

110TH CONGRESS  
1ST SESSION

# H. R. 4081

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

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 5, 2007

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

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## 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,*

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

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Prevent All Cigarette Trafficking Act of 2007” or  
6 “PACT Act”.

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

8 (1) the sale of illegal cigarettes and smokeless  
9 tobacco products significantly reduces Federal,  
10 State, and local government revenues, with Internet

1 sales alone accounting for billions of dollars of lost  
2 Federal, State, and local tobacco tax revenue each  
3 year;

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

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

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

14 (5) the majority of Internet and other remote  
15 sales of cigarettes and smokeless tobacco are being  
16 made without adequate precautions to protect  
17 against sales to children, without the payment of ap-  
18 plicable taxes, and without complying with the nomi-  
19 nal registration and reporting requirements in exist-  
20 ing Federal law;

21 (6) unfair competition from illegal sales of eiga-  
22 rettes and smokeless tobacco is taking billions of dol-  
23 lars of sales away from law-abiding retailers  
24 throughout the United States;

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

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

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

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

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

16           (1) require Internet and other remote sellers of  
17 cigarettes and smokeless tobacco to comply with the  
18 same laws that apply to law-abiding tobacco retail-  
19 ers;

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

22           (3) provide government enforcement officials  
23 with more effective enforcement tools to combat to-  
24 bacco smuggling;

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

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

7           (6) prevent and reduce youth access to inexpen-  
8 sive cigarettes and smokeless tobacco through illegal  
9 Internet or contraband sales.

10 **SEC. 2. COLLECTION OF STATE CIGARETTE AND SMOKE-**  
11 **LESS TOBACCO TAXES.**

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

17 **“SEC. 1. DEFINITIONS.**

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

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

23           “(2) CIGARETTE.—

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

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

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

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

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

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

1           “(5) 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  
12 are delivered by use of a common carrier, pri-  
13 vate delivery service, or the mails, or the seller  
14 is not in the physical presence of the buyer  
15 when the buyer obtains possession of the ciga-  
16 rettes or smokeless tobacco.

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

19           “(7) INDIAN COUNTRY.—The term ‘Indian  
20 country’ has the meaning given that term in section  
21 1151 of title 18, United States Code, except that  
22 within the State of Alaska that term applies only to  
23 the Metlakatla Indian Community, Annette Island  
24 Reserve.

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

8           “(9) INTERSTATE COMMERCE.—The term  
9           ‘interstate commerce’ means commerce between a  
10          State and any place outside the State, commerce be-  
11          tween a State and any Indian country in the State,  
12          or commerce between points in the same State but  
13          through any place outside the State or through any  
14          Indian country.

15          “(10) PERSON.—The term ‘person’ means an  
16          individual, corporation, company, association, firm,  
17          partnership, society, State government, local govern-  
18          ment, Indian tribal government, governmental orga-  
19          nization of such government, or joint stock company.

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

24          “(12) SMOKELESS TOBACCO.—The term  
25          ‘smokeless tobacco’ means any finely cut, ground,

1 powdered, or leaf tobacco, or other product con-  
2 taining tobacco, that is intended to be placed in the  
3 oral or nasal cavity or otherwise consumed without  
4 being combusted.

5 “(13) TOBACCO TAX ADMINISTRATOR.—The  
6 term ‘tobacco tax administrator’ means the State,  
7 local, or tribal official duly authorized to collect the  
8 tobacco tax or administer the tax law of a State, lo-  
9 cality, or tribe, respectively.

10 “(14) USE.—The term ‘use’, in addition to its  
11 ordinary meaning, means the consumption, storage,  
12 handling, or disposal of cigarettes or smokeless to-  
13 bacco.”.

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

17 (1) by striking “cigarettes” each place it ap-  
18 pears and inserting “cigarettes or smokeless to-  
19 bacco”;

20 (2) in subsection (a)—

21 (A) in the matter preceding paragraph

22 (1)—

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

24 “(a)”

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

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

6 (iv) by striking “to other than a dis-  
7 tributor licensed by or located in such  
8 State,”; and

9 (v) by striking “or transfer and ship-  
10 ment” and inserting “, transfer, or ship-  
11 ment”;

12 (B) in paragraph (1)—

13 (i) by striking “with the tobacco tax  
14 administrator of the State” and inserting  
15 “with the Attorney General of the United  
16 States and with the tobacco tax adminis-  
17 trators of the State and place”; and

18 (ii) by striking “; and” and inserting  
19 the following: “, as well as telephone num-  
20 bers for each place of business, a principal  
21 electronic mail address, any website ad-  
22 dresses, and the name, address, and tele-  
23 phone number of an agent in the State au-  
24 thorized to accept service on behalf of such  
25 person;”;

1 (C) in paragraph (2), by striking “and the  
2 quantity thereof.” and inserting “the quantity  
3 thereof, and the name, address, and phone  
4 number of the person delivering the shipment to  
5 the recipient on behalf of the delivery seller,  
6 with all invoice or memoranda information re-  
7 lating to specific customers to be organized by  
8 city or town and by zip code; and”;

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

10 “(3) with respect to each memorandum or in-  
11 voice filed with a State under paragraph (2), also  
12 file copies of such memorandum or invoice with the  
13 tobacco tax administrators and chief law enforce-  
14 ment officers of the local governments and Indian  
15 tribes operating within the borders of the State that  
16 apply their own local or tribal taxes on cigarettes or  
17 smokeless tobacco.”;

18 (3) in subsection (b)—

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

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

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

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

1       “(c) USE OF INFORMATION.—A tobacco tax adminis-  
2 trator or chief law enforcement officer who receives a  
3 memorandum or invoice under paragraph (2) or (3) of  
4 subsection (a) shall use such memorandum or invoice sole-  
5 ly for the purposes of the enforcement of this Act and the  
6 collection of any taxes owed on related sales of cigarettes  
7 and smokeless tobacco, and shall keep confidential any  
8 personal information in such memorandum or invoice not  
9 otherwise required for such purposes.”.

10       (c) REQUIREMENTS FOR DELIVERY SALES.—The  
11 Jenkins Act is amended by inserting after section 2 the  
12 following:

13       **“SEC. 2A. DELIVERY SALES.**

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

17               “(1) the shipping requirements set forth in sub-  
18 section (b);

19               “(2) the recordkeeping requirements set forth  
20 in subsection (c);

21               “(3) all State, local, tribal, and other laws gen-  
22 erally applicable to sales of cigarettes or smokeless  
23 tobacco as if such delivery sales occurred entirely  
24 within the specific State and place, including laws  
25 imposing—

1           “(A) excise taxes;

2           “(B) licensing and tax-stamping require-  
3           ments;

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

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

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

10          “(b) SHIPPING AND PACKAGING.—

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

23           “(2) FAILURE TO LABEL.—Any shipping pack-  
24           age described in paragraph (1) that is not labeled in  
25           accordance with that paragraph shall be treated as

1 nondeliverable matter by a common carrier or other  
2 delivery service, if the common carrier or other deliv-  
3 ery service knows or should know the package con-  
4 tains cigarettes or smokeless tobacco. If a common  
5 carrier or other delivery service believes a package is  
6 being submitted for delivery in violation of para-  
7 graph (1), it may require the person submitting the  
8 package for delivery to establish that it is not being  
9 sent in violation of paragraph (1) before accepting  
10 the package for delivery. Nothing in this paragraph  
11 shall require the common carrier or other delivery  
12 service to open any package to determine its con-  
13 tents.

14 “(3) WEIGHT RESTRICTION.—A delivery seller  
15 shall not sell, offer for sale, deliver, or cause to be  
16 delivered in any single sale or single delivery any  
17 cigarettes or smokeless tobacco weighing more than  
18 10 pounds.

19 “(4) AGE VERIFICATION.—

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

23 “(i) shall not sell, deliver, or cause to  
24 be delivered any tobacco products to a per-  
25 son under the minimum age required for

1 the legal sale or purchase of tobacco prod-  
2 ucts, as determined by the applicable law  
3 at the place of delivery;

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

6 “(I) the purchaser placing the  
7 delivery sale order, or an adult who is  
8 at least the minimum age required for  
9 the legal sale or purchase of tobacco  
10 products, as determined by the appli-  
11 cable law at the place of delivery, to  
12 sign to accept delivery of the shipping  
13 container at the delivery address; and

14 “(II) the person who signs to ac-  
15 cept delivery of the shipping container  
16 to provide proof, in the form of a  
17 valid, government-issued identification  
18 bearing a photograph of the indi-  
19 vidual, that the person is at least the  
20 minimum age required for the legal  
21 sale or purchase of tobacco products,  
22 as determined by the applicable law at  
23 the place of delivery; and

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

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

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

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

24          “(c) RECORDS.—

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

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

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

22          “(d) DELIVERY.—

23                 “(1) IN GENERAL.—Except as provided in para-  
24                 graph (2), no delivery seller may sell or deliver to  
25                 any consumer, or tender to any common carrier or

