

110TH CONGRESS
2^D SESSION

H. R. 4081

AN ACT

To prevent tobacco smuggling, to ensure the collection of
all tobacco taxes, 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,*

1 **SECTION 1. SHORT TITLE; FINDINGS; PURPOSES.**

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

5 (b) **FINDINGS.**—Congress finds that—

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

12 (2) Hezbollah, Hamas, al Qaeda, and other ter-
13 rorist organizations have profited from trafficking in
14 illegal cigarettes or counterfeit cigarette tax stamps;

15 (3) terrorist involvement in illicit cigarette traf-
16 ficking will continue to grow because of the large
17 profits such organizations can earn;

18 (4) the sale of illegal cigarettes and smokeless
19 tobacco over the Internet, and through mail, fax, or
20 phone orders, make it cheaper and easier for chil-
21 dren to obtain tobacco products;

22 (5) the majority of Internet and other remote
23 sales of cigarettes and smokeless tobacco are being
24 made without adequate precautions to protect
25 against sales to children, without the payment of ap-
26 plicable taxes, and without complying with the nomi-

1 nal registration and reporting requirements in exist-
2 ing Federal law;

3 (6) unfair competition from illegal sales of ciga-
4 rettes and smokeless tobacco is taking billions of dol-
5 lars of sales away from law-abiding retailers
6 throughout the United States;

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

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

13 (9) the number of Internet vendors in the
14 United States and in foreign countries that sell ciga-
15 rettes and smokeless tobacco to buyers in the United
16 States increased from only about 40 in 2000 to
17 more than 500 in 2005; and

18 (10) the intrastate sale of illegal cigarettes and
19 smokeless tobacco over the Internet has a substan-
20 tial effect on interstate commerce.

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

22 (1) require Internet and other remote sellers of
23 cigarettes and smokeless tobacco to comply with the
24 same laws that apply to law-abiding tobacco retail-
25 ers;

1 (2) create strong disincentives to illegal smug-
2 gling of tobacco products;

3 (3) provide government enforcement officials
4 with more effective enforcement tools to combat to-
5 bacco smuggling;

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

9 (5) increase collections of Federal, State, and
10 local excise taxes on cigarettes and smokeless to-
11 bacco; and

12 (6) prevent and reduce youth access to inexpen-
13 sive cigarettes and smokeless tobacco through illegal
14 Internet or contraband sales.

15 **SEC. 2. COLLECTION OF STATE CIGARETTE AND SMOKE-**
16 **LESS TOBACCO TAXES.**

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

22 **“SECTION 1. DEFINITIONS.**

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

24 “(1) ATTORNEY GENERAL.—The term ‘attorney
25 general’, with respect to a State, means the attorney

1 general or other chief law enforcement officer of the
2 State, or the designee of that officer.

3 “(2) CIGARETTE.—

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

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

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

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

16 “(3) COMMON CARRIER.—The term ‘common
17 carrier’ means any person (other than a local mes-
18 senger service or the United States Postal Service)
19 that holds itself out to the general public as a pro-
20 vider for hire of the transportation by water, land,
21 or air of merchandise, whether or not the person ac-
22 tually operates the vessel, vehicle, or aircraft by
23 which the transportation is provided, between a port
24 or place and a port or place in the United States.

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

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

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

16 “(B) the cigarettes or smokeless tobacco
17 are delivered to the buyer by common carrier,
18 private delivery service, or other method of
19 remote delivery, or the seller is not in the phys-
20 ical presence of the buyer when the buyer ob-
21 tains possession of the cigarettes or smokeless
22 tobacco.

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

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

3 “(A) Indian country as defined in section
4 1151 of title 18, United States Code, except that
5 within the State of Alaska that term applies
6 only to the Metlakatla Indian Community, An-
7 nette Island Reserve; and

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

11 “(8) INDIAN TRIBE.—The term ‘Indian tribe’,
12 ‘tribe’, or ‘tribal’ refers to an Indian tribe as defined
13 in section 4(e) of the Indian Self-Determination and
14 Education Assistance Act (25 U.S.C. 450b(e)) or as
15 listed pursuant to section 104 of the Federally Rec-
16 ognized Indian Tribe List Act of 1994 (25 U.S.C.
17 479a–1).

18 “(9) INTERSTATE COMMERCE.—The term
19 ‘interstate commerce’ means commerce between a
20 State and any place outside the State, commerce be-
21 tween a State and any Indian country in the State,
22 or commerce between points in the same State but
23 through any place outside the State or through any
24 Indian country.

1 “(10) PERSON.—The term ‘person’ means an
2 individual, corporation, company, association, firm,
3 partnership, society, State government, local govern-
4 ment, Indian tribal government, governmental orga-
5 nization of such government, or joint stock company.

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

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

16 “(13) TOBACCO TAX ADMINISTRATOR.—The
17 term ‘tobacco tax administrator’ means the State,
18 local, or tribal official duly authorized to collect the
19 tobacco tax or administer the tax law of a State, lo-
20 cality, or tribe, respectively.

21 “(14) TRIBAL ENTERPRISE.—The term ‘tribal
22 enterprise’ means any business enterprise, incor-
23 porated or unincorporated under federal or tribal
24 law, of an Indian tribe or group of Indian tribe.

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

5 (b) REPORTS TO STATE TOBACCO TAX ADMINISTRA-
6 TORS.—Section 2 of the Jenkins Act (15 U.S.C. 376) is
7 amended—

8 (1) by striking “cigarettes” each place it ap-
9 pears and inserting “cigarettes or smokeless to-
10 bacco”;

11 (2) in subsection (a)—

12 (A) in the matter preceding paragraph

13 (1)—

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

16 (ii) by striking “or transfers” and in-
17 serting “, transfers, or ships”;

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

21 (iv) by striking “to other than a dis-
22 tributor licensed by or located in such
23 State,”; and

1 (v) by striking “or transfer and ship-
2 ment” and inserting “, transfer, or ship-
3 ment”;

4 (B) in paragraph (1)—

5 (i) by striking “with the tobacco tax
6 administrator of the State” and inserting
7 “with the Attorney General of the United
8 States and with the tobacco tax adminis-
9 trators of the State and place”; and

10 (ii) by striking “; and” and inserting
11 the following: “, as well as telephone num-
12 bers for each place of business, a principal
13 electronic mail address, any website ad-
14 dresses, and the name, address, and tele-
15 phone number of an agent in the State au-
16 thorized to accept service on behalf of such
17 person;”;

