

PREVENT ALL CIGARETTE TRAFFICKING ACT OF 2008 OR
PACT ACT

SEPTEMBER 9, 2008.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. CONYERS, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 4081]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill
(H.R. 4081) to prevent tobacco smuggling, to ensure the collection
of all tobacco taxes, and for other purposes, having considered the
same, reports favorably thereon with an amendment and rec-
ommends that the bill as amended do pass.

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THE AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; FINDINGS; PURPOSES.

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

(b) FINDINGS.—Congress finds that—

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

(2) Hezbollah, Hamas, al Qaeda, and other terrorist organizations have profited from trafficking in illegal cigarettes or counterfeit cigarette tax stamps;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“SECTION 1. DEFINITIONS.

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

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

“(2) CIGARETTE.—

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

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

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

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

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

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

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

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

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

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

“(7) INDIAN COUNTRY.—The term ‘Indian country’ means—

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

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

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

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

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

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

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

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

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

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

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

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

(2) in subsection (a)—

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

(i) by inserting “CONTENTS.—” after “(a)”

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

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

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

- (v) by striking “or transfer and shipment” and inserting “, transfer, or shipment”;
 - (B) in paragraph (1)—
 - (i) by striking “with the tobacco tax administrator of the State” and inserting “with the Attorney General of the United States and with the tobacco tax administrators of the State and place”; and
 - (ii) by striking “; and” and inserting the following: “, as well as telephone numbers for each place of business, a principal electronic mail address, any website addresses, and the name, address, and telephone number of an agent in the State authorized to accept service on behalf of such person;”;
 - (C) in paragraph (2), by striking “and the quantity thereof.” and inserting “the quantity thereof, and the name, address, and phone number of the person delivering the shipment to the recipient on behalf of the delivery seller, with all invoice or memoranda information relating to specific customers to be organized by city or town and by zip code; and”; and
 - (D) by adding at the end the following:
 - “(3) with respect to each memorandum or invoice filed with a State under paragraph (2), also file copies of such memorandum or invoice with the tobacco tax administrators and chief law enforcement officers of the local governments and Indian tribes operating within the borders of the State that apply their own local or tribal taxes on cigarettes or smokeless tobacco.”;
 - (3) in subsection (b)—
 - (A) by inserting “PRESUMPTIVE EVIDENCE.—” after “(b)”;
 - (B) by striking “(1) that” and inserting “that”; and
 - (C) by striking “, and (2)” and all that follows and inserting a period; and
 - (4) by adding at the end the following:
 - “(c) USE OF INFORMATION.—A tobacco tax administrator or chief law enforcement officer who receives a memorandum or invoice under paragraph (2) or (3) of subsection (a) shall use such memorandum or invoice solely for the purposes of the enforcement of this Act and the collection of any taxes owed on related sales of cigarettes and smokeless tobacco, and shall keep confidential any personal information in such memorandum or invoice not otherwise required for such purposes.”.
 - (c) REQUIREMENTS FOR DELIVERY SALES.—The Jenkins Act is amended by inserting after section 2 the following:
- “SEC. 2A. DELIVERY SALES.**
- “(a) IN GENERAL.—With respect to delivery sales into a specific State and place, each delivery seller shall comply with—
 - “(1) the shipping requirements set forth in subsection (b);
 - “(2) the recordkeeping requirements set forth in subsection (c);
 - “(3) all State, local, tribal, and other laws generally applicable to sales of cigarettes or smokeless tobacco as if such delivery sales occurred entirely within the specific State and place, including laws imposing—
 - “(A) excise taxes;
 - “(B) licensing and tax-stamping requirements;
 - “(C) restrictions on sales to minors; and
 - “(D) other payment obligations or legal requirements relating to the sale, distribution, or delivery of cigarettes or smokeless tobacco; and
 - “(4) the tax collection requirements set forth in subsection (d).
 - “(b) SHIPPING AND PACKAGING.—
 - “(1) REQUIRED STATEMENT.—For any shipping package containing cigarettes or smokeless tobacco, the delivery seller shall include on the bill of lading, if any, and on the outside of the shipping package, on the same surface as the delivery address, a clear and conspicuous statement providing as follows: ‘CIGARETTES/SMOKELESS TOBACCO: FEDERAL LAW REQUIRES THE PAYMENT OF ALL APPLICABLE EXCISE TAXES, AND COMPLIANCE WITH APPLICABLE LICENSING AND TAX-STAMPING OBLIGATIONS’.
 - “(2) FAILURE TO LABEL.—Any shipping package described in paragraph (1) that is not labeled in accordance with that paragraph shall be treated as non-deliverable matter by a common carrier or other delivery service, if the common carrier or other delivery service knows or should know the package contains cigarettes or smokeless tobacco. If a common carrier or other delivery service believes a package is being submitted for delivery in violation of paragraph (1), it may require the person submitting the package for delivery to establish that it is not being sent in violation of paragraph (1) before accepting the package for delivery. Nothing in this paragraph shall require the common carrier or other delivery service to open any package to determine its contents.

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

“(4) AGE VERIFICATION.—

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

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

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

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

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

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

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

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

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

“(c) RECORDS.—

“(1) IN GENERAL.—Each delivery seller shall keep a record of any delivery sale, including all of the information described in section 2(a)(2), organized by the State, and within such State, by the city or town and by zip code, into which such delivery sale is so made.

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

“(3) ACCESS FOR OFFICIALS.—Records kept under paragraph (1) shall be made available to tobacco tax administrators of the States, to local governments and Indian tribes that apply their own local or tribal taxes on cigarettes or smokeless tobacco, to the attorneys general of the States, to the chief law enforcement officers of such local governments and Indian tribes, and to the Attorney General of the United States in order to ensure the compliance of persons making delivery sales with the requirements of this Act.

“(d) DELIVERY.—

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

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

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

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

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

State or local government, and the delivery seller complies with the requirement.

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

“(1) IN GENERAL.—

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

“(i) distribute the list to—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“(F) CONFIDENTIALITY.—The list distributed pursuant to subparagraph (A) shall be confidential, and any person receiving the list shall maintain the confidentiality of the list but may deliver the list, for enforcement purposes, to any government official or to any common carrier or other person that delivers tobacco products or small packages to consumers. Nothing in this section shall prohibit a common carrier, the United States Postal Service, or any other person receiving the list from discussing with the listed delivery sellers the delivery sellers’ inclusion on the list and the resulting effects on any services requested by such listed delivery seller.

