

ask that my colleagues vote to support unanimously this resolution and to pass H. Res. 1141.

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

H. Res. 1141 honors the accomplishments of the Honorable Sandra Day O'Connor, the first woman to serve on the United States Supreme Court.

Justice O'Connor was born in El Paso, Texas, in 1930 and grew up on a cattle ranch called the "Lazy-B" near Duncan, Arizona. The ranch was isolated and she did not have a sibling to play with until she turned eight. To compensate, young Sandra demonstrated the initiative and drive that would later propel her to the Court.

She befriended cowboys who worked on the ranch, learned to drive a car and shoot a gun, and became an expert equestrian. She also kept many pets during her childhood, including a bobcat, which probably taught her how to deal with lawyers.

Her parents decided she needed an education, so O'Connor went to live with her maternal grandmother, Mamie Scott Wilkey, in El Paso. Although homesick, O'Connor became an outstanding student and graduated from the Radford School for Girls at age 16. O'Connor always credited Mrs. Wilkey for instilling confidence in her.

She later studied economics at Stanford with an eye toward running the Lazy-B or another ranch. However, a legal dispute over the Lazy-B sparked her interest in the law. O'Connor enrolled in Stanford's law school and graduated in only 2 years, third in her class that included valedictorian and future Chief Justice of the United States William Rehnquist. One of her other classmates, John Jay O'Connor, became her husband.

This was the early 1950s and, despite her stellar law school record, O'Connor could not find work as a lawyer. The legal profession was not an easy place for women at that time.

But O'Connor was determined. She started out as a legal secretary before finding employment as the deputy county attorney for San Mateo, California. When her husband was drafted into the Judge Advocate General's Corps, she joined him in Frankfurt, Germany, where she served as a civilian attorney in the Quartermaster's Corps.

Returning to the United States in 1957, the couple settled in Phoenix and started a family—three children arrived in the next six years. O'Connor eventually hung out a shingle with one partner and began a general law practice. But with the birth of her second child, she devoted herself to homemaker duties, charitable work, and local Republican politics.

Following five years as a full-time mother, O'Connor returned to work as an Arizona assistant attorney general. Later, the governor appointed her to fill a vacant state senate seat, a position she successfully defended twice in successive elections. By 1974, O'Connor had become the first woman to serve as the majority leader in a state legislature. This achievement propelled her to the bench—first as a Maricopa County Superior Court judge and then, in 1978, as a member of the Arizona Court of Appeals, the state's intermediate appellate court.

Justice O'Connor distinguished herself as a smart, fair, even-tempered judge. She had overcome de facto discrimination through persistence, hard work, and a devotion to institutions and causes bigger than herself.

This compelling story intrigued President Ronald Reagan, who was searching for a successor to replace retiring Justice Potter Stewart at the United States Supreme Court. In Sandra Day O'Connor, he found his nominee.

Senate confirmations are not for the faint-hearted, but O'Connor came through like an experienced pro. She was confirmed by a vote of 99–0 and was sworn as the 102nd member of the Court on September 21, 1981. Of obvious importance then and now, she became the first woman to serve as an Associate Justice.

Justice O'Connor served on the Court for nearly a quarter of a century before retiring in 2006. Early in her tenure, she was known as a conservative jurist who preferred analyzing cases with a narrow, fact-specific approach. Later, she acquired the reputation as a "swing vote." Law Professor Steven Green once paid her perhaps the ultimate compliment when he observed that she "seemed to look at each case with an open mind."

Since retiring from the Court, Justice O'Connor really hasn't retired. She selflessly devoted herself to caring for her husband, John, who was diagnosed with Alzheimer's Disease in 1990 and passed away last November.

In addition to travel and spending time with other family members, Justice O'Connor has worked on an ABA project to educate Americans about the role of judges, served as a the Chancellor of The College of William & Mary, and performed trustee duties for the National Constitution Center.

In recognition of her life's work, she was awarded the Presidential Medal of Freedom—the highest civilian honor of the United States—on August 12, 2009.

Mr. Speaker, Justice Sandra Day O'Connor is a pioneer for women and an inspiration to all Americans. I urge my colleagues to support H. Res. 1141, which honors her many accomplishments.

Mr. COHEN. I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Tennessee (Mr. COHEN) that the House suspend the rules and agree to the resolution, H. Res. 1141.

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. COHEN. 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 2009

Mr. COHEN. Mr. Speaker, I move to suspend the rules and pass the bill (S. 1147) to prevent tobacco smuggling, to ensure the collection of all tobacco taxes, and for other purposes.

The Clerk read the title of the bill.

The text of the bill is as follows:

S. 1147

*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 2009" 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, makes 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.

“(2) CIGARETTE.—

“(A) IN GENERAL.—The term ‘cigarette’—

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

“(ii) includes roll-your-own tobacco (as defined in section 5702 of the Internal Revenue Code of 1986).

“(B) EXCEPTION.—The term ‘cigarette’ does not include a cigar (as 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 (regardless of whether 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’—

“(A) means any person that purchases cigarettes or smokeless tobacco; and

“(B) 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 the 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’—

“(A) has the meaning given that term in section 1151 of title 18, United States Code, except that within the State of Alaska that term applies only to the Metlakatla Indian Community, Annette Island Reserve; and

“(B) includes 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.—

“(A) IN GENERAL.—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.

“(B) INTO A STATE, PLACE, OR LOCALITY.—A sale, shipment, or transfer of cigarettes or smokeless tobacco that is made in interstate commerce, as defined in this paragraph, shall be deemed to have been made into the State, place, or locality in which such cigarettes or smokeless tobacco are delivered.

“(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 a 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) USE.—The term ‘use’ includes 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 the 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”;

(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 the 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”;

(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 the 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 per-

sonal information in the memorandum or invoice except as 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 the 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.—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 the State, by the city or town and by zip code, into which the delivery sale is so made.