18 (C) in paragraph (2), by striking “and the
19 quantity thereof.” and inserting “the quantity
20 thereof, and the name, address, and phone
21 number of the person delivering the shipment to
22 the recipient on behalf of the delivery seller,
23 with all invoice or memoranda information re-
24 lating to specific customers to be organized by
25 city or town and by zip code; and”;

1 (D) by adding at the end the following:

2 “(3) with respect to each memorandum or in-
3 voice filed with a State under paragraph (2), also
4 file copies of such memorandum or invoice with the
5 tobacco tax administrators and chief law enforce-
6 ment officers of the local governments and Indian
7 tribes operating within the borders of the State that
8 apply their own local or tribal taxes on cigarettes or
9 smokeless tobacco.”;

10 (3) in subsection (b)—

11 (A) by inserting “PRESUMPTIVE EVI-
12 DENCE.—” after “(b)”;

13 (B) by striking “(1) that” and inserting
14 “that”; and

15 (C) by striking “, and (2)” and all that
16 follows and inserting a period; and

17 (4) by adding at the end the following:

18 “(c) USE OF INFORMATION.—A tobacco tax adminis-
19 trator or chief law enforcement officer who receives a
20 memorandum or invoice under paragraph (2) or (3) of
21 subsection (a) shall use such memorandum or invoice sole-
22 ly for the purposes of the enforcement of this Act and the
23 collection of any taxes owed on related sales of cigarettes
24 and smokeless tobacco, and shall keep confidential any

1 personal information in such memorandum or invoice not
2 otherwise required for such purposes.”.

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

6 **“SEC. 2A. DELIVERY SALES.**

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

10 “(1) the shipping requirements set forth in sub-
11 section (b);

12 “(2) the recordkeeping requirements set forth
13 in subsection (c);

14 “(3) all State, local, tribal, and other laws gen-
15 erally applicable to sales of cigarettes or smokeless
16 tobacco as if such delivery sales occurred entirely
17 within the specific State and place, including laws
18 imposing—

19 “(A) excise taxes;

20 “(B) licensing and tax-stamping require-
21 ments;

22 “(C) restrictions on sales to minors; and

23 “(D) other payment obligations or legal re-
24 quirements relating to the sale, distribution, or
25 delivery of cigarettes or smokeless tobacco; and

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

3 “(b) SHIPPING AND PACKAGING.—

4 “(1) REQUIRED STATEMENT.—For any ship-
5 ping package containing cigarettes or smokeless to-
6 bacco, the delivery seller shall include on the bill of
7 lading, if any, and on the outside of the shipping
8 package, on the same surface as the delivery ad-
9 dress, a clear and conspicuous statement providing
10 as follows: ‘CIGARETTES/SMOKELESS TO-
11 BACCO: FEDERAL LAW REQUIRES THE PAY-
12 MENT OF ALL APPLICABLE EXCISE TAXES,
13 AND COMPLIANCE WITH APPLICABLE LI-
14 CENSING AND TAX-STAMPING OBLIGA-
15 TIONS’.

16 “(2) FAILURE TO LABEL.—Any shipping pack-
17 age described in paragraph (1) that is not labeled in
18 accordance with that paragraph shall be treated as
19 nondeliverable matter by a common carrier or other
20 delivery service, if the common carrier or other deliv-
21 ery service knows or should know the package con-
22 tains cigarettes or smokeless tobacco. If a common
23 carrier or other delivery service believes a package is
24 being submitted for delivery in violation of para-
25 graph (1), it may require the person submitting the

1 package for delivery to establish that it is not being
2 sent in violation of paragraph (1) before accepting
3 the package for delivery. Nothing in this paragraph
4 shall require the common carrier or other delivery
5 service to open any package to determine its con-
6 tents.

7 “(3) WEIGHT RESTRICTION.—A delivery seller
8 shall not sell, offer for sale, deliver, or cause to be
9 delivered in any single sale or single delivery any
10 cigarettes or smokeless tobacco weighing more than
11 10 pounds.

12 “(4) AGE VERIFICATION.—

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

16 “(i) shall not sell, deliver, or cause to
17 be delivered any tobacco products to a per-
18 son under the minimum age required for
19 the legal sale or purchase of tobacco prod-
20 ucts, as determined by the applicable law
21 at the place of delivery;

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

24 “(I) the purchaser placing the
25 delivery sale order, or an adult who is

1 at least the minimum age required for
2 the legal sale or purchase of tobacco
3 products, as determined by the appli-
4 cable law at the place of delivery, to
5 sign to accept delivery of the shipping
6 container at the delivery address; and

7 “(II) the person who signs to ac-
8 cept delivery of the shipping container
9 to provide proof, in the form of a
10 valid, government-issued identification
11 bearing a photograph of the indi-
12 vidual, that the person is at least the
13 minimum age required for the legal
14 sale or purchase of tobacco products,
15 as determined by the applicable law at
16 the place of delivery; and

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

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

22 “(II) verifying the information
23 provided in subclause (I), through the
24 use of a commercially available data-
25 base or aggregate of databases, con-

1 sisting primarily of data from govern-
2 ment sources, that are regularly used
3 by government and businesses for the
4 purpose of age and identity
5 verification and authentication, to en-
6 sure that the purchaser is at least the
7 minimum age required for the legal
8 sale or purchase of tobacco products,
9 as determined by the applicable law at
10 the place of delivery.

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

17 “(c) RECORDS.—

18 “(1) IN GENERAL.—Each delivery seller shall
19 keep a record of any delivery sale, including all of
20 the information described in section 2(a)(2), orga-
21 nized by the State, and within such State, by the
22 city or town and by zip code, into which such deliv-
23 ery sale is so made.

24 “(2) RECORD RETENTION.—Records of a deliv-
25 ery sale shall be kept as described in paragraph (1)

1 in the year in which the delivery sale is made and
2 for the next 4 years.

3 “(3) ACCESS FOR OFFICIALS.—Records kept
4 under paragraph (1) shall be made available to to-
5 bacco tax administrators of the States, to local gov-
6 ernments and Indian tribes that apply their own
7 local or tribal taxes on cigarettes or smokeless to-
8 bacco, to the attorneys general of the States, to the
9 chief law enforcement officers of such local govern-
10 ments and Indian tribes, and to the Attorney Gen-
11 eral of the United States in order to ensure the com-
12 pliance of persons making delivery sales with the re-
13 quirements of this Act.

14 “(d) DELIVERY.—

15 “(1) IN GENERAL.—Except as provided in para-
16 graph (2), no delivery seller may sell or deliver to
17 any consumer, or tender to any common carrier or
18 other delivery service, any cigarettes or smokeless to-
19 bacco pursuant to a delivery sale unless, in advance
20 of the sale, delivery, or tender—

21 “(A) any cigarette or smokeless tobacco ex-
22 cise tax that is imposed by the State in which
23 the cigarettes or smokeless tobacco are to be
24 delivered has been paid to the State;

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

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

10 “(2) EXCEPTION.—Paragraph (1) does not
11 apply to a delivery sale of smokeless tobacco if the
12 law of the State or local government of the place
13 where the smokeless tobacco is to be delivered re-
14 quires or otherwise provides that delivery sellers col-
15 lect the excise tax from the consumer and remit the
16 excise tax to the State or local government, and the
17 delivery seller complies with the requirement.

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

20 “(1) IN GENERAL.—

21 “(A) INITIAL LIST.—Not later than 90
22 days after this subsection goes into effect under
23 the Prevent All Cigarette Trafficking Act of
24 2008, the Attorney General of the United
25 States shall compile a list of delivery sellers of

1 cigarettes or smokeless tobacco that have not
2 registered with the Attorney General, pursuant
3 to section 2(a) or that are otherwise not in
4 compliance with this Act, and—

5 “(i) distribute the list to—

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

8 “(II) common carriers and other
9 persons that deliver small packages to
10 consumers in interstate commerce, in-
11 cluding the United States Postal Serv-
12 ice; and

13 “(III) at the discretion of the At-
14 torney General of the United States,
15 to any other persons; and

16 “(ii) publicize and make the list avail-
17 able to any other person engaged in the
18 business of interstate deliveries or who de-
19 livers cigarettes or smokeless tobacco in or
20 into any State.

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

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

4 “(ii) all addresses from which the de-
5 livery seller does business or ships ciga-
6 rettes or smokeless tobacco;

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

10 “(iv) any other information that the
11 Attorney General determines would facili-
12 tate compliance with this subsection by re-
13 cipients of the list.

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

23 “(D) STATE, LOCAL, OR TRIBAL ADDI-
24 TIONS.—The Attorney General of the United
25 States shall include in the list under subpara-

1 graph (A) any noncomplying delivery sellers
2 identified by any State, local, or tribal govern-
3 ment under paragraph (5), and shall distribute
4 the list to the attorney general or chief law en-
5 forcement official and the tax administrator of
6 any government submitting any such informa-
7 tion and to any common carriers or other per-
8 sons who deliver small packages to consumers
9 identified by any government pursuant to para-
10 graph (5).

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

15 “(i) use reasonable procedures to en-
16 sure maximum possible accuracy and com-
17 pleteness of the records and information
18 relied on for the purpose of determining
19 that such delivery seller is noncomplying;

20 “(ii) not later than 14 days prior to
21 including any delivery seller on the list
22 under paragraph (1), make a reasonable
23 attempt to send notice to the delivery seller
24 by letter, electronic mail, or other means
25 that the delivery seller is being placed on

1 such list or update, with that notice citing
2 the relevant provisions of this Act and the
3 specific reasons for being placed on such
4 list;

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

8 “(iv) investigate each such challenge
9 by contacting the relevant Federal, State,
10 tribal, and local law enforcement officials,
11 and provide the specific findings and re-
12 sults of such investigation to such delivery
13 seller not later than 30 days after the chal-
14 lenge is made; and

15 “(v) upon finding that any placement
16 is inaccurate, incomplete, or cannot be
17 verified, promptly delete such delivery sell-
18 er from the list as appropriate and notify
19 each appropriate Federal, State, tribal,
20 and local authority of such finding.

21 “(F) CONFIDENTIALITY.—The list distrib-
22 uted pursuant to subparagraph (A) shall be
23 confidential, and any person receiving the list
24 shall maintain the confidentiality of the list but
25 may deliver the list, for enforcement purposes,

1 to any government official or to any common
2 carrier or other person that delivers tobacco
3 products or small packages to consumers. Noth-
4 ing in this section shall prohibit a common car-
5 rier, the United States Postal Service, or any
6 other person receiving the list from discussing
7 with the listed delivery sellers the delivery sell-
8 ers' inclusion on the list and the resulting ef-
9 fects on any services requested by such listed
10 delivery seller.

11 “(2) PROHIBITION ON DELIVERY.—

12 “(A) IN GENERAL.—Commencing on the
13 date that is 60 days after the date of the initial
14 distribution or availability of the list under
15 paragraph (1)(A), no person who receives the
16 list under paragraph (1), and no person who
17 delivers cigarettes or smokeless tobacco to con-
18 sumers, shall knowingly complete, cause to be
19 completed, or complete its portion of a delivery
20 of any package for any person whose name and
21 address are on the list, unless—

22 “(i) the person making the delivery
23 knows or believes in good faith that the
24 item does not include cigarettes or smoke-
25 less tobacco;

1 “(ii) the delivery is made to a person
2 lawfully engaged in the business of manu-
3 facturing, distributing, or selling cigarettes
4 or smokeless tobacco; or

5 “(iii) the package being delivered
6 weighs more than 100 pounds and the per-
7 son making the delivery does not know or
8 have reasonable cause to believe that the
9 package contains cigarettes or smokeless
10 tobacco.

11 “(B) IMPLEMENTATION OF UPDATES.—
12 Commencing on the date that is 30 days after
13 the date of the distribution or availability of
14 any updates or corrections to the list under
15 paragraph (1), all recipients and all common
16 carriers or other persons that deliver cigarettes
17 or smokeless tobacco to consumers shall be sub-
18 ject to subparagraph (A) in regard to such cor-
19 rections or updates.

20 “(C) EXEMPTIONS.—Subparagraphs (A)
21 and (B), subsection (b)(2), and any other re-
22 quirements or restrictions placed directly on
23 common carriers elsewhere in this subsection,
24 shall not apply to a common carrier that is sub-
25 ject to a settlement agreement relating to to-

1 bacco product deliveries to consumers. For the
2 purposes of this section, ‘settlement agreement’
3 shall be defined to include the Assurance of
4 Discontinuance entered into by the Attorney
5 General of New York and DHL Holdings USA,
6 Inc. and DHL Express (USA), Inc. on or about
7 July 1, 2005, the Assurance of Discontinuance
8 entered into by the Attorney General of New
9 York and United Parcel Service, Inc. on or
10 about October 21, 2005, and the Assurance of
11 Compliance entered into by the Attorney Gen-
12 eral of New York and Federal Express Corpora-
13 tion and Fed Ex Ground package Systems, Inc.
14 on or about February 3, 2006, so long as
15 each is honored nationwide to block illegal de-
16 liveries of cigarettes or smokeless tobacco to
17 consumers, and also includes any other active
18 agreement between a common carrier and the
19 states that operates nationwide to ensure that
20 no deliveries of cigarettes and smokeless to-
21 bacco shall be made to consumers for illegally
22 operating Internet or mail-order sellers and
23 that any such deliveries to consumers shall
24 not be made to minors or without payment to

1 the states and localities where the consumers
2 are located of all taxes on the tobacco products.

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

4 “(A) IN GENERAL.—In the event that a
5 common carrier or other delivery service delays
6 or interrupts the delivery of a package it has in
7 its possession because it determines or has rea-
8 son to believe that the person ordering the de-
9 livery is on a list distributed under paragraph
10 (1)—

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

13 “(I) the common carrier or other
14 delivery service as if the delivery of
15 the package had been timely com-
16 pleted; and

17 “(II) if the package is not deliv-
18 erable, any reasonable additional fee
19 or charge levied by the common car-
20 rier or other delivery service to cover
21 its extra costs and inconvenience and
22 to serve as a disincentive against such
23 noncomplying delivery orders; and

24 “(ii) if the package is determined not
25 to be deliverable, the common carrier or

1 other delivery service shall, in its discre-
2 tion, either provide the package and its
3 contents to a Federal, State, or local law
4 enforcement agency or destroy the package
5 and its contents.

6 “(B) RECORDS.—A common carrier or
7 other delivery service shall maintain, for a pe-
8 riod of 5 years, any records kept in the ordi-
9 nary course of business relating to any deliv-
10 eries interrupted pursuant to this paragraph
11 and provide that information, upon request, to
12 the Attorney General of the United States or to
13 the attorney general or chief law enforcement
14 official or tax administrator of any State, local,
15 or tribal government.

16 “(C) CONFIDENTIALITY.—Any person re-
17 ceiving records under subparagraph (B) shall
18 use such records solely for the purposes of the
19 enforcement of this Act and the collection of
20 any taxes owed on related sales of cigarettes
21 and smokeless tobacco, and the person receiving
22 records under subparagraph (B) shall keep con-
23 fidential any personal information in such
24 records not otherwise required for such pur-
25 poses.

1 “(4) PREEMPTION.—

2 “(A) IN GENERAL.—No State, local, or
3 tribal government, nor any political authority of
4 2 or more State, local, or tribal governments,
5 may enact or enforce any law or regulation re-
6 lating to delivery sales that restricts deliveries
7 of cigarettes or smokeless tobacco to consumers
8 by common carriers or other delivery services
9 on behalf of delivery sellers by—

10 “(i) requiring that the common carrier
11 or other delivery service verify the age or
12 identity of the consumer accepting the de-
13 livery by requiring the person who signs to
14 accept delivery of the shipping container to
15 provide proof, in the form of a valid, gov-
16 ernment-issued identification bearing a
17 photograph of the individual, that such
18 person is at least the minimum age re-
19 quired for the legal sale or purchase of to-
20 bacco products, as determined by either
21 State or local law at the place of delivery;

22 “(ii) requiring that the common car-
23 rier or other delivery service obtain a sig-
24 nature from the consumer accepting the
25 delivery;

1 “(iii) requiring that the common car-
2 rier or other delivery service verify that all
3 applicable taxes have been paid;

4 “(iv) requiring that packages delivered
5 by the common carrier or other delivery
6 service contain any particular labels, no-
7 tice, or markings; or

8 “(v) prohibiting common carriers or
9 other delivery services from making deliv-
10 eries on the basis of whether the delivery
11 seller is or is not identified on any list of
12 delivery sellers maintained and distributed
13 by any entity other than the Federal Gov-
14 ernment.

15 “(B) RELATIONSHIP TO OTHER LAWS.—
16 Except as provided in subparagraph (C), noth-
17 ing in this paragraph shall be construed to pro-
18 hibit, expand, restrict, or otherwise amend or
19 modify—

20 “(i) section 14501(c)(1) or
21 41713(b)(4) of title 49, United States
22 Code;

23 “(ii) any other restrictions in Federal
24 law on the ability of State, local, or tribal

1 governments to regulate common carriers;
2 or

3 “(iii) any provision of State, local, or
4 tribal law regulating common carriers that
5 falls within the provisions of sections
6 14501(c)(2) or 41713(b)(4)(B) of title 49
7 of the United States Code.

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

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

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

22 “(i) all known names, addresses,
23 website addresses, and other primary con-
24 tact information of any delivery seller that
25 offers for sale or makes sales of cigarettes

1 or smokeless tobacco in or into the State,
2 locality, or tribal land but has failed to
3 register with or make reports to the re-
4 spective tax administrator, as required by
5 this Act, or that has been found in a legal
6 proceeding to have otherwise failed to com-
7 ply with this Act; and

8 “(ii) a list of common carriers and
9 other persons who make deliveries of ciga-
10 rettes or smokeless tobacco in or into the
11 State, locality, or tribal lands.

12 “(B) UPDATES.—Any government pro-
13 viding a list to the Attorney General of the
14 United States under subparagraph (A) shall
15 also provide updates and corrections every 4
16 months until such time as such government no-
17 tifies the Attorney General of the United States
18 in writing that such government no longer de-
19 sires to submit such information to supplement
20 the list maintained and distributed by the At-
21 torney General of the United States under
22 paragraph (1).

23 “(C) REMOVAL AFTER WITHDRAWAL.—
24 Upon receiving written notice that a govern-
25 ment no longer desires to submit information

1 under subparagraph (A), the Attorney General
2 of the United States shall remove from the list
3 under paragraph (1) any persons that are on
4 the list solely because of such government's
5 prior submissions of its list of noncomplying de-
6 livery sellers of cigarettes or smokeless tobacco
7 or its subsequent updates and corrections.

8 “(6) DEADLINE TO INCORPORATE ADDI-
9 TIONS.—The Attorney General of the United States
10 shall—

11 “(A) include any delivery seller identified
12 and submitted by a State, local, or tribal gov-
13 ernment under paragraph (5) in any list or up-
14 date that is distributed or made available under
15 paragraph (1) on or after the date that is 30
16 days after the date on which the information is
17 received by the Attorney General of the United
18 States; and

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

24 “(7) NOTICE TO DELIVERY SELLERS.—Not
25 later than 14 days prior to including any delivery

1 seller on the initial list distributed or made available
2 under paragraph (1), or on any subsequent list or
3 update for the first time, the Attorney General of
4 the United States shall make a reasonable attempt
5 to send notice to the delivery seller by letter, elec-
6 tronic mail, or other means that the delivery seller
7 is being placed on such list or update, with that no-
8 tice citing the relevant provisions of this Act.