“(2) PROHIBITION ON DELIVERY.—

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

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

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

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

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

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

“(3) SHIPMENTS FROM PERSONS ON LIST.—

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

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

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

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

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

“(B) RECORDS.—A common carrier or other delivery service shall maintain, for a period of 5 years, any records kept in the ordinary course of business relating to any deliveries interrupted pursuant to this paragraph and

provide that information, upon request, to the Attorney General of the United States or to the attorney general or chief law enforcement official or tax administrator of any State, local, or tribal government.

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

“(4) PREEMPTION.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“(8) LIMITATIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

“SEC. 3. PENALTIES.

“(a) CRIMINAL PENALTIES.—

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

“(2) EXCEPTIONS.—

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

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

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

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

“(b) CIVIL PENALTIES.—

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

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

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

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

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

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

“(3) EXCEPTIONS.—

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

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

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

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

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

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

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

“SEC. 4. ENFORCEMENT.

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

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

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

“(1) IN GENERAL.—

“(A) STANDING.—A State, through its attorney general (or a designee thereof), or a local government or Indian tribe that levies a tax subject to section 2A(a)(3), through its chief law enforcement officer (or a designee thereof), may bring an action in a United States district court to prevent and restrain violations of this Act by any person (or by any person control-

ling such person) or to obtain any other appropriate relief from any person (or from any person controlling such person) for violations of this Act, including civil penalties, money damages, and injunctive or other equitable relief.

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

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

“(3) USE OF PENALTIES COLLECTED.—

“(A) IN GENERAL.—There is established a separate account in the Treasury known as the ‘PACT Anti-Trafficking Fund’. Notwithstanding any other provision of law and subject to subparagraph (B), an amount equal to 50 percent of any criminal and civil penalties collected by the United States Government in enforcing the provisions of this Act shall be transferred into the PACT Anti-Trafficking Fund and shall be available to the Attorney General of the United States for purposes of enforcing the provisions of this Act and other laws relating to contraband tobacco products.

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

“(4) NONEXCLUSIVITY OF REMEDY.—

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

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

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

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

“(d) PERSONS DEALING IN TOBACCO PRODUCTS.—Any person who holds a permit under section 5712 of the Internal Revenue Code of 1986 (regarding permitting of manufacturers and importers of tobacco products and export warehouse proprietors) may bring an action in a United States district court to prevent and restrain violations of this Act by any person (or by any person controlling such person) other than a State, local, or tribal government.

“(e) NOTICE.—

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

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

“(f) PUBLIC NOTICE.—

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

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

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

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

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

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

“(j) TOBACCO PRODUCTS.—

“(1) PROHIBITION.—All cigarettes (as that term is defined in section 2341 of this title) and smokeless tobacco (as that term is defined in section 2341 of this title) 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 is known, or has reasonable cause to believe, contains any cigarettes or smokeless tobacco made nonmailable by this subsection.

“(2) REASONABLE CAUSE TO BELIEVE.—For purposes of this section, notification to the United States Postal Service by the Attorney General, a United States attorney, a State attorney general, or a local government or Indian tribe that levies an excise tax on tobacco products that an individual or entity is regularly engaged in the business of transmitting cigarettes or smokeless tobacco made nonmailable by this section shall constitute reasonable cause to believe that any packages presented to the United States Postal Service by such individual or entity contain nonmailable cigarettes or smokeless tobacco.

“(3) EXCEPTIONS.—This subsection shall not apply to the following:

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

“(B) GEOGRAPHIC EXCEPTION.—Mailings within any State that is not contiguous with at least 1 other State of the United States.

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

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

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

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

“(iv) The identities of the business or government entity submitting the mailing containing otherwise nonmailable tobacco products for delivery and the business or government entity receiving the mailing shall be clearly set forth on the package and such information shall be kept in Postal Service records and made available to the Postal Service, the Attorney General, and to persons eligible to bring enforcement actions pursuant to subsection (j)(7) for a period of at least three years.

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

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

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

“(i) The Postal Service shall verify that any person submitting an otherwise nonmailable tobacco product into the mails as authorized by

this subsection is the individual person identified on the return address label of the package and is an adult.

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

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

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

“(v) No package shall be delivered or placed in the possession of any individual person who is not a verified adult and, for mailings to individual persons. The Postal Service shall deliver the package only to the verified adult recipient at the recipient address or transfer it for delivery to an Air/Army Postal Office (APO) or Fleet Postal Office (FPO) number designated in the recipient address.

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

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

“(4) PACKAGING EXCEPTIONS INAPPLICABLE.—Subsection (b) of this section shall not apply to any tobacco product made nonmailable by paragraph (2) of this subsection.

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

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

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

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

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

(1) A State, through its attorney general (or a designee thereof), or a local government or Indian tribe that levies an excise tax on tobacco products, through its chief law enforcement officer (or a designee thereof), may bring a civil action in a United States district court to prevent and restrain any person (or any person controlling such person or aiding and abetting such person) or to obtain damages, penalties, including the penalties specified in paragraph (6), injunctive or other equitable relief from any such person (or from any person either controlling such person or aiding and abetting such person) who violates paragraph (1) by depositing nonmailable tobacco products into the mails for commercial, business, or money-making purposes.

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

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

States attorney, who shall take appropriate actions to enforce the provisions of this subsection.

(4) 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.

SEC. 4. COMPLIANCE WITH MODEL STATUTE OR QUALIFYING STATUTE.

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

(b) **JURISDICTION TO PREVENT AND RESTRAIN VIOLATIONS.**—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) **RECORDKEEPING, REPORTING, AND INSPECTION.**—Section 2343(c) of title 18, United States Code, is amended to read as follows:

“(c) 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—

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

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

(b) **PENALTIES.**—Section 2344(b) of title 18, United States Code, is amended to read as follows:

“(b) Whoever knowingly violates any rule or regulation promulgated under section 2343 or 2346 or violates section 2342(b) shall be fined under this title or imprisoned not more than three years, or both.”

SEC. 6. EXCLUSIONS REGARDING INDIAN TRIBES AND TRIBAL MATTERS.

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

(1) any agreements, compacts, or other intergovernmental arrangements between any State or local government and any government of an Indian tribe (as that term is defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) relating to the collection of taxes on cigarettes or smokeless tobacco sold in Indian country;

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

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

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

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

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

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

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

(c) **TREATMENT OF STATE AND LOCAL GOVERNMENTS.**—Nothing in this Act or the amendments made by this Act is intended, and shall not be construed to, authorize, deputize, or commission States or local governments as instrumentalities of the United States.

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

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

SEC. 7. SENSE OF CONGRESS CONCERNING THE PRECEDENTIAL EFFECT OF THIS ACT.

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

SEC. 8. EFFECTIVE DATE.

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

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

SEC. 9. SEVERABILITY.

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

PURPOSE AND SUMMARY

H.R. 4081, the Prevent All Cigarette Trafficking Act of 2007 ("PACT Act"), will help prevent tobacco smuggling and ensure the collection of tobacco taxes. This legislation will combat unlawful cigarette trafficking by updating existing anti-trafficking laws and introducing new tools to combat illegal remote sales, such as those conducted over the Internet.

BACKGROUND AND NEED FOR THE LEGISLATION**OVERVIEW OF THE PROBLEM**

Every year, tens of billions of cigarettes flow into the lucrative black market for tobacco products and are trafficked throughout the world. This smuggling seriously harms public health by undermining tobacco tax policies and making tax-free cigarettes available to young people who might otherwise not obtain them. Cigarette smuggling also helps finance criminal activity, as well as reducing government revenue that is an increasingly important funding source for public health programs.¹

Organized tobacco smuggling generally involves the diversion of large consignments of cigarettes onto the black market while the product is in transit. It is estimated that the illicit worldwide trade in cigarettes accounts for approximately 11 percent of all cigarettes sold.² By diverting cigarettes while they are in the wholesale dis-

¹Campaign for Tobacco-Free Kids, International Resource Center, available at <http://tobaccofreecenter.org>.

²See H.R. 4081, the Prevent All Cigarette Trafficking Act of 2007, and H.R. 5689, the Smuggled Tobacco Prevention Act of 2008: Hearing Before the Subcomm. on Crime, Terrorism, and Homeland Security of the H. Comm. on the Judiciary, 110th Cong. (2008) (testimony of William Hoover, Assistant Director for Field Operations, Bureau of Alcohol, Tobacco, Firearms and Explosives).

tribution chain, large-scale smugglers generally avoid all taxes.³ Estimates of worldwide tax loss to governments are between \$40 billion and \$50 billion per year.⁴ In fact, cigarette smuggling is depleting State and local treasuries in the United States. The tax losses to States from cigarette trafficking were estimated at \$1 billion for 2005. New York State alone loses approximately \$500 million annually.⁵

Unfortunately, tobacco smuggling appears to be an increasing problem in the United States. The U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) states that the number of ATF tobacco smuggling investigations has increased from ten in 1998 to 425 in fiscal year 2005.⁶

INADEQUACY OF CURRENT LAW FOR COMBATING UNLAWFUL CIGARETTE TRAFFICKING

Existing Federal statutes available for prosecuting tobacco smugglers include the Jenkins Act⁷ and the Contraband Cigarette Trafficking Act.⁸ The Jenkins Act prohibits anyone from selling and shipping cigarettes across a State line to a buyer, other than to a licensed distributor, without reporting the sale to tax officials in the buyer’s State. The Contraband Cigarette Trafficking Act prohibits anyone from knowingly shipping, transporting, receiving, possessing, selling, distributing, or purchasing contraband cigarettes or contraband smokeless tobacco. It also prohibits any person from knowingly making any false statement with respect to information it requires be kept in the records of anyone who ships, sells, or distributes in excess of 10,000 cigarettes in any single transaction.⁹

Unfortunately, these existing laws are inadequate in the Internet Age. The Internet, in particular, makes it possible for today’s illegal tobacco vendors to be mobile and invisible, and to operate with near impunity. Even when they can be identified and pursued, they can often quickly shut down operations and reappear under a new name and website. Internet-based unlawful tobacco trafficking has resulted in an estimated loss of billions of dollars in tax revenue.¹⁰

THE PACT ACT

As illegal vendors can easily elude traditional enforcement actions, one option can be to focus aggressively on the point of delivery. Illegal remote sellers of cigarettes and smokeless tobacco have, to date, been very successful by making their cigarette and smokeless tobacco deliveries to their customers by mail. To combat this problem, the PACT Act makes cigarettes and smokeless tobacco a

³ Campaign for Tobacco-Free Kids, International Resource Center, available at <http://tobaccofreecenter.org>.

⁴ See H.R. 4081, the Prevent All Cigarette Trafficking Act of 2007, and H.R. 5689, the Smuggled Tobacco Prevention Act of 2008: Hearing Before the Subcomm. on Crime, Terrorism, and Homeland Security of the H. Comm. on the Judiciary, 110th Cong. (2008) (testimony of William Hoover, Assistant Director for Field Operations, Bureau of Alcohol, Tobacco, Firearms and Explosives).

⁵ *Id.*

⁶ S. Rep. No. 110–153 (2007).

⁷ 15 U.S.C. § 375.

⁸ 18 U.S.C. § 2342.

⁹ The threshold was originally 60,000 in a transaction, but was amended to 10,000 in 2006.

¹⁰ Internet Cigarette Sales: Limited Compliance and Enforcement of the Jenkins Act Result in Loss of State Tax Revenue, U.S. Government Accountability Office, May 1, 2003, at <http://www.gao.gov/docdb/lite/details.php?rptno=GAO-03-714T>

non-mailable matter through the U.S. Postal Service. Moreover, under the bill, Internet sellers are required to verify the purchaser's age and identity through easily accessible databases, and distributors are also required under the Act to use a method of delivery that requires the person accepting delivery to verify their age and to sign for delivery.

HEARINGS

The Committee's Subcommittee on Crime, Terrorism, and Homeland Security held 1 day of hearings on H.R. 4081, the "Prevent All Cigarette Trafficking Act of 2007," and a related bill, H.R. 5689, the "Smuggled Tobacco Prevention Act of 2008," on May 1, 2008. Testimony was received from Representative Anthony Weiner (D-NY); Representative Dale E. Kildee (D-MI); Arian Melendez, Chairman, Reno-Sparks Indian Colony; Matthew L. Myers, President, Campaign for Tobacco-Free Kids; Steve Rosenthal, New York State Association of Wholesale Marketers; John Colledge, Independent Consultant; and David Lapp, Chief Counsel, Tobacco Enforcement Unit, Office of the Attorney General of Maryland.