“(2) RECORD RETENTION.—Records of a delivery sale shall be kept as described in paragraph (1) until the end of the 4th full calendar year that begins after the date of the delivery sale.

“(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 local or tribal taxes on cigarettes or smokeless tobacco, to the attorneys general of the States, to the chief law enforcement officers of the 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 the 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 2009, 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 of the United States 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) any other person that the Attorney General of the United States determines can promote the effective enforcement of this Act; 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 or has used in the transaction of its business or on packages delivered to customers;

“(ii) all addresses from which the delivery seller does or has done business, or ships or has shipped 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 of the United States 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 described in subparagraph (A) 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 described in subparagraph (A) any noncomplying delivery sellers identified by any State, local, or tribal government under paragraph (6), 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 (6).

“(E) ACCURACY AND COMPLETENESS OF LIST OF NONCOMPLYING DELIVERY SELLERS.—In preparing and revising the list described in subparagraph (A), the Attorney General of the United States 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 a delivery seller is not in compliance with this Act;

“(ii) not later than 14 days before including a delivery seller on the list, 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 the list, which shall cite the relevant provisions of this Act and the specific reasons for which the delivery seller is being placed on the list;

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

“(iv) investigate each challenge described in clause (iii) by contacting the relevant Federal, State, tribal, and local law enforce-

ment officials, and provide the specific findings and results of the investigation to the delivery seller not later than 30 days after the date on which the challenge is made; and

“(v) if the Attorney General of the United States determines that the basis for including a delivery seller on the list is inaccurate, based on incomplete information, or cannot be verified, promptly remove the delivery seller from the list as appropriate and notify each appropriate Federal, State, tribal, and local authority of the determination.

“(F) CONFIDENTIALITY.—The list described in subparagraph (A) shall be confidential, and any person receiving the list shall maintain the confidentiality of the list and 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 a listed delivery seller the inclusion of the delivery seller on the list and the resulting effects on any services requested by the 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 described in 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 described in paragraph (1)(A), 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 the corrections or updates.

“(3) EXEMPTIONS.—

“(A) IN GENERAL.—Subsection (b)(2) and any requirements or restrictions placed directly on common carriers under this subsection, including subparagraphs (A) and (B) of paragraph (2), shall not apply to a common carrier that—

“(i) is subject to a settlement agreement described in subparagraph (B); or

“(ii) if a settlement agreement described in subparagraph (B) to which the common carrier is a party is terminated or otherwise becomes inactive, is administering and enforcing policies and practices throughout the United States that are at least as stringent as the agreement.

“(B) SETTLEMENT AGREEMENT.—A settlement agreement described in this subparagraph—

“(i) is a settlement agreement relating to tobacco product deliveries to consumers; and

“(ii) includes—

“(I) 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 FedEx Ground Package Systems, Inc. on or about February 3, 2006, if each of those agreements is honored throughout the United States to block illegal deliveries of cigarettes or smokeless tobacco to consumers; and

“(II) any other active agreement between a common carrier and a State that operates throughout the United States to ensure that no deliveries of cigarettes or smokeless tobacco shall be made to consumers or 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.

“(4) SHIPMENTS FROM PERSONS ON LIST.—

“(A) IN GENERAL.—If a common carrier or other delivery service delays or interrupts the delivery of a package in the possession of the common carrier or delivery service because the common carrier or delivery service determines or has reason to believe that the person ordering the delivery is on a list described in paragraph (1)(A) and that clauses (i), (ii), and (iii) of paragraph (2)(A) do not apply—

“(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 any 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 offer to provide the package and its contents to a Federal, State, or local law enforcement agency.

“(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 delivery interrupted under 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—

“(i) use the 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

“(ii) keep confidential any personal information in the records not otherwise required for such purposes.

“(5) 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 the 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 nullify, 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 is described in section 14501(c)(2) or 41713(b)(4)(B) of title 49 of the United States Code.

“(C) STATE LAWS PROHIBITING DELIVERY SALES.—

“(i) IN GENERAL.—Except as provided in clause (ii), nothing in the Prevent All Cigarette Trafficking Act of 2009, 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.

“(ii) EXEMPTIONS.—No State may enforce against a common carrier a law prohibiting the delivery of cigarettes or other tobacco products to individual consumers or personal residences without proof that the common carrier is not exempt under paragraph (3) of this subsection.

“(6) 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—

“(I) offers for sale or makes sales of cigarettes or smokeless tobacco in or into the State, locality, or tribal land; and

“(II) 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 land.

“(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 the government notifies the Attorney General of the United States in writing that the government no longer desires to submit information to supplement the list described in paragraph (1)(A).

“(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 described in paragraph (1)(A) any persons that are on the list solely because of

the prior submissions of the government of the list of the government of noncomplying delivery sellers of cigarettes or smokeless tobacco or a subsequent update or correction by the government.

“(7) 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 (6) 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 list or update described in subparagraph (A) to any common carrier or other person who makes deliveries of cigarettes or smokeless tobacco that has been identified and submitted by a government pursuant to paragraph (6).

“(8) NOTICE TO DELIVERY SELLERS.—Not later than 14 days before including any delivery seller on the initial list described in paragraph (1)(A), or on an update to the list 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 the list or update, with that notice citing the relevant provisions of this Act.

“(9) 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—

“(i) shall not be required to make any inquiries or otherwise determine whether a person ordering a delivery is a delivery seller on the list described in paragraph (1)(A) who is using a different name or address in order to evade the related delivery restrictions; and

“(ii) shall not knowingly deliver any packages to consumers for any delivery seller on the list described in paragraph (1)(A) who the common carrier or other delivery service knows is a delivery seller who is on the list and 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 described in paragraph (1)(A);

“(ii) refusing, as a matter of regular practice and procedure, to make 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 knowingly violates this Act shall be imprisoned for 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 knowingly—

“(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 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 the delivery seller 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 imposed 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) the violation consists of an employee of the common carrier or independent delivery service who physically receives and processes orders, picks up packages, processes packages, or makes deliveries, taking ac-

tions that are outside the scope of employment of the employee, 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 the violations.

