

Union Calendar No. 537

110TH CONGRESS
2^D SESSION

H. R. 4081

[Report No. 110–836]

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

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 5, 2007

Mr. WEINER introduced the following bill; which was referred to the
Committee on the Judiciary

SEPTEMBER 9, 2008

Additional sponsors: Mr. SMITH of Texas, Mr. DOGGETT, and Mr. KING of
New York

SEPTEMBER 9, 2008

Reported with an amendment, committed to the Committee of the Whole
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on November 5, 2007]

A BILL

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 “Pre-*
3 *vent All Cigarette Trafficking Act of 2008” or “PACT Act”.*

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

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

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

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

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

20 (5) *the majority of Internet and other remote*
21 *sales of cigarettes and smokeless tobacco are being*
22 *made without adequate precautions to protect against*
23 *sales to children, without the payment of applicable*
24 *taxes, and without complying with the nominal reg-*
25 *istration and reporting requirements in existing Fed-*
26 *eral law;*

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

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

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

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

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

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

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

23 (2) *create strong disincentives to illegal smug-*
24 *gling of tobacco products;*

1 (3) *provide government enforcement officials*
2 *with more effective enforcement tools to combat to-*
3 *bacco smuggling;*

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

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

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

13 **SEC. 2. COLLECTION OF STATE CIGARETTE AND SMOKE-**
14 **LESS TOBACCO TAXES.**

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

20 **“SECTION 1. DEFINITIONS.**

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

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

1 “(2) *CIGARETTE*.—

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

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

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

10 “(B) *EXCEPTION*.—*For purposes of this Act,*
11 *the term ‘cigarette’ does not include a ‘cigar’, as*
12 *that term is defined in section 5702 of the Inter-*
13 *nal Revenue Code of 1986.*

14 “(3) *COMMON CARRIER*.—*The term ‘common car-*
15 *rier’ means any person (other than a local messenger*
16 *service or the United States Postal Service) that holds*
17 *itself out to the general public as a provider for hire*
18 *of the transportation by water, land, or air of mer-*
19 *chandise, whether or not the person actually operates*
20 *the vessel, vehicle, or aircraft by which the transpor-*
21 *tation is provided, between a port or place and a port*
22 *or place in the United States.*

23 “(4) *CONSUMER*.—*The term ‘consumer’ means*
24 *any person that purchases cigarettes or smokeless to-*
25 *bacco, but does not include any person lawfully oper-*

1 *ating as a manufacturer, distributor, wholesaler, or*
2 *retailer of cigarettes or smokeless tobacco.*

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

6 “(A) *the consumer submits the order for*
7 *such sale by means of a telephone or other meth-*
8 *od of voice transmission, the mails, or the Inter-*
9 *net or other online service, or the seller is other-*
10 *wise not in the physical presence of the buyer*
11 *when the request for purchase or order is made;*
12 *or*

13 “(B) *the cigarettes or smokeless tobacco are*
14 *delivered by use of a common carrier, private de-*
15 *livery service, or the mails, or the seller is not*
16 *in the physical presence of the buyer when the*
17 *buyer obtains possession of the cigarettes or*
18 *smokeless tobacco.*

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

21 “(7) *INDIAN COUNTRY.*—*The term ‘Indian coun-*
22 *try’ means—*

23 “(A) *Indian country as defined in section*
24 *1151 of title 18, United States Code, except that*
25 *within the State of Alaska that term applies only*

1 *to the Metlakatla Indian Community, Annette*
2 *Island Reserve; and*

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

5 “(8) *INDIAN TRIBE.*—*The term ‘Indian tribe’,*
6 *‘tribe’, or ‘tribal’ refers to an Indian tribe as defined*
7 *in section 4(e) of the Indian Self-Determination and*
8 *Education Assistance Act (25 U.S.C. 450b(e)) or as*
9 *listed pursuant to section 104 of the Federally Recog-*
10 *nized Indian Tribe List Act of 1994 (25 U.S.C. 479a-*
11 *1).*

12 “(9) *INTERSTATE COMMERCE.*—*The term ‘inter-*
13 *state commerce’ means commerce between a State and*
14 *any place outside the State, commerce between a*
15 *State and any Indian country in the State, or com-*
16 *merce between points in the same State but through*
17 *any place outside the State or through any Indian*
18 *country.*

19 “(10) *PERSON.*—*The term ‘person’ means an in-*
20 *dividual, corporation, company, association, firm,*
21 *partnership, society, State government, local govern-*
22 *ment, Indian tribal government, governmental orga-*
23 *nization of such government, or joint stock company.*

24 “(11) *STATE.*—*The term ‘State’ means each of*
25 *the several States of the United States, the District of*

1 *Columbia, the Commonwealth of Puerto Rico, or any*
2 *territory or possession of the United States.*

3 “(12) *SMOKELESS TOBACCO.*—*The term ‘smoke-*
4 *less tobacco’ means any finely cut, ground, powdered,*
5 *or leaf tobacco, or other product containing tobacco,*
6 *that is intended to be placed in the oral or nasal cav-*
7 *ity or otherwise consumed without being combusted.*

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

13 “(14) *TRIBAL ENTERPRISE.*—*The term ‘tribal*
14 *enterprise’ means any business enterprise, incor-*
15 *porated or unincorporated under federal or tribal*
16 *law, of an Indian tribe or group of Indian tribe.*

17 “(15) *USE.*—*The term ‘use’, in addition to its*
18 *ordinary meaning, means the consumption, storage,*
19 *handling, or disposal of cigarettes or smokeless to-*
20 *bacco.”.*

21 (b) *REPORTS TO STATE TOBACCO TAX ADMINISTRA-*
22 *TORS.*—*Section 2 of the Jenkins Act (15 U.S.C. 376) is*
23 *amended—*

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

1 (2) *in subsection (a)—*

2 (A) *in the matter preceding paragraph*

3 (1)—

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

6 (ii) *by striking “or transfers” and in-*
7 *serting “, transfers, or ships”;*

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

10 (iv) *by striking “to other than a dis-*
11 *tributor licensed by or located in such*
12 *State,”; and*

13 (v) *by striking “or transfer and ship-*
14 *ment” and inserting “, transfer, or ship-*
15 *ment”;*

16 (B) *in paragraph (1)—*

17 (i) *by striking “with the tobacco tax*
18 *administrator of the State” and inserting*
19 *“with the Attorney General of the United*
20 *States and with the tobacco tax administra-*
21 *tors of the State and place”;* and

22 (ii) *by striking “; and” and inserting*
23 *the following: “, as well as telephone num-*
24 *bers for each place of business, a principal*
25 *electronic mail address, any website ad-*

1 *dresses, and the name, address, and tele-*
2 *phone number of an agent in the State au-*
3 *thorized to accept service on behalf of such*
4 *person;”;*

5 *(C) in paragraph (2), by striking “and the*
6 *quantity thereof.” and inserting “the quantity*
7 *thereof, and the name, address, and phone num-*
8 *ber of the person delivering the shipment to the*
9 *recipient on behalf of the delivery seller, with all*
10 *invoice or memoranda information relating to*
11 *specific customers to be organized by city or*
12 *town and by zip code; and”;* and

13 *(D) by adding at the end the following:*

14 *“(3) with respect to each memorandum or in-*
15 *voice filed with a State under paragraph (2), also file*
16 *copies of such memorandum or invoice with the to-*
17 *bacco tax administrators and chief law enforcement*
18 *officers of the local governments and Indian tribes op-*
19 *erating within the borders of the State that apply*
20 *their own local or tribal taxes on cigarettes or smoke-*
21 *less tobacco.”;*

22 *(3) in subsection (b)—*

23 *(A) by inserting “PRESUMPTIVE EVI-*
24 *DENCE.—” after “(b)”;*

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

3 (C) by striking “, and (2)” and all that fol-
4 lows and inserting a period; and

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

6 “(c) *USE OF INFORMATION.*—A tobacco tax adminis-
7 trator or chief law enforcement officer who receives a memo-
8 randum or invoice under paragraph (2) or (3) of subsection
9 (a) shall use such memorandum or invoice solely for the
10 purposes of the enforcement of this Act and the collection
11 of any taxes owed on related sales of cigarettes and smoke-
12 less tobacco, and shall keep confidential any personal infor-
13 mation in such memorandum or invoice not otherwise re-
14 quired for such purposes.”.

15 (c) *REQUIREMENTS FOR DELIVERY SALES.*—The Jen-
16 kins Act is amended by inserting after section 2 the fol-
17 lowing:

18 “**SEC. 2A. DELIVERY SALES.**

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

22 “(1) the shipping requirements set forth in sub-
23 section (b);

24 “(2) the recordkeeping requirements set forth in
25 subsection (c);

1 “(3) all State, local, tribal, and other laws gen-
2 erally applicable to sales of cigarettes or smokeless to-
3 bacco as if such delivery sales occurred entirely with-
4 in the specific State and place, including laws impos-
5 ing—

6 “(A) excise taxes;

7 “(B) licensing and tax-stamping require-
8 ments;

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

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

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

15 “(b) SHIPPING AND PACKAGING.—

16 “(1) REQUIRED STATEMENT.—For any shipping
17 package containing cigarettes or smokeless tobacco, the
18 delivery seller shall include on the bill of lading, if
19 any, and on the outside of the shipping package, on
20 the same surface as the delivery address, a clear and
21 conspicuous statement providing as follows: ‘CIGA-
22 RETTES/SMOKELESS TOBACCO: FEDERAL
23 LAW REQUIRES THE PAYMENT OF ALL AP-
24 PLICABLE EXCISE TAXES, AND COMPLIANCE

1 *WITH APPLICABLE LICENSING AND TAX-*
2 *STAMPING OBLIGATIONS’.*

3 *“(2) FAILURE TO LABEL.—Any shipping pack-*
4 *age described in paragraph (1) that is not labeled in*
5 *accordance with that paragraph shall be treated as*
6 *nondeliverable matter by a common carrier or other*
7 *delivery service, if the common carrier or other deliv-*
8 *ery service knows or should know the package con-*
9 *tains cigarettes or smokeless tobacco. If a common*
10 *carrier or other delivery service believes a package is*
11 *being submitted for delivery in violation of paragraph*
12 *(1), it may require the person submitting the package*
13 *for delivery to establish that it is not being sent in*
14 *violation of paragraph (1) before accepting the pack-*
15 *age for delivery. Nothing in this paragraph shall re-*
16 *quire the common carrier or other delivery service to*
17 *open any package to determine its contents.*

18 *“(3) WEIGHT RESTRICTION.—A delivery seller*
19 *shall not sell, offer for sale, deliver, or cause to be de-*
20 *livered in any single sale or single delivery any ciga-*
21 *rettes or smokeless tobacco weighing more than 10*
22 *pounds.*

23 *“(4) AGE VERIFICATION.—*

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

4 “(i) *shall not sell, deliver, or cause to*
5 *be delivered any tobacco products to a per-*
6 *son under the minimum age required for*
7 *the legal sale or purchase of tobacco prod-*
8 *ucts, as determined by the applicable law at*
9 *the place of delivery;*

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

12 “(I) *the purchaser placing the de-*
13 *livery sale order, or an adult who is at*
14 *least the minimum age required for the*
15 *legal sale or purchase of tobacco prod-*
16 *ucts, as determined by the applicable*
17 *law at the place of delivery, to sign to*
18 *accept delivery of the shipping con-*
19 *tainer at the delivery address; and*

20 “(II) *the person who signs to ac-*
21 *cept delivery of the shipping container*
22 *to provide proof, in the form of a valid,*
23 *government-issued identification bear-*
24 *ing a photograph of the individual,*
25 *that the person is at least the min-*

1 *imum age required for the legal sale or*
2 *purchase of tobacco products, as deter-*
3 *mined by the applicable law at the*
4 *place of delivery; and*

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

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

10 *“(II) verifying the information*
11 *provided in subclause (I), through the*
12 *use of a commercially available data-*
13 *base or aggregate of databases, con-*
14 *sisting primarily of data from govern-*
15 *ment sources, that are regularly used*
16 *by government and businesses for the*
17 *purpose of age and identity*
18 *verification and authentication, to en-*
19 *sure that the purchaser is at least the*
20 *minimum age required for the legal*
21 *sale or purchase of tobacco products, as*
22 *determined by the applicable law at*
23 *the place of delivery.*

24 *“(B) LIMITATION.—No database being used*
25 *for age and identity verification under subpara-*

1 *graph (A)(iii) shall be in the possession or under*
2 *the control of the delivery seller, or be subject to*
3 *any changes or supplementation by the delivery*
4 *seller.*

5 “(c) *RECORDS.*—

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

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

16 “(3) *ACCESS FOR OFFICIALS.*—*Records kept*
17 *under paragraph (1) shall be made available to to-*
18 *bacco tax administrators of the States, to local gov-*
19 *ernments and Indian tribes that apply their own*
20 *local or tribal taxes on cigarettes or smokeless tobacco,*
21 *to the attorneys general of the States, to the chief law*
22 *enforcement officers of such local governments and In-*
23 *Indian tribes, and to the Attorney General of the United*
24 *States in order to ensure the compliance of persons*

1 *making delivery sales with the requirements of this*
2 *Act.*

3 “(d) *DELIVERY.*—

4 “(1) *IN GENERAL.*—*Except as provided in para-*
5 *graph (2), no delivery seller may sell or deliver to any*
6 *consumer, or tender to any common carrier or other*
7 *delivery service, any cigarettes or smokeless tobacco*
8 *pursuant to a delivery sale unless, in advance of the*
9 *sale, delivery, or tender—*

10 “(A) *any cigarette or smokeless tobacco ex-*
11 *cise tax that is imposed by the State in which*
12 *the cigarettes or smokeless tobacco are to be deliv-*
13 *ered has been paid to the State;*

14 “(B) *any cigarette or smokeless tobacco ex-*
15 *cise tax that is imposed by the local government*
16 *of the place in which the cigarettes or smokeless*
17 *tobacco are to be delivered has been paid to the*
18 *local government; and*

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

23 “(2) *EXCEPTION.*—*Paragraph (1) does not apply*
24 *to a delivery sale of smokeless tobacco if the law of the*
25 *State or local government of the place where the*

1 *smokeless tobacco is to be delivered requires or other-*
2 *wise provides that delivery sellers collect the excise tax*
3 *from the consumer and remit the excise tax to the*
4 *State or local government, and the delivery seller*
5 *complies with the requirement.*

6 “(e) *LIST OF UNREGISTERED OR NONCOMPLIANT DE-*
7 *LIVERY SELLERS.*—

8 “(1) *IN GENERAL.*—

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

18 “(i) *distribute the list to—*

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

21 “(II) *common carriers and other*
22 *persons that deliver small packages to*
23 *consumers in interstate commerce, in-*
24 *cluding the United States Postal Serv-*
25 *ice; and*

1 “(III) at the discretion of the At-
2 torney General of the United States, to
3 any other persons; and

4 “(ii) publicize and make the list avail-
5 able to any other person engaged in the
6 business of interstate deliveries or who de-
7 livers cigarettes or smokeless tobacco in or
8 into any State.

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

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

16 “(ii) all addresses from which the de-
17 livery seller does business or ships cigarettes
18 or smokeless tobacco;

19 “(iii) the website addresses, primary e-
20 mail address, and phone number of the de-
21 livery seller; and

22 “(iv) any other information that the
23 Attorney General determines would facili-
24 tate compliance with this subsection by re-
25 cipients of the list.

1 “(C) *UPDATING.*—*The Attorney General of*
2 *the United States shall update and distribute the*
3 *list at least once every 4 months, and may dis-*
4 *tribute the list and any updates by regular mail,*
5 *electronic mail, or any other reasonable means,*
6 *or by providing recipients with access to the list*
7 *through a nonpublic website that the Attorney*
8 *General of the United States regularly updates.*

9 “(D) *STATE, LOCAL, OR TRIBAL ADDI-*
10 *TIONS.*—*The Attorney General of the United*
11 *States shall include in the list under subpara-*
12 *graph (A) any noncomplying delivery sellers*
13 *identified by any State, local, or tribal govern-*
14 *ment under paragraph (5), and shall distribute*
15 *the list to the attorney general or chief law en-*
16 *forcement official and the tax administrator of*
17 *any government submitting any such informa-*
18 *tion and to any common carriers or other per-*
19 *sons who deliver small packages to consumers*
20 *identified by any government pursuant to para-*
21 *graph (5).*

22 “(E) *ACCURACY AND COMPLETENESS OF*
23 *LIST OF NONCOMPLYING DELIVERY SELLERS.*—*In*
24 *preparing and revising the list required by sub-*
25 *paragraph (A), the Attorney General shall—*

1 “(i) use reasonable procedures to en-
2 sure maximum possible accuracy and com-
3 pleteness of the records and information re-
4 lied on for the purpose of determining that
5 such delivery seller is noncomplying;

6 “(ii) not later than 14 days prior to
7 including any delivery seller on the list
8 under paragraph (1), make a reasonable at-
9 tempt to send notice to the delivery seller by
10 letter, electronic mail, or other means that
11 the delivery seller is being placed on such
12 list or update, with that notice citing the
13 relevant provisions of this Act and the spe-
14 cific reasons for being placed on such list;

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

18 “(iv) investigate each such challenge by
19 contacting the relevant Federal, State, trib-
20 al, and local law enforcement officials, and
21 provide the specific findings and results of
22 such investigation to such delivery seller not
23 later than 30 days after the challenge is
24 made; and

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

7 “(F) CONFIDENTIALITY.—The list distrib-
8 uted pursuant to subparagraph (A) shall be con-
9 fidential, and any person receiving the list shall
10 maintain the confidentiality of the list but may
11 deliver the list, for enforcement purposes, to any
12 government official or to any common carrier or
13 other person that delivers tobacco products or
14 small packages to consumers. Nothing in this sec-
15 tion shall prohibit a common carrier, the United
16 States Postal Service, or any other person receiv-
17 ing the list from discussing with the listed deliv-
18 ery sellers the delivery sellers’ inclusion on the
19 list and the resulting effects on any services re-
20 quested by such listed delivery seller.

21 “(2) PROHIBITION ON DELIVERY.—

22 “(A) IN GENERAL.—Commencing on the
23 date that is 60 days after the date of the initial
24 distribution or availability of the list under
25 paragraph (1)(A), no person who receives the list

1 *under paragraph (1), and no person who delivers*
2 *cigarettes or smokeless tobacco to consumers,*
3 *shall knowingly complete, cause to be completed,*
4 *or complete its portion of a delivery of any pack-*
5 *age for any person whose name and address are*
6 *on the list, unless—*

7 *“(i) the person making the delivery*
8 *knows or believes in good faith that the item*
9 *does not include cigarettes or smokeless to-*
10 *bacco;*

11 *“(ii) the delivery is made to a person*
12 *lawfully engaged in the business of manu-*
13 *facturing, distributing, or selling cigarettes*
14 *or smokeless tobacco; or*

15 *“(iii) the package being delivered*
16 *weighs more than 100 pounds and the per-*
17 *son making the delivery does not know or*
18 *have reasonable cause to believe that the*
19 *package contains cigarettes or smokeless to-*
20 *bacco.*

21 *“(B) IMPLEMENTATION OF UPDATES.—*
22 *Commencing on the date that is 30 days after*
23 *the date of the distribution or availability of any*
24 *updates or corrections to the list under para-*
25 *graph (1), all recipients and all common carriers*

1 or other persons that deliver cigarettes or smoke-
2 less tobacco to consumers shall be subject to sub-
3 paragraph (A) in regard to such corrections or
4 updates.

5 “(C) *EXEMPTIONS.*—Subparagraphs (A)
6 and (B), and any other requirements or restric-
7 tions placed directly on common carriers else-
8 where in this subsection, shall not apply to a
9 common carrier that is subject to a settlement
10 agreement relating to tobacco product deliveries
11 to consumers. For the purposes of this section,
12 ‘settlement agreement’ shall be defined to include
13 the Assurance of Discontinuance entered into by
14 the Attorney General of New York and DHL
15 Holdings USA, Inc. and DHL Express (USA),
16 Inc. on or about July 1, 2005, the Assurance of
17 Discontinuance entered into by the Attorney
18 General of New York and United Parcel Service,
19 Inc. on or about October 21, 2005, and the As-
20 surance of Compliance entered into by the Attor-
21 ney General of New York and Federal Express
22 Corporation and Fed Ex Ground package Sys-
23 tems, Inc. on or about February 3, 2006, so
24 long as each is honored nationwide to block
25 illegal deliveries of cigarettes or smokeless tobacco

1 to consumers, and also includes any other active
2 agreement between a common carrier and the
3 states that operates nationwide to ensure that no
4 deliveries of cigarettes and smokeless tobacco
5 shall be made to consumers for illegally oper-
6 ating Internet or mail-order sellers and that any
7 such deliveries to consumers shall not be made to
8 minors or without payment to the states and lo-
9 calities where the consumers are located of all
10 taxes on the tobacco products.

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

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

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

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

24 “(II) *if the package is not deliver-*
25 *able, any reasonable additional fee or*

1 *charge levied by the common carrier or*
2 *other delivery service to cover its extra*
3 *costs and inconvenience and to serve as*
4 *a disincentive against such noncom-*
5 *plying delivery orders; and*

6 “(ii) *if the package is determined not*
7 *to be deliverable, the common carrier or*
8 *other delivery service shall, in its discretion,*
9 *either provide the package and its contents*
10 *to a Federal, State, or local law enforcement*
11 *agency or destroy the package and its con-*
12 *tents.*

13 “(B) *RECORDS.—A common carrier or*
14 *other delivery service shall maintain, for a pe-*
15 *riod of 5 years, any records kept in the ordinary*
16 *course of business relating to any deliveries in-*
17 *terrupted pursuant to this paragraph and pro-*
18 *vide that information, upon request, to the Attor-*
19 *ney General of the United States or to the attor-*
20 *ney general or chief law enforcement official or*
21 *tax administrator of any State, local, or tribal*
22 *government.*

23 “(C) *CONFIDENTIALITY.—Any person re-*
24 *ceiving records under subparagraph (B) shall use*
25 *such records solely for the purposes of the en-*

1 *forcement of this Act and the collection of any*
2 *taxes owed on related sales of cigarettes and*
3 *smokeless tobacco, and the person receiving*
4 *records under subparagraph (B) shall keep con-*
5 *fidential any personal information in such*
6 *records not otherwise required for such purposes.*

7 “(4) *PREEMPTION.*—

8 “(A) *IN GENERAL.*—*No State, local, or trib-*
9 *al government, nor any political authority of 2*
10 *or more State, local, or tribal governments, may*
11 *enact or enforce any law or regulation relating*
12 *to delivery sales that restricts deliveries of ciga-*
13 *rettes or smokeless tobacco to consumers by com-*
14 *mon carriers or other delivery services on behalf*
15 *of delivery sellers by—*

16 “(i) *requiring that the common carrier*
17 *or other delivery service verify the age or*
18 *identity of the consumer accepting the deliv-*
19 *ery by requiring the person who signs to ac-*
20 *cept delivery of the shipping container to*
21 *provide proof, in the form of a valid, gov-*
22 *ernment-issued identification bearing a*
23 *photograph of the individual, that such per-*
24 *son is at least the minimum age required*
25 *for the legal sale or purchase of tobacco*

1 *products, as determined by either State or*
2 *local law at the place of delivery;*

3 *“(ii) requiring that the common car-*
4 *rier or other delivery service obtain a signa-*
5 *ture from the consumer accepting the deliv-*
6 *ery;*

7 *“(iii) requiring that the common car-*
8 *rier or other delivery service verify that all*
9 *applicable taxes have been paid;*

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

14 *“(v) prohibiting common carriers or*
15 *other delivery services from making deliv-*
16 *eries on the basis of whether the delivery*
17 *seller is or is not identified on any list of*
18 *delivery sellers maintained and distributed*
19 *by any entity other than the Federal Gov-*
20 *ernment.*

21 *“(B) RELATIONSHIP TO OTHER LAWS.—Ex-*
22 *cept as provided in subparagraph (C), nothing*
23 *in this paragraph shall be construed to prohibit,*
24 *expand, restrict, or otherwise amend or modify—*

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

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

7 “(iii) any provision of State, local, or
8 tribal law regulating common carriers that
9 falls within the provisions of sections
10 14501(c)(2) or 41713(b)(4)(B) of title 49 of
11 the United States Code.

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

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

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

1 “(i) all known names, addresses,
2 website addresses, and other primary con-
3 tact information of any delivery seller that
4 offers for sale or makes sales of cigarettes or
5 smokeless tobacco in or into the State, local-
6 ity, or tribal land but has failed to register
7 with or make reports to the respective tax
8 administrator, as required by this Act, or
9 that has been found in a legal proceeding to
10 have otherwise failed to comply with this
11 Act; and

12 “(ii) a list of common carriers and
13 other persons who make deliveries of ciga-
14 rettes or smokeless tobacco in or into the
15 State, locality, or tribal lands.

16 “(B) UPDATES.—Any government pro-
17 viding a list to the Attorney General of the
18 United States under subparagraph (A) shall also
19 provide updates and corrections every 4 months
20 until such time as such government notifies the
21 Attorney General of the United States in writing
22 that such government no longer desires to submit
23 such information to supplement the list main-
24 tained and distributed by the Attorney General
25 of the United States under paragraph (1).

1 “(C) *REMOVAL AFTER WITHDRAWAL.*—
2 *Upon receiving written notice that a government*
3 *no longer desires to submit information under*
4 *subparagraph (A), the Attorney General of the*
5 *United States shall remove from the list under*
6 *paragraph (1) any persons that are on the list*
7 *solely because of such government’s prior submis-*
8 *sions of its list of noncomplying delivery sellers*
9 *of cigarettes or smokeless tobacco or its subse-*
10 *quent updates and corrections.*

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

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

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

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

11 “(8) *LIMITATIONS.*—

12 “(A) *IN GENERAL.*—Any common carrier or
13 *other person making a delivery subject to this*
14 *subsection shall not be required or otherwise obli-*
15 *gated to—*

16 “(i) *determine whether any list distrib-*
17 *uted or made available under paragraph (1)*
18 *is complete, accurate, or up-to-date;*

19 “(ii) *determine whether a person order-*
20 *ing a delivery is in compliance with this*
21 *Act; or*

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

1 “(B) *ALTERNATE NAMES.*—Any common
2 carrier or other person making a delivery subject
3 to this subsection shall not be required or other-
4 wise obligated to make any inquiries or other-
5 wise determine whether a person ordering a de-
6 livery is a delivery seller on the list under para-
7 graph (1) who is using a different name or ad-
8 dress in order to evade the related delivery re-
9 strictions, but shall not knowingly deliver any
10 packages to consumers for any such delivery sell-
11 er who the common carrier or other delivery
12 service knows is a delivery seller who is on the
13 list under paragraph (1) but is using a different
14 name or address to evade the delivery restrictions
15 of paragraph (2).

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

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

1 “(ii) not, as a matter of regular prac-
2 tice and procedure, making any deliveries,
3 or any deliveries in certain States, of any
4 cigarettes or smokeless tobacco for any per-
5 son or for any person not in the business of
6 manufacturing, distributing, or selling ciga-
7 rettes or smokeless tobacco; or

8 “(iii) delaying or not making a deliv-
9 ery for any person because of reasonable ef-
10 forts to comply with this Act.

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

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

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

23 “SEC. 3. PENALTIES.

24 “(a) CRIMINAL PENALTIES.—

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

6 “(2) *EXCEPTIONS.*—

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

9 “(B) *DELIVERY VIOLATIONS.*—*A common*
10 *carrier or independent delivery service, or em-*
11 *ployee of a common carrier or independent deliv-*
12 *ery service, shall be subject to criminal penalties*
13 *under paragraph (1) for a violation of section*
14 *2A(e) only if the violation is committed inten-*
15 *tionally—*

16 “(i) *as consideration for the receipt of,*
17 *or as consideration for a promise or agree-*
18 *ment to pay, anything of pecuniary value;*
19 *or*

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

23 “(b) *CIVIL PENALTIES.*—

24 “(1) *IN GENERAL.*—*Except as provided in para-*
25 *graph (3), whoever violates any provision of this Act*

1 shall be subject to a civil penalty in an amount not
2 to exceed—

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

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

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

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

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

24 “(3) *EXCEPTIONS.*—

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

7 “(i) *as consideration for the receipt of,*
8 *or as consideration for a promise or agree-*
9 *ment to pay, anything of pecuniary value;*
10 *or*

11 “(ii) *for the purpose of assisting a de-*
12 *livery seller to violate, or otherwise evading*
13 *compliance with, section 2A.*

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

18 “(i) *the common carrier or inde-*
19 *pendent delivery service has implemented*
20 *and enforces effective policies and practices*
21 *for complying with that section; or*

22 “(ii) *an employee of the common car-*
23 *rier or independent delivery service who*
24 *physically receives and processes orders,*
25 *picks up packages, processes packages, or*

1 *makes deliveries, takes actions that are out-*
2 *side the scope of employment of the em-*
3 *ployee in the course of the violation, or that*
4 *violate the implemented and enforced poli-*
5 *cies of the common carrier or independent*
6 *delivery service described in clause (i).”.*

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

9 **“SEC. 4. ENFORCEMENT.**

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

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

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

19 *“(1) IN GENERAL.—*

20 *“(A) STANDING.—A State, through its at-*
21 *torney general (or a designee thereof), or a local*
22 *government or Indian tribe that levies a tax sub-*
23 *ject to section 2A(a)(3), through its chief law en-*
24 *forcement officer (or a designee thereof), may*
25 *bring an action in a United States district court*

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

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

16 “(2) *PROVISION OF INFORMATION.*—A State,
17 through its attorney general, or a local government or
18 Indian tribe that levies a tax subject to section
19 2A(a)(3), through its chief law enforcement officer (or
20 a designee thereof), may provide evidence of a viola-
21 tion of this Act by any person not subject to State,
22 local, or tribal government enforcement actions for
23 violations of this Act to the Attorney General of the
24 United States or a United States attorney, who shall

1 *take appropriate actions to enforce the provisions of*
2 *this Act.*

3 “(3) *USE OF PENALTIES COLLECTED.*—

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

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

25 “(4) *NONEXCLUSIVITY OF REMEDY.*—

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

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

11 “(C) *TRIBAL COURT PROCEEDINGS.*—*Noth-*
12 *ing in this Act shall be construed to expand, re-*
13 *strict, or otherwise modify any right of an au-*
14 *thorized Indian tribal government official to pro-*
15 *ceed in tribal court, or take other enforcement*
16 *actions, on the basis of an alleged violation of*
17 *tribal law.*

18 “(D) *LOCAL GOVERNMENT ENFORCE-*
19 *MENT.*—*Nothing in this Act shall be construed to*
20 *expand, restrict, or otherwise modify any right*
21 *of an authorized local government official to pro-*
22 *ceed in State court, or take other enforcement ac-*
23 *tions, on the basis of an alleged violation of local*
24 *or other law.*

1 “(d) *PERSONS DEALING IN TOBACCO PRODUCTS.*—
2 *Any person who holds a permit under section 5712 of the*
3 *Internal Revenue Code of 1986 (regarding permitting of*
4 *manufacturers and importers of tobacco products and ex-*
5 *port warehouse proprietors) may bring an action in a*
6 *United States district court to prevent and restrain viola-*
7 *tions of this Act by any person (or by any person control-*
8 *ling such person) other than a State, local, or tribal govern-*
9 *ment.*

10 “(e) *NOTICE.*—

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

15 “(2) *STATE, LOCAL, AND TRIBAL ACTIONS.*—*It is*
16 *the sense of Congress that the attorney general of any*
17 *State, or chief law enforcement officer of any locality*
18 *or tribe, that commences a civil action under this sec-*
19 *tion should inform the Attorney General of the United*
20 *States of the action.*

21 “(f) *PUBLIC NOTICE.*—

22 “(1) *IN GENERAL.*—*The Attorney General of the*
23 *United States shall make available to the public, by*
24 *posting such information on the Internet and by other*
25 *appropriate means, information regarding all en-*

1 *forcement actions undertaken by the Attorney General*
2 *or United States attorneys, or reported to the Attor-*
3 *ney General, under this section, including informa-*
4 *tion regarding the resolution of such actions and how*
5 *the Attorney General and the United States attorney*
6 *have responded to referrals of evidence of violations*
7 *pursuant to subsection (c)(2).*

8 “(2) *REPORTS TO CONGRESS.*—*The Attorney*
9 *General shall submit to Congress each year a report*
10 *containing the information described in paragraph*
11 *(1).”.*

12 **SEC. 3. TREATMENT OF CIGARETTES AND SMOKELESS TO-**
13 **BACCO AS NONMAILABLE MATTER.**

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

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

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

19 “(j) *TOBACCO PRODUCTS.*—

20 “(1) *PROHIBITION.*—*All cigarettes (as that term*
21 *is defined in section 2341 of this title) and smokeless*
22 *tobacco (as that term is defined in section 2341 of*
23 *this title) are nonmailable and shall not be deposited*
24 *in or carried through the mails. The United States*
25 *Postal Service shall not accept for delivery or trans-*

1 *mit through the mails any package that is knows, or*
2 *has reasonable cause to believe, contains any ciga-*
3 *rettes or smokeless tobacco made nonmailable by this*
4 *subsection.*

5 *“(2) REASONABLE CAUSE TO BELIEVE.—For*
6 *purposes of this section, notification to the United*
7 *States Postal Service by the Attorney General, a*
8 *United States attorney, a State attorney general, or*
9 *a local government or Indian tribe that levies an ex-*
10 *cise tax on tobacco products that an individual or en-*
11 *tity is regularly engaged in the business of transmit-*
12 *ting cigarettes or smokeless tobacco made nonmailable*
13 *by this section shall constitute reasonable cause to be-*
14 *lieve that any packages presented to the United States*
15 *Postal Service by such individual or entity contain*
16 *nonmailable cigarettes or smokeless tobacco.*

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

19 *“(A) CIGARS.—Cigars (as that term is de-*
20 *finied in section 5702(a) of the Internal Revenue*
21 *Code of 1986).*

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

1 “(C) *BUSINESS PURPOSES.*—*Tobacco prod-*
2 *ucts mailed only for business purposes between*
3 *legally operating businesses that have all appli-*
4 *cable State and Federal government licenses or*
5 *permits and are engaged in tobacco product*
6 *manufacturing, distribution, wholesale, export,*
7 *import, testing, investigation or research or for*
8 *regulatory purposes between any such businesses*
9 *and State or Federal Government regulatory*
10 *agencies, if the Postal Service issues a final rule*
11 *establishing the standards and requirements that*
12 *applies to all such mailings and which includes*
13 *the following:*

14 “(i) *The Postal Service shall verify*
15 *that any person submitting an otherwise*
16 *nonmailable tobacco product into the mails*
17 *as authorized by this paragraph is a busi-*
18 *ness or government agency permitted to*
19 *make such mailings pursuant to this sub-*
20 *section and the related final rule.*

21 “(ii) *The Postal Service shall ensure*
22 *that any recipient of an otherwise non-*
23 *mailable tobacco product sent through the*
24 *mails pursuant to this paragraph is a busi-*
25 *ness or government agency.*

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

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

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

1 “(vi) *The mailings shall be delivered*
2 *only to verified adult employees of the re-*
3 *recipient businesses or government agencies*
4 *who shall be required to sign for the mail-*
5 *ing.*

6 “(D) *CERTAIN INDIVIDUALS.—Tobacco*
7 *products mailed by individual adult people for*
8 *noncommercial, nonbusiness and non-money*
9 *making purposes, including the return of a dam-*
10 *aged or unacceptable tobacco product to its man-*
11 *ufacturer, if the Postal Service issues a final rule*
12 *establishing the standards and requirements that*
13 *applies to all such mailings and which includes*
14 *the following:*

15 “(i) *The Postal Service shall verify*
16 *that any person submitting an otherwise*
17 *nonmailable tobacco product into the mails*
18 *as authorized by this subsection is the indi-*
19 *vidual person identified on the return ad-*
20 *dress label of the package and is an adult.*

21 “(ii) *For mailings to individual per-*
22 *sons the Postal Service shall require the per-*
23 *son submitting the otherwise nonmailable*
24 *tobacco product into the mails as authorized*

1 by this subsection to affirm that the recipi-
2 ent is an adult.

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

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

9 “(v) No package shall be delivered or
10 placed in the possession of any individual
11 person who is not a verified adult and, for
12 mailings to individual persons. The Postal
13 Service shall deliver the package only to the
14 verified adult recipient at the recipient ad-
15 dress or transfer it for delivery to an Air/
16 Army Postal Office (APO) or Fleet Postal
17 Office (FPO) number designated in the re-
18 cipient address.

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

22 “(E) DEFINITION OF ADULT.—For the pur-
23 poses of subparagraphs (C) and (D), the term
24 ‘adult’ means an individual person of at least
25 the minimum age required for the legal sale or

1 *purchase of tobacco products as determined by*
2 *the applicable law at the place the individual*
3 *person is located.*

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

8 “(5) *SEIZURE AND FORFEITURE.*—*Any cigarettes*
9 *or smokeless tobacco made nonmailable by this sub-*
10 *section that are deposited in the mails shall be subject*
11 *to seizure and forfeiture, pursuant to the procedures*
12 *set forth in chapter 46 of this title. Any tobacco prod-*
13 *ucts so seized and forfeited shall either be destroyed*
14 *or retained by Government officials for the detection*
15 *or prosecution of crimes or related investigations and*
16 *then destroyed.*

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

24 “(b) *USE OF PENALTIES.*—*There is established a sepa-*
25 *rate account in the Treasury of the United States, to be*

1 *known as the “PACT Postal Service Fund”. Notwith-*
2 *standing any other provision of law, an amount equal to*
3 *50 percent of any criminal and civil fines or monetary pen-*
4 *alties collected by the United States Government in enforce-*
5 *ing the provisions of this subsection shall be transferred into*
6 *the PACT Postal Service Fund and shall be available to*
7 *the Postmaster General for the purpose of enforcing the pro-*
8 *visions of this subsection.*

9 (c) *COORDINATION OF EFFORTS.—In the enforcement*
10 *of this section, the Postal Service shall cooperate and coordi-*
11 *nate its efforts with related enforcement activities of any*
12 *other Federal agency or of any State, local, or tribal govern-*
13 *ment, whenever appropriate.*

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

16 (1) *A State, through its attorney general (or a*
17 *designee thereof), or a local government or Indian*
18 *tribe that levies an excise tax on tobacco products,*
19 *through its chief law enforcement officer (or a des-*
20 *ignee thereof), may bring a civil action in a United*
21 *States district court to prevent and restrain any per-*
22 *son (or any person controlling such person or aiding*
23 *and abetting such person) or to obtain damages, pen-*
24 *alties, including the penalties specified in paragraph*
25 *(6), injunctive or other equitable relief from any such*

1 *person (or from any person either controlling such*
2 *person or aiding and abetting such person) who vio-*
3 *lates paragraph (1) by depositing nonmailable to-*
4 *bacco products into the mails for commercial, busi-*
5 *ness, or money-making purposes.*

6 *(2) Nothing in this section shall be deemed to ab-*
7 *rogate or constitute a waiver of any sovereign immu-*
8 *nity of a State or local government or Indian tribe*
9 *against any unconsented lawsuit under paragraph*
10 *(1), or otherwise to restrict, expand, or modify any*
11 *sovereign immunity of a State or local government or*
12 *Indian tribe.*

13 *(3) A State, through its attorney general, or a*
14 *local government or Indian tribe that levies an excise*
15 *tax on tobacco products, through its chief law enforce-*
16 *ment officer (or a designee thereof), may provide evi-*
17 *dence of a violation of paragraph (1) for commercial,*
18 *business or money-making purposes by any person*
19 *not subject to State, local, or tribal government en-*
20 *forcement actions for violations of paragraph (1) to*
21 *the Attorney General of the United States or a United*
22 *States attorney, who shall take appropriate actions to*
23 *enforce the provisions of this subsection.*

24 *(4) The remedies available under this subsection*
25 *are in addition to any other remedies available under*

1 (2) *INITIATION OF ACTION.*—A State, through its
2 attorney general, may bring an action in the United
3 States district courts to prevent and restrain viola-
4 tions of subsection (a) by any person (or by any per-
5 son controlling such person).

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

11 (4) *NONEXCLUSIVITY OF REMEDIES.*—The rem-
12 edy available under paragraph (2) is in addition to
13 any other remedies available under Federal, State, or
14 other law. No provision of this Act or any other Fed-
15 eral law shall be held or construed to prohibit or pre-
16 empt the Master Settlement Agreement, the Model
17 Statute (as defined in the Master Settlement Agree-
18 ment), any legislation amending or complementary to
19 the Model Statute in effect as of June 1, 2006, or any
20 legislation substantially similar to such existing,
21 amending, or complementary legislation hereinafter
22 enacted.

23 (5) *OTHER ENFORCEMENT ACTIONS.*—Nothing in
24 this subsection shall be construed to prohibit an au-
25 thorized State official from proceeding in State court

1 *or taking other enforcement actions on the basis of an*
2 *alleged violation of State or other law.*

3 (6) *AUTHORITY OF THE ATTORNEY GENERAL.—*
4 *The Attorney General of the United States may ad-*
5 *minister and enforce subsection (a).*

6 (c) *DEFINITIONS.—In this section the following defini-*
7 *tions apply:*

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

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

17 (B) *the cigarettes or smokeless tobacco are*
18 *delivered by use of a common carrier, private de-*
19 *livery service, or the mails, or the seller is not*
20 *in the physical presence of the buyer when the*
21 *buyer obtains possession of the cigarettes or*
22 *smokeless tobacco.*

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

1 (A) *SHIPPING OR CONSIGNING.*—Any person
2 in the United States to whom nontaxpaid to-
3 bacco products manufactured in a foreign coun-
4 try, Puerto Rico, the Virgin Islands, or a posses-
5 sion of the United States are shipped or con-
6 signed.

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

11 (C) *UNLAWFUL IMPORTING.*—Any person
12 who smuggles or otherwise unlawfully brings to-
13 bacco products into the United States.

14 (3) *MASTER SETTLEMENT AGREEMENT.*—The
15 term “Master Settlement Agreement” means the
16 agreement executed November 23, 1998, between the
17 attorneys general of 46 States, the District of Colum-
18 bia, the Commonwealth of Puerto Rico, and 4 terri-
19 tories of the United States and certain tobacco manu-
20 facturers.

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

1 (5) *TOBACCO PRODUCT MANUFACTURER.*—*The*
2 *term “Tobacco Product Manufacturer” has the mean-*
3 *ing given that term in section II(uu) of the Master*
4 *Settlement Agreement.*

5 **SEC. 5. INSPECTION BY BUREAU OF ALCOHOL, TOBACCO,**
6 ***FIREARMS, AND EXPLOSIVES OF RECORDS OF***
7 ***CERTAIN CIGARETTE AND SMOKELESS TO-***
8 ***BACCO SELLERS; CRIMINAL PENALTY.***

9 (a) *RECORDKEEPING, REPORTING, AND INSPEC-*
10 *TION.*—*Section 2343(c) of title 18, United States Code, is*
11 *amended to read as follows:*

12 “(c) *Any officer of the Bureau of Alcohol, Tobacco,*
13 *Firearms, and Explosives may, during normal business*
14 *hours, enter the premises of any person described in sub-*
15 *section (a) or (b) for the purposes of inspecting—*

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

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

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

23 “(b) *Whoever knowingly violates any rule or regulation*
24 *promulgated under section 2343 or 2346 or violates section*

1 2342(b) shall be fined under this title or imprisoned not
2 more than three years, or both.”

3 **SEC. 6. EXCLUSIONS REGARDING INDIAN TRIBES AND TRIB-**
4 **AL MATTERS.**

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

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

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

20 (3) any limitations under existing Federal or
21 State law, including Federal common law and trea-
22 ties, on State, local, and tribal tax and regulatory au-
23 thority with respect to the sale, use, or distribution of
24 cigarettes and smokeless tobacco by or to Indian

1 *tribes, tribal members, tribal enterprises, or in Indian*
2 *country;*

3 (4) *any existing Federal law, including Federal*
4 *common law and treaties, regarding State jurisdic-*
5 *tion, or lack thereof, over any tribe, tribal members,*
6 *tribal enterprises, tribal reservations, or other lands*
7 *held by the United States in trust for one or more In-*
8 *dian tribes; and*

9 (5) *any existing State or local government au-*
10 *thority to bring enforcement actions against persons*
11 *located in Indian country.*

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

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

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

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

1 (c) *TREATMENT OF STATE AND LOCAL GOVERN-*
2 *MENTS.—Nothing in this Act or the amendments made by*
3 *this Act is intended, and shall not be construed to, author-*
4 *ize, deputize, or commission States or local governments as*
5 *instrumentalities of the United States.*

6 (d) *ENFORCEMENT WITHIN INDIAN COUNTRY.—Noth-*
7 *ing in this Act or the amendments made by this Act is in-*
8 *tended to prohibit, limit, or restrict enforcement by the At-*
9 *torney General of the United States of the provisions herein*
10 *within Indian country.*

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

14 **SEC. 7. SENSE OF CONGRESS CONCERNING THE PRECE-**
15 **DENTIAL EFFECT OF THIS ACT.**

16 *It is the sense of Congress that unique harms are asso-*
17 *ciated with online cigarette sales, including problems with*
18 *verifying the ages of consumers in the digital market and*
19 *the long-term health problems associated with the use of cer-*
20 *tain tobacco products. This Act was introduced recognizing*
21 *the longstanding interest of Congress in urging compliance*
22 *with States' laws regulating remote sales of certain tobacco*
23 *products to citizens of those States, including the passage*
24 *of the Jenkins Act over 50 years ago, which established re-*
25 *porting requirements for out-of-State companies that sell*

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

14 **SEC. 8. EFFECTIVE DATE.**

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

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

20 **SEC. 9. SEVERABILITY.**

21 *If any provision of this, or an amendment made by*
22 *this Act or the application thereof to any person or cir-*
23 *cumstance is held invalid, the remainder of the Act and*
24 *the application of it to any other person or circumstance*
25 *shall not be affected thereby.*

Union Calendar No. 537

110TH CONGRESS
2^D SESSION

H. R. 4081

[Report No. 110-836]

A BILL

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

SEPTEMBER 9, 2008

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed