

106TH CONGRESS  
2D SESSION

# S. 2696

To prevent evasion of United States excise taxes on cigarettes and for other purposes.

---

IN THE SENATE OF THE UNITED STATES

JUNE 8, 2000

Mr. CONRAD (for himself, Ms. COLLINS, and Mr. ROBB) introduced the following bill; which was read twice and referred to the Committee on Finance

---

## A BILL

To prevent evasion of United States excise taxes on cigarettes and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Gray Market Cigarette  
5 Compliance Act of 2000”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that additional legislation is necessary  
8 to prevent evasion of United States taxes on cigarettes,  
9 to ensure that the packages of all cigarettes sold or dis-  
10 tributed in the United States bear the health warnings re-

1 quired by Federal law, to ensure compliance with applica-  
2 ble Federal ingredient reporting requirements, and to im-  
3 prove the enforcement of existing United States trade-  
4 mark laws so as to prevent consumer confusion and decep-  
5 tion. In support of this finding, Congress has determined  
6 that:

7 (1) PREVENTION OF FEDERAL TAX EVASION.—

8 (A) Cigarettes manufactured in the United  
9 States that are labeled and shipped for export  
10 are not subject to the excise taxes that other-  
11 wise would be payable with respect to such  
12 products when removed from the premises of  
13 the manufacturer.

14 (B) Enforcement difficulties are created  
15 for the authorities charged with ensuring that  
16 proper taxes are paid whenever export-labeled  
17 cigarettes are sold or distributed in the United  
18 States.

19 (C) The Balanced Budget Act of 1997 im-  
20 posed restrictions on the domestic sale or dis-  
21 tribution of export-labeled cigarettes, but such  
22 provisions have not been adequate to prevent  
23 continued evasion of United States taxes on  
24 cigarettes.

1           (D) Enforcement of Federal cigarette tax  
2 laws will be enhanced substantially if cigarettes  
3 manufactured in the United States and labeled  
4 for export are not sold or distributed in the  
5 United States.

6           (2) ENSURING COMPLIANCE WITH FEDERAL  
7 HEALTH WARNINGS AND INGREDIENT REPORTING  
8 REQUIREMENTS.—

9           (A) Congress has required that specified  
10 warnings appear on the packages of all ciga-  
11 rettes manufactured, packaged, or imported for  
12 sale or distribution in the United States.

13           (B) Congress has required that each per-  
14 son who manufactures, packages, or imports  
15 cigarettes for sale or distribution in the United  
16 States annually provide the Secretary of Health  
17 and Human Services with a list of the ingredi-  
18 ents added to tobacco in the manufacture of  
19 such cigarettes.

20           (C) The public health objectives of the  
21 foregoing requirements will be advanced by  
22 adopting additional mechanisms for ensuring  
23 that these requirements are met with respect to  
24 all cigarettes for sale or distribution in the  
25 United States.

1           (3) ENFORCEMENT OF FEDERAL TRADEMARK  
2 LAWS.—

3           (A) Cigarettes manufactured for sale  
4 abroad have characteristics that differentiate  
5 them in material respects from cigarettes that  
6 bear the same trademarks but that are manu-  
7 factured for sale in the United States.

8           (B) Such material differences may include  
9 tar and nicotine yields, incentive programs, and  
10 quality assurances with respect to distribution  
11 and storage.

12           (C) When cigarettes bearing trademarks  
13 registered in the United States are manufac-  
14 tured for sale or distribution outside the United  
15 States but are diverted or reimported for sale  
16 or distribution in the United States, there is a  
17 substantial risk of consumer confusion and de-  
18 ception. Stickers and other similar devices are  
19 inadequate to prevent such confusion and de-  
20 ception.

21           (D) In order to effectuate the purposes of  
22 the United States trademark laws, including the  
23 prevention of consumer confusion and decep-  
24 tion, additional legislation is necessary to allow  
25 United States trademark holders to enforce

1 fully their rights against infringing cigarettes  
2 whether such cigarettes were manufactured in  
3 the United States or abroad.