9 “(8) LIMITATIONS.—

10 “(A) IN GENERAL.—Any common carrier
11 or other person making a delivery subject to
12 this subsection shall not be required or other-
13 wise obligated to—

14 “(i) determine whether any list dis-
15 tributed or made available under para-
16 graph (1) is complete, accurate, or up-to-
17 date;

18 “(ii) determine whether a person or-
19 dering a delivery is in compliance with this
20 Act; or

21 “(iii) open or inspect, pursuant to this
22 Act, any package being delivered to deter-
23 mine its contents.

24 “(B) ALTERNATE NAMES.—Any common
25 carrier or other person making a delivery sub-

1 ject to this subsection shall not be required or
2 otherwise obligated to make any inquiries or
3 otherwise determine whether a person ordering
4 a delivery is a delivery seller on the list under
5 paragraph (1) who is using a different name or
6 address in order to evade the related delivery
7 restrictions, but shall not knowingly deliver any
8 packages to consumers for any such delivery
9 seller who the common carrier or other delivery
10 service knows is a delivery seller who is on the
11 list under paragraph (1) but is using a different
12 name or address to evade the delivery restric-
13 tions of paragraph (2).

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

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

23 “(ii) not, as a matter of regular prac-
24 tice and procedure, making any deliveries,
25 or any deliveries in certain States, of any

1 cigarettes or smokeless tobacco for any
2 person or for any person not in the busi-
3 ness of manufacturing, distributing, or
4 selling cigarettes or smokeless tobacco; or
5 “(iii) delaying or not making a deliv-
6 ery for any person because of reasonable
7 efforts to comply with this Act.

8 “(D) OTHER LIMITS.—Section 2 and sub-
9 sections (a), (b), (c), and (d) of this section
10 shall not be interpreted to impose any respon-
11 sibilities, requirements, or liability on common
12 carriers.

13 “(f) PRESUMPTION.—For purposes of this Act, a de-
14 livery sale shall be deemed to have occurred in the State
15 and place where the buyer obtains personal possession of
16 the cigarettes or smokeless tobacco, and a delivery pursu-
17 ant to a delivery sale is deemed to have been initiated or
18 ordered by the delivery seller.”.

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

21 **“SEC. 3. PENALTIES.**

22 “(a) CRIMINAL PENALTIES.—

23 “(1) IN GENERAL.—Except as provided in para-
24 graph (2), whoever violates any provision of this Act
25 shall be guilty of a felony and shall be imprisoned

1 not more than 3 years, fined under title 18, United
2 States Code, or both.

3 “(2) EXCEPTIONS.—

4 “(A) GOVERNMENTS.—Paragraph (1) shall
5 not apply to a State, local, or tribal govern-
6 ment.

7 “(B) DELIVERY VIOLATIONS.—A common
8 carrier or independent delivery service, or em-
9 ployee of a common carrier or independent de-
10 livery service, shall be subject to criminal pen-
11 alties under paragraph (1) for a violation of
12 section 2A(e) only if the violation is committed
13 intentionally—

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

18 “(ii) for the purpose of assisting a de-
19 livery seller to violate, or otherwise evading
20 compliance with, section 2A.

21 “(b) CIVIL PENALTIES.—

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

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

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

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

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

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

22 “(3) EXCEPTIONS.—

23 “(A) DELIVERY VIOLATIONS.—An em-
24 ployee of a common carrier or independent de-
25 livery service shall be subject to civil penalties

1 under paragraph (1) for a violation of section
2 2A(e) only if the violation is committed inten-
3 tionally—

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

8 “(ii) for the purpose of assisting a de-
9 liverly seller to violate, or otherwise evading
10 compliance with, section 2A.

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

15 “(i) the common carrier or inde-
16 pendent delivery service has implemented
17 and enforces effective policies and practices
18 for complying with that section; or

19 “(ii) an employee of the common car-
20 rier or independent delivery service who
21 physically receives and processes orders,
22 picks up packages, processes packages, or
23 makes deliveries, takes actions that are
24 outside the scope of employment of the em-
25 ployee in the course of the violation, or

1 that violate the implemented and enforced
2 policies of the common carrier or inde-
3 pendent delivery service described in clause
4 (i).”.

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

7 **“SEC. 4. ENFORCEMENT.**

8 “(a) IN GENERAL.—The United States district
9 courts shall have jurisdiction to prevent and restrain viola-
10 tions of this Act and to provide other appropriate injunc-
11 tive or equitable relief, including money damages, for such
12 violations.

13 “(b) AUTHORITY OF THE ATTORNEY GENERAL.—
14 The Attorney General of the United States shall admin-
15 ister and enforce the provisions of this Act.

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

17 “(1) IN GENERAL.—

18 “(A) STANDING.—A State, through its at-
19 torney general (or a designee thereof), or a
20 local government or Indian tribe that levies a
21 tax subject to section 2A(a)(3), through its
22 chief law enforcement officer (or a designee
23 thereof), may bring an action in a United
24 States district court to prevent and restrain vio-
25 lations of this Act by any person (or by any

1 person controlling such person) or to obtain any
2 other appropriate relief from any person (or
3 from any person controlling such person) for
4 violations of this Act, including civil penalties,
5 money damages, and injunctive or other equi-
6 table relief.

7 “(B) SOVEREIGN IMMUNITY.—Nothing in
8 this Act shall be deemed to abrogate or con-
9 stitute a waiver of any sovereign immunity of a
10 State or local government or Indian tribe
11 against any unconsented lawsuit under this Act,
12 or otherwise to restrict, expand, or modify any
13 sovereign immunity of a State or local govern-
14 ment or Indian tribe.

15 “(2) PROVISION OF INFORMATION.—A State,
16 through its attorney general, or a local government
17 or Indian tribe that levies a tax subject to section
18 2A(a)(3), through its chief law enforcement officer
19 (or a designee thereof), may provide evidence of a
20 violation of this Act by any person not subject to
21 State, local, or tribal government enforcement ac-
22 tions for violations of this Act to the Attorney Gen-
23 eral of the United States or a United States attor-
24 ney, who shall take appropriate actions to enforce
25 the provisions of this Act.

1 “(3) USE OF PENALTIES COLLECTED.—

2 “(A) IN GENERAL.—There is established a
3 separate account in the Treasury known as the
4 ‘PACT Anti-Trafficking Fund’. Notwith-
5 standing any other provision of law and subject
6 to subparagraph (B), an amount equal to 50
7 percent of any criminal and civil penalties col-
8 lected by the United States Government in en-
9 forcing the provisions of this Act shall be trans-
10 ferred into the PACT Anti-Trafficking Fund
11 and shall be available to the Attorney General
12 of the United States for purposes of enforcing
13 the provisions of this Act and other laws relat-
14 ing to contraband tobacco products.

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

23 “(4) NONEXCLUSIVITY OF REMEDY.—

24 “(A) IN GENERAL.—The remedies avail-
25 able under this section and section 3 are in ad-

1 dition to any other remedies available under
2 Federal, State, local, tribal, or other law.

3 “(B) STATE COURT PROCEEDINGS.—Noth-
4 ing in this Act shall be construed to expand, re-
5 strict, or otherwise modify any right of an au-
6 thorized State official to proceed in State court,
7 or take other enforcement actions, on the basis
8 of an alleged violation of State or other law.

9 “(C) TRIBAL COURT PROCEEDINGS.—
10 Nothing in this Act shall be construed to ex-
11 pand, restrict, or otherwise modify any right of
12 an authorized Indian tribal government official
13 to proceed in tribal court, or take other enforce-
14 ment actions, on the basis of an alleged viola-
15 tion of tribal law.

16 “(D) LOCAL GOVERNMENT ENFORCE-
17 MENT.—Nothing in this Act shall be construed
18 to expand, restrict, or otherwise modify any
19 right of an authorized local government official
20 to proceed in State court, or take other enforce-
21 ment actions, on the basis of an alleged viola-
22 tion of local or other law.

23 “(d) PERSONS DEALING IN TOBACCO PRODUCTS.—
24 Any person who holds a permit under section 5712 of the
25 Internal Revenue Code of 1986 (regarding permitting of

1 manufacturers and importers of tobacco products and ex-
2 port warehouse proprietors) may bring an action in a
3 United States district court to prevent and restrain viola-
4 tions of this Act by any person (or by any person control-
5 ling such person) other than a State, local, or tribal gov-
6 ernment.

7 “(e) NOTICE.—

8 “(1) PERSONS DEALING IN TOBACCO PROD-
9 UCTS.—Any person who commences a civil action
10 under subsection (d) shall inform the Attorney Gen-
11 eral of the United States of the action.

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

18 “(f) PUBLIC NOTICE.—

19 “(1) IN GENERAL.—The Attorney General of
20 the United States shall make available to the public,
21 by posting such information on the Internet and by
22 other appropriate means, information regarding all
23 enforcement actions undertaken by the Attorney
24 General or United States attorneys, or reported to
25 the Attorney General, under this section, including

1 information regarding the resolution of such actions
2 and how the Attorney General and the United States
3 attorney have responded to referrals of evidence of
4 violations pursuant to subsection (c)(2).

5 “(2) REPORTS TO CONGRESS.—The Attorney
6 General shall submit to Congress each year a report
7 containing the information described in paragraph
8 (1).”.

9 **SEC. 3. TREATMENT OF CIGARETTES AND SMOKELESS TO-**
10 **BACCO AS NONMAILABLE MATTER.**

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

14 **“§ 1716E. Tobacco products as nonmailable**

15 “(a) PROHIBITION.—All cigarettes (as that term is
16 defined in section 1 of the Act of October 19, 1949, com-
17 monly referred to as the Jenkins Act) and smokeless to-
18 bacco (as that term is defined in section 1 of the Act of
19 October 19, 1949, commonly referred to as the Jenkins
20 Act) are nonmailable and shall not be deposited in or car-
21 ried through the mails.

22 “(b) ORDERS.—

23 “(1) If the Postal Service has reasonable cause
24 to believe that any person is engaged in the sending

1 of mail matter which is nonmailable under this sec-
2 tion, the Postal Service may issue an order which—

3 “(A) directs any postmaster, to whom any
4 mailing originating with such person or his rep-
5 resentative is tendered for transmission through
6 the mails (other than a mailing that consists
7 only of one or more sealed letters), to refuse to
8 accept any such mailing, unless such person or
9 his representative first establishes to the satis-
10 faction of the postmaster that the mailing does
11 not contain any matter which is nonmailable
12 under this section; and

13 “(B) requires the person or his representa-
14 tive to cease and desist from mailing any mail
15 matter which is nonmailable under this section.

16 “(2) For the purposes of paragraph (1) reason-
17 able cause includes—

18 “(A) a statement on a publicly available
19 website, or an advertisement, by any person
20 that such person will mail matter which is non-
21 mailable under this section in return for pay-
22 ment; and

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

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

4 “(A) not to exceed \$10,000 for each mail-
5 ing of fewer than 10 pieces;

6 “(B) not to exceed \$50,000 for each mail-
7 ing of 10 to 50 pieces; and

8 “(C) not to exceed \$100,000 for each mail-
9 ing of more than 50 pieces.

10 “(4) An order under this subsection may be en-
11 forced in the same manner as an order under section
12 3005 of title 39.

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

15 “(1) CIGARS.—Cigars (as that term is defined
16 in section 5702(a) of the Internal Revenue Code of
17 1986).

18 “(2) GEOGRAPHIC EXCEPTION.—Mailings with-
19 in the State of Alaska or within the State of Hawaii.

20 “(3) BUSINESS PURPOSES.—Tobacco products
21 mailed only for business purposes between legally
22 operating businesses that have all applicable State
23 and Federal government licenses or permits and are
24 engaged in tobacco product manufacturing, distribu-
25 tion, wholesale, export, import, testing, investigation,

1 or research, or for regulatory purposes between any
2 such businesses and State or Federal Government
3 regulatory agencies, if the Postal Service issues a
4 final rule establishing the standards and require-
5 ments that apply to all such mailings and which in-
6 cludes the following:

7 “(A) The Postal Service shall verify that
8 any person submitting an otherwise nonmailable
9 tobacco product into the mails as authorized by
10 this paragraph is a business or government
11 agency permitted to make such mailings pursu-
12 ant to this section and the related final rule.

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

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

21 “(D) The identities of the business or gov-
22 ernment entity submitting the mailing con-
23 taining otherwise nonmailable tobacco products
24 for delivery and the business or government en-
25 tity receiving the mailing shall be clearly set

1 forth on the package and such information shall
2 be kept in Postal Service records and made
3 available to the Postal Service, the Attorney
4 General, and to persons eligible to bring en-
5 forcement actions pursuant to section 3(d) of
6 the Prevent All Cigarette Trafficking Act of
7 2008 for a period of at least three years.

8 “(E) The mailings shall be marked with a
9 Postal Service label or marking that makes it
10 clear to Postal Service employees that it is a
11 permitted mailing of otherwise nonmailable to-
12 bacco products that may be delivered only to a
13 permitted government agency or business and
14 may not be delivered to any residence or indi-
15 vidual person.

16 “(F) The mailings shall be delivered only
17 to verified adult employees of the recipient busi-
18 nesses or government agencies who shall be re-
19 quired to sign for the mailing.

20 “(4) CERTAIN INDIVIDUALS.—Tobacco products
21 mailed by individual adult people for noncommercial,
22 nonbusiness and non-money making purposes, in-
23 cluding the return of a damaged or unacceptable to-
24 bacco product to its manufacturer, if the Postal
25 Service issues a final rule establishing the standards

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

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

9 “(B) For mailings to individual persons
10 the Postal Service shall require the person sub-
11 mitting the otherwise nonmailable tobacco prod-
12 uct into the mails as authorized by this sub-
13 section to affirm that the recipient is an adult.

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

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

19 “(E) No package shall be delivered or
20 placed in the possession of any individual per-
21 son who is not a verified adult. For mailings to
22 individual persons, the Postal Service shall de-
23 liver the package only to the verified adult re-
24 cipient at the recipient address or transfer it
25 for delivery to an Air/Army Postal Office

1 (APO) or Fleet Postal Office (FPO) number
2 designated in the recipient address.

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

5 “(5) DEFINITION OF ADULT.—For the purposes
6 of paragraphs (3) and (4), the term ‘adult’ means
7 an individual person of at least the minimum age re-
8 quired for the legal sale or purchase of tobacco prod-
9 ucts as determined by the applicable law at the place
10 the individual person is located.

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

19 “(e) ADDITIONAL PENALTIES.—In addition to any
20 other fines and penalties imposed by this chapter for viola-
21 tions of this section, any person violating this section shall
22 be subject to an additional civil penalty in the amount of
23 10 times the retail value of the nonmailable cigarettes or
24 smokeless tobacco, including all Federal, State, and local
25 taxes.

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

8 “(g) DEFINITION.—As used in this section, the term
9 ‘State’ has the meaning given that term in section
10 1716(k).”

11 (b) USE OF PENALTIES.—There is established a sep-
12 arate account in the Treasury of the United States, to be
13 known as the “PACT Postal Service Fund”. Notwith-
14 standing any other provision of law, an amount equal to
15 50 percent of any criminal and civil fines or monetary pen-
16 alties collected by the United States Government in en-
17 forcing the provisions of this subsection shall be trans-
18 ferred into the PACT Postal Service Fund and shall be
19 available to the Postmaster General for the purpose of en-
20 forcing the provisions of this subsection.

21 (c) COORDINATION OF EFFORTS.—In the enforce-
22 ment of this section, the Postal Service shall cooperate and
23 coordinate its efforts with related enforcement activities
24 of any other Federal agency or of any State, local, or trib-
25 al government, whenever appropriate.

1 (d) ACTIONS BY STATE, LOCAL OR TRIBAL GOVERN-
2 MENTS RELATING TO CERTAIN TOBACCO PRODUCTS.—

3 (1) A State, through its attorney general (or a
4 designee thereof), or a local government or Indian
5 tribe that levies an excise tax on tobacco products,
6 through its chief law enforcement officer (or a des-
7 ignee thereof), may in a civil action in a United
8 States district court obtain appropriate relief with
9 respect to a violation of section 1716E of title 18,
10 United States Code. Appropriate relief includes in-
11 junctive and equitable relief and damages equal to
12 the amount of unpaid taxes on tobacco products
13 mailed in violation of that section to addressees in
14 that State.

15 (2) The State (or designee) shall serve prior
16 written notice of any action under paragraph (1)
17 upon the Postal Service and provide the Postal Serv-
18 ice with a copy of its complaint, except in any case
19 where such prior notice is not feasible, in which case
20 the State (or designee) shall serve such notice imme-
21 diately upon instituting such action. The Postal
22 Service, in accordance with section 409(g)(2) of title
23 39, United States Code, shall have the right (A) to
24 intervene in the action, (B) upon so intervening, to

1 be heard on all matters arising therein, and (C) to
2 file petitions for appeal.

3 (3) Nothing contained in this section shall be
4 construed to prohibit an authorized State official
5 from proceeding in State court on the basis of an al-
6 leged violation of any general civil or criminal stat-
7 ute of such State.

8 (4) Whenever the Postal Service institutes a
9 civil action for violation of section 1716E of title 18,
10 United States Code, no State may, during the pend-
11 ency of such action instituted by the Postal Service,
12 subsequently institute a separate civil action for any
13 violation of such section against any defendant
14 named in the Postal Service's complaint.

15 (5) Nothing in this section shall be deemed to
16 abrogate or constitute a waiver of any sovereign im-
17 munity of a State or local government or Indian
18 tribe against any unconsented lawsuit under para-
19 graph (1), or otherwise to restrict, expand, or mod-
20 ify any sovereign immunity of a State or local gov-
21 ernment or Indian tribe.

22 (6) A State, through its attorney general, or a
23 local government or Indian tribe that levies an excise
24 tax on tobacco products, through its chief law en-
25 forcement officer (or a designee thereof), may pro-

1 vide evidence of a violation of paragraph (1) for
2 commercial, business or money-making purposes by
3 any person not subject to State, local, or tribal gov-
4 ernment enforcement actions for violations of para-
5 graph (1) to the Attorney General of the United
6 States or a United States attorney, who shall take
7 appropriate actions to enforce the provisions of this
8 subsection.

9 (7) The remedies available under this sub-
10 section are in addition to any other remedies avail-
11 able under Federal, State, local, tribal, or other law.
12 Nothing in this subsection shall be construed to ex-
13 pand, restrict, or otherwise modify any right of an
14 authorized State, local, or tribal government official
15 to proceed in a State, tribal, or other appropriate
16 court, or take other enforcement actions, on the
17 basis of an alleged violation of State, local, tribal, or
18 other law.

19 (e) CLERICAL AMENDMENT.—The table of sections
20 at the beginning of chapter 83 of title 18 is amended by
21 adding after the item relating to section 1716D the fol-
22 lowing new item:

“1716E. Tobacco products as nonmailable.”.

1 **SEC. 4. COMPLIANCE WITH MODEL STATUTE OR QUALI-**
2 **FYING STATUTE.**

3 (a) IN GENERAL.—A Tobacco Product Manufacturer
4 or importer may not sell in, deliver to, or place for delivery
5 sale, or cause to be sold in, delivered to, or placed for deliv-
6 ery sale in a State that is a party to the Master Settlement
7 Agreement, any cigarette manufactured by a Tobacco
8 Product Manufacturer that is not in full compliance with
9 the terms of the Model Statute or Qualifying Statute en-
10 acted by such State requiring funds to be placed into a
11 qualified escrow account under specified conditions, or any
12 regulations promulgated pursuant to such statute.

13 (b) JURISDICTION TO PREVENT AND RESTRAIN VIO-
14 LATIONS.—

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

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

24 (3) ATTORNEY FEES.—In any action under
25 paragraph (2), a State, through its attorney general,
26 shall be entitled to reasonable attorney fees from a

1 person found to have willfully and knowingly violated
2 subsection (a).

3 (4) NONEXCLUSIVITY OF REMEDIES.—The rem-
4 edy available under paragraph (2) is in addition to
5 any other remedies available under Federal, State,
6 or other law. No provision of this Act or any other
7 Federal law shall be held or construed to prohibit or
8 preempt the Master Settlement Agreement, the
9 Model Statute (as defined in the Master Settlement
10 Agreement), any legislation amending or complemen-
11 tary to the Model Statute in effect as of June 1,
12 2006, or any legislation substantially similar to such
13 existing, amending, or complementary legislation
14 hereinafter enacted.

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

20 (6) AUTHORITY OF THE ATTORNEY GEN-
21 ERAL.—The Attorney General of the United States
22 may administer and enforce subsection (a).

23 (c) DEFINITIONS.—In this section the following defi-
24 nitions apply:

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

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

11 (B) the cigarettes or smokeless tobacco are
12 delivered to the buyer by common carrier, pri-
13 vate delivery service, or other method of re-
14 mote delivery, or the seller is not in the physical
15 presence of the buyer when the buyer obtains
16 possession of the cigarettes or smokeless to-
17 bacco.

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

20 (A) SHIPPING OR CONSIGNING.—Any per-
21 son in the United States to whom nontaxpaid
22 tobacco products manufactured in a foreign
23 country, Puerto Rico, the Virgin Islands, or a
24 possession of the United States are shipped or
25 consigned.

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

5 (C) UNLAWFUL IMPORTING.—Any person
6 who smuggles or otherwise unlawfully brings to-
7 bacco products into the United States.

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

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

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

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

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

7 “(c)(1) Any officer of the Bureau of Alcohol, To-
8 bacco, Firearms, and Explosives may, during normal busi-
9 ness hours, enter the premises of any person described in
10 subsection (a) or (b) for the purposes of inspecting—

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

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

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

19 “(3) Whoever violates paragraph (1), or an order
20 issued under paragraph (2), shall be subject to a civil pen-
21 alty in an amount not to exceed \$10,000 for each viola-
22 tion.”.

1 **SEC. 6. EXCLUSIONS REGARDING INDIAN TRIBES AND**
2 **TRIBAL MATTERS.**

3 (a) IN GENERAL.—Nothing in this Act or the amend-
4 ments made by this Act is intended nor shall be construed
5 to affect, amend, or modify—

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

14 (2) any State laws that authorize or otherwise
15 pertain to any such intergovernmental arrangements
16 or create special rules or procedures for the collec-
17 tion of State, local, or tribal taxes on cigarettes or
18 smokeless tobacco sold in Indian country;

19 (3) any limitations under Federal or State law,
20 including Federal common law and treaties, on
21 State, local, and tribal tax and regulatory authority
22 with respect to the sale, use, or distribution of ciga-
23 rettes and smokeless tobacco by or to Indian tribes,
24 tribal members, tribal enterprises, or in Indian coun-
25 try;

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

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

10 (b) COORDINATION OF LAW ENFORCEMENT.—Noth-
11 ing in this Act or the amendments made by this Act shall
12 be construed to inhibit or otherwise affect any coordinated
13 law enforcement effort by 1 or more States or other juris-
14 dictions, including Indian tribes, through interstate com-
15 pact or otherwise, that—

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

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

22 (3) establishes cooperative programs for the ad-
23 ministration of such laws.

24 (c) TREATMENT OF STATE AND LOCAL GOVERN-
25 MENTS.—Nothing in this Act or the amendments made

1 by this Act is intended, and shall not be construed to, au-
2 thorize, deputize, or commission States or local govern-
3 ments as instrumentalities of the United States.

4 (d) ENFORCEMENT WITHIN INDIAN COUNTRY.—
5 Nothing in this Act or the amendments made by this Act
6 is intended to prohibit, limit, or restrict enforcement by
7 the Attorney General of the United States of the provi-
8 sions herein within Indian country.

9 (e) AMBIGUITY.—Any ambiguity between the lan-
10 guage of this section or its application and any other pro-
11 vision of this Act shall be resolved in favor of this section.

12 **SEC. 7. SENSE OF CONGRESS CONCERNING THE PRECE-**
13 **DENTIAL EFFECT OF THIS ACT.**

14 It is the sense of Congress that unique harms are
15 associated with online cigarette sales, including problems
16 with verifying the ages of consumers in the digital market
17 and the long-term health problems associated with the use
18 of certain tobacco products. This Act was introduced rec-
19 ognizing the longstanding interest of Congress in urging
20 compliance with States' laws regulating remote sales of
21 certain tobacco products to citizens of those States, includ-
22 ing the passage of the Jenkins Act over 50 years ago,
23 which established reporting requirements for out-of-State
24 companies that sell certain tobacco products to citizens of
25 the taxing States, and which gave authority to the Depart-

1 ment of Justice and the Bureau of Alcohol, Tobacco and
2 Firearms to enforce the Jenkins Act. In light of the
3 unique harms and circumstances surrounding the online
4 sale of certain tobacco products, this Act is intended to
5 help collect cigarette excise taxes, to stop tobacco sales to
6 underage youth, and to help the States enforce their laws
7 that target the online sales of certain tobacco products
8 only. This Act is in no way meant to create a precedent
9 regarding the collection of State sales or use taxes by, or
10 the validity of efforts to impose other types of taxes on,
11 out-of-State entities that do not have a physical presence
12 within the taxing State.

13 **SEC. 8. EFFECTIVE DATE.**

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

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

19 **SEC. 9. SEVERABILITY.**

20 If any provision of this, or an amendment made by
21 this Act or the application thereof to any person or cir-
22 cumstance is held invalid, the remainder of the Act and

- 1 the application of it to any other person or circumstance
- 2 shall not be affected thereby.

Passed the House of Representatives September 10,
2008.

Attest:

Clerk.

110TH CONGRESS
2^D SESSION

H. R. 4081

AN ACT

To prevent tobacco smuggling; to ensure the collection of all tobacco taxes, and for other purposes.