COMMITTEE CONSIDERATION

On July 16, 2008, the Committee met in open session and ordered the bill, H.R. 4081, favorably reported with an amendment, by voice vote, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee's consideration of H.R. 4081.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 4081, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 25, 2008.

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4081, the Prevent All Cigarette Trafficking Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Grabowicz (for Federal costs), who can be reached at 226–2860, Melissa Merrell (for the State, local, and tribal impact), who can be reached at 225–3220, and Jacob Kuipers (for the private-sector impact), who can be reached at 226–2940.

Sincerely,

PETER R. ORSZAG,
DIRECTOR.

Enclosure

cc: Honorable Lamar S. Smith.
Ranking Member

H.R. 4081—Prevent All Cigarette Trafficking Act of 2007.

SUMMARY

H.R. 4081 would require individuals and businesses that make interstate sales of cigarettes or smokeless tobacco to comply with State tax laws and register with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATFE). The bill would permit ATFE to inspect the premises of anyone who distributes or sells more than 10,000 cigarettes or 500 cans or packages of smokeless tobacco in a month via telephone, the mail, or the Internet. H.R. 4081 also would increase penalties, including criminal and civil fines, for violations of the laws relating to taxation of cigarettes and smokeless tobacco.

CBO estimates that implementing H.R. 4081 would cost about \$120 million over the 2009–2013 period for ATFE to enforce the bill's provisions, assuming appropriation of the necessary amounts. Enacting the bill could affect direct spending and receipts, but we estimate that any such effects would not be significant.

H.R. 4081 would impose both intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on certain tobacco sellers, common carriers, and individuals. The bill also would preempt certain State, local, and tribal laws regulating the delivery of tobacco products. CBO expects that the direct costs to comply with those mandates would not be significant and would not exceed the annual thresholds established in UMRA for intergovernmental and private-sector mandates (\$68 million and \$136 million respectively in 2008, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 4081 is shown in the following table. The costs of this legislation fall within budget func-

tion 750 (administration of justice). In addition to the costs shown below, enacting H.R. 4081 could affect direct spending and receipts. However, we estimate that any such effects would be insignificant.

By Fiscal Year, in Millions of Dollars

	2008	2009	2010	2011	2012	2013	2009–2013
CHANGES IN SPENDING SUBJECT TO APPROPRIATION							
Estimated Authorization Level	0	18	25	26	27	28	124
Estimated Outlays	0	15	24	26	27	28	120

BASIS OF ESTIMATE

CBO estimates that implementing H.R. 4081 would increase ATFE's operating costs by about \$120 million over the 2009–2013 period. For this estimate, CBO assumes that the necessary amounts will be appropriated near the start of each fiscal year and that spending will follow historical patterns for similar activities conducted by ATFE. In addition, the bill would have an insignificant effect on direct spending and receipts.

Spending Subject to Appropriation

H.R. 4081 would permit ATFE to inspect the premises of businesses that distribute or sell more than 10,000 cigarettes or 500 cans or packages of smokeless tobacco each month via telephone, the mail, or the Internet. Under the bill, the agency expects that it would need to conduct inspections of about 7,500 businesses each year. ATFE anticipates that it would need to hire about 130 new employees, including inspectors, agents, auditors, and support personnel, to carry out inspections and any subsequent investigations into illegal activity. Once fully phased in, CBO estimates that the costs of additional employees under the bill would reach \$25 million annually, including salaries, benefits, training, equipment, upgraded computer systems, and support costs. For this estimate, we assume that the new positions would be fully staffed by fiscal year 2010.

Direct Spending and Revenues

Enacting H.R. 4081 could increase collections of civil and criminal fines for violations of the bill's provisions relating to the sale of cigarettes and smokeless tobacco. CBO expects that any additional collections would not be significant because of the relatively small number of additional cases likely to be affected. The receipt of criminal and civil fines is recorded as additional revenue.

Under the bill's provisions, some of those fines would not be available for spending, some would be deposited in the Crime Victims fund and later spent, and others would be deposited in new funds established by the bill and later spent from those funds. (Deposits into one of those new funds would be spent by the U.S. Postal Service and thus would be classified as off-budget.) CBO estimates that spending of fines collected under H.R. 4081 would not be significant.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 4081 contains both intergovernmental and private-sector mandates as defined in UMRA. It would impose new requirements related to certain sales of tobacco products by private and tribal entities and preempt certain State, local, and tribal laws. According to ATFE and industry sources, most of the entities affected by the requirements already perform many of the duties that would be imposed by this bill, and CBO estimates that the additional requirements would impose minimal costs. CBO expects that the preemption would impose minimal costs on State, local, or tribal governments. Consequently, CBO estimates that the total direct costs to comply with the requirements of the bill would fall well below the annual thresholds established in UMRA for intergovernmental and private-sector mandates (\$68 million and \$136 million respectively in 2008, adjusted annually for inflation).

Requirements Related to Delivery Sales of Tobacco. H.R. 4081 would require delivery sellers of tobacco products to comply with certain requirements regarding reporting, shipping, record keeping, and tax collection. Delivery sellers include those businesses that sell or deliver tobacco products purchased online, by catalog, or by phone. The bill also would prohibit importers and interstate tobacco sellers from selling certain types of cigarettes that are not in full compliance with the terms of the tobacco settlement agreement between States and tobacco manufacturers and sellers. The requirements would be both intergovernmental and private-sector mandates because tobacco delivery sales are conducted by both private-sector and tribal entities.

H.R. 4081 also would require common carriers and delivery services to keep records for 5 years of any business relating to a delivery that has been interrupted because the carrier or service determines or has reason to believe that the person ordering the delivery is in violation of this act. In addition, the bill would affect individuals who currently send or receive tobacco products in the mail by prohibiting the mailing of such tobacco products in the continental United States through the U.S. Postal Service. Information from industry experts indicates that most companies that ship tobacco products, including two tribal governments, rarely use the Postal Service to distribute their products.

Preemption of State, Local, and Tribal Laws. The bill also would preempt certain State, local, and tribal laws that require common carriers and delivery services to verify the age and require the signature of the individual accepting a tobacco delivery or place other restrictions on those services.

Other Impacts on State, Local, and Tribal Governments

H.R. 4081 would benefit State governments by expanding their authority to enforce cigarette tax collection through the Jenkins Act. This expanded authority would allow State attorneys general to file charges in U.S. district courts against sellers or deliverers who violate this law. This bill also would preserve existing agreements between States and tribal governments regarding cigarette taxes.

PREVIOUS CBO ESTIMATE

On July 20, 2007, CBO transmitted a cost estimate for S. 1027, the Prevent All Cigarette Trafficking Act of 2007, as ordered reported by the Senate Committee on the Judiciary on May 17, 2007. The two bills are similar, and the cost estimates are identical.

ESTIMATE PREPARED BY:

Federal Spending: Mark Grabowicz (226–2860)
Impact on State, Local, and Tribal Governments: Melissa Merrell (225–3220)
Impact on the Private Sector: Jacob Kuipers (226–2940)

ESTIMATE APPROVED BY:

Theresa Gullo
Deputy Assistant Director for Budget Analysis

PERFORMANCE GOALS AND OBJECTIVES

The Committee states, pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, that H.R. 4081 strengthens and updates existing cigarette trafficking laws to ensure the collection of tobacco taxes and introduces new law enforcement tools to combat illegal remote sales of cigarettes, such as those conducted over the Internet.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clause 3 of the Constitution.

ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 4081 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

SECTION-BY-SECTION ANALYSIS

The following discussion describes the bill as reported by the Committee.

Sec. 1. Short Title; Findings; Purposes. Section 1(a) sets forth the short title of the bill as the “Prevent All Cigarette Trafficking Act of 2007” or “PACT Act.”

Section 1(b) sets forth certain findings. It notes, for example, that federal, State, and local governments are losing billions of dollars in tax revenue each year due to the sale of illegal tobacco products.

Section 1(c) sets forth the purposes of the bill. These include, for instance, that the legislation is intended to provide the government with more tools to combat tobacco smuggling, increase collections on lost tax revenue, and prevent youth access to tobacco products.

Sec. 2. Collection of State Cigarette and Smokeless Tobacco Taxes. Section 2(a) sets forth various definitions. Subsection (a) replaces the entire definition section of the Jenkins Act. It adds a definition of “delivery sale” to ensure that the provisions of the Jenkins Act

apply to all remote sellers, whether they conduct sales by telephone, fax, Internet, or mail. The provision also expands the definition of “use” to include the consumption, storage, handling, or disposal of smokeless tobacco, in addition to cigarettes. In addition, subsection (a) amends the Act’s definition of “tobacco tax administrator” to include local or tribal officials duly authorized to collect and administer the tobacco tax in addition to the State official.

Subsection (b) enhances the existing reporting requirements under the Jenkins Act. While current law requires sellers to file reports with the tobacco tax administrator of a State, locality, or tribal government, this subsection would also require sellers to file these reports with the Attorney General of the United States. It also requires vendors to provide additional identifying information in these reports to ensure that law enforcement officials can locate them for inspection and enforcement purposes.

Subsection (c) adds a new section to the Jenkins Act to provide for stronger enforcement of the Act’s requirements against illegal Internet and other remote sellers, defined as “delivery sellers” under the bill, by requiring them to comply with specified requirements.

First, a delivery seller must comply with the shipping requirements outlined in the PACT Act. For example, the delivery seller would have to place a label on the outside of all packages to indicate that it contains cigarettes or smokeless tobacco, to provide notice to a common carrier or other delivery service. This subsection also prohibits a delivery seller from selling tobacco products to a person under the minimum age required for the legal sale or purchase of tobacco at the place of delivery, and requires a delivery seller to ensure that its customers are of legal age to purchase tobacco.

Second, delivery sellers would be required to keep records of all delivery sales made, for at least 4 years. These records would have to be made available to State, local, tribal, and Federal officials for enforcement purposes.

Third, the subsection prohibits delivery sellers from selling or delivering cigarettes or smokeless tobacco into a State or locality unless the seller has paid all applicable excise taxes and affixed all required stamps or other indicia to the cigarettes or smokeless tobacco in advance of completing the sale or delivery.

In addition, this subsection would authorize the Attorney General of the United States to compile a list of unauthorized delivery sellers. The list would include any delivery seller who has not registered with the Attorney General, as required under the Jenkins Act, or has failed to comply with the requirements of the Jenkins Act or the PACT Act. The list would be compiled with the input of Federal law enforcement officials, as well as the State attorney general, tax administrator, or chief law enforcement official in each State, local or tribal government that levies a tobacco tax. Both the initial list and any updates would be distributed to these tax and law enforcement officials, and to all common carriers and other delivery services, including the United States Postal Service. The bill would prohibit any common carrier from knowingly completing the delivery of any package for a person whose name and other identifying information is included on the list.

The subsection provides due process procedures for those sellers who have been incorrectly placed on the list of prohibited delivery sellers. For example, the subsection requires that the Attorney General ensure maximum possible accuracy and completeness of the list, and that individuals be given the right to challenge placement on the list, with the Attorney General required to investigate any such challenge and provide the results to the individual in question. If the Attorney General finds that the placement is inaccurate or flawed, the individual must be removed from the list, and all of the appropriate authorities specified in the bill must be notified.

Finally, the subsection provides a limited exception from these requirements for a common carrier with an active settlement agreement with a State, honored nationwide, to block deliveries of cigarettes and smokeless tobacco or shipments where applicable taxes have not been paid. The three major common carriers—United Parcel Service, FedEx, and DHL—all have such agreements with the New York State Attorney General’s office. At the May 1, 2008, hearing on the bill, the Crime, Terrorism, and Homeland Security Subcommittee received testimony that these agreements were effective at stopping the illegal shipment of cigarettes. To consumers.

Subsection (2)(d) replaces section 3 of the Jenkins Act to enhance existing penalties and provide for punishment of any violation of the new requirements added to the Jenkins Act by the PACT Act. The subsection would place two limitations on the applicable criminal penalties. First, it clarifies that State, local and tribal governments are not subject to criminal penalties. Second, it provides that common carriers, independent delivery services, and their employees are subject to criminal penalties only if the violation was committed intentionally, either for economic gain or to assist a delivery seller in violating the Act.

Subsection (2)(e) of the bill includes new authorities for State, local, and tribal law enforcement officials. Currently, the ability of State and local law enforcement officials to reach out-of-State cigarette traffickers through enforcement actions in their own State courts is limited. To extend the reach of these officials, this subsection provides jurisdiction to U.S. district courts to prevent and restrain violations of this Act, as well as to award injunctive or equitable relief, including money damages, for such violations.