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

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

“(1) IN GENERAL.—

“(A) STANDING.—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, may bring an action in a United States district court to prevent and restrain violations of this Act by any person or to obtain any other appropriate relief from any 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, 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 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 Federal Government in enforcing 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 this Act and other laws relating to contraband tobacco products.

“(B) ALLOCATION OF FUNDS.—Of the amount available to the Attorney General of the United States 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 an appropriate United States district court to prevent and restrain violations of this Act by any 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 information on the Internet and by other appropriate means, information regarding all enforcement actions brought by the United States, or reported to the Attorney General of the United States, under this section, including information regarding the resolution of the enforcement actions and how the Attorney General of the United States has responded to referrals of evidence of violations pursuant to subsection (c)(2).

“(2) REPORTS TO CONGRESS.—Not later than 1 year after the date of enactment of the Prevent All Cigarette Trafficking Act of 2009, and every year thereafter until the date that is 5 years after such date of enactment, the Attorney General of the United States shall submit to Congress 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.—

“(1) IN GENERAL.—All cigarettes and smokeless tobacco (as those terms are 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. The United States Postal Service shall not accept for delivery or transmit through the mails any package that it knows or has reasonable cause to believe contains any cigarettes or smokeless tobacco made nonmailable by this paragraph.

“(2) REASONABLE CAUSE.—For the purposes of this subsection reasonable cause includes—

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

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

“(b) EXCEPTIONS.—

“(1) CIGARS.—Subsection (a) shall not apply to cigars (as defined in section 5702(a) of the Internal Revenue Code of 1986).

“(2) GEOGRAPHIC EXCEPTION.—Subsection (a) shall not apply to mailings within the State of Alaska or within the State of Hawaii.

“(3) BUSINESS PURPOSES.—

“(A) IN GENERAL.—Subsection (a) shall not apply to tobacco products mailed only—

“(i) 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

“(ii) for regulatory purposes between any business described in clause (i) and an agency of the Federal Government or a State government.

“(B) RULES.—

“(i) IN GENERAL.—Not later than 180 days after the date of enactment of the Prevent All Cigarette Trafficking Act of 2009, the Postmaster General shall issue a final rule which shall establish the standards and requirements that apply to all mailings described in subparagraph (A).

“(ii) CONTENTS.—The final rule issued under clause (i) shall require—

“(I) the United States Postal Service to verify that any person submitting an otherwise nonmailable tobacco product into the mails as authorized under this paragraph is a business or government agency permitted to make a mailing under this paragraph;

“(II) the United States Postal Service to ensure that any recipient of an otherwise nonmailable tobacco product sent through the mails under this paragraph is a business or government agency that may lawfully receive the product;

“(III) that any mailing described in subparagraph (A) shall be sent through the systems of the United States Postal Service that provide for the tracking and confirmation of the delivery;

“(IV) that the identity of the business or government entity submitting the mailing containing otherwise nonmailable tobacco products for delivery and the identity of the business or government entity receiving the mailing are clearly set forth on the package;

“(V) the United States Postal Service to maintain identifying information described in subclause (IV) during the 3-year period beginning on the date of the mailing and make the information available to the Postal Service, the Attorney General of the United States, and to persons eligible to bring enforcement actions under section 3(d) of the Prevent All Cigarette Trafficking Act of 2009;

“(VI) that any mailing described in subparagraph (A) be marked with a United States Postal Service label or marking that makes it clear to employees of the United States Postal Service 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; and

“(VII) that any mailing described in subparagraph (A) be delivered only to a verified employee of the recipient business or government agency, who is not a minor and who shall be required to sign for the mailing.

“(C) DEFINITION.—In this paragraph, the term ‘minor’ means an individual who is less than the minimum age required for the legal sale or purchase of tobacco products as de-

termined by applicable law at the place the individual is located.

“(4) CERTAIN INDIVIDUALS.—

“(A) IN GENERAL.—Subsection (a) shall not apply to tobacco products mailed by individuals who are not minors for noncommercial purposes, including the return of a damaged or unacceptable tobacco product to the manufacturer.

“(B) RULES.—

“(i) IN GENERAL.—Not later than 180 days after the date of enactment of the Prevent All Cigarette Trafficking Act of 2009, the Postmaster General shall issue a final rule which shall establish the standards and requirements that apply to all mailings described in subparagraph (A).

“(ii) CONTENTS.—The final rule issued under clause (i) shall require—

“(I) the United States Postal Service to verify that any person submitting an otherwise nonmailable tobacco product into the mails as authorized under this paragraph is the individual identified on the return address label of the package and is not a minor;

“(II) for a mailing to an individual, the United States Postal Service to require the person submitting the otherwise nonmailable tobacco product into the mails as authorized by this paragraph to affirm that the recipient is not a minor;

“(III) that any package mailed under this paragraph shall weigh not more than 10 ounces;

“(IV) that any mailing described in subparagraph (A) shall be sent through the systems of the United States Postal Service that provide for the tracking and confirmation of the delivery;

“(V) that a mailing described in subparagraph (A) shall not be delivered or placed in the possession of any individual who has not been verified as not being a minor;

“(VI) for a mailing described in subparagraph (A) to an individual, that the United States Postal Service shall deliver the package only to a recipient who is verified not to be a minor at the recipient address or transfer it for delivery to an Air/Army Postal Office or Fleet Postal Office number designated in the recipient address; and

“(VII) that no person may initiate more than 10 mailings described in subparagraph (A) during any 30-day period.

“(C) DEFINITION.—In this paragraph, the term ‘minor’ means an individual who is less than the minimum age required for the legal sale or purchase of tobacco products as determined by applicable law at the place the individual is located.