4 **SEC. 3. RESTRICTIONS ON TOBACCO PRODUCTS INTENDED**  
5 **FOR EXPORT.**

6 (a) RESTRICTIONS ON TOBACCO PRODUCTS IN-  
7 TENDED FOR EXPORT.—Section 5754 of the Internal Rev-  
8 enue Code of 1986 is amended to read as follows:

9 **“SEC. 5754. RESTRICTIONS ON TOBACCO PRODUCTS IN-**  
10 **TENDED FOR EXPORT.**

11 “(a) EXPORT-LABELED TOBACCO PRODUCTS.—To-  
12 bacco products and cigarette papers and tubes manufac-  
13 tured in the United States and labeled or shipped for ex-  
14 portation under this chapter—

15 “(1) may be transferred to or removed from the  
16 premises of a manufacturer or an export warehouse  
17 proprietor only if such articles are being transferred  
18 or removed without tax in accordance with section  
19 5704;

20 “(2) except as provided in subsection (b), may  
21 be imported or brought into the United States, after  
22 their exportation, only if—

23 “(A) the requirements of section 4 of the  
24 Gray Market Cigarette Compliance Act of 2000  
25 are satisfied; and

1           “(B) such articles either are eligible to be  
2           released from customs custody with the partial  
3           duty exemption provided in section 5704(d) or  
4           are returned to the original manufacturer of  
5           such article as provided in section 5704(e); and

6           “(3) may be sold or held for sale for domestic  
7           consumption in the United States only if such arti-  
8           cles are removed from their export packaging and  
9           repackaged by the original manufacturer or its au-  
10          thorized agent into new packaging that does not  
11          contain the mark, label, or notice required by section  
12          5704(b) and complies with all other domestic law  
13          applicable to such article.

14 This section shall apply to articles labeled for export by  
15 the original manufacturer even if the packaging or the ap-  
16 pearance of such packaging to the consumer of such arti-  
17 cles has been modified or altered by a person other than  
18 the original manufacturer or its authorized agent so as  
19 to remove or conceal or attempt to remove or conceal (in-  
20 cluding by the placement of a sticker over) any mark,  
21 label, or notice required by section 5704(b). For purposes  
22 of this section, sections 5704(d) and 5761, and such other  
23 provisions as the Secretary may specify by regulations,  
24 references to exportation shall be treated as including a

1 reference to shipment to the Commonwealth of Puerto  
2 Rico.

3 “(b) EXCEPTIONS FOR EXPORT-LABELED TOBACCO  
4 PRODUCTS FOR PERSONAL USE.—The restrictions of sub-  
5 section (a)(2) and the penalty and forfeiture provisions in  
6 section 5761(c) shall not apply to personal use quantities  
7 of tobacco products and cigarette papers and tubes, as de-  
8 fined in section 555(b)(8)(G) of the Tariff Act of 1930  
9 (19 U.S.C 1555(b)(8)(G)).

10 “(c) CROSS REFERENCE.—Section 5761(c) contains  
11 civil penalties related to violations of this section. Section  
12 5762(b) contains a criminal penalty applicable to any vio-  
13 lation of this section. Section 5763(a)(3) contains for-  
14 feiture provisions related to violations of this section.”.

15 (b) CLARIFICATION OF REIMPORTATION RULES.—  
16 Section 5704(d) of the Internal Revenue Code of 1986 (re-  
17 lating to tobacco products and cigarette papers and tubes  
18 exported and returned) is amended by—

19 (1) striking “a manufacturer of” and inserting  
20 “the original manufacturer, or its authorized agent,  
21 of such”; and

22 (2) inserting “authorized by such manufacturer  
23 to receive such articles” after “proprietor of an ex-  
24 port warehouse”.

25 (c) CONFORMING AMENDMENTS.—

1           (1) Section 5761(e) is amended by adding at  
2           the end the following: “For an exception to the ap-  
3           plication of the penalty under subsection (c), see sec-  
4           tion 5754(b).”.

5           (2) Section 5763(a) of the Internal Revenue  
6           Code of 1986 is amended by adding at the end the  
7           following new paragraph:

8           “(3) EXPORT-LABELED TOBACCO PRODUCTS OR  
9           CIGARETTE PAPERS OR TUBES.—Any tobacco prod-  
10          uct, cigarette paper, or tube that was imported or  
11          brought into the United States, or is sought to be  
12          imported or brought into the United States in viola-  
13          tion of section 5754(a)(2), or that is sold or being  
14          held for sale in violation of section 5754(a)(3), shall  
15          be forfeited to the United States. Notwithstanding  
16          any other provision of law, any product forfeited to  
17          the United States pursuant to this section shall be  
18          destroyed.”.

19          (d) CLERICAL AMENDMENT.—The item relating to  
20          section 5754 in the table of sections for subchapter F of  
21          chapter 52 of the Internal Revenue Code of 1986 is  
22          amended to read as follows:

                  Sec. 5754. Restrictions on tobacco products intended for export.

23       **SEC. 4. REQUIREMENTS APPLICABLE TO CIGARETTE**  
24                               **IMPORTS.**

25          (a) DEFINITIONS.—As used in this section:

1           (1) SECRETARY.—Except as otherwise indi-  
2 cated, the term “Secretary” means the Secretary of  
3 the Treasury.

4           (2) PRIMARY PACKAGING.—The term “primary  
5 packaging” refers to the permanent packaging inside  
6 of the innermost cellophane or other transparent  
7 wrapping and labels, if any. Warnings or other  
8 statements shall be deemed “permanently im-  
9 printed” only if printed directly on such primary  
10 packaging and not by way of stickers or other simi-  
11 lar devices.

12           (b) REQUIREMENTS FOR ENTRY OF CIGARETTES.—

13           (1) GENERAL RULE.—Except as provided in  
14 paragraph (2), cigarettes (whether originally manu-  
15 factured in the United States or in a foreign coun-  
16 try) may be imported or brought into the United  
17 States only if—

18           (A) the manufacturer of those cigarettes  
19 has timely submitted, or has certified that it  
20 will timely submit to the Secretary of Health  
21 and Human Services the lists of the ingredients  
22 added to the tobacco in the manufacture of  
23 such cigarettes as described in section 7 of the  
24 Federal Cigarette Labeling and Advertising Act  
25 (15 U.S.C. 1335a);

1 (B) the precise warning statements in the  
2 precise format specified in section 4 of such Act  
3 (15 U.S.C. 1333) are permanently imprinted on  
4 both—

5 (i) the primary packaging of all those  
6 cigarettes; and

7 (ii) any other pack, box, carton, or  
8 container of any kind in which those ciga-  
9 rettes are to be offered for sale or other-  
10 wise distributed to consumers;

11 (C) the manufacturer or importer of those  
12 cigarettes is in compliance as to those cigarettes  
13 being imported or brought into the United  
14 States with a rotation plan approved by the  
15 Federal Trade Commission pursuant to section  
16 4(e) of such Act (15 U.S.C. 1333(e));

17 (D) those cigarettes do not bear a trade-  
18 mark registered in the United States for ciga-  
19 rettes, or if those cigarettes do bear a trade-  
20 mark registered in the United States for ciga-  
21 rettes, the owner of such United States trade-  
22 mark registration for cigarettes (or a person  
23 authorized to act on behalf of such owner) has  
24 consented to the importation of such cigarettes  
25 into the United States; and

1 (E) the importer has submitted at the time  
2 of entry all of the certificates described in para-  
3 graph (3).

