeas and nays;

H.R. 6168, by the yeas and nays;

H.R. 6630, by the yeas and nays.

Remaining postponed votes will be taken tomorrow.

The first electronic vote will be conducted as a 15-minute vote. Remaining electronic votes will be conducted as 5-minute votes.

COMMENDING BHUTAN'S PARTICI- PATION IN THE SMITHSONIAN FOLKLIFE FESTIVAL

The SPEAKER pro tempore. The unfinished business is the vote on the motion to suspend the rules and agree to the resolution, H. Res. 1307, as amended, on which the yeas and nays were ordered.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Washington (Mr. BAIRD) that the House suspend the rules and agree to the resolution, H. Res. 1307, as amended.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 395, nays 15, not voting 23, as follows:

[Roll No. 573]

YEAS—395

| | | |
|-------------|---------------|-------------|
| Abercrombie | Baird | Bilirakis |
| Ackerman | Baldwin | Bishop (GA) |
| Aderholt | Barrett (SC) | Bishop (NY) |
| Akin | Barrow | Bishop (UT) |
| Alexander | Bartlett (MD) | Blumenauer |
| Allen | Bean | Blunt |
| Altmire | Becerra | Boehner |
| Andrews | Berkley | Bonner |
| Arcuri | Berman | Bono Mack |
| Baca | Berry | Boozman |
| Bachmann | Biggert | Boren |
| Bachus | Bilbray | Boswell |

| | | |
|-----------------|-----------------|------------------|
| Boustany | Garrett (NJ) | McCaul (TX) |
| Boyd (FL) | Gerlach | McCollum (MN) |
| Boyd (KS) | Giffords | McCotter |
| Brady (PA) | Gilchrest | McDermott |
| Brady (TX) | Gillibrand | McGovern |
| Braley (IA) | Gingrey | McHenry |
| Broun (GA) | Gohmert | McHugh |
| Brown (SC) | Gonzalez | McIntyre |
| Brown, Corrine | Goodlatte | McKeon |
| Brown-Waite, | Gordon | McMorris |
| Ginny | Granger | Rodgers |
| Buchanan | Graves | McNerney |
| Burgess | Green, Al | Meek (FL) |
| Butterfield | Green, Gene | Mica |
| Buyer | Grijalva | Michaud |
| Calvert | Gutierrez | Miller (MI) |
| Camp (MI) | Hall (NY) | Miller (NC) |
| Campbell (CA) | Hall (TX) | Miller, Gary |
| Cannon | Hare | Mitchell |
| Cantor | Harman | Mollohan |
| Capito | Hastings (FL) | Moore (KS) |
| Capps | Hastings (WA) | Moore (WI) |
| Capuano | Hayes | Moran (KS) |
| Cardoza | Heller | Moran (VA) |
| Carney | Hensarling | Murphy (CT) |
| Carson | Herger | Murphy, Patrick |
| Castle | Hereth Sandlin | Murphy, Tim |
| Castor | Higgins | Murtha |
| Chabot | Hill | Musgrave |
| Chandler | Hinchey | Myrick |
| Childers | Hinojosa | Nadler |
| Clarke | Hirono | Napolitano |
| Clay | Hobson | Neal (MA) |
| Cleaver | Hoekstra | Nunes |
| Clyburn | Holden | Oberstar |
| Coble | Holt | Obey |
| Cohen | Honda | Ortiz |
| Cole (OK) | Hooley | Pallone |
| Conaway | Hoyer | Pascarell |
| Conyers | Hunter | Pastor |
| Cooper | Inglis (SC) | Paul |
| Costa | Inslee | Payne |
| Costello | Israel | Pearce |
| Courtney | Issa | Pence |
| Cramer | Jackson (IL) | Perlmutter |
| Crenshaw | Jackson-Lee | Peterson (PA) |
| Crowley | (TX) | Petri |
| Cubin | Jefferson | Pickering |
| Cuellar | Johnson (GA) | Platts |
| Cummings | Johnson (IL) | Pomeroy |
| Davis (AL) | Johnson, E. B. | Porter |
| Davis (CA) | Jones (NC) | Price (GA) |
| Davis (IL) | Jordan | Price (NC) |
| Davis (KY) | Kanjorski | Pryce (OH) |
| Davis, David | Kaptur | Putnam |
| Davis, Lincoln | Keller | Radanovich |
| Davis, Tom | Kennedy | Rahall |
| Deal (GA) | Kildee | Ramstad |
| DeFazio | Kilpatrick | Rangel |
| DeGette | Kind | Regula |
| Delahunt | King (IA) | Rehberg |
| DeLauro | King (NY) | Reichert |
| Dent | Kirk | Renzi |
| Diaz-Balart, L. | Klein (FL) | Reyes |
| Diaz-Balart, M. | Kline (MN) | Richardson |
| Dicks | Knollenberg | Rodriguez |
| Dingell | Kucinich | Rogers (AL) |
| Doggett | Kuhl (NY) | Rogers (KY) |
| Donnelly | LaHood | Rogers (MI) |
| Doyle | Lamborn | Rohrabacher |
| Drake | Lampson | Ros-Lehtinen |
| Dreier | Langevin | Roskam |
| Duncan | Larsen (WA) | Ross |
| Edwards (MD) | Larson (CT) | Rothman |
| Edwards (TX) | Latham | Roybal-Allard |
| Ehlers | LaTourette | Royce |
| Ellsworth | Latta | Ruppersberger |
| Emanuel | Lewis (CA) | Rush |
| Emerson | Lewis (GA) | Ryan (OH) |
| English (PA) | Lewis (KY) | Ryan (WI) |
| Eshoo | Linder | Salazar |
| Etheridge | Lipinski | Sali |
| Everett | LoBiondo | Sánchez, Linda |
| Fallin | Loeb sack | T. |
| Farr | Lofgren, Zoe | Sanchez, Loretta |
| Fattah | Lowey | Sarbanes |
| Feeney | Lungren, Daniel | Saxton |
| Ferguson | E. | Scalise |
| Flner | Lynch | Schakowsky |
| Flake | Mack | Schiff |
| Forbes | Mahoney (FL) | Schmidt |
| Fortenberry | Maloney (NY) | Schwartz |
| Fossella | Manzullo | Scott (GA) |
| Foster | Marchant | Scott (VA) |
| Fox | Markley | Serrano |
| Frank (MA) | Marshall | Sessions |
| Franks (AZ) | Matheson | Sestak |
| Frelinghuysen | Matsui | Shadegg |
| Gallegly | McCarthy (CA) | Shays |