“(5) EXCEPTION FOR MAILINGS FOR CONSUMER TESTING BY MANUFACTURERS.—

“(A) IN GENERAL.—Subject to subparagraph (B), subsection (a) shall not preclude a legally operating cigarette manufacturer or a legally authorized agent of a legally operating cigarette manufacturer from using the United States Postal Service to mail cigarettes to verified adult smoker solely for consumer testing purposes, if—

“(i) the cigarette manufacturer has a permit, in good standing, issued under section 5713 of the Internal Revenue Code of 1986;

“(ii) the package of cigarettes mailed under this paragraph contains not more than 12 packs of cigarettes (240 cigarettes);

“(iii) the recipient does not receive more than 1 package of cigarettes from any 1 cigarette manufacturer under this paragraph during any 30-day period;

“(iv) all taxes on the cigarettes mailed under this paragraph levied by the State and locality of delivery are paid to the State and locality before delivery, and tax stamps or other tax-payment indicia are affixed to the cigarettes as required by law; and

“(v)(I) the recipient has not made any payments of any kind in exchange for receiving the cigarettes;

“(II) the recipient is paid a fee by the manufacturer or agent of the manufacturer for participation in consumer product tests; and

“(III) the recipient, in connection with the tests, evaluates the cigarettes and provides feedback to the manufacturer or agent.

“(B) LIMITATIONS.—Subparagraph (A) shall not—

“(i) permit a mailing of cigarettes to an individual located in any State that prohibits the delivery or shipment of cigarettes to individuals in the State, or preempt, limit, or otherwise affect any related State laws; or

“(ii) permit a manufacturer, directly or through a legally authorized agent, to mail cigarettes in any calendar year in a total amount greater than 1 percent of the total cigarette sales of the manufacturer in the United States during the calendar year before the date of the mailing.

“(C) RULES.—

“(i) IN GENERAL.—Not later than 180 days after the date of enactment of the Prevent All Cigarette Trafficking Act of 2009, the Postmaster General shall issue a final rule which shall establish the standards and requirements that apply to all mailings described in subparagraph (A).

“(ii) CONTENTS.—The final rule issued under clause (i) shall require—

“(I) the United States Postal Service to verify that any person submitting a tobacco product into the mails under this paragraph is a legally operating cigarette manufacturer permitted to make a mailing under this paragraph, or an agent legally authorized by the legally operating cigarette manufacturer to submit the tobacco product into the mails on behalf of the manufacturer;

“(II) the legally operating cigarette manufacturer submitting the cigarettes into the mails under this paragraph to affirm that—

“(aa) the manufacturer or the legally authorized agent of the manufacturer has verified that the recipient is an adult established smoker;

“(bb) the recipient has not made any payment for the cigarettes;

“(cc) the recipient has signed a written statement that is in effect indicating that the recipient wishes to receive the mailings; and

“(dd) the manufacturer or the legally authorized agent of the manufacturer has offered the opportunity for the recipient to withdraw the written statement described in item (cc) not less frequently than once in every 3-month period;

“(III) the legally operating cigarette manufacturer or the legally authorized agent of the manufacturer submitting the cigarettes into the mails under this paragraph to affirm that any package mailed under this paragraph contains not more than 12 packs of cigarettes (240 cigarettes) on which all taxes levied on the cigarettes by the State and locality of delivery have been paid and all related State tax stamps or other tax-payment indicia have been applied;

“(IV) that any mailing described in subparagraph (A) shall be sent through the systems of the United States Postal Service that provide for the tracking and confirmation of the delivery;

“(V) the United States Postal Service to maintain records relating to a mailing described in subparagraph (A) during the 3-year period beginning on the date of the mailing and make the information available to persons enforcing this section;

“(VI) that any mailing described in subparagraph (A) be marked with a United States Postal Service label or marking that makes it clear to employees of the United States Postal Service that it is a permitted



mailing of otherwise nonmailable tobacco products that may be delivered only to the named recipient after verifying that the recipient is an adult; and

“(VII) the United States Postal Service shall deliver a mailing described in subparagraph (A) only to the named recipient and only after verifying that the recipient is an adult.

“(D) DEFINITIONS.—In this paragraph—

“(i) the term ‘adult’ means an individual who is not less than 21 years of age; and

“(ii) the term ‘consumer testing’ means testing limited to formal data collection and analysis for the specific purpose of evaluating the product for quality assurance and benchmarking purposes of cigarette brands or sub-brands among existing adult smokers.

“(6) FEDERAL GOVERNMENT AGENCIES.—An agency of the Federal Government involved in the consumer testing of tobacco products solely for public health purposes may mail cigarettes under the same requirements, restrictions, and rules and procedures that apply to consumer testing mailings of cigarettes by manufacturers under paragraph (5), except that the agency shall not be required to pay the recipients for participating in the consumer testing.

“(c) 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 seized and forfeited under this subsection shall be destroyed or retained by the Federal Government for the detection or prosecution of crimes or related investigations and then destroyed.

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

“(e) 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 is nonmailable matter under this section shall be fined under this title, imprisoned not more than 1 year, or both.

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

“(g) COORDINATION OF EFFORTS.—The Postmaster General shall cooperate and coordinate efforts to enforce this section with related enforcement activities of any other Federal agency or agency of any State, local, or tribal government, whenever appropriate.

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

“(1) IN GENERAL.—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, may in a civil action in a United States district court obtain appropriate relief with respect to a violation of this section. Appropriate relief includes injunctive and equitable relief and damages equal to the amount of unpaid taxes on to-

bacco products mailed in violation of this section to addressees in that State, locality, or tribal land.

“(2) SOVEREIGN IMMUNITY.—Nothing in this subsection shall be deemed to abrogate or constitute a waiver of any sovereign immunity of a State or local government or Indian tribe against any unconsented lawsuit under paragraph (1), or otherwise to restrict, expand, or modify any sovereign immunity of a State or local government or Indian tribe.