Subsection (2)(e) also establishes a PACT Anti-Trafficking Fund in the U.S. Treasury. Fifty percent of penalties collected by the Federal Government through PACT enforcement efforts would be transferred into the PACT Anti-Trafficking Fund and made available to the Attorney General for use in connection with enforcement of the Jenkins Act and other tobacco product anti-contraband laws.

Sec. 3. Treatment of Cigarettes and Smokeless Tobacco as Non-mailable Matter. Section 1716 of Title 18, United States Code, provides that alcohol, poisons, weapons, and other specified materials must be treated as nonmailable matter by the United States Postal Service. Section 3 of the bill amends that section to add cigarettes and smokeless tobacco to the list of nonmailable matter. This would make it illegal for delivery sellers to deposit tobacco products in the U.S. mails, and would prohibit the U.S. Postal Service from

accepting for delivery, or delivering, packages its employees know or have reason to believe contain cigarettes or smokeless tobacco.

This section of the bill allows for limited instances of allowable mailings through the U.S. Postal Service. For example, it allows for returns of damaged tobacco products by adult consumers and business mailings to government testing facilities.

Sec. 4. Compliance with Model Statute or Qualifying Statute. In 1998, 46 States, along with Puerto Rico, the U.S. Virgin Islands, American Samoa, the Northern Mariana Islands, Guam, and the District of Columbia, entered into an agreement known as the Master Settlement Agreement (MSA) with the Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company, Philip Morris Incorporated, R.J. Reynolds Tobacco Company, Commonwealth Tobacco, and Liggett & Myers. The MSA imposed a variety of restrictions on the advertising, marketing, and promotion of cigarettes.

In addition to avoiding taxes, an important way in which cigarette traffickers are able to raise money and compete with legitimate sellers is to avoid compliance with State escrow statutes, which require manufacturers that are not parties to the MSA to pay money into an escrow fund. Subsection (a) addresses this loophole by prohibiting tobacco manufacturers that do not pay funds into the State escrow accounts from selling or delivering for sale cigarettes in States that are a party to the MSA.

Subsection (b) provides that U.S. district courts have jurisdiction to prevent and restrain violations of this section. It allows States, through their attorneys general, to bring suit in U.S. district courts for violations of the compliance provisions of this section and to recover attorney's fees from persons found to have willfully and knowingly violated this section.

Sec. 5. Inspection by Bureau of Alcohol, Tobacco, Firearms, and Explosives of Records of Certain Cigarette and Smokeless Tobacco Sellers. Section 5 of the bill amends the Contraband Cigarette Trafficking Act by authorizing the Bureau of Alcohol, Tobacco, Firearms, and Explosives to inspect the premises and records of delivery sellers who transfer more than ten thousand cigarettes or more than five hundred single-unit cans or packages of smokeless tobacco in a single month.

Sec. 6. Exclusions Regarding Indian Tribes and Tribal Matters. Section 6(a)(1) provides that nothing in the PACT Act is intended to affect, amend, or modify any agreements, compacts, or other intergovernmental arrangements between an Indian tribe and any State or local government relating to the collection of taxes on cigarettes or smokeless tobacco.

Section 6(a)(3) clarifies that nothing in the PACT Act should be construed to affect, amend, or modify limitations under existing Federal law, including Federal common law and treaties on State, local, and tribal tax and regulatory authority with respect to the sale, use or distribution of cigarettes and smokeless tobacco by or to Indian tribes or tribal members in Indian country.

Sections 6(a)(4) and 6(a)(5) clarify that the bill does not have any impact on the current state of law regarding Tribal sovereignty. The Committee intends that the terms "Indian country" and "tribal enterprise" as used in section 6 are to be interpreted broadly. For example, the term "tribal enterprise" encompasses different types of business entities owned by one or more tribes. "Indian country"

includes, among other things, Indian lands and cultural centers held in trust. These various entities benefit from the same jurisdictional status as the tribe or tribes that own them.

Sec. 7. Sense of Congress Concerning the Precedential Effect of this Act. Section 7 of the bill expresses the sense of the Congress that unique harms are associated with online cigarette sales and that this bill is not intended to create a precedent regarding the collection of other State sales or use taxes by out-of-State entities that do not have a physical presence within the taxing State.

Sec. 8. Effective Date. Section 8 of the bill provides that Section 5, dealing with Bureau of Alcohol, Tobacco, Firearms, and Explosives authority, takes effect on the date of enactment, and that other provisions of the bill take effect ninety days after that date.

Sec. 9. Severability. Section 8 provides that the invalidation of any provision of the bill or its application will not affect other provisions of the bill, or their application to any other person or circumstance.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

ACT OF OCTOBER 19, 1949

(Commonly known as the “Jenkins Act”)

AN ACT to assist States in collecting sales and use taxes on cigarettes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [That for the purposes of this Act—

[(1) The term “person” includes corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.

[(2) The term “cigarette” means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

[(3) The term “distributor licensed by or located in such State” means—

[(A) in the case of any State which by State statute or regulation authorizes the distribution of cigarettes at wholesale or retail, any person so authorized, or

[(B) in the case of any other State, any person located in such State who distributes cigarettes at wholesale or retail;

but such term in no case includes a person who acquires cigarettes for purposes other than resale.

[(4) The term “use” in addition to its ordinary meaning, means the consumption, storage, handling, or disposal of cigarettes.

[(5) The term “tobacco tax administrator” means the State official duly authorized to administer the cigarette tax law of a State.

[(6) The term “State” includes the District of Columbia, Alaska, Hawaii, and the Commonwealth of Puerto Rico.

[(7) The term “transfers for profit” means any transfer for profit or other disposition for profit, including any transfer or disposition by an agent to his principal in connection with which the agent receives anything of value.】

SECTION. 1. DEFINITIONS.

As used in this Act, the following definitions apply:

(1) **ATTORNEY GENERAL.**—*The term “attorney general”, with respect to a State, means the attorney general or other chief law enforcement officer of the State, or the designee of that officer.*

(2) **CIGARETTE.**—

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

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

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

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

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

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

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

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

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

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

(7) **INDIAN COUNTRY.**—*The term “Indian country” means—*

(A) Indian country as defined in section 1151 of title 18, United States Code, except that within the State of Alaska

that term applies only to the Metlakatla Indian Community, Annette Island Reserve; and

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

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

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

(10) **PERSON.**—*The term “person” means an individual, corporation, company, association, firm, partnership, society, State government, local government, Indian tribal government, governmental organization of such government, or joint stock company.*

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

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

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

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

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

SEC. 2. (a) CONTENTS.—*Any person who sells [or transfers], transfers, or ships for profit [cigarettes] cigarettes or smokeless tobacco in interstate commerce, whereby such [cigarettes] cigarettes or smokeless tobacco are shipped into a State, locality, or Indian country of an Indian tribe taxing the sale or use of [cigarettes] cigarettes or smokeless tobacco, [to other than a distributor licensed by or located in such State,] or who advertises or offers [cigarettes] cigarettes or smokeless tobacco for such a sale [or transfer and shipment], transfer, or shipment, shall—*

(1) first file [with the tobacco tax administrator of the State] with the Attorney General of the United States and with the tobacco tax administrators of the State and place into which such shipment is made or in which such advertisement trade name (if any), and the address of his principal place of business and of any other place of business[; and], as well as telephone

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

(2) not later than the 10th day of each calendar month, file with the tobacco tax administrator of the State into which such shipment is made, a memorandum or a copy of the invoice covering each and every shipment of **[cigarettes]** *cigarettes or smokeless tobacco* made during the previous calendar month into such State; the memorandum or invoice in each case to include the name and address of the person to whom the shipment was made, the brand, **[and the quantity thereof.]** *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*

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

(b) **PRESUMPTIVE EVIDENCE.**—The fact that any person ships or delivers for shipment any **[cigarettes]** *cigarettes or smokeless tobacco* shall, if such shipment is into a State in which such person has filed a statement with the tobacco tax administrator under subsection (a)(1) of this section, be presumptive evidence **[(1)]** that such **[cigarettes]** *cigarettes or smokeless tobacco* were sold, or transferred for profit, by such person**],** and (2) that such sale or transfer was to other than a distributor licensed by or located in such State**].**

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

SEC. 2A. DELIVERY SALES.

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

- (1) the shipping requirements set forth in subsection (b);*
- (2) the recordkeeping requirements set forth in subsection (c);*
- (3) all State, local, tribal, and other laws generally applicable to sales of cigarettes or smokeless tobacco as if such delivery sales occurred entirely within the specific State and place, including laws imposing—*
 - (A) excise taxes;*
 - (B) licensing and tax-stamping requirements;*
 - (C) restrictions on sales to minors; and*

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

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

(b) *SHIPPING AND PACKAGING.*—

(1) *REQUIRED STATEMENT.*—For any shipping package containing cigarettes or smokeless tobacco, the delivery seller shall include on the bill of lading, if any, and on the outside of the shipping package, on the same surface as the delivery address, a clear and conspicuous statement providing as follows: “CIGARETTES/SMOKELESS TOBACCO: FEDERAL LAW REQUIRES THE PAYMENT OF ALL APPLICABLE EXCISE TAXES, AND COMPLIANCE WITH APPLICABLE LICENSING AND TAX-STAMPING OBLIGATIONS”.

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

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

(4) *AGE VERIFICATION.*—

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

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

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

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

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

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

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

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

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

(c) RECORDS.—

(1) IN GENERAL.—Each delivery seller shall keep a record of any delivery sale, including all of the information described in section 2(a)(2), organized by the State, and within such State, by the city or town and by zip code, into which such delivery sale is so made.

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

(3) ACCESS FOR OFFICIALS.—Records kept under paragraph (1) shall be made available to tobacco tax administrators of the States, to local governments and Indian tribes that apply their own local or tribal taxes on cigarettes or smokeless tobacco, to the attorneys general of the States, to the chief law enforcement officers of such local governments and Indian tribes, and to the Attorney General of the United States in order to ensure the compliance of persons making delivery sales with the requirements of this Act.

(d) DELIVERY.—

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

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

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

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

(2) EXCEPTION.—Paragraph (1) does not apply to a delivery sale of smokeless tobacco if the law of the State or local govern-

ment of the place where the smokeless tobacco is to be delivered requires or otherwise provides that delivery sellers collect the excise tax from the consumer and remit the excise tax to the State or local government, and the delivery seller complies with the requirement.

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

(1) IN GENERAL.—

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

(i) distribute the list to—

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

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

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

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

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

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

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

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

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

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

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

and to any common carriers or other persons who deliver small packages to consumers identified by any government pursuant to paragraph (5).

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

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

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

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

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

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

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

(2) *PROHIBITION ON DELIVERY.*—

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

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

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

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

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

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

(3) *SHIPMENTS FROM PERSONS ON LIST.*—

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

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

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

(II) *if the package is not deliverable, any reasonable additional fee or charge levied by the common carrier or other delivery service to cover its extra costs and inconvenience and to serve as a disincen-*

tive against such noncomplying delivery orders;
and

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

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

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

(4) PREEMPTION.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) LIMITATIONS.—

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

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

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

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

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

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

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

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

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

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

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

【SEC. 3. Whoever violates any provision of this Act shall be guilty of a misdemeanor and shall be fined not more than \$1,000, or imprisoned not more than 6 months, or both.

【SEC. 4. The United States district courts shall have jurisdiction to prevent and restrain violations of this Act.】

SEC. 3. PENALTIES.

(a) CRIMINAL PENALTIES.—

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

(2) EXCEPTIONS.—

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

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

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

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

(b) CIVIL PENALTIES.—

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

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

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

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

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

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

(3) *EXCEPTIONS.*—

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

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

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

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

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

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

SEC. 4. ENFORCEMENT.

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

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

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

(1) *IN GENERAL.*—

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

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

(2) *PROVISION OF INFORMATION.*—A State, through its attorney general, or a local government or Indian tribe that levies a tax subject to section 2A(a)(3), through its chief law enforce-

ment officer (or a designee thereof), may provide evidence of a violation of this Act by any person not subject to State, local, or tribal government enforcement actions for violations of this Act to the Attorney General of the United States or a United States attorney, who shall take appropriate actions to enforce the provisions of this Act.

(3) *USE OF PENALTIES COLLECTED.*—

(A) *IN GENERAL.*—There is established a separate account in the Treasury known as the “PACT Anti-Trafficking Fund”. Notwithstanding any other provision of law and subject to subparagraph (B), an amount equal to 50 percent of any criminal and civil penalties collected by the United States Government in enforcing the provisions of this Act shall be transferred into the PACT Anti-Trafficking Fund and shall be available to the Attorney General of the United States for purposes of enforcing the provisions of this Act and other laws relating to contraband tobacco products.

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

(4) *NONEXCLUSIVITY OF REMEDY.*—

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

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

(C) *TRIBAL COURT PROCEEDINGS.*—Nothing in this Act shall be construed to expand, restrict, or otherwise modify any right of an authorized Indian tribal government official to proceed in tribal court, or take other enforcement actions, on the basis of an alleged violation of tribal law.

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

(d) *PERSONS DEALING IN TOBACCO PRODUCTS.*—Any person who holds a permit under section 5712 of the Internal Revenue Code of 1986 (regarding permitting of manufacturers and importers of tobacco products and export warehouse proprietors) may bring an action in a United States district court to prevent and restrain violations of this Act by any person (or by any person controlling such person) other than a State, local, or tribal government.

(e) *NOTICE.*—

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

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

(f) *PUBLIC NOTICE.*—

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

(2) *REPORTS TO CONGRESS.*—The Attorney General shall submit to Congress each year a report containing the information described in paragraph (1).

TITLE 18, UNITED STATES CODE

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PART I—CRIMES

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CHAPTER 83—POSTAL SERVICE

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§ 1716. Injurious articles as nonmailable

(a) * * *

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(j) *TOBACCO PRODUCTS.*—

(1) *PROHIBITION.*—All cigarettes (as that term is defined in section 2341 of this title) and smokeless tobacco (as that term is defined in section 2341 of this title) 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 is known, or has reasonable cause to believe, contains any cigarettes or smokeless tobacco made nonmailable by this subsection.

(2) *REASONABLE CAUSE TO BELIEVE.*—For purposes of this section, notification to the United States Postal Service by the Attorney General, a United States attorney, a State attorney general, or a local government or Indian tribe that levies an excise tax on tobacco products that an individual or entity is regularly engaged in the business of transmitting cigarettes or smokeless tobacco made nonmailable by this section shall constitute reasonable cause to believe that any packages presented to the United States Postal Service by such individual or entity contain nonmailable cigarettes or smokeless tobacco.

(3) *EXCEPTIONS.*—This subsection shall not apply to the following:

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

(B) *GEOGRAPHIC EXCEPTION*.—Mailings within any State that is not contiguous with at least 1 other State of the United States.

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

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

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

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

(iv) The identities of the business or government entity submitting the mailing containing otherwise nonmailable tobacco products for delivery and the business or government entity receiving the mailing shall be clearly set forth on the package and such information shall be kept in Postal Service records and made available to the Postal Service, the Attorney General, and to persons eligible to bring enforcement actions pursuant to subsection (j)(7) for a period of at least three years.

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

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

(D) *CERTAIN INDIVIDUALS*.—Tobacco products mailed by individual adult people for noncommercial, nonbusiness and non-money making purposes, including the return of a damaged or unacceptable tobacco product to its manufacturer, if the Postal Service issues a final rule establishing

the standards and requirements that applies to all such mailings and which includes the following:

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

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

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

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

(v) No package shall be delivered or placed in the possession of any individual person who is not a verified adult and, for mailings to individual persons. The Postal Service shall deliver the package only to the verified adult recipient at the recipient address or transfer it for delivery to an Air/Army Postal Office (APO) or Fleet Postal Office (FPO) number designated in the recipient address.

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

(E) DEFINITION OF ADULT.—For the purposes of subparagraphs (C) and (D), the term “adult” means an individual person of at least the minimum age required for the legal sale or purchase of tobacco products as determined by the applicable law at the place the individual person is located.

(4) PACKAGING EXCEPTIONS INAPPLICABLE.—Subsection (b) of this section shall not apply to any tobacco product made nonmailable by paragraph (2) of this subsection.

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

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

[(j)] (k)(1) * * *

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[(k)] (l) For purposes of this section, the term “State” includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

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CHAPTER 114—TRAFFICKING IN CONTRABAND CIGARETTES AND SMOKELESS TOBACCO

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§ 2343. Recordkeeping, reporting, and inspection

(a) * * *

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[(c) Upon the consent of any person who ships, sells, or distributes any quantity of cigarettes in excess of 10,000 in a single transaction, or pursuant to a duly issued search warrant, the Attorney General may enter the premises (including places of storage) of such person for the purpose of inspecting any records or information required to be maintained by such person under this chapter, and any cigarettes kept or stored by such person at such premises.]

(c) 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—

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

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

* * * * *

§ 2344. Penalties

(a) * * *

[(b) Whoever knowingly violates any rule or regulation promulgated under section 2343(a) or 2346 of this title or violates section 2342(b) of this title shall be fined under this title or imprisoned not more than three years, or both.]

(b) Whoever knowingly violates any rule or regulation promulgated under section 2343 or 2346 or violates section 2342(b) shall be fined under this title or imprisoned not more than three years, or both.

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DISSENTING VIEWS

While I support the overall objectives of H.R. 4081—preventing the illegal sale of cigarettes—I have serious concerns that legitimate and legal business practices will be unintentionally affected by the current language of the bill.

H.R. 4081 provides several exceptions for sending cigarettes through the mail for various non-commercial uses. For example, it permits a tobacco company to use the mail to send tobacco products to a third party for testing purposes. Consumers are also permitted to return defective or damaged tobacco products through the mail.

Unfortunately, H.R. 4081 is lacking one more exception: the mailing of products for consumer testing purposes. Like any other consumer product, tobacco products are test marketed, and tobacco companies should continue to have the right to use the mail for such purposes. No sales are involved by such mailings, no business transactions occur, and no profits are made. Therefore, this exemption should be included in the current list of exemptions for non-commercial purposes.

In the 109th Congress we amended the Contraband Cigarette Trafficking Act (CCTA) to address cigarette smuggling schemes that were linked by the Justice Department to organizations funneling funds to terrorist groups around the world. One particular smuggling operation involved contraband cigarettes from North Carolina. When we amended the CCTA in the 109th Congress, it was supported by all stakeholders and was limited to cigarette smuggling. Unfortunately, H.R. 4081 has not garnered universal support from stakeholders because it would outlaw consumer testing which is a legitimate and legal business practice that is not in any way linked to the sale of counterfeit cigarettes.

HOWARD COBLE.

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