Shea-Porter
Sherman
Shimkus
Shuler
Shuster
Simpson
Sires
Skelton
Slaughter
Smith (NE)
Smith (NJ)
Smith (TX)
Snyder
Solis
Souder
Space
Speier
Spratt
Stark
Stearns
Stupak
Sutton
Tanner

Tauscher
Taylor
Terry
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Tsongas
Turner
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Walberg
Walden (OR)
Walsh (NY)
Kingston
Wamp

Barton (TX)
Blackburn
Barton (IN)
Carter
Culberson

NAYS—15

Doolittle
Goode
Johnson, Sam
Kingston
Lucas
Miller (FL)
Neugebauer
Poe
Sullivan
Tancredo

NOT VOTING—23

| | | |
|----------|----------------|---------------|
| Boucher | Lee | Olver |
| Carnahan | Levin | Peterson (MN) |
| Cazayoux | McCarthy (NY) | Pitts |
| Ellison | McCrery | Reynolds |
| Engel | McNulty | Sensenbrenner |
| Hodes | Meeks (NY) | Smith (WA) |
| Hulshof | Melancon | Towns |
| Kagen | Miller, George | |

□ 1838

Messrs. LUCAS and TANCREDO changed their vote from "yea" to "nay."

Messrs. BILBRAY and FLAKE changed their vote from "nay" to "yea."

So (two-thirds being in the affirmative) the rules were suspended and the resolution, as amended, was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

LANCE CORPORAL DREW W. WEAVER POST OFFICE BUILDING

The SPEAKER pro tempore. The unfinished business is the vote on the motion to suspend the rules and pass the bill, H.R. 6168, on which the yeas and nays were ordered.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Illinois (Mr. DAVIS) that the House suspend the rules and pass the bill, H.R. 6168.

This is a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 403, nays 0, not voting 30, as follows:

[Roll No. 574]

YEAS—403

| | | |
|-------------|---------------|-------------|
| Abercrombie | Baldwin | Bilirakis |
| Ackerman | Barrett (SC) | Bishop (GA) |
| Aderholt | Barrow | Bishop (NY) |
| Akin | Bartlett (MD) | Bishop (UT) |
| Alexander | Barton (TX) | Blackburn |
| Allen | Bean | Blumenauer |
| Altmire | Becerra | Blunt |
| Arcuri | Berkley | Boehner |
| Baca | Berman | Bonner |
| Bachmann | Berry | Bono Mack |
| Bachus | Biggert | Boozman |
| Baird | Bilbray | Boren |