“(3) ATTORNEY GENERAL REFERRAL.—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, may provide evidence of a violation of this section for commercial purposes by any person not subject to State, local, or tribal government enforcement actions for violations of this section to the Attorney General of the United States, who shall take appropriate actions to enforce this section.

“(4) NONEXCLUSIVITY OF REMEDIES.—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.

“(5) OTHER ENFORCEMENT ACTIONS.—Nothing in this subsection shall be construed to prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of the State.

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

(b) CLERICAL AMENDMENT.—The table of sections for chapter 83 of title 18 is amended by inserting after the item relating to section 1716D the following:

“1716E. Tobacco products as nonmailable.”

**SEC. 4. 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 the person under this chapter; or

“(B) any cigarettes or smokeless tobacco kept or stored by the person at the 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 denies access to an officer under paragraph (1), or who fails to comply with an order issued under paragraph (2), shall be subject to a civil penalty in an amount not to exceed \$10,000.”

**SEC. 5. EXCLUSIONS REGARDING INDIAN TRIBES AND TRIBAL MATTERS.**

(a) IN GENERAL.—Nothing in this Act or the amendments made by this Act shall be construed to amend, modify, or otherwise affect—

(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; or

(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 shall 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 shall prohibit, limit, or restrict enforcement by the Attorney General of the United States of this Act or an amendment made by this Act 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.

(f) DEFINITIONS.—In this section—

(1) the term “Indian country” has the meaning given that term in section 1 of the Jenkins Act, as amended by this Act; and

(2) the term “tribal enterprise” means any business enterprise, regardless of whether incorporated or unincorporated under Federal or tribal law, of an Indian tribe or group of Indian tribes.

**SEC. 6. 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.—The amendments made by section 4 shall take effect on the date of enactment of this Act.

**SEC. 7. SEVERABILITY.**

If any provision of this Act, or any 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 the Act to any other person or circumstance shall not be affected thereby.

# SEC. 8. 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 enacted recognizing the long-standing 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, Firearms, and Explosives 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.

The SPEAKER pro tempore: Pursuant to the rule, the gentleman from Tennessee (Mr. COHEN) and the gentleman from Texas (Mr. SMITH) each will control 20 minutes.

The Chair recognizes the gentleman from Tennessee.

## GENERAL LEAVE

Mr. COHEN. I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and provide extraneous material on the bill under consideration.

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

There was no objection.

Mr. COHEN. I yield myself such time as I may consume.

Mr. Speaker, S. 1147, the Prevent All Cigarette Trafficking Act of 2009, or PACT Act, will allow law enforcement to strengthen their efforts to combat illegal smuggling of tobacco products. Every year, tens of billions of cigarettes are illegally smuggled across State lines and across borders, cheating State and local governments out of much-needed tax revenues. In fact, tax evasion is the chief motivator for cigarette smuggling. Buying in a State where the cigarette tax is low and selling illegally in a State with a higher tax, the smuggler can sell at a discount and still turn a nice profit.

Cigarette smuggling costs States \$1 billion in uncollected tax revenue each year. The size of this illicit revenue stream has attracted organized crime and even terrorist groups. Because of the interstate scope of this criminal activity, as well as its sheer magnitude, States cannot adequately address it on their own. It has long been recognized as a Federal matter.

And there are Federal statutes. The Jenkins Act requires reporting inter-

state cigarette sales to tax officials in the buyer's State. And the Contraband Cigarette Trafficking Act prohibits knowingly dealing in contraband cigarettes or smokeless tobacco.

But these statutes in their current form are no match for the Internet. The Internet is being used to shepherd tobacco products across State lines in massive amounts, and the existing Federal statutes are unable to effectively stop them.

Internet-based smuggling operations are so mobile, in fact, that even when the smugglers can be identified and pursued, they can act quickly to shut down and simply reappear under a new name on a new Web site.

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

First, the bill permanently prohibits, with limited exceptions, sending tobacco products through the U.S. mail.

Second, vendors using commercial delivery services for retail sales are required to notify the tax authorities in the receiving State, conspicuously label all tobacco products, verify the purchasers are of legal age, and keep careful records of all sales.

Third, the bill raises the offense of cigarette trafficking from a misdemeanor to a felony.

Finally, the bill also 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.

S. 1147 passed the Senate on March 11 and is substantially similar to H.R. 1676, which passed the House under suspension of the rules on May 21, 2009 by a 397-11 roll call vote.

I would like to thank Mr. WEINER for his leadership in sponsoring the House version of this legislation. I also commend our ranking member, LAMAR SMITH of Texas, for his leadership in making this a bipartisan effort.

I urge my colleagues to support this important legislation.

I reserve the balance of my time.

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

Mr. Speaker, S. 1147, the Prevent All Cigarette Trafficking, or PACT, Act of 2009, is bipartisan legislation that will help Federal, State, and local law enforcement officials combat cigarette smuggling and trafficking.

Today, the House considers the Senate version of this legislation. The House passed similar bipartisan legislation last May, which I cosponsored with my colleague from New York (Mr. WEINER).

□ 1045

Tobacco smuggling has become one of the most prevalent forms of smuggling in recent years, and its effects are felt not only in America but around the world. The World Health Organiza-

tion estimates that illegal cigarettes account for over 10 percent, or approximately 600 billion cigarettes, of the almost 6 trillion cigarettes sold globally each year. According to a study by the World Bank, cigarettes are appealing to smugglers because taxes typically account for a large portion of the sale price for cigarettes. Smugglers are, therefore, able to sell contraband cigarettes at a significantly lower price, making it highly profitable to traffic them for resale.