1 other delivery service, any cigarettes or smokeless to-  
2 bacco pursuant to a delivery sale unless, in advance  
3 of the sale, delivery, or tender—

4 “(A) any cigarette or smokeless tobacco ex-  
5 cise tax that is imposed by the State in which  
6 the cigarettes or smokeless tobacco are to be  
7 delivered has been paid to the State;

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

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

17 “(2) EXCEPTION.—Paragraph (1) does not  
18 apply to a delivery sale of smokeless tobacco if the  
19 law of the State or local government of the place  
20 where the smokeless tobacco is to be delivered re-  
21 quires or otherwise provides that delivery sellers col-  
22 lect the excise tax from the consumer and remit the  
23 excise tax to the State or local government, and the  
24 delivery seller complies with the requirement.

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

3               “(1) IN GENERAL.—

4                       “(A) INITIAL LIST.—Not later than 90  
5 days after this subsection goes into effect under  
6 the Prevent All Cigarette Trafficking Act of  
7 2007, the Attorney General of the United  
8 States shall compile a list of delivery sellers of  
9 cigarettes or smokeless tobacco that have not  
10 registered with the Attorney General, pursuant  
11 to section 2(a) or that are otherwise not in  
12 compliance with this Act, and—

13                               “(i) distribute the list to—

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

16                                       “(II) common carriers and other  
17 persons that deliver small packages to  
18 consumers in interstate commerce, in-  
19 cluding the United States Postal Serv-  
20 ice; and

21                                       “(III) at the discretion of the At-  
22 torney General of the United States,  
23 to any other persons; and

24                                       “(ii) publicize and make the list avail-  
25 able to any other person engaged in the

1 business of interstate deliveries or who de-  
2 livers cigarettes or smokeless tobacco in or  
3 into any State.

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

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

11 “(ii) all addresses from which the de-  
12 livery seller does business or ships ciga-  
13 rettes or smokeless tobacco;

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

17 “(iv) any other information that the  
18 Attorney General determines would facili-  
19 tate compliance with this subsection by re-  
20 cipients of the list.

21 “(C) UPDATING.—The Attorney General of  
22 the United States shall update and distribute  
23 the list at least once every 4 months, and may  
24 distribute the list and any updates by regular  
25 mail, electronic mail, or any other reasonable

1 means, or by providing recipients with access to  
2 the list through a nonpublic website that the  
3 Attorney General of the United States regularly  
4 updates.

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

18 “(E) CONFIDENTIALITY.—The list distrib-  
19 uted pursuant to subparagraph (A) shall be  
20 confidential, and any person receiving the list  
21 shall maintain the confidentiality of the list but  
22 may deliver the list, for enforcement purposes,  
23 to any government official or to any common  
24 carrier or other person that delivers tobacco  
25 products or small packages to consumers. Noth-

1 ing in this section shall prohibit a common car-  
2 rier, the United States Postal Service, or any  
3 other person receiving the list from discussing  
4 with the listed delivery sellers the delivery sell-  
5 ers' inclusion on the list and the resulting ef-  
6 fects on any services requested by such listed  
7 delivery seller.

8 “(2) PROHIBITION ON DELIVERY.—

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

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

23 “(ii) the delivery is made to a person  
24 lawfully engaged in the business of manu-

1 facturing, distributing, or selling cigarettes  
2 or smokeless tobacco; or

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

9 “(B) IMPLEMENTATION OF UPDATES.—

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

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

19 “(A) IN GENERAL.—In the event that a  
20 common carrier or other delivery service delays  
21 or interrupts the delivery of a package it has in  
22 its possession because it determines or has rea-  
23 son to believe that the person ordering the de-  
24 livery is on a list distributed under paragraph  
25 (1)—

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

3           “(I) the common carrier or other  
4 delivery service as if the delivery of  
5 the package had been timely com-  
6 pleted; and

7           “(II) if the package is not deliv-  
8 erable, any reasonable additional fee  
9 or charge levied by the common car-  
10 rier or other delivery service to cover  
11 its extra costs and inconvenience and  
12 to serve as a disincentive against such  
13 noncomplying delivery orders; and

14           “(ii) if the package is determined not  
15 to be deliverable, the common carrier or  
16 other delivery service shall, in its discre-  
17 tion, either provide the package and its  
18 contents to a Federal, State, or local law  
19 enforcement agency or destroy the package  
20 and its contents.

21           “(B) RECORDS.—A common carrier or  
22 other delivery service shall maintain, for a pe-  
23 riod of 5 years, any records kept in the ordi-  
24 nary course of business relating to any deliv-  
25 eries interrupted pursuant to this paragraph

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

6 “(C) CONFIDENTIALITY.—Any person re-  
7 ceiving records under subparagraph (B) shall  
8 use such records solely for the purposes of the  
9 enforcement of this Act and the collection of  
10 any taxes owed on related sales of cigarettes  
11 and smokeless tobacco, and the person receiving  
12 records under subparagraph (B) shall keep con-  
13 fidential any personal information in such  
14 records not otherwise required for such pur-  
15 poses.

16 “(4) PREEMPTION.—

17 “(A) IN GENERAL.—No State, local, or  
18 tribal government, nor any political authority of  
19 2 or more State, local, or tribal governments,  
20 may enact or enforce any law or regulation re-  
21 lating to delivery sales that restricts deliveries  
22 of cigarettes or smokeless tobacco to consumers  
23 by common carriers or other delivery services  
24 on behalf of delivery sellers by—

1           “(i) requiring that the common carrier  
2           or other delivery service verify the age or  
3           identity of the consumer accepting the de-  
4           livery by requiring the person who signs to  
5           accept delivery of the shipping container to  
6           provide proof, in the form of a valid, gov-  
7           ernment-issued identification bearing a  
8           photograph of the individual, that such  
9           person is at least the minimum age re-  
10          quired for the legal sale or purchase of to-  
11          bacco products, as determined by either  
12          State or local law at the place of delivery;

13           “(ii) requiring that the common car-  
14          rier or other delivery service obtain a sig-  
15          nature from the consumer accepting the  
16          delivery;

17           “(iii) requiring that the common car-  
18          rier or other delivery service verify that all  
19          applicable taxes have been paid;

20           “(iv) requiring that packages delivered  
21          by the common carrier or other delivery  
22          service contain any particular labels, no-  
23          tice, or markings; or

24           “(v) prohibiting common carriers or  
25          other delivery services from making deliv-

1           eries on the basis of whether the delivery  
2           seller is or is not identified on any list of  
3           delivery sellers maintained and distributed  
4           by any entity other than the Federal Gov-  
5           ernment.

6           “(B) RELATIONSHIP TO OTHER LAWS.—

7           Nothing in this paragraph shall be construed to  
8           prohibit, expand, restrict, or otherwise amend  
9           or modify—

10           “(i) section 14501(c)(1) or  
11           41713(b)(4) of title 49, United States  
12           Code;

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

17           “(iii) any provision of State, local, or  
18           tribal law regulating common carriers that  
19           falls within the provisions of chapter 49 of  
20           the United States Code, sections  
21           14501(c)(2) or 41713(b)(4)(B).

22           “(C) STATE LAWS PROHIBITING DELIVERY  
23           SALES.—Nothing in the Prevent All Cigarette  
24           Trafficking Act of 2007, or the amendments  
25           made by that Act, may be construed to preempt

1 or supersede State laws prohibiting the delivery  
2 sale, or the shipment or delivery pursuant to a  
3 delivery sale, of cigarettes or smokeless tobacco  
4 to individual consumers.

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

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

9 “(i) all known names, addresses,  
10 website addresses, and other primary con-  
11 tact information of any delivery seller that  
12 offers for sale or makes sales of cigarettes  
13 or smokeless tobacco in or into the State,  
14 locality, or tribal land but has failed to  
15 register with or make reports to the re-  
16 spective tax administrator, as required by  
17 this Act, or that has been found in a legal  
18 proceeding to have otherwise failed to com-  
19 ply with this Act; and

20 “(ii) a list of common carriers and  
21 other persons who make deliveries of ciga-  
22 rettes or smokeless tobacco in or into the  
23 State, locality, or tribal lands.

24 “(B) UPDATES.—Any government pro-  
25 viding a list to the Attorney General of the

1 United States under subparagraph (A) shall  
2 also provide updates and corrections every 4  
3 months until such time as such government no-  
4 tifies the Attorney General of the United States  
5 in writing that such government no longer de-  
6 sires to submit such information to supplement  
7 the list maintained and distributed by the At-  
8 torney General of the United States under  
9 paragraph (1).

10 “(C) REMOVAL AFTER WITHDRAWAL.—

11 Upon receiving written notice that a govern-  
12 ment no longer desires to submit information  
13 under subparagraph (A), the Attorney General  
14 of the United States shall remove from the list  
15 under paragraph (1) any persons that are on  
16 the list solely because of such government’s  
17 prior submissions of its list of noncomplying de-  
18 livery sellers of cigarettes or smokeless tobacco  
19 or its subsequent updates and corrections.

20 “(6) DEADLINE TO INCORPORATE ADDI-

21 TIONS.—The Attorney General of the United States  
22 shall—

23 “(A) include any delivery seller identified  
24 and submitted by a State, local, or tribal gov-  
25 ernment under paragraph (5) in any list or up-

1 date that is distributed or made available under  
2 paragraph (1) on or after the date that is 30  
3 days after the date on which the information is  
4 received by the Attorney General of the United  
5 States; and

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

11 “(7) NOTICE TO DELIVERY SELLERS.—Not  
12 later than 14 days prior to including any delivery  
13 seller on the initial list distributed or made available  
14 under paragraph (1), or on any subsequent list or  
15 update for the first time, the Attorney General of  
16 the United States shall make a reasonable attempt  
17 to send notice to the delivery seller by letter, elec-  
18 tronic mail, or other means that the delivery seller  
19 is being placed on such list or update, with that no-  
20 tice citing the relevant provisions of this Act.

21 “(8) LIMITATIONS.—

22 “(A) IN GENERAL.—Any common carrier  
23 or other person making a delivery subject to  
24 this subsection shall not be required or other-  
25 wise obligated to—

1           “(i) determine whether any list dis-  
2           tributed or made available under para-  
3           graph (1) is complete, accurate, or up-to-  
4           date;

5           “(ii) determine whether a person or-  
6           dering a delivery is in compliance with this  
7           Act; or

8           “(iii) open or inspect, pursuant to this  
9           Act, any package being delivered to deter-  
10          mine its contents.

11          “(B) ALTERNATE NAMES.—Any common  
12          carrier or other person making a delivery sub-  
13          ject to this subsection shall not be required or  
14          otherwise obligated to make any inquiries or  
15          otherwise determine whether a person ordering  
16          a delivery is a delivery seller on the list under  
17          paragraph (1) who is using a different name or  
18          address in order to evade the related delivery  
19          restrictions, but shall not knowingly deliver any  
20          packages to consumers for any such delivery  
21          seller who the common carrier or other delivery  
22          service knows is a delivery seller who is on the  
23          list under paragraph (1) but is using a different  
24          name or address to evade the delivery restric-  
25          tions of paragraph (2).

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

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

10           “(ii) not, as a matter of regular prac-  
11 tice and procedure, making any deliveries,  
12 or any deliveries in certain States, of any  
13 cigarettes or smokeless tobacco for any  
14 person or for any person not in the busi-  
15 ness of manufacturing, distributing, or  
16 selling cigarettes or smokeless tobacco; or

17           “(iii) delaying or not making a deliv-  
18 ery for any person because of reasonable  
19 efforts to comply with this Act.

20           “(D) OTHER LIMITS.—Section 2 and sub-  
21 sections (a), (b), (c), and (d) of this section  
22 shall not be interpreted to impose any respon-  
23 sibilities, requirements, or liability on common  
24 carriers.

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

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

9       **“SEC. 3. PENALTIES.**

10       “(a) CRIMINAL PENALTIES.—

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

16               “(2) EXCEPTIONS.—

17                       “(A) GOVERNMENTS.—Paragraph (1) shall  
18 not apply to a State, local, or tribal govern-  
19 ment.

20                       “(B) DELIVERY VIOLATIONS.—A common  
21 carrier or independent delivery service, or em-  
22 ployee of a common carrier or independent de-  
23 livery service, shall be subject to criminal pen-  
24 alties under paragraph (1) for a violation of

1 section 2A(e) only if the violation is committed  
2 intentionally—

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

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

10 “(b) CIVIL PENALTIES.—

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

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

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

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

24 “(B) in the case of a common carrier or  
25 other delivery service, \$2,500 in the case of a

1 first violation, or \$5,000 for any violation with-  
2 in 1 year of a prior violation.

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

11 “(3) EXCEPTIONS.—

12 “(A) DELIVERY VIOLATIONS.—An em-  
13 ployee of a common carrier or independent de-  
14 livery service shall be subject to civil penalties  
15 under paragraph (1) for a violation of section  
16 2A(e) only if the violation is committed inten-  
17 tionally—

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

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

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

5           “(i) the common carrier or inde-  
6 pendent delivery service has implemented  
7 and enforces effective policies and practices  
8 for complying with that section; or

9           “(ii) an employee of the common car-  
10 rier or independent delivery service who  
11 physically receives and processes orders,  
12 picks up packages, processes packages, or  
13 makes deliveries, takes actions that are  
14 outside the scope of employment of the em-  
15 ployee in the course of the violation, or  
16 that violate the implemented and enforced  
17 policies of the common carrier or inde-  
18 pendent delivery service described in clause  
19 (i).”.

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

22 **“SEC. 4. ENFORCEMENT.**

23           “(a) IN GENERAL.—The United States district  
24 courts shall have jurisdiction to prevent and restrain viola-  
25 tions of this Act and to provide other appropriate injunc-

1 tive or equitable relief, including money damages, for such  
2 violations.

3 “(b) AUTHORITY OF THE ATTORNEY GENERAL.—

4 The Attorney General of the United States shall admin-  
5 ister and enforce the provisions of this Act.

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

7 “(1) IN GENERAL.—

8 “(A) STANDING.—A State, through its at-  
9 torney general (or a designee thereof), or a  
10 local government or Indian tribe that levies a  
11 tax subject to section 2A(a)(3), through its  
12 chief law enforcement officer (or a designee  
13 thereof), may bring an action in a United  
14 States district court to prevent and restrain vio-  
15 lations of this Act by any person (or by any  
16 person controlling such person) or to obtain any  
17 other appropriate relief from any person (or  
18 from any person controlling such person) for  
19 violations of this Act, including civil penalties,  
20 money damages, and injunctive or other equi-  
21 table relief.

22 “(B) SOVEREIGN IMMUNITY.—Nothing in  
23 this Act shall be deemed to abrogate or con-  
24 stitute a waiver of any sovereign immunity of a  
25 State or local government or Indian tribe

1           against any unconsented lawsuit under this Act,  
2           or otherwise to restrict, expand, or modify any  
3           sovereign immunity of a State or local govern-  
4           ment or Indian tribe.

5           “(2) PROVISION OF INFORMATION.—A State,  
6           through its attorney general, or a local government  
7           or Indian tribe that levies a tax subject to section  
8           2A(a)(3), through its chief law enforcement officer  
9           (or a designee thereof), may provide evidence of a  
10          violation of this Act by any person not subject to  
11          State, local, or tribal government enforcement ac-  
12          tions for violations of this Act to the Attorney Gen-  
13          eral of the United States or a United States attor-  
14          ney, who shall take appropriate actions to enforce  
15          the provisions of this Act.

16          “(3) USE OF PENALTIES COLLECTED.—

17                 “(A) IN GENERAL.—There is established a  
18                 separate account in the Treasury known as the  
19                 ‘PACT Anti-Trafficking Fund’. Notwith-  
20                 standing any other provision of law and subject  
21                 to subparagraph (B), an amount equal to 50  
22                 percent of any criminal and civil penalties col-  
23                 lected by the United States Government in en-  
24                 forcing the provisions of this Act shall be trans-  
25                 ferred into the PACT Anti-Trafficking Fund

1 and shall be available to the Attorney General  
2 of the United States for purposes of enforcing  
3 the provisions of this Act and other laws relat-  
4 ing to contraband tobacco products.

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

13 “(4) NONEXCLUSIVITY OF REMEDY.—

14 “(A) IN GENERAL.—The remedies avail-  
15 able under this section and section 3 are in ad-  
16 dition to any other remedies available under  
17 Federal, State, local, tribal, or other law.

18 “(B) STATE COURT PROCEEDINGS.—Noth-  
19 ing in this Act shall be construed to expand, re-  
20 strict, or otherwise modify any right of an au-  
21 thorized State official to proceed in State court,  
22 or take other enforcement actions, on the basis  
23 of an alleged violation of State or other law.

24 “(C) TRIBAL COURT PROCEEDINGS.—  
25 Nothing in this Act shall be construed to ex-

1           pand, restrict, or otherwise modify any right of  
2           an authorized Indian tribal government official  
3           to proceed in tribal court, or take other enforce-  
4           ment actions, on the basis of an alleged viola-  
5           tion of tribal law.

6           “(D) LOCAL GOVERNMENT ENFORCE-  
7           MENT.—Nothing in this Act shall be construed  
8           to expand, restrict, or otherwise modify any  
9           right of an authorized local government official  
10          to proceed in State court, or take other enforce-  
11          ment actions, on the basis of an alleged viola-  
12          tion of local or other law.

13          “(d) PERSONS DEALING IN TOBACCO PRODUCTS.—  
14          Any person who holds a permit under section 5712 of the  
15          Internal Revenue Code of 1986 (regarding permitting of  
16          manufacturers and importers of tobacco products and ex-  
17          port warehouse proprietors) may bring an action in a  
18          United States district court to prevent and restrain viola-  
19          tions of this Act by any person (or by any person control-  
20          ling such person) other than a State, local, or tribal gov-  
21          ernment.

22          “(e) NOTICE.—

23                  “(1) PERSONS DEALING IN TOBACCO PROD-  
24          UCTS.—Any person who commences a civil action

1 under subsection (d) shall inform the Attorney Gen-  
2 eral of the United States of the action.

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

9 “(f) PUBLIC NOTICE.—

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

21 “(2) REPORTS TO CONGRESS.—The Attorney  
22 General shall submit to Congress each year a report  
23 containing the information described in paragraph  
24 (1).”.

1 **SEC. 3. TREATMENT OF CIGARETTES AND SMOKELESS TO-**  
2 **BACCO AS NONMAILABLE MATTER.**

3 Section 1716 of title 18, United States Code, is  
4 amended—

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

7 (2) by inserting after subsection (i) the fol-  
8 lowing:

9 “(j) TOBACCO PRODUCTS.—

10 “(1) PROHIBITION.—

11 “(A) IN GENERAL.—Except as provided in  
12 subparagraphs (C) and (D), all cigarettes (as  
13 that term is defined in section 1(2) of the Act  
14 of October 19, 1949 (15 U.S.C. 375; commonly  
15 referred to as the ‘Jenkins Act’)) and smokeless  
16 tobacco (as that term is defined in section  
17 1(12) of that Act), are nonmailable and shall  
18 not be deposited in or carried through the  
19 mails. The United States Postal Service shall  
20 not accept for delivery or transmit through the  
21 mails any package that it knows or has reason-  
22 able cause to believe contains any cigarettes or  
23 smokeless tobacco made nonmailable by this  
24 subsection.

25 “(B) REASONABLE CAUSE TO BELIEVE.—

26 For purposes of this section, notification to the

1 United States Postal Service by the Attorney  
2 General, a United States attorney, or a State  
3 Attorney General that an individual or entity is  
4 primarily engaged in the business of transmit-  
5 ting cigarettes or smokeless tobacco made non-  
6 mailable by this section shall constitute reason-  
7 able cause to believe that any packages pre-  
8 sented to the United States Postal Service by  
9 such individual or entity contain nonmailable  
10 cigarettes or smokeless tobacco.

11 “(C) CIGARS.—Subparagraph (A) shall not  
12 apply to cigars (as that term is defined in sec-  
13 tion 5702(a) of the Internal Revenue Code of  
14 1986).

15 “(D) GEOGRAPHIC EXCEPTION.—Subpara-  
16 graph (A) shall not apply to mailings within or  
17 into any State that is not contiguous with at  
18 least 1 other State of the United States. For  
19 purposes of this paragraph, ‘State’ means any  
20 of the 50 States or the District of Columbia.

21 “(2) PACKAGING EXCEPTIONS INAPPLICABLE.—  
22 Subsection (b) shall not apply to any tobacco prod-  
23 uct made nonmailable by this subsection.

24 “(3) SEIZURE AND FORFEITURE.—Any ciga-  
25 rettes or smokeless tobacco made nonmailable by

1 this subsection that are deposited in the mails shall  
2 be subject to seizure and forfeiture, and any tobacco  
3 products so seized and forfeited shall either be de-  
4 stroyed or retained by Government officials for the  
5 detection or prosecution of crimes or related inves-  
6 tigation and then destroyed.

7 “(4) ADDITIONAL PENALTIES.—In addition to  
8 any other fines and penalties imposed by this chap-  
9 ter for violations of this section, any person violating  
10 this subsection shall be subject to an additional pen-  
11 alty in the amount of 10 times the retail value of the  
12 nonmailable cigarettes or smokeless tobacco, includ-  
13 ing all Federal, State, and local taxes.

14 “(5) USE OF PENALTIES.—There is established  
15 a separate account in the Treasury known as the  
16 ‘PACT Postal Service Fund’. Notwithstanding any  
17 other provision of law, an amount equal to 50 per-  
18 cent of any criminal and civil fines or monetary pen-  
19 alties collected by the United States Government in  
20 enforcing the provisions of this subsection shall be  
21 transferred into the PACT Postal Service Fund and  
22 shall be available to the Postmaster General for the  
23 purpose of enforcing the provisions of this sub-  
24 section.”.

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 by use of a common carrier, private  
13 delivery service, or the mails, or the seller is not  
14 in the physical presence of the buyer when the  
15 buyer obtains possession of the cigarettes or  
16 smokeless tobacco.

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

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

5 (a) IN GENERAL.—Any officer of the Bureau of Alco-  
6 hol, Tobacco, Firearms, and Explosives may, during nor-  
7 mal business hours, enter the premises of any person de-  
8 scribed in subsection (b) for the purposes of inspecting—

9 (1) any records or information required to be  
10 maintained by such person under the provisions of  
11 law referred to in subsection (d); or

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

14 (b) COVERED PERSONS.—Subsection (a) applies to  
15 any person who engages in a delivery sale, and who ships,  
16 sells, distributes, or receives any quantity in excess of  
17 10,000 cigarettes, or any quantity in excess of 500 single-  
18 unit consumer-sized cans or packages of smokeless to-  
19 bacco, within a single month.

20 (c) RELIEF.—

21 (1) IN GENERAL.—The district courts of the  
22 United States shall have the authority in a civil ac-  
23 tion under this subsection to compel inspections au-  
24 thorized by subsection (a).

25 (2) VIOLATIONS.—Whoever violates subsection

26 (a) or an order issued pursuant to paragraph (1)

1 shall be subject to a civil penalty in an amount not  
2 to exceed \$10,000 for each violation.

3 (d) COVERED PROVISIONS OF LAW.—The provisions  
4 of law referred to in this subsection are—

5 (1) the Act of October 19, 1949 (15 U.S.C.  
6 375; commonly referred to as the “Jenkins Act”);

7 (2) chapter 114 of title 18, United States Code;  
8 and

9 (3) this Act.

10 (e) DELIVERY SALE DEFINED.—In this section, the  
11 term “delivery sale” has the meaning given that term in  
12 2343(e) of title 18, United States Code, as amended by  
13 this Act.

14 **SEC. 6. EXCLUSIONS REGARDING INDIAN TRIBES AND**  
15 **TRIBAL MATTERS.**

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

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

1       dian country (as that term is defined in section  
2       1151 of title 18, United States Code);

3           (2) any State laws that authorize or otherwise  
4       pertain to any such intergovernmental arrangements  
5       or create special rules or procedures for the collec-  
6       tion of State, local, or tribal taxes on cigarettes or  
7       smokeless tobacco sold in Indian country;

8           (3) any limitations under existing Federal law,  
9       including Federal common law and treaties, on  
10      State, local, and tribal tax and regulatory authority  
11      with respect to the sale, use, or distribution of ciga-  
12      rettes and smokeless tobacco by or to Indian tribes  
13      or tribal members or in Indian country;

14          (4) any existing Federal law, including Federal  
15      common law and treaties, regarding State jurisdic-  
16      tion, or lack thereof, over any tribe, tribal members,  
17      or tribal reservations; and

18          (5) any existing State or local government au-  
19      thority to bring enforcement actions against persons  
20      located in Indian country.

21      (b) COORDINATION OF LAW ENFORCEMENT.—Noth-  
22      ing in this Act or the amendments made by this Act shall  
23      be construed to inhibit or otherwise affect any coordinated  
24      law enforcement effort by 1 or more States or other juris-

1 ditions, including Indian tribes, through interstate com-  
2 pact or otherwise, that—

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

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

9           (3) establishes cooperative programs for the ad-  
10          ministration of such laws.

11          (c) TREATMENT OF STATE AND LOCAL GOVERN-  
12          MENTS.—Nothing in this Act or the amendments made  
13          by this Act is intended, and shall not be construed to, au-  
14          thorize, deputize, or commission States or local govern-  
15          ments as instrumentalities of the United States.

16          (d) ENFORCEMENT WITHIN INDIAN COUNTRY.—  
17          Nothing in this Act or the amendments made by this Act  
18          is intended to prohibit, limit, or restrict enforcement by  
19          the Attorney General of the United States of the provi-  
20          sions herein within Indian country.

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

1 **SEC. 7. EFFECTIVE DATE.**

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

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

7 **SEC. 8. SEVERABILITY.**

8 If any provision of this, or an amendment made by  
9 this Act or the application thereof to any person or cir-  
10 cumstance is held invalid, the remainder of the Act and  
11 the application of it to any other person or circumstance  
12 shall not be affected thereby.

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