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PREVENT ALL CIGARETTE TRAFFICKING ACT OF 2007

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

R E P O R T

[To accompany S. 1027]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to which was referred the bill (S. 1027), to prevent tobacco smuggling, to ensure the collection of all tobacco taxes, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

CONTENTS

	Page
I. Purpose of the Prevent All Cigarette Trafficking Act	1
II. Background and Need for the Legislation	2
III. History of the Bill and Committee Consideration	8
IV. Section-by-Section and Summary of the Bill	9
V. Congressional Budget Office Cost Estimate	17
VI. Regulatory Impact Evaluation	20
VII. Conclusion	20
VIII. Changes to Existing Law Made by the Bill, as Reported	20

I. PURPOSE OF THE PREVENT ALL CIGARETTE TRAFFICKING ACT OF 2007

Senators Kohl, Specter, Leahy, Kyl and Schumer introduced the Prevent All Cigarette Trafficking Act (PACT Act), S. 1027, on March 29, 2007, to help combat cigarette trafficking by updating existing anti-trafficking laws and introducing new tools to combat illegal remote sales, such as those conducted over the Internet.

The bill would: (1) expand the Jenkins Act to cover smokeless tobacco; (2) increase penalties under the Jenkins Act from a misdemeanor to a felony; (3) make it a federal offense for any seller

making a “delivery sale” to fail to comply with all state excise tax, sales tax licensing, and tax stamping laws; (4) empower state Attorneys General and others to bring an action in federal court seeking injunctive relief and civil penalties against out-of-state sellers who violate state or federal requirements; (5) utilize a list enforcement scheme to ensure common carriers will not deliver tobacco products for those who violate federal and state laws; (6) require Internet and other remote sellers to require sellers to use a method of delivery that requires the persons accepting delivery to verify that they are old enough to purchase tobacco and sign for the delivery; (7) make cigarettes and smokeless tobacco nonmailable matter for purposes of the United States Postal Service; (8) grant the Bureau of Alcohol, Tobacco, Firearms and Explosives broad record inspection authority for distributors of large quantities of tobacco products; and (9) clarify that it is not intended to modify specified agreements or limitations regarding the collection of taxes on cigarettes or smokeless tobacco sold in Indian country.

II. BACKGROUND AND NEED FOR THE LEGISLATION

A. TERRORIST FINANCING GENERALLY

Shortly after the September 11, 2001, terrorist attacks on the World Trade Center and the Pentagon, President George W. Bush declared: “Money is the lifeblood of terrorist operations today. We’re asking the world to stop payment.”¹

Since the 2001 terrorist attacks, it has been widely recognized that an indispensable part of our strategy for defeating al Qaeda and protecting this country from the threat of terrorism is to deny terrorist organizations the very things they need to survive, including financial support. The September 2002 National Security Strategy of the United States declared:

The United States will continue to work with our allies to disrupt the financing of terrorism. We will identify and block the sources of funding for terrorism, freeze the assets of terrorists and those who support them, deny terrorists access to the international financial system, protect legitimate charities from being abused by terrorists, and prevent the movement of terrorists’ assets through alternative financial networks.

To that end, the United States, in conjunction with its allies around the world, has undertaken a broad effort to freeze, seize, and intercept the flow of funds to terrorist groups, including the al Qaeda terrorist network that was responsible for the 9/11 attacks.

According to the Government Accountability Office (GAO), terrorists continue to raise money “through illicit trade in myriad commodities, such as drugs, weapons, cigarettes, and systems, such as charities, owing to their profitability.”² The 9/11 stated: “Counterterrorism investigations often overlap or are cued by other criminal investigations, such as money laundering or the *smuggling of contraband* [emphasis added]. In the field, the close con-

¹“President Freezes Terrorist Assets: Remarks by the President, Secretary of the Treasury O’Neill, and Secretary of State Powell on Executive Order.” EMediaMillworks Inc., September 25, 2001.

²Government Accountability Office, U.S. Agencies Should Systematically Assess Terrorists’ Use of Alternative Financing Mechanisms, GAO-04-163, 2003.

nection to criminal work has many benefits.”³ The PACT Act is an effort to provide better tools with respect to criminal enforcement of cigarette smuggling laws.

B. NORTH CAROLINA SMUGGLING RING: FIRST EXAMPLE OF GROWING LINK BETWEEN TERRORISM AND CIGARETTE TRAFFICKING

One area which continues to be exploited by terrorists and other organized criminal enterprises to raise significant amounts of money is tobacco smuggling. While cigarette trafficking is a global problem, much of it is happening in the United States. A truckload of cigarettes contains approximately 800 cases, and it can generate as much as \$2 million for a smuggler. According to William Billingslea, an intelligence analyst with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), “[w]ith huge profits—and low penalties for arrest and conviction—illicit cigarette trafficking now has begun to rival drug trafficking as a funding choice for terrorist groups.”⁴

The first case of documented links between a terrorist organization and cigarette smuggling was uncovered a decade ago. In 1996, ATF began a joint investigation with the Iredell County Sheriff Department into illegal cigarette trafficking in Charlotte, North Carolina. Law enforcement focused their attention on this group when it was discovered that they were purchasing large pallets full of cigarettes from local distributors, and paying for everything in cash.

Their business model involved moving large amounts of cigarettes across state lines, where they would be sold for a substantial profit in states with higher tobacco tax rates. In North Carolina, where they purchased the cigarettes, the tax was 50 cents per carton. They would then load the cigarettes onto large trucks and drive them to Michigan in vans and moving trucks, where they would sell them to local convenience store owners. In Michigan, the tax was \$7.50 per carton, but those taxes were never paid. By avoiding Michigan’s tobacco tax, it is estimated that these individuals were able to make anywhere from \$3,000 to \$10,000 on each trip. According to court documents, “the conspiracy involved a quantity of cigarettes valued at roughly \$7.5 million and that the state of Michigan was deprived of \$3 million in tax revenues.”

In 1999, the Federal Bureau of Investigation (FBI) notified ATF that a Hezbollah cell was raising funds and procuring equipment in Charlotte. Mohamad Hammoud led the fundraising efforts for the cell, and he was also a prime suspect in the cigarette smuggling ring identified by ATF in 1996. The most troubling aspect of this case is what happened to the profits from this illegal smuggling operation. Hammoud transferred funds generated by the cigarette trafficking scheme, as well as money raised from other sources, back to Lebanon to support Hezbollah, a designated foreign terrorist organization. That support included cash and dual use equipment, such as night vision goggles, high-end computers, ultrasonic dog repellers, and global positioning systems.

On July 21, 2000, special agents from the FBI, as part of “Operation Smokescreen,” arrested 18 members of the organization for

³The 9/11 Commission Report, p. 424.

⁴Sari Horwitz, Cigarette Smuggling Linked to Terrorism, Wash. Post, June 8, 2004 at A1.

contraband cigarette trafficking, money laundering, and immigration violations. This investigation lasted approximately six and one half years. In the end, Hammoud was convicted of cigarette trafficking, providing material support to a foreign terrorist organization, and other charges.

In September 2003, in a separate case, Hassan Moussa Makki pleaded guilty to charges of cigarette smuggling, racketeering, and providing material support to a foreign terrorist organization. From 1996 to 2002, Makki and his co-conspirators would obtain low-tax cigarettes from the Cattaraugus Indian Reservation in New York and North Carolina and sell them for a substantial profit in Detroit. According to ATF, Hassan Makki was trafficking between \$36,000 and \$72,000 of contraband cigarettes per month between 1997 and 1999. It was later discovered that one of Makki's sources for cheap cigarettes was Hammoud's North Carolina smuggling ring, and like Hammoud, Makki would then remit the proceeds from these illegal tobacco sales to Hezbollah.

This is only one example of a vast, interstate conspiracy to engage in cigarette smuggling operations inside the United States and funnel the proceeds to a designated foreign terrorist organization. Neither the problem of cigarette trafficking nor the links between tobacco smuggling and the funding of terrorist organizations is new, however. According to a November 2003 GAO report, "[ATF] officials told us that as of August 20, 2003, they were investigating at least six such cases with ties to terrorist groups. [ATF] officials also believe that there are several other investigations under way that may produce evidence linking them to terrorist groups."⁵ In the two years after that report was published, the number of active tobacco investigations by ATF increased from 50 to 450. It has been reported that cigarette smuggling investigations have been linked to Hamas, Hezbollah, al Qaeda, and other designated foreign terrorist organizations in recent years.⁶

C. STATE TAX RESOURCES BEING DIVERTED TO TERRORISTS AND OTHER CRIMINAL ENTERPRISES; PROFITABILITY FUELS GROWTH OF ILLEGAL TOBACCO TRADE

In addition to the links to designated foreign terrorist organizations, cigarette smuggling is depleting state and local resources. In 2005, ATF used data from the Center for Disease Control (CDC), the United States Department of Agriculture (USDA), and the Tax and Trade Bureau (TTB) to assess the scope of this problem. It found that the total loss of federal and state taxes amounted to somewhere between \$3.5 billion and \$3.8 billion in 2004. New York alone lost approximately \$1.1 billion. Other states at the top of the list in terms of lost tax revenue were California, New Jersey, Pennsylvania, Washington, Massachusetts, Illinois, and Michigan.

For state governments, the problem will only get worse if left unaddressed. As for terrorists and others in the business of smuggling tobacco, their efforts will become more lucrative. In 2004, Texas had a tax rate of 41 cents per pack. That year, the state lost nearly \$118 million in tobacco tax revenue. Today, Texas's cigarette tax is \$1.41 per pack. This increase gives smugglers a greater in-

⁵ GAO Report, *Supra* note 4.

⁶ Bureau of Alcohol, Tobacco, Firearms and Explosives, *Illicit Cigarette Trafficking and the Funding of Terrorism*, July 22, 2003.

centive to flood the state with contraband tobacco products, since they can make more money on each pack they sell. A number of other states have either raised, or are seeking to raise, their tobacco tax rates as well. The more money that can be made by smuggling tobacco, law enforcement see a greater number of illegal sellers enter the market.

In fact, there is evidence that the problem of illegal tobacco smuggling is already getting worse. Today, according to one expert, the number of cigarette vendors has risen from 88 in January 2000 to 772 in 2006.⁷ According to ATF, there are more than 372 websites worldwide that offer tax-free cigarettes to consumers in the United States. The proliferation of these websites has resulted in a dramatic increase of investigations and prosecutions of tobacco smuggling. Only 10 cigarette smuggling investigations were initiated by ATF in 1998. In Fiscal Year 2005, ATF had 425 active tobacco diversion investigations.

D. STATE AND LOCAL LAW ENFORCEMENT LACK SUFFICIENT TOOLS

In its final report, the 9/11 Commission recognized the importance of combating terrorist financing to our broader effort to secure this country from terrorist attacks. In one of its staff monographs, the 9/11 Commission found that “making it harder for terrorists to get money is a necessary * * * component of our overall strategy” and called it “a critical part of the overall campaign against al Qaeda.”⁸ Neutralizing terrorist financing efforts is merely one tool, albeit a very important one, that must be utilized to secure the nation from terrorist threats. To be effective, we must continue to adapt along with the terrorists if our counterterrorism efforts are to be truly effective. There are a number of areas where the U.S. government’s efforts to eliminate methods of terrorist financing have succeeded, but there are other known fundraising methods, such as tobacco smuggling, that have been identified where our efforts to combat them need to be strengthened.

If we have knowledge that terrorist organizations are exploiting a particular commodity, or gaps in our enforcement efforts, to raise funds, actions must be taken to combat those efforts. To turn a blind eye to the problem would be inexcusable. While the PACT Act is not, nor does it claim to be, a panacea to the overall problem of terrorist financing, it will enable law enforcement officials to disrupt their ability to raise funds through illegal tobacco smuggling operations.

State and local governments are directly affected by tobacco smuggling. They have an incentive to bring enforcement actions. To combat these schemes, the states have taken an aggressive, multifaceted approach to stopping these illegal sales. For example, states have brought enforcement actions against online retailers; obtained agreements from the major credit card companies, common carriers (not including the US Postal Service) and two tobacco manufacturers to stop facilitating these sales; and one state (New York) ob-

⁷ Ribisl KM, Kim AE, Williams RS. Sales and Marketing of Cigarettes on the Internet: Emerging Threats to Tobacco Control and Promising Policy Solutions. In: Bonnie RJ, Stratton K, Wallace RB, eds. Ending the Tobacco Problem: A Blueprint for the Nation. Washington, D.C.: The National Academies Press; 2007.

⁸ U.S. National Commission on Terrorist Attacks Upon the United States, Staff Monograph on Terrorist Financing, Staff Report to the Commission, p. 1. Available at [http://www.9-11commission.gov/staff_statements/911_TerrFin_Monograph.pdf].

tained an Assurance of Discontinuance against a third party service provider used to facilitate these sales.

States' enforcement authority is severely limited, however. Cigarette trafficking is, by its very nature, an interstate problem. Smugglers make money by moving tobacco products—either through the mail or by the truckload—from low-tax states to high-tax states. Therefore, smugglers base their operations in low-tax states, where they have easy access to cheap cigarettes and smokeless tobacco. Though state enforcement officials can often identify out-of-state sellers who are violating their tobacco tax laws, the high-tax states' ability to enforce their laws against out-of-state sellers is limited because of the jurisdictional limitations of their state courts. As a result, our state and local governments are often helpless to address this problem and have to rely on federal law enforcement officials to pursue these cases.

E. FEDERAL ENFORCEMENT EFFORTS EXPANDING, BUT INSUFFICIENT AUTHORITIES LIMIT EFFECTIVENESS

Tobacco smuggling is inherently an interstate and international problem. Unless we enhance the reach of state enforcement officials, the involvement of federal law enforcement is often critical to the success of an investigation. There are a variety of federal criminal statutes that can be used to prosecute tobacco smugglers. The primary federal law governing interstate sales of tobacco products is commonly referred to as the Jenkins Act,⁹ which requires out-of-state tobacco sellers to register with state tobacco tax collectors and report all sales into a state to that state's tax collection officials. The Contraband Cigarette Trafficking Act (CCTA) prohibits the purchase, sale, shipment or distribution of large amounts of cigarettes and smokeless tobacco across state lines.¹⁰ Amendments to strengthen the CCTA were included in earlier versions of the PACT Act, and during the 109th Congress, they were enacted as part of H.R. 3199, a bill to reauthorize the USA PATRIOT Act. Similar language was included in section 121 of the Conference Report to accompany H.R. 3199, House Report 109–333. The Conference Report passed the House on December 14, 2005, and the Senate on March 2, 2006. It was signed into law on March 9, 2006.

Depending on the facts of the case, a variety of other tools have been used to prosecute individuals who engage in the illegal sale of tobacco products. For example, convictions have been obtained under the Racketeer Influenced and Corrupt Organization (RICO) Act,¹¹ as well as pursuant to money laundering¹² and material support statutes.¹³ Additional authorities that have been used to prosecute smugglers include statutes prohibiting wire fraud,¹⁴ mail fraud,¹⁵ trafficking in counterfeit goods,¹⁶ and trafficking in counterfeit stamps.¹⁷

⁹ 15 U.S.C. §§ 375–78.

¹⁰ 18 U.S.C. § 2341.

¹¹ 18 U.S.C. § 1962.

¹² 18 U.S.C. §§ 1956, 1957.

¹³ 18 U.S.C. § 2339.

¹⁴ 18 U.S.C. § 1343.

¹⁵ 18 U.S.C. § 1341.

¹⁶ 18 U.S.C. § 2320.

¹⁷ 18 U.S.C. § 2314.

As already noted, federal tobacco smuggling enforcement has increased dramatically in recent years, using all of these tools. While past cases—including those in North Carolina and Detroit—and the increasing number of investigations are pointed to as successes, there are a number of obstacles that limit the effectiveness of federal enforcement efforts to curtail cigarette trafficking, and to eliminate it as a lucrative method of financing terrorist organizations and their operations. Over time, tobacco smuggling cases have become increasingly complex. They take longer and require more resources to resolve, and the enforcement tools on the books are not always sufficient to deal with the problem.

First, the penalties for violating some of the laws governing tobacco smuggling are not strong enough to deter violators. A 2002 study by the GAO found that 78 percent of the websites reviewed did not comply with the Jenkins Act, and the other 22 percent gave no indication one way or the other whether they complied with the Act. A violation of the primary federal law governing the payment of state tobacco taxes is a misdemeanor. None of those websites identified by the GAO in 2002 had been penalized for violating federal law. Federal officials have little incentive to enforce this law today, unless more serious charges can be pursued.

Second, ATF's record inspection authority in this area is much different from its authority to inspect licensed firearms manufacturers and dealers. This limits ATF's ability to ensure compliance with the Jenkins Act and other federal laws governing tobacco sellers.

F. INTERNET SALES POSE UNIQUE CHALLENGE TO FEDERAL, STATE AND LOCAL ENFORCEMENT EFFORTS

In addition, many of the existing law enforcement tools were not designed to meet the challenges posed by today's illegal tobacco vendors, particularly those who conduct sales over the Internet. There are a large number of illegal tobacco vendors who conduct sales over the Internet, and still more who do so by phone, fax, and mail order. These vendors are mobile, making it difficult for law enforcement to locate them. The Internet, in particular, helps illegal vendors to operate with near impunity. Even those who are identified and the subject of enforcement actions are able to close up shop and quickly reappear with a new name and website.

Since illegal vendors can easily elude traditional enforcement actions, one obvious point of disruption is at the point of delivery. Illegal remote sellers of cigarettes and smokeless tobacco have, to date, been very successful at evading compliance with existing federal and state laws by conducting sales by making their cigarette and smokeless tobacco deliveries to their customers by mail. Conducting sales in this manner allows lawbreaking tobacco vendors to escape federal and state enforcement efforts. Without gaining the cooperation of delivery services, whether it is the United States Postal Service (USPS) or private carriers, law enforcement officials have had limited impact on remote sellers. While some progress has been made with respect to private carriers, most of whom prohibit the use of their services to ship cigarettes, it is a reality that both private carriers and the USPS continue to serve as the delivery arm for illegal tobacco vendors.

III. HISTORY OF THE BILL AND COMMITTEE CONSIDERATION

108TH CONGRESS

On June 6, 2003, Senators Hatch and Kohl introduced the Prevent All Cigarette Trafficking (PACT) Act of 2003 (S. 1177). The bill was taken up by the Senate Committee on the Judiciary on July 31, 2003, and reported without objection. On December 9, 2003, the PACT Act was amended and passed the Senate by unanimous consent.

109TH CONGRESS

On July 21, 2005, the House of Representatives passed H.R. 3199, a bill to reauthorize the USA PATRIOT Act. Section 123 of that bill was substantially similar to Section 4 of the PACT Act, S. 1177 in the 108th Congress. It amended the Contraband Cigarette Trafficking Act (“CCTA,” 18 U.S.C. Sec. 2341 et seq.), which makes it unlawful for any person knowingly to ship, possess, sell, distribute or purchase contraband cigarettes. It amended the CCTA by: (1) extending its provisions to cover contraband smokeless tobacco; (2) reducing the number of cigarettes that trigger application of the CCTA from 60,000 to 10,000; (3) imposing reporting requirements on persons, except for tribal governments, who engage in delivery sales of more than 10,000 cigarettes or 500 single-unit cans or packages of smokeless tobacco in a single month; (4) requiring the destruction of cigarettes and smokeless tobacco seized and forfeited under the CCTA; and (5) authorizing State and local governments, and certain persons who hold Federal tobacco permits, to bring causes of action against violators of the CCTA. It also amends section 2344(c), the contraband cigarette forfeiture provisions, by adding “contraband smokeless tobacco” to items subject to forfeiture and by removing the reference to the Internal Revenue Code, which became outdated after the enactment of the Civil Asset Forfeiture Reform Act of 2000. This language was included in section 121 of the Conference Report to accompany H.R. 3199, House Report 109–333. The Conference Report passed the House on December 14, 2005, and the Senate on March 2, 2006. It was signed into law on March 9.

On August 3, 2006, the Prevent All Cigarette Trafficking (PACT) Act of 2006 (S. 3810), was introduced by Senators Kohl and Schumer. The bill was referred to the Committee on the Judiciary, but no further action was taken.

110TH CONGRESS

On March 29, 2007, S. 1027, the Prevent All Cigarette Trafficking (PACT) Act was introduced by Senator Kohl. The bill had four cosponsors: Senators Specter, Leahy, Kyl, and Schumer. The bill was placed on the agenda for the Judiciary Committee business meeting on May 17, 2007, and the Committee reported the bill favorably and without amendment. After being approved by the Judiciary Committee, on May 21, 2007, Senator Collins was added as a cosponsor.

IV. SECTION-BY-SECTION AND SUMMARY OF THE BILL

The following is a section-by-section analysis and explanation of the Prevent All Cigarette Trafficking Act of 2007.

Section 1. Short title; findings; purposes

Section 2. Collection of state cigarette and smokeless tobacco taxes

Section 2(a). Definitions

Subsection (a) replaces the entire definitions section of the existing Jenkins Act. It redefines the term “cigarette” to include “roll-your-own” tobacco products. 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 through the mail. This section also adds definitions for the following: “Attorney General”; “common carrier”; “consumer”; “delivery sale”; “delivery seller”; “Indian country”; “Indian tribe”; “inter-state commerce”; and “smokeless tobacco”. It redefines the term “person” to include State, local and Indian tribal governments, and it expands the definition of “use” to include the consumption, storage, handling or disposal of smokeless tobacco, in addition to cigarettes. This section also amends the 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.

Section 2(b). Reporting requirements

Subsection (b) enhances the existing reporting requirements under the Jenkins Act, which currently requires interstate sellers of tobacco products to register with state tobacco tax collectors and report all sales into a state to that state’s tax collection officials.

Specifically, subsection (b) expands the scope of reporting requirements to apply to: (1) the sale or advertising for sale of smokeless tobacco products; (2) persons who ship or transfer cigarettes and smokeless tobacco products; and (3) the shipment of cigarettes or smokeless tobacco into localities or Indian country that tax the sale or use of such products. 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 them to file those reports with the Attorney General of the United States. It also requires vendors to provide additional identifying information in those reports to ensure that law enforcement officials can locate them for inspection and enforcement purposes. Subsection (b) clearly states that any information provided in these reports can only be used for purposes of enforcing the Jenkins Act or the collection of any cigarette or smokeless tobacco sales taxes owed.

Section 2(c). Regulation of “delivery sellers” and list enforcement

Subsection (c) adds a new section, Section 2A, to the Jenkins Act to provide for better 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 three basic requirements.

First, a delivery seller would be required to comply with the shipping requirements outlined in the PACT Act. The delivery seller would have to place a label on the outside of all packages to indicate that it contains cigarettes or smokeless tobacco, providing notice to a common carrier or other delivery service that the package contains tobacco products. If the package containing tobacco is not properly labeled, it is to be treated as nonmailable matter.

The shipping requirements impose a weight limit on delivery sales of tobacco products, prohibiting a delivery seller from selling, offering or delivering a package containing more than 10 pounds of cigarettes and smokeless tobacco in a single sale or single delivery.

Finally, it 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. To ensure that tobacco products are not being sold to minors, the subsection requires the delivery seller to: (1) obtain identifying information from the customer at the time of sale and verify through a commercially available database, consisting primarily of information from government sources, that the customer is old enough to purchase tobacco and (2) use a method of delivery that requires the recipient to sign for delivery and provide a valid, government-issued identification showing the person is old enough to purchase tobacco.

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

Third, subsection (c) requires delivery sellers to comply with all state, local, tribal and other laws applicable to the sale of tobacco products, including excise taxes; licensing and stamping requirements; restrictions on sales to minors; and other legal requirements relating to the sale, distribution, or delivery of cigarettes or smokeless tobacco. In addition, it 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.

Subsection (c) also ensures that the legitimate delivery services of private common carriers, such as UPS, FedEx and DHL, will not be exploited by cigarette traffickers to deliver their illegal products while avoiding detection. To do so, the PACT Act adopts a novel approach similar to one that has been employed by the State of Maine, sometimes referred to as a list enforcement scheme.

Through negotiations with common carriers over the course of a year, the sponsors of the bill have worked to ensure that the list enforcement scheme can be implemented effectively, and without imposing an unreasonable burden on common carriers. A great number of changes were made to previous iterations of the legislation to ensure its workability and to empower delivery services to prevent illegal tobacco products from being shipped through their companies.

To do so, subsection (e) of Section 2A of the Jenkins Act would authorize the Attorney General of the United States to compile a list of unauthorized delivery sellers. The list would include any de-

livery seller who has not registered with the Attorney General, as required under the Jenkins Act, or has failed to comply with any of the requirements of the Jenkins Act or the Prevent All Cigarette Trafficking Act of 2007. The list would be compiled with the input of federal law enforcement officials and the attorney general, tax administrator, or chief law enforcement official of each state, local or tribal government that levies a tobacco tax. The list would be updated at least every four months to include additional delivery sellers, or remove those who have come into compliance with all of the necessary requirements.

Under subsection (e)(1)(B), the list would contain, to the extent known, the following information for each delivery seller included in the list: (1) all names the delivery seller uses in the transaction of its business or on packages delivered to customers; (2) all addresses from which the delivery seller does business or ships cigarettes or smokeless tobacco; (3) the website addresses, primary e-mail addresses, and phone number of the delivery seller; and (4) any other information the Attorney General determines would facilitate compliance with the list enforcement scheme.

Both the initial list and any updates would be distributed to the attorney general and tax administrator of every state and all common carriers and other delivery services, including the United States Postal Service. This section also permits the Attorney General to distribute the list to other persons if he or she determines that doing so will enhance enforcement efforts. The subsection also allows people receiving the list to deliver it to a government official or common carrier for enforcement purposes, or to discuss a delivery seller's inclusion on this list with the delivery seller, but otherwise requires the list to be kept confidential.

Subsection (e)(2) of Section 2A 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 any list, or its updates, distributed by the Attorney General of the United States.

The inclusion of detailed identifying information on the initial list and all of the updates is intended to accomplish two objectives. First, it will ensure that common carriers and other delivery services will have adequate information to identify which of their customers are using their services to violate state and federal tax laws and avoid detection by law enforcement.

Second, the language of this subsection clarifies that common carriers are not required to act as an investigative arm of the government. Common carriers would simply be prohibited from delivering packages for those people whose identifying information appears on the list, and would not be required to determine whether packages not containing this identifying information were actually being shipped by individuals identified on the lists. Subsection (e)(8)(A) of Section 2A of the Jenkins Act would clarify that any list is accurate or complete, determine whether a customer who appears on that list is in compliance with the PACT Act, or open or inspect a package to determine whether it contains tobacco products.

The subsection accommodates concerns raised about the ability of common carriers to maintain compliance immediately after the distribution of the initial list and any updates. Subsections (e)(2)(A)

and (B) of Section 2A of the Jenkins Act would allow 60 days after the distribution of the list, and 30 days after the distribution of any updates, for common carriers and other delivery services to stop shipping packages for customers identified on those lists.

Subsection (e)(3)(B) of Section 2A of the Jenkins Act would require common carriers to maintain, for a period of five years, any records kept in the ordinary course of business relating to deliveries that were interrupted for purposes of compliance with the PACT Act.

To ensure that common carriers will not be penalized for complying with the requirements of the Act, subsection (e)(8)(C) of Section 2A of the Jenkins Act would clarify that a common carrier will not be penalized under section 14101(a) of Title 49, United States Code, for not completing the delivery of a package because of reasonable efforts to comply with the requirements of the Act. If a delivery service encounters a package from an individual identified on the list, subsection (e)(3)(A)(ii) of Section 2A requires the common carrier or other delivery service to provide the package to law enforcement officials or destroy it.

One criticism of earlier versions of the PACT Act focused on creating federal regulations of the delivery of tobacco products, when a large number of states have already passed laws in this area. Common carriers and other delivery services believed that it would be burdensome to comply with the various federal and state requirements in this area.

To lessen these concerns, subsection (e)(4) was added to the new Section 2A of the Jenkins Act. This subsection preempts a limited number of state laws in this area, namely those types of laws that are being replaced by the strong federal regulatory scheme in the PACT Act. Specifically, subsection (e)(4) preempts state, local and tribal laws regulating the delivery of cigarettes or smokeless tobacco to consumers that: (1) require common carriers or delivery services to verify the age or identity of the consumer accepting delivery of the package using a government-issued identification; (2) require the common carrier or delivery service to obtain a signature from the person accepting the package; (3) require the common carrier or delivery service to verify that all applicable taxes were paid; (4) require packages delivered by the common carrier or delivery service to contain particular labels, notices, or markings; or (5) prohibit common carriers or delivery services from making deliveries based on whether the delivery seller is identified on a list maintained or distributed by anyone other than the Federal government.

New York has adopted regulations, however, that do not in any way conflict with the PACT Act's provisions. New York has enacted a law that completely prohibits the delivery sale of tobacco products to individual consumers. Because New York's law entirely prohibits the delivery sale, shipment and delivery of cigarettes to consumers, rather than regulating how such delivery sale, shipment or delivery should be effected, there is no need to preempt New York's law, or other similar state statutes. As a result, subsection (e)(4)(C) was included to clarify that state laws prohibiting the delivery sale, and those prohibiting the shipment or delivery pursuant to a delivery sale, of cigarettes and smokeless tobacco to individual consumers are not preempted by the PACT Act. This is intended to

preserve New York's existing law and ensure that other states are able to adopt similar laws in the future.

Subsection (e)(7) of Section 2A of the Jenkins Act would provide protection for law abiding delivery sellers. This subsection requires the Attorney General to make a reasonable attempt to provide notice to delivery sellers who will be included on the list of non-compliant delivery sellers at least 14 days in advance of the distribution of such a list. This provides sufficient time for a delivery seller to challenge the determination by federal, state, local or tribal officials that they have not complied with applicable laws.

Section 2(d). Enhanced penalties

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 Prevent All Cigarette Trafficking Act.

Most importantly, it would create a new subsection (a)(1) of the Jenkins Act, which would ensure that violators of the Jenkins Act are guilty of a felony, punishable by up to three years in prison and a fine. As mentioned previously in this Report, studies have shown that virtually all Internet tobacco vendors are not in compliance with Jenkins Act requirements, but enforcement actions have not been taken against them under this law because the penalties are insufficient. The Department of Justice and the Bureau of Alcohol, Tobacco, Firearms and Explosives believe that making violations of the Jenkins Act a felony will encourage U.S. Attorneys' Offices to prosecute violators of the Jenkins Act.¹⁸

Subsection (a)(2) of Section 3 of the Jenkins Act 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.

As amended by the PACT Act, subsection (b) of Section 3 of the Jenkins Act would define the applicable civil penalties for violations of the Act. It provides that delivery sellers who violate the Jenkins Act will be fined the greater of \$5,000 for a first violation and \$10,000 for any subsequent violation, or two percent of the gross sales of cigarettes or smokeless tobacco sold during the one year period ending on the date of the violation.

This subsection also provides that a common carrier or other delivery service that violates the Jenkins Act will be subject to a civil fine for violating the Act. Any fine of a common carrier or other delivery service will not exceed \$2,500 for a first violation, and \$5,000 for any subsequent violation within one year of a prior violation.

The subsection also provides that any civil penalties imposed against either a delivery seller or a delivery service are in addition to other damages, equitable relief, or injunctive relief that can be awarded by the court.

The subsection includes an additional limitation on civil penalties with respect to common carriers and other delivery services.

¹⁸ Government Accountability Office, Internet Cigarette Sales: Giving ATF Investigative Authority May Improve Reporting and Enforcement, GAO-02-743, 2002.

It would add subsection (b)(3)(B) to Section 3 of the Jenkins Act, which exempts the delivery service from civil liability if it “has implemented and enforces effective policies and practices for complying with the requirements” of the Jenkins Act. The Committee’s intention is to place great emphasis on the word “effective.” UPS, FedEx, and other large delivery services currently have elaborate systems to track packages and ensure compliance with their own internal regulations, including prohibitions or limitations on the shipment of alcohol, hazardous materials, and by non-paying customers. The regulations of the PACT Act can be incorporated into that compliance system quite easily. This provision is not intended to diminish the requirements placed on delivery services. Rather, it is expected to yield substantial results. It is the Committee’s intention that this provision will absolve delivery services of civil liability only when, despite their best efforts to create a fool proof system, packages slip through the cracks or cannot reasonably be detected by their compliance system.

Section 2(e). Enhanced enforcement authorities

Subsection (2)(e) includes critically important 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 United States 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. While the United States Attorney General will continue to have primary enforcement authority under the Jenkins Act, this subsection clarifies that state, local and tribal enforcement officials have standing to bring actions in U.S. District Courts to enforce the Jenkins Act.

Subsection (2)(e) allows states, localities, and tribes who levy excise taxes to provide evidence to the Attorney General of violations of the Jenkins Act for enforcement purposes.

Subsection (2)(e) also establishes a PACT Anti-Trafficking Fund in the 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. Fifty percent of those funds must be made available to the Department of Justice agencies and offices responsible for the investigations leading to the collection of the penalty.

Like all areas of law enforcement, cooperation between all levels of government—federal, state, local and tribal—is essential to an efficient allocation of resources and a successful outcome. To that end, subsection (2)(e) encourages state, local, and tribal officials who bring an enforcement action in U.S. District Court to inform the Attorney General.

Section 3. Treatment of cigarettes and smokeless tobacco as non-mailable matter

Illegal remote sellers of cigarettes and smokeless tobacco have been incredibly successful at evading compliance with existing fed-

eral and state laws relating to interstate tobacco sales simply by delivering cigarettes and smokeless tobacco to their customers by mail. Using the mails has allowed them to evade detection and operate with near impunity.

Section 1716 of Title 18, United States Code, provides that alcohol, poisons, weapons, and other materials shall be treated as non-mailable matter by the United States Postal Service. Section 3 of the PACT Act 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 it 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. As mentioned earlier in this section, the list of noncompliant sellers compiled by the Attorney General of the United States will be transmitted to the United States Postal Service. This list will provide vital information to the Postal Service for the enforcement of this section. In addition, this section clarifies that the phrase “reasonable cause to believe” includes notification by the Attorney General, a U.S. Attorney, or a state Attorney General that a person is primarily engaged in the business of transmitting nonmailable cigarettes or smokeless tobacco. It is our intent that the language of Section 3 be interpreted by the U.S. Postal Service and other federal law enforcement agencies to achieve the most effective means possible to stop any and all prohibited mailings of cigarettes and smokeless tobacco into or within the United States.

Section 3 includes a geographic exception to the nonmailable matter provision. This exception was included to allow mailings of cigarettes and smokeless tobacco to persons located in remote areas of Hawaii or Alaska, where individuals are forced to rely exclusively on the mails to obtain groceries and other consumables.

Section 3 requires tobacco products seized and forfeited pursuant to this section to either be destroyed or retained by the government for law enforcement purposes and then destroyed.

In the event that a delivery seller violates the nonmailable matter provision, Section 3 of the PACT Act provides for a fine of as much as ten times the retail value of the nonmailable cigarettes or smokeless tobacco, in addition to any unpaid taxes.

Section 3 also establishes, within the Treasury, the PACT Postal Service Fund. This provision requires fifty percent all fines imposed for violations of the nonmailability provisions to be transferred into the PACT Postal Service Fund for use by the Postmaster General for enforcement of the nonmailability provision.

Section 4. Compliance with model statute or qualifying statute

In 1998, 46 states, Puerto Rico, the U.S. Virgin Islands, American Samoa, the Northern Mariana Islands, Guam, the District of Columbia, the Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company, Philip Morris Incorporated, R.J. Reynolds Tobacco Company, Commonwealth Tobacco, and Liggett & Myers entered into what is called the Master Settlement Agreement (MSA). 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 the Model Statute, which requires manufacturers who are not party to the MSA to pay money into an escrow fund. The vast majority of delivery sellers who violate the Model Statute and the MSA are foreign entities, many of which are known to engage in illegal cigarette trafficking.

Section 4 would make it a felony for a manufacturer or importer to sell or deliver tobacco products into a state that is a party to the MSA if the cigarettes or smokeless tobacco are produced by a manufacturer that is not complying with the Model statute or Qualifying Statute enacted by a state.

Subsection (b) provides that United States District Courts shall have jurisdiction to prevent and restrain violations of this section, and it allows states, through their attorneys general, to bring suit in U.S. District Courts for violations of the compliance provisions and to recover attorneys fees from persons found to have willfully and knowingly violated this section. Subsection (b)(5) clarifies that the Attorney General of the United States also has authority to administer and enforce this section of the PACT Act.

Section 5. Inspection by Bureau of Alcohol, Tobacco, Firearms, and Explosives of records of certain cigarette and smokeless tobacco sellers

Section 5 authorizes 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.

In the event that a delivery seller or other tobacco vendor refuses to comply with a request by law enforcement officials to inspect records, Section 5 allows U.S. District Courts to compel inspections in a civil action. Any failure to maintain records or allow inspection under this section would result in a fine of as much as \$10,000 for each violation.

Section 6. Exclusions regarding Indian tribes and tribal matters

Subsection (a)(1) provides that nothing in the PACT Act is intended to affect, amend or modify any agreements, compacts or other intergovernmental arrangements between Indian tribes and any State or local government relating to the collection of taxes on cigarettes or smokeless tobacco.

Subsection (a)(3) clarifies that nothing in the PACT Act or its amendments 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.

Subparagraphs (4) and (5) of subsection (a) clarify that the PACT Act and its amendments will not have any impact on the current state of law regarding Tribal sovereignty. Subparagraph (4) clarifies that the PACT Act does not affect, amend, or modify State jurisdiction over tribal governments, members, or reservations. Subparagraph (5) states that the PACT Act does not affect, amend, or modify any existing authority of state or local governments to bring enforcement actions against persons in Indian country. However,

subsection (b) preserves any agreements or pacts between Indian tribes and state or local governments to allow for the enforcement of tobacco laws and regulations.

Subsection (c) affirms that nothing in this Act, including authorities provided to state and local governments to bring enforcement actions in U.S. District Courts, are intended to “authorize, deputize, or commission States or local governments as instrumentalities of the United States.”

Subsection (d) clarifies that nothing in the PACT Act or its amendments is intended to prohibit, limit or restrict the enforcement authority of the Attorney General within Indian country.

Section 7. Effective date

Section 7 provides that Section 5 of the Act, dealing with Bureau of Alcohol, Tobacco, Firearms, and Explosives authority, shall take effect on the date of enactment. All other sections of the PACT Act will take effect ninety days after the date of enactment.

Section 8. Severability

Section 8 provides that the invalidation of any provision of the PACT Act or its application will not affect the other provisions included in the Act, or their application to any other person or circumstance.

V. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

The Committee sets forth, with respect to the bill, S. 879, 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 20, 2007.

Hon. PATRICK J. LEAHY,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1027, 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 cost), Melissa Merrell (for the state, local, and tribal impact), and Jacob Kuipers (for the private-sector impact).

Sincerely,

PETER R. ORSZAG.

Enclosure.

Summary: S. 1027 would require individuals and businesses who 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 (ATF). The bill would permit ATF to inspect the premises of anyone who distributes or sells in interstate commerce more than 10,000 cigarettes or 500 cans or packages of smokeless tobacco in a month via telephone, the mail, or the Internet. S. 1027 also would increase penalties, including crimi-

nal and civil fines, for violations of the laws relating to taxation of cigarettes and smokeless tobacco.

CBO estimates that implementing S. 1027 would cost about \$120 million over the 2008–2012 period for ATF 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.

S. 1027 would impose both intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on certain tobacco sellers 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 (\$66 million and \$131 million respectively in 2007, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1027 is shown in the following table. The costs of this legislation fall within budget function 750 (administration of justice). In addition to the costs shown below, enacting S. 1027 could affect direct spending and receipts. However, we estimate that any such effects would be less than \$500,000 in any year.

	By fiscal year, in million of dollars—					
	2007	2008	2009	2010	2011	2012
SPENDING SUBJECT TO APPROPRIATION						
ATF Spending Under Current Law:						
Estimated Authorization Level ¹	979	1,014	1,046	1,078	1,113	1,148
Estimated Outlays	976	1,011	1,043	1,075	1,110	1,145
Proposed Changes:						
Estimated Authorization Level	0	18	25	26	27	28
Estimated Outlays	0	16	24	26	27	28
ATF Spending Under S. 1027:						
Estimated Authorization Level	979	1,032	1,071	1,104	1,140	1,176
Estimated Outlays	976	1,027	1,067	1,101	1,137	1,173

¹The 2007 level is the amount appropriated for that year for ATF activities. The estimated authorization levels for 2008 through 2012 are CBO baseline estimates that adjust the amount appropriated for 2007 for anticipated inflation.

Basis of estimate: CBO estimates that implementing S. 1027 would increase ATF operating costs by about \$120 million over the 2008–2012 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 ATF. In addition, the bill would have an insignificant effect on direct spending and receipts.

Spending subject to appropriation

S. 1027 would permit the Bureau of Alcohol, Tobacco, Firearms, and Explosives 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 for about 7,500 businesses each year. The ATF anticipates that it would need to hire about 130 new employees, including inspectors, agents, auditors, and necessary 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 2009.

Direct spending and revenues

Enacting S. 1027 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 S. 1027 would not be significant.

Intergovernmental and private-sector impact

Mandates

S. 1027 contains both intergovernmental and private-sector mandates, as defined in UMRA. It would impose new requirements on certain sales of tobacco products by private and tribal entities and pre-empt certain state, local, and tribal laws. According to ATF and industry sources, most of those business entities already perform many of the duties imposed by this act and 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 by UMRA for intergovernmental and private-sector mandates (\$66 million and \$131 million respectively in 2007, adjusted annually for inflation).

Requirements on Delivery Sales of Tobacco. S. 1027 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 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.

S. 1027 also would require common carriers to keep records for five years of any business relating to a delivery that has been interrupted because the 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.

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

S. 1027 would benefit state governments by expanding their authority to enforce cigarette tax collection through the Jenkins Act. This expanded authority would allow states' attorney generals 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.

Estimate prepared by: Federal Spending: Mark Grabowicz; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private Sector: Jacob Kuipers.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

VI. REGULATORY IMPACT EVALUATION

In compliance with rule XXVI of the Standing Rules of the Senate, the Committee finds that no significant regulatory impact will result from the enactment of S. 1027.

VII. CONCLUSION

Passage and enactment of the Prevent All Cigarette Trafficking (PACT) Act of 2007, S. 1027, is long overdue. This bipartisan legislation closes loopholes in current tobacco trafficking laws, enhances penalties for violations, and provides law enforcement with new tools to combat the innovative new methods being used by cigarette traffickers to distribute their products. Unfortunately, the criminal laws and investigative authorities available to law enforcement to combat tobacco smuggling are insufficient. By strengthening criminal laws governing cigarette trafficking, and empowering federal, state and local law enforcement with the powers to investigate and prosecute the cigarette traffickers of the 21st Century, the PACT Act can help disrupt terrorist groups and other organized criminal enterprises. The PACT Act was carefully crafted to address each of the shortcomings in our existing laws that have been identified. For more than a decade, terrorist and other criminal organizations have been engaging in tobacco smuggling as a means of generating significant amounts of revenue. As the problem continues to worsen, and these dangerous groups continue to raise more and more money through tobacco smuggling to finance their activities, it is imperative that we act quickly to provide law enforcement officials with the tools they need to combat cigarette trafficking.

VIII. CHANGES TO EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 119, as reported, are shown as follows (existing law proposed to be omitted

is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

TITLE 15—COMMERCE AND TRADE

CHAPTER 10A—COLLECTION OF STATE CIGARETTE TAXES

* * * * *

SEC. 375. [DEFINITIONS.]

[For the purposes of this chapter—

[(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.]

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” has the meaning given that term in section 1151 of title 18, United States Code, except that within the State of Alaska that term applies only to the Metlakatla Indian Community, Annette Island Reserve.

(8) *INDIAN TRIBE.*—The term “Indian tribe”, “tribe”, or “triba” 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 Com-

monwealth of Puerto Rico, or any territory or possession of the United States.

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

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

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

SEC. 376. REPORTS TO STATE TOBACCO TAX ADMINISTRATOR.

(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 or offer is disseminated a statement setting forth his name and 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】 *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. 376A. 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 com-

mon 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 2007, 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) *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.

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

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

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

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

(C) *STATE LAWS PROHIBITING DELIVERY SALES.*—Nothing in the Prevent All Cigarette Trafficking Act of 2007, or the amendments made by that Act, may be construed to preempt or supersede State laws prohibiting the delivery sale, or the shipment or delivery pursuant to a delivery sale, of cigarettes or smokeless tobacco to individual consumers.

(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. 377. PENALTIES.

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

(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).

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SEC. 378. [Jurisdiction to prevent and restrain violations] Enforcement.

[The United States district courts shall have jurisdiction to prevent and restrain violations of this Act.]

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

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

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

(1) *IN GENERAL.*—

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

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

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

(3) *USE OF PENALTIES COLLECTED.*—

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

(B) *ALLOCATION OF FUNDS.*—*Of the amount available to the Attorney General under subparagraph (A), not less than 50 percent shall be made available only to the agencies and offices within the Department of Justice that were respon-*

sible 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).

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TITLE 18—CRIMES AND CRIMINAL PROCEDURE

PART I—CRIMES

CHAPTER 83—POSTAL SERVICE

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SEC. 1716. INJURIOUS ARTICLES AS NONMAILABLE.

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(i) * * *

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(2) As used in this subsection, the term “ballistic knife” means a knife with a detachable blade that is propelled by a spring-operated mechanism.

(j) *TOBACCO PRODUCTS.*—

(1) *PROHIBITION.*—

(A) *IN GENERAL.*—*Except as provided in subparagraphs (C) and (D), all cigarettes (as that term is defined in section 1(2) of the Act of October 19, 1949 (15 U.S.C. 375; commonly referred to as the “Jenkins Act”)) and smokeless tobacco (as that term is defined in section 1(12) of that Act), are nonmailable and shall not be deposited in or carried through the mails. The United States Postal Service shall not accept for delivery or transmit through the mails any package that it knows or has reasonable cause to believe contains any cigarettes or smokeless tobacco made nonmailable by this subsection.*

(B) *REASONABLE CAUSE TO BELIEVE.*—*For purposes of this section, notification to the United States Postal Service by the Attorney General, a United States attorney, or a State Attorney General that an individual or entity is primarily 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.*

(C) *CIGARS.*—*Subparagraph (A) shall not apply to cigars (as that term is defined in section 5702(a) of the Internal Revenue Code of 1986).*

(D) *GEOGRAPHIC EXCEPTION.*—*Subparagraph (A) shall not apply to mailings within or into any State that is not contiguous with at least 1 other State of the United States. For purposes of this paragraph, “State” means any of the 50 States or the District of Columbia.*

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

(3) *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, and 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.

(4) *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.*

(5) *USE OF PENALTIES.—There is established a separate account in the Treasury 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.*

[(j)](k)(1) Whoever knowingly deposits for mailing or delivery, or knowingly causes to be delivered by mail, according to the direction thereon, or at any place at which it is directed to be delivered by the person to whom it is addressed, anything declared nonmailable by this section, unless in accordance with the rules and regulations authorized to be prescribed by the Postal Service, shall be fined under this title or imprisoned not more than one year, or both.

[(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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