Tobacco smuggling traditionally involves the diversion of large quantities of cigarettes from wholesale distribution into the market. This usually occurs during shipment of the cigarettes, thus allowing the traffickers to avoid most, if not all, of the taxes that will be imposed at retail. The profits from tobacco trafficking can be used to finance illegal activities, such as organized crime and drug trafficking syndicates. In addition, the sale of smuggled tobacco on the market deprives States of significant amounts of tax revenue each year.

California officials estimate that taxes are unpaid on about 15 percent of all tobacco sold in its markets at a cost of \$276 million a year. In a recently released study, the State of New York, for example, put its losses at more than \$576 million per year. Recently, my home State of Texas raised its cigarette taxes. This increase is supposed to generate an additional \$800 million in revenue for the State. This revenue could be lost if smugglers continue to divert cigarettes for resale on the underground market.

The PACT Act will help to ensure that States like California, New York, and Texas receive or recover tax revenue that is due to them. This bipartisan legislation closes loopholes in current tobacco trafficking laws and provides law enforcement officials with ways to combat the innovative methods being used by cigarette traffickers to distribute their products.

Mr. Speaker, S. 1147 is supported by the Lung Cancer Alliance, the Campaign for Tobacco-Free Kids, and more than 20 public health advocacy organizations. A number of tobacco manufacturers and a majority of State attorneys general also support passage of this bill. I urge my colleagues to support this legislation.

I yield back the balance of my time.

Mr. COHEN. Mr. Speaker, I yield as much time as he may consume to the silver-throated Representative from New York's Ninth Congressional District (Mr. WEINER).

Mr. WEINER. I thank you very much, and I thank the ranking member for his informed remarks about this bill. I want to thank also the chairman of our full committee for reaching it to this point.

You know, the fact is that the various States have different levels of tax on their tobacco products. Some States are very high. My State of New York is among the highest. Our city puts an



additional tax. It is one of the prerogatives of the different States—some have chosen to tax more; some have chosen to tax less.

But the fact is that there is an enormous economy around avoiding that tax, essentially violating the law. There are Internet tobacco sites that exist with their sole purpose apparently being to deliver tobacco to people outside the realm of taxation. That's a problem. It's a problem not just because it makes it impossible for States to collect taxes that they've levied, but it's also a problem because the sale of Internet tobacco encourages underage smoking. It also makes it very easy for anyone who wants to commit illicit acts.

When the Government Accounting Office took a look at a smuggling ring that they discovered in the early part of this century, they found that Hezbollah, the international terrorist organization, was using this difference in taxes to fund their illicit activities. Here's how it worked: They would purchase tobacco at a low tax rate in North Carolina; they would ship it to a higher tax State in Michigan; and the difference that they'd save by selling the cheaper tobacco in Michigan would produce millions of dollars.

But it is not just international terrorist organizations and not just underage smokers that are using this gap in the laws to undermine our interstate commerce. It is also just everyday citizens who have become scofflaws by using Internet tobacco sales.

So how does this PACT Act, which was sponsored by Senator KOHL and is sponsored by my Republican friends in the House and passed by a broad margin when we earlier considered this, how does this solve the problem? Well, it does it in a couple of ways.

One, it is already by agreement that UPS, FedEx, DHL, the major common carriers have said, You know what? We think it's wrong to be facilitating this by making deliveries for Internet tobacco companies, so we're not going to do it. They've agreed to it. It's in place in all 50 States. There's only one common carrier that today still delivers tobacco through the mail—the United States Postal Service. They came to us and said, Congress, if you really want us not to mail this, you've got to define what a nonmailable material is, and you've got to add that to the list. That's what the PACT Act does. It says that you can no longer mail tobacco through the mail once this becomes law. So it's going to make it very, very difficult, if not impossible, for Internet tobacco sales to continue.

A second thing that it does is that transaction that I described, where you buy something cheaply and don't pay taxes on it or pay a lower tax than you're supposed to in your State, is already a violation of the law. But effectively, those violations are never prosecuted because under the Jenkins Act, which is the structure of the law that enforces this, it's only a misdemeanor.

Well, that's going to change. In this bill, it's going to become a felony. If you think you're going to skirt the law by driving to your neighborhood Indian reservation, buying boxes and boxes or cases and cases of cigarettes, not paying taxes on it, well, now that's a violation of the Jenkins Act that rises to a felony. So it might make sense for the U.S. Attorney or for an attorney general to say, You know what? We're going to do a stakeout here, and if we find untaxed tobacco is being sold or undertaxed tobacco is being sold, we're going to crack down on it.

A third thing that it does is it increases the enforcement of the act that is supposed to happen. When you buy something in a low tax State, you're supposed to pay the taxes in your home State. So this is going to increase the reporting requirements. Anyone that sells these products is going to have to report back to your home State on the taxes that are owed.

Now, what is this going to mean? In addition to cutting down on underage smoking, this is going to mean that States and localities are going to find that they're going to start collecting the taxes they're supposed to. And again, we have people who support lower tobacco taxes on this bill, people who support higher tobacco taxes on this bill. This is not an issue of whether you think there should or should not be tobacco taxes. I think there is bipartisan agreement that there is, within the right of the 50 States, the ability to levy these taxes, and the sovereignty of those 50 States depend on them being able to collect it. What this is going to be able to do now is we are going to make sure that, in the context of this debate, that these tobacco taxes get collected.

No one knows exactly what was being evaded here, but there was one estimate that said as much as \$1 billion in New York State alone is being evaded, and we are finally going to be able to get control of this problem. All 51 State attorneys general have supported the PACT Act, the National Association of Convenience Stores, the American Wholesalers Association. Even the major tobacco companies who understand that there is a regime that has been set up in the 50 States, they want it to be followed, too. So companies like Altria and Lorillard are saying, You know what? While there are a lot of hot debates about tobacco use in this country, there should not be a hot debate about whether or not we enforce the laws of the 50 States.