4 (2) EXEMPTIONS.—Cigarettes satisfying the  
5 conditions of any of the following subparagraphs  
6 shall not be subject to the requirements of para-  
7 graph (1):

8 (A) PERSONAL-USE CIGARETTES.—Ciga-  
9 rettes that are imported or brought into the  
10 United States in personal use quantities as de-  
11 fined in section 555(b)(8)(G) of the Tariff Act  
12 of 1930 (19 U.S.C. 1555(b)(8)(G)).

13 (B) CIGARETTES BROUGHT INTO THE  
14 UNITED STATES FOR ANALYSIS.—Cigarettes  
15 that are imported or brought into the United  
16 States solely for the purpose of analysis in  
17 quantities suitable for such purpose, but only if  
18 the importer submits at the time of entry a cer-  
19 tificate signed, under penalties of perjury, by  
20 the consignee (or a person authorized by such  
21 consignee) providing such facts as may be re-  
22 quired by the Secretary to establish that such  
23 consignee is a manufacturer of cigarettes, a  
24 Federal or State government agency, a univer-  
25 sity, or is otherwise engaged in bona fide re-

1 search and stating that such cigarettes will be  
2 used solely for analysis and will not be sold in  
3 domestic commerce in the United States.

4 (C) CIGARETTES INTENDED FOR NON-  
5 COMMERCIAL USE, REEXPORT, OR REPACK-  
6 AGING.—Cigarettes—

7 (i) that are being imported or brought  
8 into the United States for delivery to the  
9 original manufacturer of such cigarettes,  
10 or to a cigarette manufacturer or an ex-  
11 port warehouse authorized by such original  
12 manufacturer;

13 (ii) that do not bear a trademark reg-  
14 istered in the United States for cigarettes,  
15 or if those cigarettes do bear a trademark  
16 registered in the United States for ciga-  
17 rettes, cigarettes for which the owner of  
18 such United States trademark registration  
19 for cigarettes (or a person authorized to  
20 act on behalf of such owner) has consented  
21 to the importation of such cigarettes into  
22 the United States; and

23 (iii) for which the importer submits a  
24 certificate signed by the manufacturer or  
25 export warehouse (or a person authorized

1 by such manufacturer or export ware-  
2 house) to which such cigarettes are to be  
3 delivered (as provided in clause (i)) stat-  
4 ing, under penalties of perjury, with re-  
5 spect to those cigarettes, that it will not  
6 distribute those cigarettes into domestic  
7 commerce unless prior to such distribution  
8 all steps have been taken to comply with  
9 subparagraphs (A), (B), and (C) of para-  
10 graph (1), and, to the extent applicable,  
11 section 5754(a)(3) of the Internal Revenue  
12 Code of 1986.

13 For purposes of this subsection, a trademark is reg-  
14 istered in the United States if it is registered in the  
15 Patent and Trademark Office under the provisions  
16 of title I of the Act of July 5, 1946 (popularly  
17 known as the Trademark Act of 1946), and a copy  
18 of the certificate of registration of such mark has  
19 been filed with the Secretary. The Secretary shall  
20 make available to interested parties a current list of  
21 the marks so filed.

22 (3) CUSTOMS CERTIFICATIONS REQUIRED FOR  
23 CIGARETTE IMPORTS.—The certificates that must be  
24 submitted by the importer of cigarettes at the time

1 of entry in order to comply with paragraph (1)(E)  
2 are—

3 (A) a certificate signed by the manufac-  
4 turer of such cigarettes or an authorized official  
5 of such manufacturer stating under penalties of  
6 perjury with respect to those cigarettes, that  
7 such manufacturer has timely submitted, and  
8 will continue to submit timely, to the Secretary  
9 of Health and Human Services the ingredient  
10 reporting information required by section 7 of  
11 the Federal Cigarette Labeling and Advertising  
12 Act (15 U.S.C. 1335a);

13 (B) a certificate signed by such importer  
14 or an authorized official of such importer stat-  
15 ing under penalties of perjury that—

16 (i) the precise warning statements in  
17 the precise format required by section 4 of  
18 the such Act (15 U.S.C. 1333) are perma-  
19 nently imprinted on both—

20 (I) the primary packaging of all  
21 those cigarettes; and

22 (II) any other pack, box, carton,  
23 or container of any kind in which  
24 those cigarettes are to be offered for

1 sale or otherwise distributed to con-  
2 sumers; and

3 (ii) with respect to those cigarettes  
4 being imported or brought into the United  
5 States, such importer has complied, and  
6 will continue to comply, with a rotation  
7 plan approved by the Federal Trade Com-  
8 mission pursuant to section 4(c) of such  
9 Act (15 U.S.C. 1333(c)); and

10 (C) either—

11 (i) a certificate signed by such im-  
12 porter or an authorized official of such im-  
13 porter stating under penalties of perjury  
14 that those cigarettes and the packages con-  
15 taining those cigarettes do not bear a  
16 trademark registered in the United States  
17 for cigarettes; or

18 (ii) if those cigarettes do bear a trade-  
19 mark registered in the United States for  
20 cigarettes—

21 (I) a certificate signed by the  
22 owner of such United States trade-  
23 mark registration for cigarettes (or a  
24 person authorized to act on behalf of  
25 such owner) stating under penalties of

1 perjury that such owner (or author-  
2 ized person) consents to the importa-  
3 tion of such cigarettes into the United  
4 States; and

5 (II) a certificate signed by such  
6 importer or an authorized official of  
7 such importer stating under penalties  
8 of perjury that the consent referred to  
9 in clause (i) is accurate, remains in  
10 effect, and has not been withdrawn.

11 The Secretary may provide by regulation for the  
12 submission of certifications under this subsection in  
13 electronic form if prior to the entry of any cigarettes  
14 into the United States, the person required to pro-  
15 vide such certifications submits to the Secretary a  
16 written statement, signed under penalties of perjury,  
17 verifying the accuracy and completeness of all infor-  
18 mation contained in such electronic submissions.

19 (c) ENFORCEMENT.—

20 (1) CIVIL PENALTY.—Any person who violates  
21 a provision of subsection (b) shall, in addition to the  
22 tax and any other penalty provided by law, be liable  
23 for a civil penalty for each violation equal to the  
24 greater of \$1,000 or 5 times the amount of the tax  
25 imposed by chapter 52 of the Internal Revenue Code

1 of 1986 on all cigarettes that are the subject of such  
2 violation.

3 (2) FORFEITURES.—Any tobacco product, ciga-  
4 rette papers, or tube that was imported or brought  
5 into the United States or is sought to be imported  
6 or brought into the United States in violation of, or  
7 without meeting the requirements of, subsection (b)  
8 shall be forfeited to the United States. Notwith-  
9 standing any other provision of law, any product for-  
10 feited to the United States pursuant to this section  
11 shall be destroyed.

12 (3) CROSS REFERENCE.—Section 1621 of title  
13 18, United States Code, contains criminal penalties  
14 applicable to the commission of perjury under this  
15 section.

16 **SEC. 5. PENALTIES APPLICABLE TO THE SALE OF CIGA-**  
17 **RETTES NOT IN COMPLIANCE WITH LABEL-**  
18 **ING REQUIREMENTS.**

19 (a) CIVIL PENALTY.—Any person who sells or holds  
20 for sale for domestic consumption any cigarettes for which  
21 the precise warning statements in the precise format re-  
22 quired by section 4 of the Cigarette Labeling and Adver-  
23 tising Act (15 U.S.C. 1333) are not permanently im-  
24 printed on both—

1           (1) the primary packaging of all those ciga-  
2           rettes; and

3           (2) any other pack, box, carton, or container of  
4           any kind in which those cigarettes are offered for  
5           sale, sold, or otherwise distributed to consumers,  
6 shall, in addition to the tax and any other penalty provided  
7 in this title, be liable for a penalty for each violation equal  
8 to the greater of \$1,000 or 5 times the amount of the  
9 tax imposed by chapter 52 of the Internal Revenue Code  
10 of 1986 on all cigarettes that are the subject of such viola-  
11 tion.

12           (b) FORFEITURES.—Cigarettes that are sold, or are  
13 being held for domestic sale, in the United States (and  
14 not for export or duty-free sale) shall be forfeited to the  
15 United States if the precise warning statements in the pre-  
16 cise format required by section 4 of the Federal Cigarette  
17 Labeling and Advertising Act (15 U.S.C. 1333) are not  
18 permanently imprinted on both—

19           (1) the primary packaging of all those ciga-  
20           rettes; and

21           (2) any other pack, box, carton, or container of  
22           any kind in which those cigarettes are offered for  
23           sale, sold, or otherwise distributed to consumers.

24           (c) ENFORCEMENT.—The provisions of this section  
25 shall be enforced by the Secretary of the Treasury through

1 the Bureau of Alcohol, Tobacco, and Firearms and such  
2 other agencies within the Department of the Treasury as  
3 the Secretary may determine.

4 (d) TREATMENT OF TRANSFERS.—Transfers of ciga-  
5 rettes that meet the requirements for transfer or removal  
6 free of tax under section 5704 of the Internal Revenue  
7 Code of 1986 and transfers of cigarettes pursuant to sec-  
8 tion 4(b) of this Act shall not be treated as sales for do-  
9 mestic consumption under this section.

10 (e) DESTRUCTION OF FORFEITED ARTICLES.—Not-  
11 withstanding any other provision of law, any article for-  
12 feited to the United States pursuant to this section shall  
13 be destroyed.

14 (f) DEFINITIONS.—For purposes of this section, the  
15 term “primary packaging” shall refer to the permanent  
16 packaging inside of the innermost cellophane or other  
17 transparent wrapping and labels, if any. Warnings or  
18 other statements shall be deemed “permanently im-  
19 printed” only if printed directly on such primary pack-  
20 aging and not by way of stickers or other similar devices.

21 **SEC. 6. EFFECTIVE DATES.**

22 (a) IN GENERAL.—Except as provided in subsection  
23 (b), this Act, and the amendments made by this Act, shall  
24 take effect upon the date of enactment of this Act. Noth-  
25 ing in this subsection shall be construed to affect the effec-

1 tive date of the provisions of section 9302 of the Balanced  
2 Budget Act of 1997 (Public Law 105–33).

3 (b) EXCEPTIONS.—The amendments to sections  
4 5754(a)(3) and 5763(a)(3) of the Internal Revenue Code  
5 of 1986, and the provisions of sections 4 and 5 of this  
6 Act shall take effect after the date which is 60 days after  
7 the date of enactment of this Act.

8 **SEC. 7. STUDY.**

9 The Director of the Bureau of Alcohol, Tobacco, and  
10 Firearms shall study whether the penalties imposed under  
11 sections 5761, 5762, and 5763 of the Internal Revenue  
12 Code of 1986 are adequate to enforce the provisions of  
13 sections 5704(d) and 5754 of such Code and report the  
14 results of such study to the Committee on Ways and  
15 Means of the House of Representatives and the Committee  
16 on Finance of the Senate within 1 year of the date of en-  
17 actment of this Act.

18 **SEC. 8. SEVERABILITY.**

19 If any provision of this section is held to be invalid  
20 as it relates to any particular circumstance, such provision  
21 shall remain valid under all other circumstances, and all  
22 other provisions of this section shall remain in full force  
23 and effect. If any provision of this section is held to be  
24 invalid in its entirety, all other provisions of this section  
25 shall remain in full force and effect.

**1 SEC. 9. SAVINGS.**

2       The civil or criminal penalties and remedies provided  
3 by this Act and any other civil or criminal penalty and  
4 remedy provided by chapter 52 of the Internal Revenue  
5 Code of 1986 and section 4 of this Act that are applicable  
6 to any violation shall not be exclusive, but shall be in addi-  
7 tion to any other remedy provided by law.

○