I also want to thank my Republican colleagues here. Mr. SMITH and his colleagues and a bipartisan coalition said, You know what? You're going to be tough on crime; we're going to be tough on this crime as well, and have every step of the way made suggestions that have improved this legislation.

And also—this is the part that is the toughest to say—I want to thank my colleagues in the Senate. There have been 290 times that we have sent legis-

lation in their direction, and while I think it was Benjamin Franklin who called the Senate “the cooling saucer of our democracy,” they've been more akin to a meat locker in recent months. And I want to commend Senator KOHL for figuring out a way to extract something from that frigid environment. Hopefully, we'll be getting this to the President's desk.

This is an important thing, what we're doing here. This is going to allow States to collect the revenue they're supposed to have. Every antismoking organization that's concerned about underage smoking has been active in making this happen—27 public health groups, the Campaign for Tobacco-Free Kids, the American Heart Association, American Cancer Society, the American Lung Association. I think all of us who are concerned about keeping tobacco out of the hands of children recognize that this giant gap in our law that allows them to get it on the Internet without any age verification, which is another element of this bill that's going to become law, has a stake in making this bill a reality.

I want to thank Mr. COHEN for so deftly managing this bill.

I would like to thank members of the Democratic and Republican staff of the Judiciary Committee and my staff, who worked tirelessly on this legislation. In particular, I would like to thank Perry Apfelbaum, Ted Kalo and Danielle Brown on the House Judiciary Committee, Jesselyn McCurdy, Kimani Little and Caroline Lynch with the Judiciary Subcommittee on Crime, Terrorism and Homeland Security, Marni Karlin on the Senate Judiciary Committee, John Mautz with Congressman Coble's staff and Joe Dunn on my staff.

I would also like to thank Artie Katz, Lenny Schwartz and Steve Rosenthal with the New York Association of Wholesale Marketers, John Hoel and Sarah Knakmuhs with Altria, Eric Lindblom and Brian Hickey with the Campaign for Tobacco Free Kids, Anne Holloway with the American Wholesale Marketers Association, Blair Tinkle with the National Association of Attorneys General, Lyle Beckwith with the National Association of Convenience Stores and Laurie McKay with Dickstein Shapiro.

I urge my colleagues to support this important legislation.

Mr. COHEN. Mr. Speaker, I just want to commend both Ranking Member SMITH and Mr. WEINER. This is bipartisan, bicameral, and bilegally. And since it's tri-bi, I encourage everybody to vote “aye” on S. 1147.

I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Tennessee (Mr. COHEN) that the House suspend the rules and pass the bill, S. 1147.

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. COHEN. 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. 1089, by the yeas and nays;

H. Res. 1167, by the yeas and nays;

H. Res. 1184, by the yeas and nays.

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

#### RECOGNIZING 150TH ANNIVERSARY OF AUGUSTANA COLLEGE

The SPEAKER pro tempore. The unfinished business is the vote on the motion to suspend the rules and agree to the resolution, H. Res. 1089, 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 gentlewoman from New Hampshire (Ms. SHEA-PORTER) that the House suspend the rules and agree to the resolution, H. Res. 1089, as amended.

The vote was taken by electronic device, and there were—yeas 421, nays 0, not voting 9, as follows:

[Roll No. 120]

YEAS—421

Ackerman	Braley (IA)	Costa
Aderholt	Bright	Costello
Adler (NJ)	Broun (GA)	Courtney
Akin	Brown, Corrine	Crenshaw
Alexander	Brown-Waite,	Crowley
Altmire	Ginny	Culberson
Andrews	Buchanan	Cummings
Arcuri	Burgess	Dahlkemper
Austria	Burton (IN)	Davis (AL)
Baca	Butterfield	Davis (CA)
Bachmann	Buyer	Davis (IL)
Bachus	Calvert	Davis (KY)
Baird	Camp	Davis (TN)
Baldwin	Campbell	DeFazio
Barrow	Cantor	DeGette
Bartlett	Cao	Delahunt
Barton (TX)	Capito	DeLauro
Bean	Capps	Dent
Becerra	Capuano	Diaz-Balart, L.
Berkley	Cardoza	Diaz-Balart, M.
Berman	Carnahan	Dicks
Berry	Carney	Dingell
Biggert	Carson (IN)	Doggett
Bilbray	Carter	Donnelly (IN)
Bilirakis	Cassidy	Doyle
Bishop (GA)	Castle	Dreier
Bishop (NY)	Castor (FL)	Driehaus
Bishop (UT)	Chaffetz	Duncan
Blackburn	Chandler	Edwards (MD)
Blumenauer	Childers	Edwards (TX)
Blunt	Chu	Ehlers
Boccheri	Clarke	Ellison
Boehner	Clay	Ellsworth
Bonner	Cleaver	Emerson
Bono Mack	Clyburn	Eshoo
Boozman	Coble	Etheridge
Boren	Coffman (CO)	Fallin
Boswell	Cohen	Farr
Boucher	Cole	Fattah
Boustany	Conaway	Filner
Boyd	Connolly (VA)	Flake
Brady (PA)	Conyers	Fleming
Brady (TX)	Cooper	Forbes

Fortenberry	Linder	Reichert	Wittman	Woolsey	Yarmuth
Foster	Lipinski	Reyes	Wolf	Wu	Young (AK)
Fox	LoBiondo	Richardson			
Frank (MA)	Loeb	Rodriguez			
Franks (AZ)	Loftgren, Zoe	Roe (TN)			
Frelinghuysen	Lowey	Rogers (AL)	Barrett (SC)	Deal (GA)	Schrader
Fudge	Lucas	Rogers (KY)	Brown (SC)	Engel	Stark
Gallely	Luetkemeyer	Rogers (MI)	Cuellar	Perriello	Young (FL)
Garamendi	Lujan	Rohrabacher			
Garrett (NJ)	Lummis	Rooney			
Gerlach	Lungren, Daniel	Ros-Lehtinen			
Giffords	E.	Roskam			
Gingrey (GA)	Lynch	Ross			
Gohmert	Mack	Rothman (NJ)			
Gonzalez	Maffei	Roybal-Allard			
Goodlatte	Maloney	Royce			
Gordon (TN)	Manzullo	Ruppersberger			
Granger	Marchant	Rush			
Graves	Markey (CO)	Ryan (OH)			
Grayson	Markey (MA)	Ryan (WI)			
Green, Al	Marshall	Salazar			
Green, Gene	Matheson	Sanchez, Linda			
Griffith	Matsui	T.			
Grijalva	McCarthy (CA)	Sanchez, Loretta			
Guthrie	McCarthy (NY)	Sanbanes			
Gutierrez	McCaul	Scalise			
Hall (NY)	McClintock	Schakowsky			
Hall (TX)	McCollum	Schauer			
Halvorson	McCotter	Schiff			
Hare	McDermott	Schmidt			
Harman	McGovern	Schock			
Harper	McHenry	Schwartz			
Hastings (FL)	McIntyre	Scott (GA)			
Hastings (WA)	McKeon	Scott (VA)			
Heinrich	McMahon	Sensenbrenner			
Heller	McMorris	Serrano			
Hensarling	Rodgers	Sessions			
Herger	McNerney	Sestak			
Herseth Sandlin	Meek (FL)	Shadegg			
Higgins	Meeks (NY)	Shea-Porter			
Hill	Melancon	Sherman			
Himes	Mica	Shimkus			
Hinchey	Michaud	Shuler			
Hinojosa	Miller (FL)	Shuster			
Hirono	Miller (MI)	Simpson			
Hodes	Miller (NC)	Sires			
Hoekstra	Miller, Gary	Skelton			
Holden	Miller, George	Slaughter			
Holt	Minnick	Smith (NE)			
Honda	Mitchell	Smith (NJ)			
Hoyer	Mollohan	Smith (TX)			
Hunter	Moore (KS)	Smith (WA)			
Inglis	Moore (WI)	Snyder			
Inlee	Moran (KS)	Souder			
Israel	Moran (VA)	Space			
Issa	Murphy (CT)	Speier			
Jackson (IL)	Murphy (NY)	Spratt			
Jackson Lee	Murphy, Patrick	Stearns			
(TX)	Murphy, Tim	Stupak			
Jenkins	Myrick	Sullivan			
Johnson (GA)	Nadler (NY)	Sutton			
Johnson (IL)	Napolitano	Tanner			
Johnson, E. B.	Neal (MA)	Taylor			
Johnson, Sam	Neugebauer	Teague			
Jones	Nunes	Terry			
Jordan (OH)	Nye	Thompson (CA)			
Kagen	Oberstar	Thompson (MS)			
Kanjorski	Obey	Thompson (PA)			
Kaptur	Olson	Thornberry			
Kennedy	Olver	Tiahrt			
Kildee	Ortiz	Tiberi			
Kilpatrick (MI)	Owens	Tierney			
Kilroy	Pallone	Titus			
Kind	Pascarella	Tonko			
King (IA)	Pastor (AZ)	Towns			
King (NY)	Paul	Tsongas			
Kingston	Paulsen	Turner			
Kirk	Payne	Upton			
Kirkpatrick (AZ)	Pence	Van Hollen			
Kissell	Perlmutter	Velázquez			
Klein (FL)	Peters	Viscosky			
Kline (MN)	Peterson	Walden			
Kosmas	Petri	Walz			
Kratovil	Pingree (ME)	Wamp			
Kucinich	Pitts	Wasserman			
Lamborn	Platts	Schultz			
Lance	Poe (TX)	Waters			
Langevin	Polis (CO)	Watson			
Larsen (WA)	Pomeroy	Watt			
Larson (CT)	Posey	Waxman			
Latham	Price (GA)	Weiner			
LaTourette	Price (NC)	Welch			
Latta	Putnam	Westmoreland			
Lee (CA)	Quigley	Whitfield			
Lee (NY)	Radanovich	Wilson (OH)			
Levin	Rahall	Wilson (SC)			
Lewis (CA)	Rangel				
Lewis (GA)	Rehberg				

NOT VOTING—9

Barrett (SC) Deal (GA) Schrader

Brown (SC) Engel Stark

Cuellar Perriello Young (FL)

□ 1127

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.

The title of the resolution was amended so as to read: "Recognizing the 150th anniversary of Augustana College in Rock Island, Illinois."

A motion to reconsider was laid on the table.

#### MESSAGE FROM THE SENATE

A message from the Senate by Ms. Curtis, one of its clerks, announced that the Senate has passed without amendment a concurrent resolution of the House of the following title:

H. Con. Res. 249. Concurrent resolution commemorating the 45th anniversary of Bloody Sunday and the role that it played in ensuring the passage of the Voting Rights Act of 1965.

The message also announced that the Senate has passed a bill of the following title in which the concurrence of the House is requested:

S. 1782. An act to provide improvements for the operations of the Federal courts, and for other purposes.

The message also announced that the Senate agrees to the amendment of the House to the amendment of the Senate to the amendment of the House to the amendment of the Senate to the bill (H.R. 2847) "An Act making appropriations for the Departments of Commerce and Justice, and Science, and Related Agencies for the fiscal year ending September 30, 2010, and for other purposes."

#### ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. WEINER). Without objection, 5-minute voting will continue.

There was no objection.

#### SUPPORTING SOCIAL WORK MONTH AND WORLD SOCIAL WORK DAY

The SPEAKER pro tempore. The unfinished business is the vote on the motion to suspend the rules and agree to the resolution, H. Res. 1167, 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 gentlewoman from New Hampshire (Ms. SHEA-PORTER) that the House suspend the rules and agree to the resolution, H. Res. 1167.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 419, nays 0, not voting 11, as follows: