

**Calendar No. 216**111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION**S. 1147**

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

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## IN THE SENATE OF THE UNITED STATES

MAY 21, 2009

Mr. KOHL (for himself, Mr. LEAHY, Mrs. GILLIBRAND, Mr. SCHUMER, Mr. WARNER, Mr. PRYOR, Mr. SPECTER, Mrs. FEINSTEIN, Mr. KERRY, Ms. KLOBUCHAR, Mr. DURBIN, Mr. WEBB, Mr. CASEY, Mr. HARKIN, Mr. SESSIONS, Mr. CORNYN, and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

NOVEMBER 19, 2009

Reported by Mr. LEAHY, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]**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  
3 “Prevent All Cigarette Trafficking Act of 2009” or  
4 “PACT Act”.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 **“SECTION 1. DEFINITIONS.**

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

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

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

3 “(2) CIGARETTE.—

4 “(A) IN GENERAL.—The term ‘cigarette’—

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

8 “(ii) includes roll-your-own tobacco  
9 (as defined in section 5702 of the Internal  
10 Revenue Code of 1986).

11 “(B) EXCEPTION.—The term ‘cigarette’  
12 does not include a cigar (as defined in section  
13 5702 of the Internal Revenue Code of 1986).

14 “(3) COMMON CARRIER.—The term ‘common  
15 carrier’ means any person (other than a local mes-  
16 senger service or the United States Postal Service)  
17 that holds itself out to the general public as a pro-  
18 vider for hire of the transportation by water, land,  
19 or air of merchandise (regardless of whether the per-  
20 son actually operates the vessel, vehicle, or aircraft  
21 by which the transportation is provided) between a  
22 port or place and a port or place in the United  
23 States.

24 “(4) CONSUMER.—The term ‘consumer’—

1           “(A) means any person that purchases  
2           cigarettes or smokeless tobacco; and

3           “(B) does not include any person lawfully  
4           operating as a manufacturer, distributor, whole-  
5           saler, or retailer of cigarettes or smokeless to-  
6           bacco.

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

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

17           “(B) the cigarettes or smokeless tobacco  
18           are delivered to the buyer by common carrier,  
19           private delivery service, or other method of re-  
20           mote delivery, or the seller is not in the physical  
21           presence of the buyer when the buyer obtains  
22           possession of the cigarettes or smokeless to-  
23           bacco.

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

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

3           “(A) has the meaning given that term in  
4 section 1151 of title 18, United States Code,  
5 except that within the State of Alaska that  
6 term applies only to the Metlakatla Indian  
7 Community, Annette Island Reserve, and

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

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

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

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

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

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

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

22           “(14) USE.—The term ‘use’ includes the con-  
23 sumption, storage, handling, or disposal of cigarettes  
24 or smokeless tobacco.”



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

4           (1) by striking “cigarettes” each place it ap-  
 5 pears and inserting “cigarettes or smokeless to-  
 6 bacco”;

7           (2) in subsection (a)—

8           (A) in the matter preceding paragraph  
 9 (1)—

10           (i) by inserting “CONTENTS.—” after  
 11 “(a)”;

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

14           (iii) by inserting “, locality, or Indian  
 15 country of an Indian tribe” after “a  
 16 State”;

17           (iv) by striking “to other than a dis-  
 18 tributor licensed by or located in such  
 19 State,”; and

20           (v) by striking “or transfer and ship-  
 21 ment” and inserting “, transfer, or ship-  
 22 ment”;

23           (B) in paragraph (1)—

24           (i) by striking “with the tobacco tax  
 25 administrator of the State” and inserting

1 “with the Attorney General of the United  
2 States and with the tobacco tax adminis-  
3 trators of the State and place”; and

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

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

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

21 “(3) with respect to each memorandum or in-  
22 voice filed with a State under paragraph (2), also  
23 file copies of the memorandum or invoice with the  
24 tobacco tax administrators and chief law enforce-  
25 ment officers of the local governments and Indian

1 tribes operating within the borders of the State that  
 2 apply their own local or tribal taxes on cigarettes or  
 3 smokeless tobacco.”;

4 (3) in subsection (b)—

5 (A) by inserting “PRESUMPTIVE EVIDENCE.—” after “(b)”;

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

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

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

11 “(e) USE OF INFORMATION.—A tobacco tax adminis-  
 12 trator or chief law enforcement officer who receives a  
 13 memorandum or invoice under paragraph (2) or (3) of  
 14 subsection (a) shall use the memorandum or invoice solely  
 15 for the purposes of the enforcement of this Act and the  
 16 collection of any taxes owed on related sales of cigarettes  
 17 and smokeless tobacco, and shall keep confidential any  
 18 personal information in the memorandum or invoice except  
 19 as required for such purposes.”.

20 (e) REQUIREMENTS FOR DELIVERY SALES.—The  
 21 Jenkins Act is amended by inserting after section 2 the  
 22 following:  
 23

1 **“SEC. 2A. DELIVERY SALES.**

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

5 “(1) the shipping requirements set forth in sub-  
6 section (b);

7 “(2) the recordkeeping requirements set forth  
8 in subsection (c);

9 “(3) all State, local, tribal, and other laws gen-  
10 erally applicable to sales of cigarettes or smokeless  
11 tobacco as if the delivery sales occurred entirely  
12 within the specific State and place, including laws  
13 imposing—

14 “(A) excise taxes;

15 “(B) licensing and tax-stamping require-  
16 ments;

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

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

21 “(4) the tax collection requirements set forth in  
22 subsection (d).

23 “(b) **SHIPPING AND PACKAGING.**—

24 “(1) **REQUIRED STATEMENT.**—For any ship-  
25 ping package containing cigarettes or smokeless to-  
26 bacco, the delivery seller shall include on the bill of

1 lading, if any, and on the outside of the shipping  
2 package, on the same surface as the delivery ad-  
3 dress, a clear and conspicuous statement providing  
4 as follows: ‘CIGARETTES/SMOKELESS TO-  
5 BACCO: FEDERAL LAW REQUIRES THE PAY-  
6 MENT OF ALL APPLICABLE EXCISE TAXES,  
7 AND COMPLIANCE WITH APPLICABLE LI-  
8 CENSING AND TAX-STAMPING OBLIGA-  
9 TIONS’.

10 “(2) FAILURE TO LABEL.—Any shipping pack-  
11 age described in paragraph (1) that is not labeled in  
12 accordance with that paragraph shall be treated as  
13 nondeliverable matter by a common carrier or other  
14 delivery service, if the common carrier or other deliv-  
15 ery service knows or should know the package con-  
16 tains cigarettes or smokeless tobacco. If a common  
17 carrier or other delivery service believes a package is  
18 being submitted for delivery in violation of para-  
19 graph (1), it may require the person submitting the  
20 package for delivery to establish that it is not being  
21 sent in violation of paragraph (1) before accepting  
22 the package for delivery. Nothing in this paragraph  
23 shall require the common carrier or other delivery  
24 service to open any package to determine its con-  
25 tents.

1           ~~“(3) WEIGHT RESTRICTION.—~~A delivery seller  
2 shall not sell, offer for sale, deliver, or cause to be  
3 delivered in any single sale or single delivery any  
4 cigarettes or smokeless tobacco weighing more than  
5 10 pounds.

6           ~~“(4) AGE VERIFICATION.—~~

7           ~~“(A) IN GENERAL.—~~A delivery seller who  
8 mails or ships tobacco products—

9           ~~“(i) shall not sell, deliver, or cause to~~  
10           ~~be delivered any tobacco products to a per-~~  
11           ~~son under the minimum age required for~~  
12           ~~the legal sale or purchase of tobacco prod-~~  
13           ~~ucts, as determined by the applicable law~~  
14           ~~at the place of delivery;~~

15           ~~“(ii) shall use a method of mailing or~~  
16           ~~shipping that requires—~~

17           ~~“(I) the purchaser placing the~~  
18           ~~delivery sale order, or an adult who is~~  
19           ~~at least the minimum age required for~~  
20           ~~the legal sale or purchase of tobacco~~  
21           ~~products, as determined by the appli-~~  
22           ~~eable law at the place of delivery, to~~  
23           ~~sign to accept delivery of the shipping~~  
24           ~~container at the delivery address; and~~

1           “(H) the person who signs to ac-  
2           cept delivery of the shipping container  
3           to provide proof, in the form of a  
4           valid, government-issued identification  
5           bearing a photograph of the indi-  
6           vidual, that the person is at least the  
7           minimum age required for the legal  
8           sale or purchase of tobacco products,  
9           as determined by the applicable law at  
10          the place of delivery; and

11          “(iii) shall not accept a delivery sale  
12          order from a person without—

13                 “(I) obtaining the full name,  
14                 birth date, and residential address of  
15                 that person; and

16                 “(II) verifying the information  
17                 provided in subclause (I), through the  
18                 use of a commercially available data-  
19                 base or aggregate of databases, con-  
20                 sisting primarily of data from govern-  
21                 ment sources, that are regularly used  
22                 by government and businesses for the  
23                 purpose of age and identity  
24                 verification and authentication, to en-  
25                 sure that the purchaser is at least the

1           minimum age required for the legal  
2           sale or purchase of tobacco products,  
3           as determined by the applicable law at  
4           the place of delivery.

5           “(B) LIMITATION.—No database being  
6           used for age and identity verification under  
7           subparagraph (A)(iii) shall be in the possession  
8           or under the control of the delivery seller, or be  
9           subject to any changes or supplementation by  
10          the delivery seller.

11         “(e) RECORDS.—

12           “(1) IN GENERAL.—Each delivery seller shall  
13           keep a record of any delivery sale, including all of  
14           the information described in section 2(a)(2), orga-  
15           nized by the State, and within the State, by the city  
16           or town and by zip code, into which the delivery sale  
17           is so made.

18           “(2) RECORD RETENTION.—Records of a deliv-  
19           ery sale shall be kept as described in paragraph (1)  
20           until the end of the 4th full calendar year that be-  
21           gins after the date of the delivery sale.

22           “(3) ACCESS FOR OFFICIALS.—Records kept  
23           under paragraph (1) shall be made available to to-  
24           bacco tax administrators of the States, to local gov-  
25           ernments and Indian tribes that apply local or tribal



1 taxes on cigarettes or smokeless tobacco, to the at-  
2 torneys general of the States, to the chief law en-  
3 forcement officers of the local governments and In-  
4 dian tribes, and to the Attorney General of the  
5 United States in order to ensure the compliance of  
6 persons making delivery sales with the requirements  
7 of this Act.

8 “(d) DELIVERY.—

9 “(1) IN GENERAL.—Except as provided in para-  
10 graph (2), no delivery seller may sell or deliver to  
11 any consumer, or tender to any common carrier or  
12 other delivery service, any cigarettes or smokeless to-  
13 bacco pursuant to a delivery sale unless, in advance  
14 of the sale, delivery, or tender—

15 “(A) any cigarette or smokeless tobacco ex-  
16 cise tax that is imposed by the State in which  
17 the cigarettes or smokeless tobacco are to be  
18 delivered has been paid to the State;

19 “(B) any cigarette or smokeless tobacco  
20 excise tax that is imposed by the local govern-  
21 ment of the place in which the cigarettes or  
22 smokeless tobacco are to be delivered has been  
23 paid to the local government; and

24 “(C) any required stamps or other indicia  
25 that the excise tax has been paid are properly

1           affixed or applied to the cigarettes or smokeless  
2           tobacco.

3           “(2) EXCEPTION.—Paragraph (1) does not  
4           apply to a delivery sale of smokeless tobacco if the  
5           law of the State or local government of the place  
6           where the smokeless tobacco is to be delivered re-  
7           quires or otherwise provides that delivery sellers col-  
8           lect the excise tax from the consumer and remit the  
9           excise tax to the State or local government, and the  
10          delivery seller complies with the requirement.

11          “(e) LIST OF UNREGISTERED OR NONCOMPLIANT  
12          DELIVERY SELLERS.—

13                 “(1) IN GENERAL.—

14                         “(A) INITIAL LIST.—Not later than 90  
15                         days after this subsection goes into effect under  
16                         the Prevent All Cigarette Trafficking Act of  
17                         2009, the Attorney General of the United  
18                         States shall compile a list of delivery sellers of  
19                         cigarettes or smokeless tobacco that have not  
20                         registered with the Attorney General of the  
21                         United States pursuant to section 2(a), or that  
22                         are otherwise not in compliance with this Act,  
23                         and—

24                                 “(i) distribute the list to—

1           “(I) the attorney general and tax  
2 administrator of every State;

3           “(II) common carriers and other  
4 persons that deliver small packages to  
5 consumers in interstate commerce, in-  
6 cluding the United States Postal Serv-  
7 ice; and

8           “(III) any other person that the  
9 Attorney General of the United States  
10 determines can promote the effective  
11 enforcement of this Act; and

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

17           “(B) LIST CONTENTS.—To the extent  
18 known, the Attorney General of the United  
19 States shall include, for each delivery seller on  
20 the list described in subparagraph (A)—

21           “(i) all names the delivery seller uses  
22 or has used in the transaction of its busi-  
23 ness or on packages delivered to cus-  
24 tomers;

1           “(ii) all addresses from which the de-  
2           livery seller does or has done business, or  
3           ships or has shipped cigarettes or smoke-  
4           less tobacco;

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

8           “(iv) any other information that the  
9           Attorney General of the United States de-  
10          termines would facilitate compliance with  
11          this subsection by recipients of the list.

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

21          “(D) STATE, LOCAL, OR TRIBAL ADDI-  
22          TIONS.—The Attorney General of the United  
23          States shall include in the list described in sub-  
24          paragraph (A) any noncomplying delivery sell-  
25          ers identified by any State, local, or tribal gov-

1           ernment under paragraph (6), and shall dis-  
2           tribute the list to the attorney general or chief  
3           law enforcement official and the tax adminis-  
4           trator of any government submitting any such  
5           information, and to any common carriers or  
6           other persons who deliver small packages to  
7           consumers identified by any government pursu-  
8           ant to paragraph (6).

9           “(E) ACCURACY AND COMPLETENESS OF  
10          LIST OF NONCOMPLYING DELIVERY SELLERS.—

11         In preparing and revising the list described in  
12         subparagraph (A), the Attorney General of the  
13         United States shall—

14                 “(i) use reasonable procedures to en-  
15                 sure maximum possible accuracy and com-  
16                 pleteness of the records and information  
17                 relied on for the purpose of determining  
18                 that a delivery seller is not in compliance  
19                 with this Act;

20                 “(ii) not later than 14 days before in-  
21                 cluding a delivery seller on the list, make  
22                 a reasonable attempt to send notice to the  
23                 delivery seller by letter, electronic mail, or  
24                 other means that the delivery seller is  
25                 being placed on the list, which shall cite

1 the relevant provisions of this Act and the  
2 specific reasons for which the delivery sell-  
3 er is being placed on the list;

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

7 “(iv) investigate each challenge de-  
8 scribed in clause (iii) by contacting the rel-  
9 evant Federal, State, tribal, and local law  
10 enforcement officials; and provide the spe-  
11 cific findings and results of the investiga-  
12 tion to the delivery seller not later than 30  
13 days after the date on which the challenge  
14 is made; and

15 “(v) if the Attorney General of the  
16 United States determines that the basis for  
17 including a delivery seller on the list is in-  
18 accurate, based on incomplete information,  
19 or cannot be verified, promptly remove the  
20 delivery seller from the list as appropriate  
21 and notify each appropriate Federal, State,  
22 tribal, and local authority of the deter-  
23 mination.

24 “(F) CONFIDENTIALITY.—The list de-  
25 scribed in subparagraph (A) shall be confiden-

1            tial, and any person receiving the list shall  
2            maintain the confidentiality of the list and may  
3            deliver the list, for enforcement purposes, to  
4            any government official or to any common car-  
5            rier or other person that delivers tobacco prod-  
6            ucts or small packages to consumers. Nothing  
7            in this section shall prohibit a common carrier,  
8            the United States Postal Service, or any other  
9            person receiving the list from discussing with a  
10           listed delivery seller the inclusion of the delivery  
11           seller on the list and the resulting effects on  
12           any services requested by the listed delivery  
13           seller.

14           “(2) PROHIBITION ON DELIVERY.—

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

1           “(i) the person making the delivery  
2           knows or believes in good faith that the  
3           item does not include cigarettes or smoke-  
4           less tobacco;

5           “(ii) the delivery is made to a person  
6           lawfully engaged in the business of manu-  
7           facturing, distributing, or selling cigarettes  
8           or smokeless tobacco; or

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

15          “(B) IMPLEMENTATION OF UPDATES.—  
16          Commencing on the date that is 30 days after  
17          the date of the distribution or availability of  
18          any updates or corrections to the list described  
19          in paragraph (1)(A), all recipients and all com-  
20          mon carriers or other persons that deliver ciga-  
21          rettes or smokeless tobacco to consumers shall  
22          be subject to subparagraph (A) in regard to the  
23          corrections or updates.

24          “(3) EXEMPTIONS.—



1           “(A) IN GENERAL.—Subsection (b)(2) and  
2 any requirements or restrictions placed directly  
3 on common carriers under this subsection, in-  
4 cluding subparagraphs (A) and (B) of para-  
5 graph (2), shall not apply to a common carrier  
6 that—

7           “(i) is subject to a settlement agree-  
8 ment described in subparagraph (B); or

9           “(ii) if a settlement agreement de-  
10 scribed in subparagraph (B) to which the  
11 common carrier is a party is terminated or  
12 otherwise becomes inactive, is admin-  
13 istering and enforcing policies and prac-  
14 tices throughout the United States that  
15 are at least as stringent as the agreement.

16           “(B) SETTLEMENT AGREEMENT.—A set-  
17 tlement agreement described in this subpara-  
18 graph—

19           “(i) is a settlement agreement relating  
20 to tobacco product deliveries to consumers;  
21 and

22           “(ii) includes—

23           “(I) the Assurance of Discontinu-  
24 ance entered into by the Attorney  
25 General of New York and DHL Hold-

1           ings USA, Inc. and DHL Express  
2           (USA), Inc. on or about July 1, 2005,  
3           the Assurance of Discontinuance en-  
4           tered into by the Attorney General of  
5           New York and United Parcel Service,  
6           Inc. on or about October 21, 2005,  
7           and the Assurance of Compliance en-  
8           tered into by the Attorney General of  
9           New York and Federal Express Cor-  
10          poration and FedEx Ground Package  
11          Systems, Inc. on or about February 3,  
12          2006, if each of those agreements is  
13          honored throughout the United States  
14          to block illegal deliveries of cigarettes  
15          or smokeless tobacco to consumers;  
16          and

17                 “(II) any other active agreement  
18                 between a common carrier and a  
19                 State that operates throughout the  
20                 United States to ensure that no deliv-  
21                 eries of cigarettes or smokeless to-  
22                 bacco shall be made to consumers or  
23                 illegally operating Internet or mail-  
24                 order sellers and that any such deliv-  
25                 eries to consumers shall not be made

1 to minors or without payment to the  
2 States and localities where the con-  
3 sumers are located of all taxes on the  
4 tobacco products.

5 ~~“(4) SHIPMENTS FROM PERSONS ON LIST.—~~

6 ~~“(A) IN GENERAL.—If a common carrier~~  
7 ~~or other delivery service delays or interrupts the~~  
8 ~~delivery of a package in the possession of the~~  
9 ~~common carrier or delivery service because the~~  
10 ~~common carrier or delivery service determines~~  
11 ~~or has reason to believe that the person order-~~  
12 ~~ing the delivery is on a list described in para-~~  
13 ~~graph (1)(A) and that the package contains~~  
14 ~~cigarettes or smokeless tobacco—~~

15 ~~“(i) the person ordering the delivery~~  
16 ~~shall be obligated to pay—~~

17 ~~“(I) the common carrier or other~~  
18 ~~delivery service as if the delivery of~~  
19 ~~the package had been timely com-~~  
20 ~~pleted; and~~

21 ~~“(II) if the package is not deliv-~~  
22 ~~erable, any reasonable additional fee~~  
23 ~~or charge levied by the common ear-~~  
24 ~~rier or other delivery service to cover~~  
25 ~~any extra costs and inconvenience and~~

1 to serve as a disincentive against such  
2 noncomplying delivery orders; and

3 “(ii) if the package is determined not  
4 to be deliverable, the common carrier or  
5 other delivery service shall offer to provide  
6 the package and its contents to a Federal,  
7 State, or local law enforcement agency.

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

18 “(C) CONFIDENTIALITY.—Any person re-  
19 ceiving records under subparagraph (B) shall—

20 “(i) use the records solely for the pur-  
21 poses of the enforcement of this Act and  
22 the collection of any taxes owed on related  
23 sales of cigarettes and smokeless tobacco;  
24 and

1           “(ii) keep confidential any personal  
2           information in the records not otherwise  
3           required for such purposes.

4           “(5) PREEMPTION.—

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

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

1           “(ii) requiring that the common car-  
2           rier or other delivery service obtain a sig-  
3           nature from the consumer accepting the  
4           delivery;

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

8           “(iv) requiring that packages delivered  
9           by the common carrier or other delivery  
10          service contain any particular labels, no-  
11          tice, or markings; or

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

19          “(B) RELATIONSHIP TO OTHER LAWS.—

20          Except as provided in subparagraph (C), noth-  
21          ing in this paragraph shall be construed to nul-  
22          lify, expand, restrict, or otherwise amend or  
23          modify—

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

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

8           “(iii) any provision of State, local, or  
9           tribal law regulating common carriers that  
10          is described in section 14501(e)(2) or  
11          41713(b)(4)(B) of title 49 of the United  
12          States Code.

13          “(C) STATE LAWS PROHIBITING DELIVERY  
14          SALES.—

15                 “(i) IN GENERAL.—Except as pro-  
16                 vided in clause (ii), nothing in the Prevent  
17                 All Cigarette Trafficking Act of 2009, the  
18                 amendments made by that Act, or in any  
19                 other Federal statute shall be construed to  
20                 preempt, supersede, or otherwise limit or  
21                 restrict State laws prohibiting the delivery  
22                 sale, or the shipment or delivery pursuant  
23                 to a delivery sale, of cigarettes or other to-  
24                 bacco products to individual consumers or  
25                 personal residences.

1           “(ii) EXEMPTIONS.—No State may  
 2           enforce against a common carrier a law  
 3           prohibiting the delivery of cigarettes or  
 4           other tobacco products to individual con-  
 5           sumers or personal residences without  
 6           proof that the common carrier is not ex-  
 7           empt under paragraph (3) of this sub-  
 8           section.

9           “(6) STATE, LOCAL, AND TRIBAL ADDITIONS.—

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

13           “(i) all known names, addresses,  
 14           website addresses, and other primary con-  
 15           tact information of any delivery seller  
 16           that—

17           “(I) offers for sale or makes  
 18           sales of cigarettes or smokeless to-  
 19           bacco in or into the State, locality, or  
 20           tribal land; and

21           “(II) has failed to register with  
 22           or make reports to the respective tax  
 23           administrator as required by this Act,  
 24           or that has been found in a legal pro-



1                   ceeding to have otherwise failed to  
2                   comply with this Act; and

3                   “(ii) a list of common carriers and  
4                   other persons who make deliveries of ciga-  
5                   rettes or smokeless tobacco in or into the  
6                   State, locality, or tribal land.

7                   “(B) UPDATES.—Any government pro-  
8                   viding a list to the Attorney General of the  
9                   United States under subparagraph (A) shall  
10                  also provide updates and corrections every 4  
11                  months until such time as the government noti-  
12                  fies the Attorney General of the United States  
13                  in writing that the government no longer de-  
14                  sires to submit information to supplement the  
15                  list described in paragraph (1)(A).

16                  “(C) REMOVAL AFTER WITHDRAWAL.—  
17                  Upon receiving written notice that a govern-  
18                  ment no longer desires to submit information  
19                  under subparagraph (A), the Attorney General  
20                  of the United States shall remove from the list  
21                  described in paragraph (1)(A) any persons that  
22                  are on the list solely because of the prior sub-  
23                  missions of the government of the list of the  
24                  government of noncomplying delivery sellers of

1           cigarettes or smokeless tobacco or a subsequent  
2           update or correction by the government.

3           “(7) DEADLINE TO INCORPORATE ADDI-  
4           TIONS.—The Attorney General of the United States  
5           shall—

6                   “(A) include any delivery seller identified  
7                   and submitted by a State, local, or tribal gov-  
8                   ernment under paragraph (6) in any list or up-  
9                   date that is distributed or made available under  
10                  paragraph (1) on or after the date that is 30  
11                  days after the date on which the information is  
12                  received by the Attorney General of the United  
13                  States; and

14                   “(B) distribute any list or update de-  
15                   scribed in subparagraph (A) to any common  
16                   carrier or other person who makes deliveries of  
17                   cigarettes or smokeless tobacco that has been  
18                   identified and submitted by a government pur-  
19                   suant to paragraph (6).

20           “(8) NOTICE TO DELIVERY SELLERS.—Not  
21           later than 14 days before including any delivery sell-  
22           er on the initial list described in paragraph (1)(A),  
23           or on an update to the list for the first time, the At-  
24           torney General of the United States shall make a  
25           reasonable attempt to send notice to the delivery

1 seller by letter, electronic mail, or other means that  
 2 the delivery seller is being placed on the list or up-  
 3 date, with that notice citing the relevant provisions  
 4 of this Act.

5 “(9) LIMITATIONS.—

6 “(A) IN GENERAL.—Any common carrier  
 7 or other person making a delivery subject to  
 8 this subsection shall not be required or other-  
 9 wise obligated to—

10 “(i) determine whether any list dis-  
 11 tributed or made available under para-  
 12 graph (1) is complete, accurate, or up-to-  
 13 date;

14 “(ii) determine whether a person or-  
 15 dering a delivery is in compliance with this  
 16 Act; or

17 “(iii) open or inspect, pursuant to this  
 18 Act, any package being delivered to deter-  
 19 mine its contents.

20 “(B) ALTERNATE NAMES.—Any common  
 21 carrier or other person making a delivery sub-  
 22 ject to this subsection—

23 “(i) shall not be required to make any  
 24 inquiries or otherwise determine whether a  
 25 person ordering a delivery is a delivery sell-

1 er on the list described in paragraph  
2 (1)(A) who is using a different name or  
3 address in order to evade the related deliv-  
4 ery restrictions; and

5 “(ii) shall not knowingly deliver any  
6 packages to consumers for any delivery  
7 seller on the list described in paragraph  
8 (1)(A) who the common carrier or other  
9 delivery service knows is a delivery seller  
10 who is on the list and is using a different  
11 name or address to evade the delivery re-  
12 strictions of paragraph (2).

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

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

23 “(ii) refusing, as a matter of regular  
24 practice and procedure, to make any deliv-  
25 eries, or any deliveries in certain States, of

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

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

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

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

21          “**SEC. 3. PENALTIES.**

22          “~~(a)~~ CRIMINAL PENALTIES.—

23                  “~~(1)~~ IN GENERAL.—Except as provided in para-  
 24          graph ~~(2)~~, whoever knowingly violates this Act shall

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

3 ~~“(2) EXCEPTIONS.—~~

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

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

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

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

21 ~~“(b) CIVIL PENALTIES.—~~

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

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

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

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

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

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

23           “(3) EXCEPTIONS.—

24                   “(A) DELIVERY VIOLATIONS.—An em-  
25           ployee of a common carrier or independent de-

1 livery service shall be subject to civil penalties  
2 under paragraph (1) for a violation of section  
3 ~~2A(e)~~ only if the violation is committed inten-  
4 tionally—

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

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

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

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

20 “(ii) the violation consists of an em-  
21 ployee of the common carrier or inde-  
22 pendent delivery service who physically re-  
23 ceives and processes orders, picks up pack-  
24 ages, processes packages, or makes deliv-  
25 eries, taking actions that are outside the



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

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

8 **“SEC. 4. ENFORCEMENT.**

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

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

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

18 “(1) IN GENERAL.—

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

1 appropriate relief from any person for violations  
2 of this Act, including civil penalties, money  
3 damages, and injunctive or other equitable re-  
4 lief.

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

13 “(2) PROVISION OF INFORMATION.—A State,  
14 through its attorney general, or a local government  
15 or Indian tribe that levies a tax subject to section  
16 2A(a)(3), through its chief law enforcement officer,  
17 may provide evidence of a violation of this Act by  
18 any person not subject to State, local, or tribal gov-  
19 ernment enforcement actions for violations of this  
20 Act to the Attorney General of the United States or  
21 a United States attorney, who shall take appropriate  
22 actions to enforce this Act.

23 “(3) USE OF PENALTIES COLLECTED.—

24 “(A) IN GENERAL.—There is established a  
25 separate account in the Treasury known as the

1           ‘PACT Anti-Trafficking Fund’. Notwith-  
2 standing any other provision of law and subject  
3 to subparagraph (B), an amount equal to 50  
4 percent of any criminal and civil penalties col-  
5 lected by the Federal Government in enforcing  
6 this Act shall be transferred into the PACT  
7 Anti-Trafficking Fund and shall be available to  
8 the Attorney General of the United States for  
9 purposes of enforcing this Act and other laws  
10 relating to contraband tobacco products.

11           “(B) ALLOCATION OF FUNDS.—Of the  
12 amount available to the Attorney General of the  
13 United States under subparagraph (A), not less  
14 than 50 percent shall be made available only to  
15 the agencies and offices within the Department  
16 of Justice that were responsible for the enforce-  
17 ment actions in which the penalties concerned  
18 were imposed or for any underlying investiga-  
19 tions.

20           “(4) NONEXCLUSIVITY OF REMEDY.—

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

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

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

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

21          “(d) PERSONS DEALING IN TOBACCO PRODUCTS.—

22          Any person who holds a permit under section 5712 of the  
23          Internal Revenue Code of 1986 (regarding permitting of  
24          manufacturers and importers of tobacco products and ex-  
25          port warehouse proprietors) may bring an action in an ap-

1 appropriate United States district court to prevent and re-  
2 strain violations of this Act by any person other than a  
3 State, local, or tribal government.

4 “(e) NOTICE.—

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

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

15 “(f) PUBLIC NOTICE.—

16 “(1) IN GENERAL.—The Attorney General of  
17 the United States shall make available to the public,  
18 by posting information on the Internet and by other  
19 appropriate means, information regarding all en-  
20 forcement actions brought by the United States, or  
21 reported to the Attorney General of the United  
22 States, under this section, including information re-  
23 garding the resolution of the enforcement actions  
24 and how the Attorney General of the United States

1 has responded to referrals of evidence of violations  
 2 pursuant to subsection (e)(2).

3 “(2) REPORTS TO CONGRESS.—Not later than  
 4 1 year after the date of enactment of the Prevent All  
 5 Cigarette Trafficking Act of 2009, and every year  
 6 thereafter until the date that is 5 years after such  
 7 date of enactment, the Attorney General of the  
 8 United States shall submit to Congress a report con-  
 9 taining the information described in paragraph  
 10 (1).”.

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

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

16 **“§ 1716E. Tobacco products as nonmailable**

17 **“(a) PROHIBITION.—**

18 **“(1) IN GENERAL.—**All cigarettes and smoke-  
 19 less tobacco (as those terms are defined in section  
 20 1 of the Act of October 19, 1949, commonly referred  
 21 to as the Jenkins Act) are nonmailable and shall not  
 22 be deposited in or carried through the mails. The  
 23 United States Postal Service shall not accept for de-  
 24 livery or transmit through the mails any package  
 25 that it knows or has reasonable cause to believe con-

1 tains any cigarettes or smokeless tobacco made non-  
2 mailable by this paragraph.

3 ~~“(2) REASONABLE CAUSE.—For the purposes~~  
4 ~~of this subsection reasonable cause includes—~~

5 ~~“(A) a statement on a publicly available~~  
6 ~~website; or an advertisement, by any person~~  
7 ~~that the person will mail matter which is non-~~  
8 ~~mailable under this section in return for pay-~~  
9 ~~ment; or~~

10 ~~“(B) the fact that the person is on the list~~  
11 ~~created under section 2A(e) of the Jenkins Act.~~

12 ~~“(b) EXCEPTIONS.—~~

13 ~~“(1) CIGARS.—Subsection (a) shall not apply to~~  
14 ~~cigars (as defined in section 5702(a) of the Internal~~  
15 ~~Revenue Code of 1986).~~

16 ~~“(2) GEOGRAPHIC EXCEPTION.—Subsection (a)~~  
17 ~~shall not apply to mailings within the State of Alas-~~  
18 ~~ka or within the State of Hawaii.~~

19 ~~“(3) BUSINESS PURPOSES.—~~

20 ~~“(A) IN GENERAL.—Subsection (a) shall~~  
21 ~~not apply to tobacco products mailed only—~~

22 ~~“(i) for business purposes between le-~~  
23 ~~gally operating businesses that have all ap-~~  
24 ~~plicable State and Federal Government li-~~  
25 ~~censes or permits and are engaged in to-~~

1           bacco product manufacturing, distribution,  
2           wholesale, export, import, testing, inves-  
3           tigation, or research; or

4           “(ii) for regulatory purposes between  
5           any business described in clause (i) and an  
6           agency of the Federal Government or a  
7           State government.

8           “(B) RULES.—

9           “(i) IN GENERAL.—Not later than  
10          180 days after the date of enactment of  
11          the Prevent All Cigarette Trafficking Act  
12          of 2009, the Postmaster General shall  
13          issue a final rule which shall establish the  
14          standards and requirements that apply to  
15          all mailings described in subparagraph (A).

16          “(ii) CONTENTS.—The final rule  
17          issued under clause (i) shall require—

18                 “(I) the United States Postal  
19                 Service to verify that any person sub-  
20                 mitting an otherwise nonmailable to-  
21                 bacco product into the mails as au-  
22                 thorized under this paragraph is a  
23                 business or government agency per-  
24                 mitted to make a mailing under this  
25                 paragraph;



1           “(II) the United States Postal  
2 Service to ensure that any recipient of  
3 an otherwise nonmailable tobacco  
4 product sent through the mails under  
5 this paragraph is a business or gov-  
6 ernment agency that may lawfully re-  
7 ceive the product;

8           “(III) that any mailing described  
9 in subparagraph (A) shall be sent  
10 through the systems of the United  
11 States Postal Service that provide for  
12 the tracking and confirmation of the  
13 delivery;

14           “(IV) that the identity of the  
15 business or government entity submit-  
16 ting the mailing containing otherwise  
17 nonmailable tobacco products for de-  
18 livery and the identity of the business  
19 or government entity receiving the  
20 mailing are clearly set forth on the  
21 package;

22           “(V) the United States Postal  
23 Service to maintain identifying infor-  
24 mation described in subclause (IV)  
25 during the 3-year period beginning on

1 the date of the mailing and make the  
2 information available to the Postal  
3 Service, the Attorney General of the  
4 United States, and to persons eligible  
5 to bring enforcement actions under  
6 section 3(d) of the Prevent All Ciga-  
7 rette Trafficking Act of 2009;

8 “(VI) that any mailing described  
9 in subparagraph (A) be marked with  
10 a United States Postal Service label  
11 or marking that makes it clear to em-  
12 ployees of the United States Postal  
13 Service that it is a permitted mailing  
14 of otherwise nonmailable tobacco  
15 products that may be delivered only to  
16 a permitted government agency or  
17 business and may not be delivered to  
18 any residence or individual person;  
19 and

20 “(VII) that any mailing described  
21 in subparagraph (A) be delivered only  
22 to a verified employee of the recipient  
23 business or government agency, who is  
24 not a minor and who shall be required  
25 to sign for the mailing.

1           “(C) DEFINITION.—In this paragraph, the  
2 term ‘minor’ means an individual who is less  
3 than the minimum age required for the legal  
4 sale or purchase of tobacco products as deter-  
5 mined by applicable law at the place the indi-  
6 vidual is located.

7           “(4) CERTAIN INDIVIDUALS.—

8           “(A) IN GENERAL.—Subsection (a) shall  
9 not apply to tobacco products mailed by individ-  
10 uals who are not minors for noncommercial  
11 purposes, including the return of a damaged or  
12 unacceptable tobacco product to the manufac-  
13 turer.

14           “(B) RULES.—

15           “(i) IN GENERAL.—Not later than  
16 180 days after the date of enactment of  
17 the Prevent All Cigarette Trafficking Act  
18 of 2009, the Postmaster General shall  
19 issue a final rule which shall establish the  
20 standards and requirements that apply to  
21 all mailings described in subparagraph (A).

22           “(ii) CONTENTS.—The final rule  
23 issued under clause (i) shall require—

24           “(I) the United States Postal  
25 Service to verify that any person sub-

1           mitting an otherwise nonmailable to-  
2           bacco product into the mails as au-  
3           thorized under this paragraph is the  
4           individual identified on the return ad-  
5           dress label of the package and is not  
6           a minor;

7           “(II) for a mailing to an indi-  
8           vidual, the United States Postal Serv-  
9           ice to require the person submitting  
10          the otherwise nonmailable tobacco  
11          product into the mails as authorized  
12          by this paragraph to affirm that the  
13          recipient is not a minor;

14          “(III) that any package mailed  
15          under this paragraph shall weigh not  
16          more than 10 ounces;

17          “(IV) that any mailing described  
18          in subparagraph (A) shall be sent  
19          through the systems of the United  
20          States Postal Service that provide for  
21          the tracking and confirmation of the  
22          delivery;

23          “(V) that a mailing described in  
24          subparagraph (A) shall not be deliv-  
25          ered or placed in the possession of any

1 individual who has not been verified  
2 as not being a minor;

3 “(VI) for a mailing described in  
4 subparagraph (A) to an individual;  
5 that the United States Postal Service  
6 shall deliver the package only to a re-  
7 cipient who is verified not to be a  
8 minor at the recipient address or  
9 transfer it for delivery to an Air/Army  
10 Postal Office or Fleet Postal Office  
11 number designated in the recipient  
12 address; and

13 “(VII) that no person may ini-  
14 tiate more than 10 mailings described  
15 in subparagraph (A) during any 30-  
16 day period.

17 “(C) DEFINITION.—In this paragraph, the  
18 term ‘minor’ means an individual who is less  
19 than the minimum age required for the legal  
20 sale or purchase of tobacco products as deter-  
21 mined by applicable law at the place the indi-  
22 vidual is located.

23 “(5) EXCEPTION FOR MAILINGS FOR CONSUMER  
24 TESTING BY MANUFACTURERS.—

1           “(A) IN GENERAL.—Subject to subpara-  
2 graph (B), subsection (a) shall not preclude a  
3 legally operating cigarette manufacturer or a le-  
4 gally authorized agent of a legally operating  
5 cigarette manufacturer from using the United  
6 States Postal Service to mail cigarettes to  
7 verified adult smoker solely for consumer test-  
8 ing purposes, if—

9           “(i) the cigarette manufacturer has a  
10 permit, in good standing, issued under sec-  
11 tion ~~5713~~ of the Internal Revenue Code of  
12 ~~1986~~;

13           “(ii) the package of cigarettes mailed  
14 under this paragraph contains not more  
15 than ~~12~~ packs of cigarettes (~~240~~ eiga-  
16 rettes);

17           “(iii) the recipient does not receive  
18 more than ~~1~~ package of cigarettes from  
19 any ~~1~~ cigarette manufacturer under this  
20 paragraph during any ~~30~~-day period;

21           “(iv) all taxes on the cigarettes mailed  
22 under this paragraph levied by the State  
23 and locality of delivery are paid to the  
24 State and locality before delivery, and tax  
25 stamps or other tax-payment indicia are

1 affixed to the cigarettes as required by law;  
2 and

3 “(v)(I) the recipient has not made any  
4 payments of any kind in exchange for re-  
5 ceiving the cigarettes;

6 “(II) the recipient is paid a fee by the  
7 manufacturer or agent of the manufacturer  
8 for participation in consumer product  
9 tests; and

10 “(III) the recipient, in connection  
11 with the tests, evaluates the cigarettes and  
12 provides feedback to the manufacturer or  
13 agent.

14 “(B) LIMITATIONS.—Subparagraph (A)  
15 shall not—

16 “(i) permit a mailing of cigarettes to  
17 an individual located in any State that pro-  
18 hibits the delivery or shipment of eiga-  
19 rettes to individuals in the State, or pre-  
20 empt, limit, or otherwise affect any related  
21 State laws; or

22 “(ii) permit a manufacturer, directly  
23 or through a legally authorized agent, to  
24 mail cigarettes in any calendar year in a  
25 total amount greater than 1 percent of the

1 total cigarette sales of the manufacturer in  
2 the United States during the calendar year  
3 before the date of the mailing.

4 “(C) RULES.—

5 “(i) IN GENERAL.—Not later than  
6 180 days after the date of enactment of  
7 the Prevent All Cigarette Trafficking Act  
8 of 2009, the Postmaster General shall  
9 issue a final rule which shall establish the  
10 standards and requirements that apply to  
11 all mailings described in subparagraph (A).

12 “(ii) CONTENTS.—The final rule  
13 issued under clause (i) shall require—

14 “(I) the United States Postal  
15 Service to verify that any person sub-  
16 mitting a tobacco product into the  
17 mails under this paragraph is a le-  
18 gally operating cigarette manufacturer  
19 permitted to make a mailing under  
20 this paragraph, or an agent legally  
21 authorized by the legally operating  
22 cigarette manufacturer to submit the  
23 tobacco product into the mails on be-  
24 half of the manufacturer;



1           “(H) the legally operating eiga-  
2           rette manufacturer submitting the  
3           cigarettes into the mails under this  
4           paragraph to affirm that—

5                   “(aa) the manufacturer or  
6                   the legally authorized agent of  
7                   the manufacturer has verified  
8                   that the recipient is an adult es-  
9                   tablished smoker;

10                   “(bb) the recipient has not  
11                   made any payment for the eiga-  
12                   rettes;

13                   “(cc) the recipient has  
14                   signed a written statement that  
15                   is in effect indicating that the re-  
16                   cipient wishes to receive the mail-  
17                   ings; and

18                   “(dd) the manufacturer or  
19                   the legally authorized agent of  
20                   the manufacturer has offered the  
21                   opportunity for the recipient to  
22                   withdraw the written statement  
23                   described in item (cc) not less  
24                   frequently than once in every 3-  
25                   month period;

1           “(III) the legally operating eiga-  
2           rette manufacturer or the legally au-  
3           thorized agent of the manufacturer  
4           submitting the cigarettes into the  
5           mails under this paragraph to affirm  
6           that any package mailed under this  
7           paragraph contains not more than 12  
8           packs of cigarettes (240 cigarettes) on  
9           which all taxes levied on the cigarettes  
10          by the State and locality of delivery  
11          have been paid and all related State  
12          tax stamps or other tax-payment indi-  
13          cia have been applied;

14           “(IV) that any mailing described  
15          in subparagraph (A) shall be sent  
16          through the systems of the United  
17          States Postal Service that provide for  
18          the tracking and confirmation of the  
19          delivery;

20           “(V) the United States Postal  
21          Service to maintain records relating to  
22          a mailing described in subparagraph  
23          (A) during the 3-year period begin-  
24          ning on the date of the mailing and

1 make the information available to per-  
2 sons enforcing this section;

3 “(VI) that any mailing described  
4 in subparagraph (A) be marked with  
5 a United States Postal Service label  
6 or marking that makes it clear to em-  
7 ployees of the United States Postal  
8 Service that it is a permitted mailing  
9 of otherwise nonmailable tobacco  
10 products that may be delivered only to  
11 the named recipient after verifying  
12 that the recipient is an adult; and

13 “(VII) the United States Postal  
14 Service shall deliver a mailing de-  
15 scribed in subparagraph (A) only to  
16 the named recipient and only after  
17 verifying that the recipient is an  
18 adult.

19 “(D) DEFINITIONS.—In this paragraph—

20 “(i) the term ‘adult’ means an indi-  
21 vidual who is not less than 21 years of age;  
22 and

23 “(ii) the term ‘consumer testing’  
24 means testing limited to formal data collec-  
25 tion and analysis for the specific purpose

1 of evaluating the product for quality assur-  
2 ance and benchmarking purposes of eiga-  
3 rette brands or sub-brands among existing  
4 adult smokers.

5 “(6) FEDERAL GOVERNMENT AGENCIES.—An  
6 agency of the Federal Government involved in the  
7 consumer testing of tobacco products solely for pub-  
8 lic health purposes may mail cigarettes under the  
9 same requirements, restrictions, and rules and pro-  
10 cedures that apply to consumer testing mailings of  
11 cigarettes by manufacturers under paragraph (5),  
12 except that the agency shall not be required to pay  
13 the recipients for participating in the consumer test-  
14 ing.

15 “(c) SEIZURE AND FORFEITURE.—Any cigarettes or  
16 smokeless tobacco made nonmailable by this subsection  
17 that are deposited in the mails shall be subject to seizure  
18 and forfeiture, pursuant to the procedures set forth in  
19 chapter 46 of this title. Any tobacco products seized and  
20 forfeited under this subsection shall be destroyed or re-  
21 tained by the Federal Government for the detection or  
22 prosecution of crimes or related investigations and then  
23 destroyed.

24 “(d) ADDITIONAL PENALTIES.—In addition to any  
25 other fines and penalties under this title for violations of

1 this section, any person violating this section shall be sub-  
2 ject to an additional civil penalty in the amount equal to  
3 10 times the retail value of the nonmailable cigarettes or  
4 smokeless tobacco, including all Federal, State, and local  
5 taxes.

6 “(e) CRIMINAL PENALTY.—Whoever knowingly de-  
7 posits for mailing or delivery, or knowingly causes to be  
8 delivered by mail, according to the direction thereon, or  
9 at any place at which it is directed to be delivered by the  
10 person to whom it is addressed, anything that is non-  
11 mailable matter under this section shall be fined under  
12 this title, imprisoned not more than 1 year, or both.

13 “(f) USE OF PENALTIES.—There is established a sep-  
14 arate account in the Treasury, to be known as the ‘PACT  
15 Postal Service Fund’. Notwithstanding any other provi-  
16 sion of law, an amount equal to 50 percent of any criminal  
17 fines, civil penalties, or other monetary penalties collected  
18 by the Federal Government in enforcing this section shall  
19 be transferred into the PACT Postal Service Fund and  
20 shall be available to the Postmaster General for the pur-  
21 pose of enforcing this subsection.

22 “(g) COORDINATION OF EFFORTS.—The Postmaster  
23 General shall cooperate and coordinate efforts to enforce  
24 this section with related enforcement activities of any

1 other Federal agency or agency of any State, local, or trib-  
2 al government, whenever appropriate.

3 “(h) ACTIONS BY STATE, LOCAL, OR TRIBAL GOV-  
4 ERNMENTS RELATING TO CERTAIN TOBACCO PROD-  
5 UCTS.—

6 “(1) IN GENERAL.—A State, through its attor-  
7 ney general, or a local government or Indian tribe  
8 that levies an excise tax on tobacco products,  
9 through its chief law enforcement officer, may in a  
10 civil action in a United States district court obtain  
11 appropriate relief with respect to a violation of this  
12 section. Appropriate relief includes injunctive and  
13 equitable relief and damages equal to the amount of  
14 unpaid taxes on tobacco products mailed in violation  
15 of this section to addressees in that State, locality,  
16 or tribal land.

17 “(2) SOVEREIGN IMMUNITY.—Nothing in this  
18 subsection shall be deemed to abrogate or constitute  
19 a waiver of any sovereign immunity of a State or  
20 local government or Indian tribe against any  
21 unconsented lawsuit under paragraph (1), or other-  
22 wise to restrict, expand, or modify any sovereign im-  
23 munity of a State or local government or Indian  
24 tribe.

1           “(3) ATTORNEY GENERAL REFERRAL.—A  
2 State, through its attorney general, or a local gov-  
3 ernment or Indian tribe that levies an excise tax on  
4 tobacco products, through its chief law enforcement  
5 officer, may provide evidence of a violation of this  
6 section for commercial purposes by any person not  
7 subject to State, local, or tribal government enforce-  
8 ment actions for violations of this section to the At-  
9 torney General of the United States, who shall take  
10 appropriate actions to enforce this section.

11           “(4) NONEXCLUSIVITY OF REMEDIES.—The  
12 remedies available under this subsection are in addi-  
13 tion to any other remedies available under Federal,  
14 State, local, tribal, or other law. Nothing in this sub-  
15 section shall be construed to expand, restrict, or oth-  
16 erwise modify any right of an authorized State,  
17 local, or tribal government official to proceed in a  
18 State, tribal, or other appropriate court, or take  
19 other enforcement actions, on the basis of an alleged  
20 violation of State, local, tribal, or other law.

21           “(5) OTHER ENFORCEMENT ACTIONS.—Noth-  
22 ing in this subsection shall be construed to prohibit  
23 an authorized State official from proceeding in State  
24 court on the basis of an alleged violation of any gen-  
25 eral civil or criminal statute of the State.

1       “(i) DEFINITION.—In this section, the term ‘State’  
2 has the meaning given that term in section 1716(k).”.

3       (b) CLERICAL AMENDMENT.—The table of sections  
4 for chapter 83 of title 18 is amended by inserting after  
5 the item relating to section 1716D the following:

“1716E. Tobacco products as nonmailable.”.

6 **SEC. 4. COMPLIANCE WITH MODEL STATUTE OR QUALI-**  
7 **FYING STATUTE.**

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

18       (b) JURISDICTION TO PREVENT AND RESTRAIN VIO-  
19 LATIONS.—

20           (1) IN GENERAL.—The United States district  
21 courts shall have jurisdiction to prevent and restrain  
22 violations of subsection (a) in accordance with this  
23 subsection.

24           (2) INITIATION OF ACTION.—A State, through  
25 its attorney general, may bring an action in an ap-



1 appropriate United States district court to prevent and  
2 restrain violations of subsection (a) by any person.

3 ~~(3) ATTORNEY FEES.—~~In any action under  
4 paragraph ~~(2)~~, a State, through its attorney general,  
5 shall be entitled to reasonable attorney fees from a  
6 person found to have knowingly violated subsection  
7 ~~(a)~~.

8 ~~(4) NONEXCLUSIVITY OF REMEDIES.—~~The rem-  
9 edy available under paragraph ~~(2)~~ is in addition to  
10 any other remedies available under Federal, State,  
11 or other law. No provision of this Act or any other  
12 Federal law shall be held or construed to prohibit or  
13 preempt the Master Settlement Agreement, the  
14 Model Statute (as defined in the Master Settlement  
15 Agreement), any legislation amending or complemen-  
16 tary to the Model Statute in effect as of June 1,  
17 2006, or any legislation substantially similar to such  
18 existing, amending, or complementary legislation en-  
19 acted after the date of enactment of this Act.

20 ~~(5) OTHER ENFORCEMENT ACTIONS.—~~Nothing  
21 in this subsection shall be construed to prohibit an  
22 authorized State official from proceeding in State  
23 court or taking other enforcement actions on the  
24 basis of an alleged violation of State or other law.

1           (6) AUTHORITY OF THE ATTORNEY GEN-  
2           ERAL.—The Attorney General of the United States  
3           may bring an action in an appropriate United States  
4           district court to prevent and restrain violations of  
5           subsection (a) by any person.

6           (c) DEFINITIONS.—In this section the following defi-  
7           nitions 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 the  
12                   sale by means of a telephone or other method  
13                   of voice transmission, the mails, or the Internet  
14                   or other online service, or the seller is otherwise  
15                   not in the physical presence of the buyer when  
16                   the request for purchase or order is made; or

17                   (B) the cigarettes or smokeless tobacco are  
18                   delivered to the buyer by common carrier, pri-  
19                   vate delivery service, or other method of remote  
20                   delivery, or the seller is not in the physical pres-  
21                   ence of the buyer when the buyer obtains pos-  
22                   session of the cigarettes or smokeless tobacco.

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

1           (A) SHIPPING OR CONSIGNING.—Any per-  
2           son in the United States to whom nontaxpaid  
3           tobacco products manufactured in a foreign  
4           country, Puerto Rico, the Virgin Islands, or a  
5           possession of the United States are shipped or  
6           consigned.

7           (B) MANUFACTURING WAREHOUSES.—Any  
8           person who removes cigars or cigarettes for sale  
9           or consumption in the United States from a  
10          customs-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  
17          the attorneys general of 46 States, the District of  
18          Columbia, the Commonwealth of Puerto Rico, and 4  
19          territories of the United States and certain tobacco  
20          manufacturers.

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

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

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

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

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

15                 “(A) any records or information required to be  
 16                 maintained by the person under this chapter; or

17                 “(B) any cigarettes or smokeless tobacco kept  
 18                 or stored by the person at the premises.

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

22          “(3) Whoever denies access to an officer under para-  
 23          graph (1), or who fails to comply with an order issued  
 24          under paragraph (2), shall be subject to a civil penalty  
 25          in an amount not to exceed \$10,000.”.

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

3 (a) IN GENERAL.—Nothing in this Act or the amend-  
4 ments made by this Act shall be construed to amend, mod-  
5 ify, or otherwise affect—

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

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

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

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

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

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

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

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

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

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

1 by this Act shall be construed to authorize, deputize, or  
 2 commission States or local governments as instrumental-  
 3 ities of the United States.

4 (d) ENFORCEMENT WITHIN INDIAN COUNTRY.—  
 5 Nothing in this Act or the amendments made by this Act  
 6 shall prohibit, limit, or restrict enforcement by the Attor-  
 7 ney General of the United States of this Act or an amend-  
 8 ment made by this Act within Indian country.

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

12 (f) DEFINITIONS.—In this section—

13 (1) the term “Indian country” has the meaning  
 14 given that term in section 4 of the Jenkins Act, as  
 15 amended by this Act; and

16 (2) the term “tribal enterprise” means any  
 17 business enterprise, regardless of whether incor-  
 18 porated or unincorporated under Federal or tribal  
 19 law, of an Indian tribe or group of Indian tribes.

20 **SEC. 7. ENHANCED CONTRABAND TOBACCO ENFORCE-**  
 21 **MENT.**

22 (a) REQUIREMENTS.—The Director of the Bureau of  
 23 Alcohol, Tobacco, Firearms, and Explosives shall—

24 (1) not later than the end of the 3-year period  
 25 beginning on the effective date of this Act, create a

1 regional contraband tobacco trafficking team in each  
2 of New York, New York, the District of Columbia,  
3 Detroit, Michigan, Los Angeles, California, Seattle,  
4 Washington, and Miami, Florida;

5 (2) create a Tobacco Intelligence Center to  
6 oversee investigations and monitor and coordinate  
7 ongoing investigations and to serve as the coordi-  
8 nator for all ongoing tobacco diversion investigations  
9 within the Bureau of Alcohol, Tobacco, Firearms,  
10 and Explosives, in the United States and, where ap-  
11 plicable, with law enforcement organizations around  
12 the world;

13 (3) establish a covert national warehouse for  
14 undercover operations; and

15 (4) create a computer database that will track  
16 and analyze information from retail sellers of to-  
17 bacco products that sell through the Internet or by  
18 mail order or make other non-face-to-face sales.

19 (b) AUTHORIZATION OF APPROPRIATIONS.—There is  
20 authorized to be appropriated to carry out subsection (a)  
21 \$8,500,000 for each of fiscal years 2010 through 2014.

22 **SEC. 8. EFFECTIVE DATE.**

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



1 (b) **BATFE AUTHORITY.**—The amendments made by  
2 section 5 shall take effect on the date of enactment of this  
3 Act.

4 **SEC. 9. SEVERABILITY.**

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

10 **SEC. 10. SENSE OF CONGRESS CONCERNING THE PRECE-**  
11 **DENTIAL EFFECT OF THIS ACT.**

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

1 of the unique harms and circumstances surrounding the  
2 online sale of certain tobacco products, this Act is in-  
3 tended to help collect cigarette excise taxes, to stop to-  
4 bacco sales to underage youth, and to help the States en-  
5 force their laws that target the online sales of certain to-  
6 bacco products only. This Act is in no way meant to create  
7 a precedent regarding the collection of State sales or use  
8 taxes by, or the validity of efforts to impose other types  
9 of taxes on, out-of-State entities that do not have a phys-  
10 ical presence within the taxing State.

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

12 (a) *SHORT TITLE.*—This Act may be cited as the “Pre-  
13 vent All Cigarette Trafficking Act of 2009” or “PACT Act”.

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

15 (1) the sale of illegal cigarettes and smokeless to-  
16 bacco products significantly reduces Federal, State,  
17 and local government revenues, with Internet sales  
18 alone accounting for billions of dollars of lost Federal,  
19 State, and local tobacco tax revenue each year;

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

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

1           (4) *the sale of illegal cigarettes and smokeless to-*  
2           *bacco over the Internet, and through mail, fax, or*  
3           *phone orders, makes it cheaper and easier for children*  
4           *to obtain tobacco products;*

5           (5) *the majority of Internet and other remote*  
6           *sales of cigarettes and smokeless tobacco are being*  
7           *made without adequate precautions to protect against*  
8           *sales to children, without the payment of applicable*  
9           *taxes, and without complying with the nominal reg-*  
10          *istration and reporting requirements in existing Fed-*  
11          *eral law;*

12          (6) *unfair competition from illegal sales of ciga-*  
13          *rettes and smokeless tobacco is taking billions of dol-*  
14          *lars of sales away from law-abiding retailers through-*  
15          *out the United States;*

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

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

22          (9) *the number of Internet vendors in the United*  
23          *States and in foreign countries that sell cigarettes*  
24          *and smokeless tobacco to buyers in the United States*

1       *increased from only about 40 in 2000 to more than*  
2       *500 in 2005; and*

3               *(10) the intrastate sale of illegal cigarettes and*  
4       *smokeless tobacco over the Internet has a substantial*  
5       *effect on interstate commerce.*

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

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

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

12              *(3) provide government enforcement officials*  
13       *with more effective enforcement tools to combat to-*  
14       *bacco smuggling;*

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

18              *(5) increase collections of Federal, State, and*  
19       *local excise taxes on cigarettes and smokeless tobacco;*  
20       *and*

21              *(6) prevent and reduce youth access to inexpen-*  
22       *sive cigarettes and smokeless tobacco through illegal*  
23       *Internet or contraband sales.*

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

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

8 **“SECTION 1. DEFINITIONS.**

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

10 *“(1) ATTORNEY GENERAL.—The term ‘attorney*  
11 *general’, with respect to a State, means the attorney*  
12 *general or other chief law enforcement officer of the*  
13 *State.*

14 *“(2) CIGARETTE.—*

15 *“(A) IN GENERAL.—The term ‘cigarette’—*

16 *“(i) has the meaning given that term*  
17 *in section 2341 of title 18, United States*  
18 *Code; and*

19 *“(ii) includes roll-your-own tobacco (as*  
20 *defined in section 5702 of the Internal Rev-*  
21 *enue Code of 1986).*

22 *“(B) EXCEPTION.—The term ‘cigarette’ does*  
23 *not include a cigar (as defined in section 5702*  
24 *of the Internal Revenue Code of 1986).*

25 *“(3) COMMON CARRIER.—The term ‘common car-*  
26 *rier’ means any person (other than a local messenger*

1       *service or the United States Postal Service) that holds*  
2       *itself out to the general public as a provider for hire*  
3       *of the transportation by water, land, or air of mer-*  
4       *chandise (regardless of whether the person actually*  
5       *operates the vessel, vehicle, or aircraft by which the*  
6       *transportation is provided) between a port or place*  
7       *and a port or place in the United States.*

8               “(4) *CONSUMER.*—*The term ‘consumer’—*

9                       “(A) *means any person that purchases ciga-*  
10                      *rettes or smokeless tobacco; and*

11                     “(B) *does not include any person lawfully*  
12                     *operating as a manufacturer, distributor, whole-*  
13                     *saler, or retailer of cigarettes or smokeless to-*  
14                     *bacco.*

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

18                     “(A) *the consumer submits the order for the*  
19                     *sale by means of a telephone or other method of*  
20                     *voice transmission, the mails, or the Internet or*  
21                     *other online service, or the seller is otherwise not*  
22                     *in the physical presence of the buyer when the*  
23                     *request for purchase or order is made; or*

24                     “(B) *the cigarettes or smokeless tobacco are*  
25                     *delivered to the buyer by common carrier, pri-*

1           *vate delivery service, or other method of remote*  
2           *delivery, or the seller is not in the physical pres-*  
3           *ence of the buyer when the buyer obtains posses-*  
4           *sion of the cigarettes or smokeless tobacco.*

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

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

9                   “(A) *has the meaning given that term in*  
10           *section 1151 of title 18, United States Code, ex-*  
11           *cept that within the State of Alaska that term*  
12           *applies only to the Metlakatla Indian Commu-*  
13           *nity, Annette Island Reserve; and*

14                   “(B) *includes any other land held by the*  
15           *United States in trust or restricted status for one*  
16           *or more Indian tribes.*

17           “(8) *INDIAN TRIBE.*—*The term ‘Indian tribe’,*  
18           *‘tribe’, or ‘tribal’ refers to an Indian tribe as defined*  
19           *in section 4(e) of the Indian Self-Determination and*  
20           *Education Assistance Act (25 U.S.C. 450b(e)) or as*  
21           *listed pursuant to section 104 of the Federally Recog-*  
22           *nized Indian Tribe List Act of 1994 (25 U.S.C. 479a-*  
23           *1).*

24           “(9) *INTERSTATE COMMERCE.*—

1           “(A) *IN GENERAL.*—*The term ‘interstate*  
2           *commerce’ means commerce between a State and*  
3           *any place outside the State, commerce between a*  
4           *State and any Indian country in the State, or*  
5           *commerce between points in the same State but*  
6           *through any place outside the State or through*  
7           *any Indian country.*

8           “(B) *INTO A STATE, PLACE, OR LOCALITY.*—  
9           *A sale, shipment, or transfer of cigarettes or*  
10           *smokeless tobacco that is made in interstate com-*  
11           *merce, as defined in this paragraph, shall be*  
12           *deemed to have been made into the State, place,*  
13           *or locality in which such cigarettes or smokeless*  
14           *tobacco are delivered.*

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

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



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

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

11          “(14) *USE.*—*The term ‘use’ includes the con-*  
 12          *sumption, storage, handling, or disposal of cigarettes*  
 13          *or smokeless tobacco.”.*

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 appears*  
 18                 *and inserting “cigarettes or smokeless tobacco”;*

19                 (2) *in subsection (a)—*

20                         (A) *in the matter preceding paragraph*

21                         (1)—

22                                 (i) *by inserting “CONTENTS.—” after*  
 23                                 *“(a)”;*

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

1           (iii) by inserting “, locality, or Indian  
2           country of an Indian tribe” after “a State”;

3           (iv) by striking “to other than a dis-  
4           tributor licensed by or located in such  
5           State,”; and

6           (v) by striking “or transfer and ship-  
7           ment” and inserting “, transfer, or ship-  
8           ment”;

9           (B) in paragraph (1)—

10           (i) by striking “with the tobacco tax  
11           administrator of the State” and inserting  
12           “with the Attorney General of the United  
13           States and with the tobacco tax administra-  
14           tors of the State and place”; and

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

23           (C) in paragraph (2), by striking “and the  
24           quantity thereof.” and inserting “the quantity  
25           thereof, and the name, address, and phone num-

1           *ber of the person delivering the shipment to the*  
 2           *recipient on behalf of the delivery seller, with all*  
 3           *invoice or memoranda information relating to*  
 4           *specific customers to be organized by city or*  
 5           *town and by zip code; and”;* and

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

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

15                  *(3) in subsection (b)—*

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

18                   *(B) by striking “(1) that” and inserting*  
 19                   *“that”;* and

20                   *(C) by striking “, and (2)” and all that fol-*  
 21                   *lows and inserting a period; and*

22                  *(4) by adding at the end the following:*

23           *“(c) USE OF INFORMATION.—A tobacco tax adminis-*  
 24          *trator or chief law enforcement officer who receives a memo-*  
 25          *randum or invoice under paragraph (2) or (3) of subsection*

1 *(a) shall use the memorandum or invoice solely for the pur-*  
 2 *poses of the enforcement of this Act and the collection of*  
 3 *any taxes owed on related sales of cigarettes and smokeless*  
 4 *tobacco, and shall keep confidential any personal informa-*  
 5 *tion in the memorandum or invoice except as required for*  
 6 *such purposes.”.*

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

10 **“SEC. 2A. DELIVERY SALES.**

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

14 *“(1) the shipping requirements set forth in sub-*  
 15 *section (b);*

16 *“(2) the recordkeeping requirements set forth in*  
 17 *subsection (c);*

18 *“(3) all State, local, tribal, and other laws gen-*  
 19 *erally applicable to sales of cigarettes or smokeless to-*  
 20 *bacco as if the delivery sales occurred entirely within*  
 21 *the specific State and place, including laws impos-*  
 22 *ing—*

23 *“(A) excise taxes;*

24 *“(B) licensing and tax-stamping require-*  
 25 *ments;*

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

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

5           “(4) the tax collection requirements set forth in  
6           subsection (d).

7           “(b) SHIPPING AND PACKAGING.—

8           “(1) REQUIRED STATEMENT.—For any shipping  
9           package containing cigarettes or smokeless tobacco, the  
10          delivery seller shall include on the bill of lading, if  
11          any, and on the outside of the shipping package, on  
12          the same surface as the delivery address, a clear and  
13          conspicuous statement providing as follows: ‘CIGA-  
14          RETTES/SMOKELESS TOBACCO: FEDERAL  
15          LAW REQUIRES THE PAYMENT OF ALL AP-  
16          PLICABLE EXCISE TAXES, AND COMPLIANCE  
17          WITH APPLICABLE LICENSING AND TAX-  
18          STAMPING OBLIGATIONS’.

19          “(2) FAILURE TO LABEL.—Any shipping pack-  
20          age described in paragraph (1) that is not labeled in  
21          accordance with that paragraph shall be treated as  
22          nondeliverable matter by a common carrier or other  
23          delivery service, if the common carrier or other deliv-  
24          ery service knows or should know the package con-  
25          tains cigarettes or smokeless tobacco. If a common

1        *carrier or other delivery service believes a package is*  
2        *being submitted for delivery in violation of paragraph*  
3        *(1), it may require the person submitting the package*  
4        *for delivery to establish that it is not being sent in*  
5        *violation of paragraph (1) before accepting the pack-*  
6        *age for delivery. Nothing in this paragraph shall re-*  
7        *quire the common carrier or other delivery service to*  
8        *open any package to determine its contents.*

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

14            *“(4) AGE VERIFICATION.—*

15            *“(A) IN GENERAL.—A delivery seller who*  
16        *mails or ships tobacco products—*

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

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

1           “(I) the purchaser placing the de-  
2           livery sale order, or an adult who is at  
3           least the minimum age required for the  
4           legal sale or purchase of tobacco prod-  
5           ucts, as determined by the applicable  
6           law at the place of delivery, to sign to  
7           accept delivery of the shipping con-  
8           tainer at the delivery address; and

9           “(II) the person who signs to ac-  
10          cept delivery of the shipping container  
11          to provide proof, in the form of a valid,  
12          government-issued identification bear-  
13          ing a photograph of the individual,  
14          that the person is at least the min-  
15          imum age required for the legal sale or  
16          purchase of tobacco products, as deter-  
17          mined by the applicable law at the  
18          place of delivery; and

19          “(iii) shall not accept a delivery sale  
20          order from a person without—

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

24                 “(II) verifying the information  
25                 provided in subclause (I), through the

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

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

19                  “(c) *RECORDS.*—

20                  “(1) *IN GENERAL.*—*Each delivery seller shall*  
21                  *keep a record of any delivery sale, including all of the*  
22                  *information described in section 2(a)(2), organized by*  
23                  *the State, and within the State, by the city or town*  
24                  *and by zip code, into which the delivery sale is so*  
25                  *made.*



1           “(2) *RECORD RETENTION.*—*Records of a delivery*  
2           *sale shall be kept as described in paragraph (1) until*  
3           *the end of the 4th full calendar year that begins after*  
4           *the date of the delivery sale.*

5           “(3) *ACCESS FOR OFFICIALS.*—*Records kept*  
6           *under paragraph (1) shall be made available to to-*  
7           *bacco tax administrators of the States, to local gov-*  
8           *ernments and Indian tribes that apply local or tribal*  
9           *taxes on cigarettes or smokeless tobacco, to the attor-*  
10          *neys general of the States, to the chief law enforce-*  
11          *ment officers of the local governments and Indian*  
12          *tribes, and to the Attorney General of the United*  
13          *States in order to ensure the compliance of persons*  
14          *making delivery sales with the requirements of this*  
15          *Act.*

16          “(d) *DELIVERY.*—

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

23                       “(A) *any cigarette or smokeless tobacco ex-*  
24                       *cise tax that is imposed by the State in which*

1           *the cigarettes or smokeless tobacco are to be deliv-*  
2           *ered has been paid to the State;*

3           “(B) *any cigarette or smokeless tobacco ex-*  
4           *cise tax that is imposed by the local government*  
5           *of the place in which the cigarettes or smokeless*  
6           *tobacco are to be delivered has been paid to the*  
7           *local government; and*

8           “(C) *any required stamps or other indicia*  
9           *that the excise tax has been paid are properly af-*  
10          *fixed or applied to the cigarettes or smokeless to-*  
11          *bacco.*

12          “(2) *EXCEPTION.—Paragraph (1) does not apply*  
13          *to a delivery sale of smokeless tobacco if the law of the*  
14          *State or local government of the place where the*  
15          *smokeless tobacco is to be delivered requires or other-*  
16          *wise provides that delivery sellers collect the excise tax*  
17          *from the consumer and remit the excise tax to the*  
18          *State or local government, and the delivery seller*  
19          *complies with the requirement.*

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

22                 “(1) *IN GENERAL.—*

23                         “(A) *INITIAL LIST.—Not later than 90 days*  
24                         *after this subsection goes into effect under the*  
25                         *Prevent All Cigarette Trafficking Act of 2009,*

1           *the Attorney General of the United States shall*  
2           *compile a list of delivery sellers of cigarettes or*  
3           *smokeless tobacco that have not registered with*  
4           *the Attorney General of the United States pursu-*  
5           *ant to section 2(a), or that are otherwise not in*  
6           *compliance with this Act, and—*

7                   *“(i) distribute the list to—*

8                           *“(I) the attorney general and tax*  
9                           *administrator of every State;*

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

15                           *“(III) any other person that the*  
16                           *Attorney General of the United States*  
17                           *determines can promote the effective*  
18                           *enforcement of this Act; and*

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

24                           *“(B) LIST CONTENTS.—To the extent*  
25                           *known, the Attorney General of the United States*

1 shall include, for each delivery seller on the list  
2 described in subparagraph (A)—

3 “(i) all names the delivery seller uses  
4 or has used in the transaction of its busi-  
5 ness or on packages delivered to customers;

6 “(ii) all addresses from which the de-  
7 livery seller does or has done business, or  
8 ships or has shipped cigarettes or smokeless  
9 tobacco;

10 “(iii) the website addresses, primary e-  
11 mail address, and phone number of the de-  
12 livery seller; and

13 “(iv) any other information that the  
14 Attorney General of the United States deter-  
15 mines would facilitate compliance with this  
16 subsection by recipients of the list.

17 “(C) UPDATING.—The Attorney General of  
18 the United States shall update and distribute the  
19 list described in subparagraph (A) at least once  
20 every 4 months, and may distribute the list and  
21 any updates by regular mail, electronic mail, or  
22 any other reasonable means, or by providing re-  
23 cipients with access to the list through a non-  
24 public website that the Attorney General of the  
25 United States regularly updates.

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

14           “(E) *ACCURACY AND COMPLETENESS OF*  
15           *LIST OF NONCOMPLYING DELIVERY SELLERS.—In*  
16           *preparing and revising the list described in sub-*  
17           *paragraph (A), the Attorney General of the*  
18           *United States shall—*

19                   “(i) *use reasonable procedures to en-*  
20                   *sure maximum possible accuracy and com-*  
21                   *pleteness of the records and information re-*  
22                   *lied on for the purpose of determining that*  
23                   *a delivery seller is not in compliance with*  
24                   *this Act;*

1           “(ii) not later than 14 days before in-  
2           cluding a delivery seller on the list, make a  
3           reasonable attempt to send notice to the de-  
4           livery seller by letter, electronic mail, or  
5           other means that the delivery seller is being  
6           placed on the list, which shall cite the rel-  
7           evant provisions of this Act and the specific  
8           reasons for which the delivery seller is being  
9           placed on the list;

10           “(iii) provide an opportunity to the  
11           delivery seller to challenge placement on the  
12           list;

13           “(iv) investigate each challenge de-  
14           scribed in clause (iii) by contacting the rel-  
15           evant Federal, State, tribal, and local law  
16           enforcement officials, and provide the spe-  
17           cific findings and results of the investiga-  
18           tion to the delivery seller not later than 30  
19           days after the date on which the challenge  
20           is made; and

21           “(v) if the Attorney General of the  
22           United States determines that the basis for  
23           including a delivery seller on the list is in-  
24           accurate, based on incomplete information,  
25           or cannot be verified, promptly remove the

1           *delivery seller from the list as appropriate*  
2           *and notify each appropriate Federal, State,*  
3           *tribal, and local authority of the determina-*  
4           *tion.*

5           “(F) *CONFIDENTIALITY.*—*The list described*  
6           *in subparagraph (A) shall be confidential, and*  
7           *any person receiving the list shall maintain the*  
8           *confidentiality of the list and may deliver the*  
9           *list, for enforcement purposes, to any government*  
10          *official or to any common carrier or other person*  
11          *that delivers tobacco products or small packages*  
12          *to consumers. Nothing in this section shall pro-*  
13          *hibit a common carrier, the United States Postal*  
14          *Service, or any other person receiving the list*  
15          *from discussing with a listed delivery seller the*  
16          *inclusion of the delivery seller on the list and the*  
17          *resulting effects on any services requested by the*  
18          *listed delivery seller.*

19          “(2) *PROHIBITION ON DELIVERY.*—

20                 “(A) *IN GENERAL.*—*Commencing on the*  
21                 *date that is 60 days after the date of the initial*  
22                 *distribution or availability of the list described*  
23                 *in paragraph (1)(A), no person who receives the*  
24                 *list under paragraph (1), and no person who de-*  
25                 *livers cigarettes or smokeless tobacco to con-*

1           *sumers, shall knowingly complete, cause to be*  
2           *completed, or complete its portion of a delivery*  
3           *of any package for any person whose name and*  
4           *address are on the list, unless—*

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

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

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

19                  “(B) *IMPLEMENTATION OF UPDATES.—*  
20                  *Commencing on the date that is 30 days after*  
21                  *the date of the distribution or availability of any*  
22                  *updates or corrections to the list described in*  
23                  *paragraph (1)(A), all recipients and all common*  
24                  *carriers or other persons that deliver cigarettes*  
25                  *or smokeless tobacco to consumers shall be subject*



1           to subparagraph (A) in regard to the corrections  
2           or updates.

3           “(3) *EXEMPTIONS.*—

4                   “(A) *IN GENERAL.*—Subsection (b)(2) and  
5           any requirements or restrictions placed directly  
6           on common carriers under this subsection, in-  
7           cluding subparagraphs (A) and (B) of para-  
8           graph (2), shall not apply to a common carrier  
9           that—

10                           “(i) is subject to a settlement agree-  
11                           ment described in subparagraph (B); or

12                           “(ii) if a settlement agreement de-  
13                           scribed in subparagraph (B) to which the  
14                           common carrier is a party is terminated or  
15                           otherwise becomes inactive, is administering  
16                           and enforcing policies and practices  
17                           throughout the United States that are at  
18                           least as stringent as the agreement.

19                   “(B) *SETTLEMENT AGREEMENT.*—A settle-  
20           ment agreement described in this subpara-  
21           graph—

22                           “(i) is a settlement agreement relating  
23                           to tobacco product deliveries to consumers;  
24                           and

25                           “(ii) includes—

1           “(I) *the Assurance of Discontinu-*  
2           *ance entered into by the Attorney Gen-*  
3           *eral of New York and DHL Holdings*  
4           *USA, Inc. and DHL Express (USA),*  
5           *Inc. on or about July 1, 2005, the As-*  
6           *surance of Discontinuance entered into*  
7           *by the Attorney General of New York*  
8           *and United Parcel Service, Inc. on or*  
9           *about October 21, 2005, and the Assur-*  
10           *ance of Compliance entered into by the*  
11           *Attorney General of New York and*  
12           *Federal Express Corporation and*  
13           *FedEx Ground Package Systems, Inc.*  
14           *on or about February 3, 2006, if each*  
15           *of those agreements is honored through-*  
16           *out the United States to block illegal*  
17           *deliveries of cigarettes or smokeless to-*  
18           *bacco to consumers; and*

19           “(II) *any other active agreement*  
20           *between a common carrier and a State*  
21           *that operates throughout the United*  
22           *States to ensure that no deliveries of*  
23           *cigarettes or smokeless tobacco shall be*  
24           *made to consumers or illegally oper-*  
25           *ating Internet or mail-order sellers and*

1                   *that any such deliveries to consumers*  
2                   *shall not be made to minors or without*  
3                   *payment to the States and localities*  
4                   *where the consumers are located of all*  
5                   *taxes on the tobacco products.*

6                   “(4) *SHIPMENTS FROM PERSONS ON LIST.—*

7                   “*(A) IN GENERAL.—If a common carrier or*  
8                   *other delivery service delays or interrupts the de-*  
9                   *livery of a package in the possession of the com-*  
10                   *mon carrier or delivery service because the com-*  
11                   *mon carrier or delivery service determines or has*  
12                   *reason to believe that the person ordering the de-*  
13                   *livery is on a list described in paragraph (1)(A)*  
14                   *and that clauses (i), (ii), and (iii) of paragraph*  
15                   *(2)(A) do not apply—*

16                   “*(i) the person ordering the delivery*  
17                   *shall be obligated to pay—*

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

22                   “*(II) if the package is not deliver-*  
23                   *able, any reasonable additional fee or*  
24                   *charge levied by the common carrier or*  
25                   *other delivery service to cover any*

1           *extra costs and inconvenience and to*  
2           *serve as a disincentive against such*  
3           *noncomplying delivery orders; and*

4           “(ii) *if the package is determined not*  
5           *to be deliverable, the common carrier or*  
6           *other delivery service shall offer to provide*  
7           *the package and its contents to a Federal,*  
8           *State, or local law enforcement agency.*

9           “(B) *RECORDS.—A common carrier or*  
10          *other delivery service shall maintain, for a pe-*  
11          *riod of 5 years, any records kept in the ordinary*  
12          *course of business relating to any delivery inter-*  
13          *rupted under this paragraph and provide that*  
14          *information, upon request, to the Attorney Gen-*  
15          *eral of the United States or to the attorney gen-*  
16          *eral or chief law enforcement official or tax ad-*  
17          *ministrator of any State, local, or tribal govern-*  
18          *ment.*

19          “(C) *CONFIDENTIALITY.—Any person re-*  
20          *ceiving records under subparagraph (B) shall—*

21                 “(i) *use the records solely for the pur-*  
22                 *poses of the enforcement of this Act and the*  
23                 *collection of any taxes owed on related sales*  
24                 *of cigarettes and smokeless tobacco; and*

1                   “(ii) *keep confidential any personal in-*  
2                   *formation in the records not otherwise re-*  
3                   *quired for such purposes.*

4                   “(5) *PREEMPTION.—*

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

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

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

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

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

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

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

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

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

5           “(iii) any provision of State, local, or  
6 tribal law regulating common carriers that  
7 is described in section 14501(c)(2) or  
8 41713(b)(4)(B) of title 49 of the United  
9 States Code.

10           “(C) STATE LAWS PROHIBITING DELIVERY  
11 SALES.—

12           “(i) IN GENERAL.—Except as provided  
13 in clause (ii), nothing in the Prevent All  
14 Cigarette Trafficking Act of 2009, the  
15 amendments made by that Act, or in any  
16 other Federal statute shall be construed to  
17 preempt, supersede, or otherwise limit or re-  
18 strict State laws prohibiting the delivery  
19 sale, or the shipment or delivery pursuant  
20 to a delivery sale, of cigarettes or other to-  
21 bacco products to individual consumers or  
22 personal residences.

23           “(ii) EXEMPTIONS.—No State may en-  
24 force against a common carrier a law pro-  
25 hibiting the delivery of cigarettes or other

1           *tobacco products to individual consumers or*  
2           *personal residences without proof that the*  
3           *common carrier is not exempt under para-*  
4           *graph (3) of this subsection.*

5           “(6) *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*  
12           *that—*

13           “*(I) offers for sale or makes sales*  
14           *of cigarettes or smokeless tobacco in or*  
15           *into the State, locality, or tribal land;*  
16           *and*

17           “*(II) has failed to register with or*  
18           *make reports to the respective tax ad-*  
19           *ministrator as required by this Act, or*  
20           *that has been found in a legal pro-*  
21           *ceeding to have otherwise failed to com-*  
22           *ply with this Act; and*

23           “*(ii) a list of common carriers and*  
24           *other persons who make deliveries of ciga-*



1           *rettes or smokeless tobacco in or into the*  
2           *State, locality, or tribal land.*

3           “(B) *UPDATES.*—*Any government pro-*  
4           *viding a list to the Attorney General of the*  
5           *United States under subparagraph (A) shall also*  
6           *provide updates and corrections every 4 months*  
7           *until such time as the government notifies the*  
8           *Attorney General of the United States in writing*  
9           *that the government no longer desires to submit*  
10          *information to supplement the list described in*  
11          *paragraph (1)(A).*

12          “(C) *REMOVAL AFTER WITHDRAWAL.*—  
13          *Upon receiving written notice that a government*  
14          *no longer desires to submit information under*  
15          *subparagraph (A), the Attorney General of the*  
16          *United States shall remove from the list de-*  
17          *scribed in paragraph (1)(A) any persons that*  
18          *are on the list solely because of the prior submis-*  
19          *sions of the government of the list of the govern-*  
20          *ment of noncomplying delivery sellers of ciga-*  
21          *rettes or smokeless tobacco or a subsequent up-*  
22          *date or correction by the government.*

23          “(7) *DEADLINE TO INCORPORATE ADDITIONS.*—  
24          *The Attorney General of the United States shall—*

1           “(A) include any delivery seller identified  
2           and submitted by a State, local, or tribal govern-  
3           ment under paragraph (6) in any list or update  
4           that is distributed or made available under  
5           paragraph (1) on or after the date that is 30  
6           days after the date on which the information is  
7           received by the Attorney General of the United  
8           States; and

9           “(B) distribute any list or update described  
10          in subparagraph (A) to any common carrier or  
11          other person who makes deliveries of cigarettes or  
12          smokeless tobacco that has been identified and  
13          submitted by a government pursuant to para-  
14          graph (6).

15          “(8) NOTICE TO DELIVERY SELLERS.—Not later  
16          than 14 days before including any delivery seller on  
17          the initial list described in paragraph (1)(A), or on  
18          an update to the list for the first time, the Attorney  
19          General of the United States shall make a reasonable  
20          attempt to send notice to the delivery seller by letter,  
21          electronic mail, or other means that the delivery seller  
22          is being placed on the list or update, with that notice  
23          citing the relevant provisions of this Act.

24          “(9) LIMITATIONS.—

1           “(A) *IN GENERAL.*—Any common carrier or  
2 other person making a delivery subject to this  
3 subsection shall not be required or otherwise obli-  
4 gated to—

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

8           “(ii) *determine whether a person order-*  
9 *ing a delivery is in compliance with this*  
10 *Act; or*

11           “(iii) *open or inspect, pursuant to this*  
12 *Act, any package being delivered to deter-*  
13 *mine its contents.*

14           “(B) *ALTERNATE NAMES.*—Any common  
15 carrier or other person making a delivery subject  
16 to this subsection—

17           “(i) *shall not be required to make any*  
18 *inquiries or otherwise determine whether a*  
19 *person ordering a delivery is a delivery sell-*  
20 *er on the list described in paragraph (1)(A)*  
21 *who is using a different name or address in*  
22 *order to evade the related delivery restric-*  
23 *tions; and*

24           “(ii) *shall not knowingly deliver any*  
25 *packages to consumers for any delivery sell-*

1            *er on the list described in paragraph (1)(A)*  
2            *who the common carrier or other delivery*  
3            *service knows is a delivery seller who is on*  
4            *the list and is using a different name or ad-*  
5            *dress to evade the delivery restrictions of*  
6            *paragraph (2).*

7            *“(C) PENALTIES.—Any common carrier or*  
8            *person in the business of delivering packages on*  
9            *behalf of other persons shall not be subject to any*  
10           *penalty under section 14101(a) of title 49,*  
11           *United States Code, or any other provision of*  
12           *law for—*

13           *“(i) not making any specific delivery,*  
14           *or any deliveries at all, on behalf of any*  
15           *person on the list described in paragraph*  
16           *(1)(A);*

17           *“(ii) refusing, as a matter of regular*  
18           *practice and procedure, to make any deliv-*  
19           *eries, or any deliveries in certain States, of*  
20           *any cigarettes or smokeless tobacco for any*  
21           *person or for any person not in the business*  
22           *of manufacturing, distributing, or selling*  
23           *cigarettes or smokeless tobacco; or*

1                   “(iii) *delaying or not making a deliv-*  
2                   *ery for any person because of reasonable ef-*  
3                   *forts to comply with this Act.*

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

8                   “(f) *PRESUMPTION.*—For purposes of this Act, a deliv-  
9                   *ery sale shall be deemed to have occurred in the State and*  
10                  *place where the buyer obtains personal possession of the*  
11                  *cigarettes or smokeless tobacco, and a delivery pursuant to*  
12                  *a delivery sale is deemed to have been initiated or ordered*  
13                  *by the delivery seller.”.*

14                  “(d) *PENALTIES.*—The Jenkins Act is amended by  
15                  *striking section 3 and inserting the following:*

16                  “**SEC. 3. PENALTIES.**

17                  “(a) *CRIMINAL PENALTIES.*—

18                         “(1) *IN GENERAL.*—Except as provided in para-  
19                         *graph (2), whoever knowingly violates this Act shall*  
20                         *be imprisoned for not more than 3 years, fined under*  
21                         *title 18, United States Code, or both.*

22                         “(2) *EXCEPTIONS.*—

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

1           “(B) *DELIVERY VIOLATIONS.*—A common  
 2 carrier or independent delivery service, or em-  
 3 ployee of a common carrier or independent deliv-  
 4 ery service, shall be subject to criminal penalties  
 5 under paragraph (1) for a violation of section  
 6 2A(e) only if the violation is committed know-  
 7 ingly—

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

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

15           “(b) *CIVIL PENALTIES.*—

16           “(1) *IN GENERAL.*—Except as provided in para-  
 17 graph (3), whoever violates this Act shall be subject to  
 18 a civil penalty in an amount not to exceed—

19           “(A) in the case of a delivery seller, the  
 20 greater of—

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

24           “(ii) for any violation, 2 percent of the  
 25 gross sales of cigarettes or smokeless tobacco

1           *of the delivery seller during the 1-year pe-*  
2           *riod ending on the date of the violation.*

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

7           “(2) *RELATION TO OTHER PENALTIES.—A civil*  
8           *penalty imposed under paragraph (1) for a violation*  
9           *of this Act shall be imposed in addition to any crimi-*  
10          *nal penalty under subsection (a) and any other dam-*  
11          *ages, equitable relief, or injunctive relief awarded by*  
12          *the court, including the payment of any unpaid taxes*  
13          *to the appropriate Federal, State, local, or tribal gov-*  
14          *ernments.*

15          “(3) *EXCEPTIONS.—*

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

22                         “(i) *as consideration for the receipt of,*  
23                         *or as consideration for a promise or agree-*  
24                         *ment to pay, anything of pecuniary value;*  
25                         *or*

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

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

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

12                   “(ii) the violation consists of an em-  
13                  ployee of the common carrier or inde-  
14                  pendent delivery service who physically re-  
15                  ceives and processes orders, picks up pack-  
16                  ages, processes packages, or makes deliveries,  
17                  taking actions that are outside the scope of  
18                  employment of the employee, or that violate  
19                  the implemented and enforced policies of the  
20                  common carrier or independent delivery  
21                  service described in clause (i).”.

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



1 **“SEC. 4. ENFORCEMENT.**

2       “(a) *IN GENERAL.*—*The United States district courts*  
3 *shall have jurisdiction to prevent and restrain violations*  
4 *of this Act and to provide other appropriate injunctive or*  
5 *equitable relief, including money damages, for the viola-*  
6 *tions.*

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

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

11               “(1) *IN GENERAL.*—

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

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

1           to restrict, expand, or modify any sovereign im-  
2           munity of a State or local government or Indian  
3           tribe.

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

14          “(3) *USE OF PENALTIES COLLECTED.*—

15                 “(A) *IN GENERAL.*—There is established a  
16                 separate account in the Treasury known as the  
17                 ‘PACT Anti-Trafficking Fund’. Notwithstanding  
18                 any other provision of law and subject to sub-  
19                 paragraph (B), an amount equal to 50 percent  
20                 of any criminal and civil penalties collected by  
21                 the Federal Government in enforcing this Act  
22                 shall be transferred into the PACT Anti-Traf-  
23                 ficking Fund and shall be available to the Attor-  
24                 ney General of the United States for purposes of

1           *enforcing this Act and other laws relating to con-*  
2           *traband tobacco products.*

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

11          “(4) *NONEXCLUSIVITY OF REMEDY.*—

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

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

22           “(C) *TRIBAL COURT PROCEEDINGS.*—*Noth-*  
23           *ing in this Act shall be construed to expand, re-*  
24           *strict, or otherwise modify any right of an au-*  
25           *thorized Indian tribal government official to pro-*

1           *ceed in tribal court, or take other enforcement*  
 2           *actions, on the basis of an alleged violation of*  
 3           *tribal law.*

4           “(D) LOCAL GOVERNMENT ENFORCE-  
 5           MENT.—*Nothing in this Act shall be construed to*  
 6           *expand, restrict, or otherwise modify any right*  
 7           *of an authorized local government official to pro-*  
 8           *ceed in State court, or take other enforcement ac-*  
 9           *tions, on the basis of an alleged violation of local*  
 10           *or other law.*

11           “(d) PERSONS DEALING IN TOBACCO PRODUCTS.—  
 12           *Any person who holds a permit under section 5712 of the*  
 13           *Internal Revenue Code of 1986 (regarding permitting of*  
 14           *manufacturers and importers of tobacco products and ex-*  
 15           *port warehouse proprietors) may bring an action in an ap-*  
 16           *propriate United States district court to prevent and re-*  
 17           *strain violations of this Act by any person other than a*  
 18           *State, local, or tribal government.*

19           “(e) NOTICE.—

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

24           “(2) STATE, LOCAL, AND TRIBAL ACTIONS.—*It is*  
 25           *the sense of Congress that the attorney general of any*

1     *State, or chief law enforcement officer of any locality*  
2     *or tribe, that commences a civil action under this sec-*  
3     *tion should inform the Attorney General of the United*  
4     *States of the action.*

5     “(f) *PUBLIC NOTICE.*—

6             “(1) *IN GENERAL.*—*The Attorney General of the*  
7     *United States shall make available to the public, by*  
8     *posting information on the Internet and by other ap-*  
9     *propriate means, information regarding all enforce-*  
10    *ment actions brought by the United States, or re-*  
11    *ported to the Attorney General of the United States,*  
12    *under this section, including information regarding*  
13    *the resolution of the enforcement actions and how the*  
14    *Attorney General of the United States has responded*  
15    *to referrals of evidence of violations pursuant to sub-*  
16    *section (c)(2).*

17            “(2) *REPORTS TO CONGRESS.*—*Not later than 1*  
18    *year after the date of enactment of the Prevent All*  
19    *Cigarette Trafficking Act of 2009, and every year*  
20    *thereafter until the date that is 5 years after such*  
21    *date of enactment, the Attorney General of the United*  
22    *States shall submit to Congress a report containing*  
23    *the information described in paragraph (1).”.*

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

3 (a) *IN GENERAL.*—Chapter 83 of title 18, United  
4 States Code, is amended by inserting after section 1716D  
5 the following:

6 **“§ 1716E. Tobacco products as nonmailable**

7 “(a) *PROHIBITION.*—

8 “(1) *IN GENERAL.*—All cigarettes and smokeless  
9 tobacco (as those terms are defined in section 1 of the  
10 Act of October 19, 1949, commonly referred to as the  
11 Jenkins Act) are nonmailable and shall not be depos-  
12 ited in or carried through the mails. The United  
13 States Postal Service shall not accept for delivery or  
14 transmit through the mails any package that it knows  
15 or has reasonable cause to believe contains any ciga-  
16 rettes or smokeless tobacco made nonmailable by this  
17 paragraph.

18 “(2) *REASONABLE CAUSE.*—For the purposes of  
19 this subsection reasonable cause includes—

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

25 “(B) the fact that the person is on the list  
26 created under section 2A(e) of the Jenkins Act.

1 “(b) *EXCEPTIONS.*—

2 “(1) *CIGARS.*—*Subsection (a) shall not apply to*  
3 *cigars (as defined in section 5702(a) of the Internal*  
4 *Revenue Code of 1986).*

5 “(2) *GEOGRAPHIC EXCEPTION.*—*Subsection (a)*  
6 *shall not apply to mailings within the State of Alaska*  
7 *or within the State of Hawaii.*

8 “(3) *BUSINESS PURPOSES.*—

9 “(A) *IN GENERAL.*—*Subsection (a) shall not*  
10 *apply to tobacco products mailed only—*

11 “(i) *for business purposes between le-*  
12 *gally operating businesses that have all ap-*  
13 *plicable State and Federal Government li-*  
14 *censes or permits and are engaged in to-*  
15 *bacco product manufacturing, distribution,*  
16 *wholesale, export, import, testing, investiga-*  
17 *tion, or research; or*

18 “(ii) *for regulatory purposes between*  
19 *any business described in clause (i) and an*  
20 *agency of the Federal Government or a*  
21 *State government.*

22 “(B) *RULES.*—

23 “(i) *IN GENERAL.*—*Not later than 180*  
24 *days after the date of enactment of the Pre-*  
25 *vent All Cigarette Trafficking Act of 2009,*

1           *the Postmaster General shall issue a final*  
2           *rule which shall establish the standards and*  
3           *requirements that apply to all mailings de-*  
4           *scribed in subparagraph (A).*

5           “(i) *CONTENTS.*—*The final rule issued*  
6           *under clause (i) shall require—*

7                   “(I) *the United States Postal*  
8                   *Service to verify that any person sub-*  
9                   *mitting an otherwise nonmailable to-*  
10                  *bacco product into the mails as author-*  
11                  *ized under this paragraph is a business*  
12                  *or government agency permitted to*  
13                  *make a mailing under this paragraph;*

14                  “(II) *the United States Postal*  
15                  *Service to ensure that any recipient of*  
16                  *an otherwise nonmailable tobacco prod-*  
17                  *uct sent through the mails under this*  
18                  *paragraph is a business or government*  
19                  *agency that may lawfully receive the*  
20                  *product;*

21                  “(III) *that any mailing described*  
22                  *in subparagraph (A) shall be sent*  
23                  *through the systems of the United*  
24                  *States Postal Service that provide for*



1           *the tracking and confirmation of the*  
2           *delivery;*

3           “(IV) *that the identity of the busi-*  
4           *ness or government entity submitting*  
5           *the mailing containing otherwise non-*  
6           *mailable tobacco products for delivery*  
7           *and the identity of the business or gov-*  
8           *ernment entity receiving the mailing*  
9           *are clearly set forth on the package;*

10           “(V) *the United States Postal*  
11           *Service to maintain identifying infor-*  
12           *mation described in subclause (IV)*  
13           *during the 3-year period beginning on*  
14           *the date of the mailing and make the*  
15           *information available to the Postal*  
16           *Service, the Attorney General of the*  
17           *United States, and to persons eligible*  
18           *to bring enforcement actions under sec-*  
19           *tion 3(d) of the Prevent All Cigarette*  
20           *Trafficking Act of 2009;*

21           “(VI) *that any mailing described*  
22           *in subparagraph (A) be marked with a*  
23           *United States Postal Service label or*  
24           *marking that makes it clear to employ-*  
25           *ees of the United States Postal Service*

1           *that it is a permitted mailing of other-*  
2           *wise nonmailable tobacco products that*  
3           *may be delivered only to a permitted*  
4           *government agency or business and*  
5           *may not be delivered to any residence*  
6           *or individual person; and*

7                   “(VII) *that any mailing described*  
8                   *in subparagraph (A) be delivered only*  
9                   *to a verified employee of the recipient*  
10                  *business or government agency, who is*  
11                  *not a minor and who shall be required*  
12                  *to sign for the mailing.*

13                  “(C) *DEFINITION.—In this paragraph, the*  
14                  *term ‘minor’ means an individual who is less*  
15                  *than the minimum age required for the legal sale*  
16                  *or purchase of tobacco products as determined by*  
17                  *applicable law at the place the individual is lo-*  
18                  *cated.*

19                  “(4) *CERTAIN INDIVIDUALS.—*

20                   “(A) *IN GENERAL.—Subsection (a) shall not*  
21                   *apply to tobacco products mailed by individuals*  
22                   *who are not minors for noncommercial purposes,*  
23                   *including the return of a damaged or unaccept-*  
24                   *able tobacco product to the manufacturer.*

25                   “(B) *RULES.—*

1           “(i) *IN GENERAL.*—Not later than 180  
2           *days after the date of enactment of the Pre-*  
3           *vent All Cigarette Trafficking Act of 2009,*  
4           *the Postmaster General shall issue a final*  
5           *rule which shall establish the standards and*  
6           *requirements that apply to all mailings de-*  
7           *scribed in subparagraph (A).*

8           “(ii) *CONTENTS.*—*The final rule issued*  
9           *under clause (i) shall require—*

10           “(I) *the United States Postal*  
11           *Service to verify that any person sub-*  
12           *mitting an otherwise nonmailable to-*  
13           *bacco product into the mails as author-*  
14           *ized under this paragraph is the indi-*  
15           *vidual identified on the return address*  
16           *label of the package and is not a*  
17           *minor;*

18           “(II) *for a mailing to an indi-*  
19           *vidual, the United States Postal Serv-*  
20           *ice to require the person submitting the*  
21           *otherwise nonmailable tobacco product*  
22           *into the mails as authorized by this*  
23           *paragraph to affirm that the recipient*  
24           *is not a minor;*

1           “(III) that any package mailed  
2 under this paragraph shall weigh not  
3 more than 10 ounces;

4           “(IV) that any mailing described  
5 in subparagraph (A) shall be sent  
6 through the systems of the United  
7 States Postal Service that provide for  
8 the tracking and confirmation of the  
9 delivery;

10          “(V) that a mailing described in  
11 subparagraph (A) shall not be deliv-  
12 ered or placed in the possession of any  
13 individual who has not been verified as  
14 not being a minor;

15          “(VI) for a mailing described in  
16 subparagraph (A) to an individual,  
17 that the United States Postal Service  
18 shall deliver the package only to a re-  
19 cipient who is verified not to be a  
20 minor at the recipient address or  
21 transfer it for delivery to an Air/Army  
22 Postal Office or Fleet Postal Office  
23 number designated in the recipient ad-  
24 dress; and

1                   “(VII) that no person may ini-  
2                   tiate more than 10 mailings described  
3                   in subparagraph (A) during any 30-  
4                   day period.

5                   “(C) DEFINITION.—In this paragraph, the  
6                   term ‘minor’ means an individual who is less  
7                   than the minimum age required for the legal sale  
8                   or purchase of tobacco products as determined by  
9                   applicable law at the place the individual is lo-  
10                  cated.

11                  “(5) EXCEPTION FOR MAILINGS FOR CONSUMER  
12                  TESTING BY MANUFACTURERS.—

13                  “(A) IN GENERAL.—Subject to subpara-  
14                  graph (B), subsection (a) shall not preclude a le-  
15                  gally operating cigarette manufacturer or a le-  
16                  gally authorized agent of a legally operating cig-  
17                  arette manufacturer from using the United  
18                  States Postal Service to mail cigarettes to  
19                  verified adult smoker solely for consumer testing  
20                  purposes, if—

21                  “(i) the cigarette manufacturer has a  
22                  permit, in good standing, issued under sec-  
23                  tion 5713 of the Internal Revenue Code of  
24                  1986;

1           “(ii) the package of cigarettes mailed  
2 under this paragraph contains not more  
3 than 12 packs of cigarettes (240 cigarettes);

4           “(iii) the recipient does not receive  
5 more than 1 package of cigarettes from any  
6 1 cigarette manufacturer under this para-  
7 graph during any 30-day period;

8           “(iv) all taxes on the cigarettes mailed  
9 under this paragraph levied by the State  
10 and locality of delivery are paid to the  
11 State and locality before delivery, and tax  
12 stamps or other tax-payment indicia are af-  
13 fixed to the cigarettes as required by law;  
14 and

15           “(v)(I) the recipient has not made any  
16 payments of any kind in exchange for re-  
17 ceiving the cigarettes;

18           “(II) the recipient is paid a fee by the  
19 manufacturer or agent of the manufacturer  
20 for participation in consumer product tests;  
21 and

22           “(III) the recipient, in connection with  
23 the tests, evaluates the cigarettes and pro-  
24 vides feedback to the manufacturer or agent.

1           “(B) *LIMITATIONS.*—Subparagraph (A)  
2 shall not—

3           “(i) *permit a mailing of cigarettes to*  
4 *an individual located in any State that*  
5 *prohibits the delivery or shipment of ciga-*  
6 *rettes to individuals in the State, or pre-*  
7 *empt, limit, or otherwise affect any related*  
8 *State laws; or*

9           “(ii) *permit a manufacturer, directly*  
10 *or through a legally authorized agent, to*  
11 *mail cigarettes in any calendar year in a*  
12 *total amount greater than 1 percent of the*  
13 *total cigarette sales of the manufacturer in*  
14 *the United States during the calendar year*  
15 *before the date of the mailing.*

16           “(C) *RULES.*—

17           “(i) *IN GENERAL.*—*Not later than 180*  
18 *days after the date of enactment of the Pre-*  
19 *vent All Cigarette Trafficking Act of 2009,*  
20 *the Postmaster General shall issue a final*  
21 *rule which shall establish the standards and*  
22 *requirements that apply to all mailings de-*  
23 *scribed in subparagraph (A).*

24           “(ii) *CONTENTS.*—*The final rule issued*  
25 *under clause (i) shall require—*

1           “(I) the United States Postal  
2           Service to verify that any person sub-  
3           mitting a tobacco product into the  
4           mails under this paragraph is a le-  
5           gally operating cigarette manufacturer  
6           permitted to make a mailing under  
7           this paragraph, or an agent legally au-  
8           thorized by the legally operating ciga-  
9           rette manufacturer to submit the to-  
10          bacco product into the mails on behalf  
11          of the manufacturer;

12           “(II) the legally operating ciga-  
13          rette manufacturer submitting the  
14          cigarettes into the mails under this  
15          paragraph to affirm that—

16                   “(aa) the manufacturer or  
17                   the legally authorized agent of the  
18                   manufacturer has verified that the  
19                   recipient is an adult established  
20                   smoker;

21                   “(bb) the recipient has not  
22                   made any payment for the ciga-  
23                   rettes;

24                   “(cc) the recipient has signed  
25                   a written statement that is in ef-



1           *fect indicating that the recipient*  
2           *wishes to receive the mailings;*  
3           *and*

4                     *“(dd) the manufacturer or*  
5                     *the legally authorized agent of the*  
6                     *manufacturer has offered the op-*  
7                     *portunity for the recipient to*  
8                     *withdraw the written statement*  
9                     *described in item (cc) not less fre-*  
10                    *quently than once in every 3-*  
11                    *month period;*

12                    *“(III) the legally operating ciga-*  
13                    *rette manufacturer or the legally au-*  
14                    *thorized agent of the manufacturer sub-*  
15                    *mitting the cigarettes into the mails*  
16                    *under this paragraph to affirm that*  
17                    *any package mailed under this para-*  
18                    *graph contains not more than 12 packs*  
19                    *of cigarettes (240 cigarettes) on which*  
20                    *all taxes levied on the cigarettes by the*  
21                    *State and locality of delivery have been*  
22                    *paid and all related State tax stamps*  
23                    *or other tax-payment indicia have been*  
24                    *applied;*

1           “(IV) that any mailing described  
2           in subparagraph (A) shall be sent  
3           through the systems of the United  
4           States Postal Service that provide for  
5           the tracking and confirmation of the  
6           delivery;

7           “(V) the United States Postal  
8           Service to maintain records relating to  
9           a mailing described in subparagraph  
10          (A) during the 3-year period beginning  
11          on the date of the mailing and make  
12          the information available to persons  
13          enforcing this section;

14          “(VI) that any mailing described  
15          in subparagraph (A) be marked with a  
16          United States Postal Service label or  
17          marking that makes it clear to employ-  
18          ees of the United States Postal Service  
19          that it is a permitted mailing of other-  
20          wise nonmailable tobacco products that  
21          may be delivered only to the named re-  
22          cipient after verifying that the recipi-  
23          ent is an adult; and

24          “(VII) the United States Postal  
25          Service shall deliver a mailing de-

1                   *scribed in subparagraph (A) only to*  
2                   *the named recipient and only after*  
3                   *verifying that the recipient is an adult.*

4                   “(D) *DEFINITIONS.—In this paragraph—*

5                   *“(i) the term ‘adult’ means an indi-*  
6                   *vidual who is not less than 21 years of age;*  
7                   *and*

8                   *“(ii) the term ‘consumer testing’ means*  
9                   *testing limited to formal data collection and*  
10                  *analysis for the specific purpose of evalu-*  
11                  *ating the product for quality assurance and*  
12                  *benchmarking purposes of cigarette brands*  
13                  *or sub-brands among existing adult smok-*  
14                  *ers.*

15                  “(6) *FEDERAL GOVERNMENT AGENCIES.—An*  
16                  *agency of the Federal Government involved in the*  
17                  *consumer testing of tobacco products solely for public*  
18                  *health purposes may mail cigarettes under the same*  
19                  *requirements, restrictions, and rules and procedures*  
20                  *that apply to consumer testing mailings of cigarettes*  
21                  *by manufacturers under paragraph (5), except that*  
22                  *the agency shall not be required to pay the recipients*  
23                  *for participating in the consumer testing.*

24                  “(c) *SEIZURE AND FORFEITURE.—Any cigarettes or*  
25                  *smokeless tobacco made nonmailable by this subsection that*

1 *are deposited in the mails shall be subject to seizure and*  
2 *forfeiture, pursuant to the procedures set forth in chapter*  
3 *46 of this title. Any tobacco products seized and forfeited*  
4 *under this subsection shall be destroyed or retained by the*  
5 *Federal Government for the detection or prosecution of*  
6 *crimes or related investigations and then destroyed.*

7       “(d) *ADDITIONAL PENALTIES.—In addition to any*  
8 *other fines and penalties under this title for violations of*  
9 *this section, any person violating this section shall be sub-*  
10 *ject to an additional civil penalty in the amount equal to*  
11 *10 times the retail value of the nonmailable cigarettes or*  
12 *smokeless tobacco, including all Federal, State, and local*  
13 *taxes.*

14       “(e) *CRIMINAL PENALTY.—Whoever knowingly depos-*  
15 *its for mailing or delivery, or knowingly causes to be deliv-*  
16 *ered by mail, according to the direction thereon, or at any*  
17 *place at which it is directed to be delivered by the person*  
18 *to whom it is addressed, anything that is nonmailable mat-*  
19 *ter under this section shall be fined under this title, impris-*  
20 *oned not more than 1 year, or both.*

21       “(f) *USE OF PENALTIES.—There is established a sepa-*  
22 *rate account in the Treasury, to be known as the ‘PACT*  
23 *Postal Service Fund’.* Notwithstanding any other provision  
24 *of law, an amount equal to 50 percent of any criminal*  
25 *fines, civil penalties, or other monetary penalties collected*

1 *by the Federal Government in enforcing this section shall*  
2 *be transferred into the PACT Postal Service Fund and shall*  
3 *be available to the Postmaster General for the purpose of*  
4 *enforcing this subsection.*

5       “(g) *COORDINATION OF EFFORTS.*—*The Postmaster*  
6 *General shall cooperate and coordinate efforts to enforce this*  
7 *section with related enforcement activities of any other Fed-*  
8 *eral agency or agency of any State, local, or tribal govern-*  
9 *ment, whenever appropriate.*

10       “(h) *ACTIONS BY STATE, LOCAL, OR TRIBAL GOVERN-*  
11 *MENTS RELATING TO CERTAIN TOBACCO PRODUCTS.*—

12               “(1) *IN GENERAL.*—*A State, through its attorney*  
13 *general, or a local government or Indian tribe that*  
14 *levies an excise tax on tobacco products, through its*  
15 *chief law enforcement officer, may in a civil action in*  
16 *a United States district court obtain appropriate re-*  
17 *lief with respect to a violation of this section. Appro-*  
18 *priate relief includes injunctive and equitable relief*  
19 *and damages equal to the amount of unpaid taxes on*  
20 *tobacco products mailed in violation of this section to*  
21 *addressees in that State, locality, or tribal land.*

22               “(2) *SOVEREIGN IMMUNITY.*—*Nothing in this*  
23 *subsection shall be deemed to abrogate or constitute a*  
24 *waiver of any sovereign immunity of a State or local*  
25 *government or Indian tribe against any unconsented*

1        *lawsuit under paragraph (1), or otherwise to restrict,*  
2        *expand, or modify any sovereign immunity of a State*  
3        *or local government or Indian tribe.*

4            “(3) *ATTORNEY GENERAL REFERRAL.*—A State,  
5        *through its attorney general, or a local government or*  
6        *Indian tribe that levies an excise tax on tobacco prod-*  
7        *ucts, through its chief law enforcement officer, may*  
8        *provide evidence of a violation of this section for com-*  
9        *mercial purposes by any person not subject to State,*  
10       *local, or tribal government enforcement actions for*  
11       *violations of this section to the Attorney General of*  
12       *the United States, who shall take appropriate actions*  
13       *to enforce this section.*

14            “(4) *NONEXCLUSIVITY OF REMEDIES.*—The rem-  
15        *edies available under this subsection are in addition*  
16        *to any other remedies available under Federal, State,*  
17        *local, tribal, or other law. Nothing in this subsection*  
18        *shall be construed to expand, restrict, or otherwise*  
19        *modify any right of an authorized State, local, or*  
20        *tribal government official to proceed in a State, trib-*  
21        *al, or other appropriate court, or take other enforce-*  
22        *ment actions, on the basis of an alleged violation of*  
23        *State, local, tribal, or other law.*

24            “(5) *OTHER ENFORCEMENT ACTIONS.*—Nothing  
25        *in this subsection shall be construed to prohibit an*

1 *authorized State official from proceeding in State*  
 2 *court on the basis of an alleged violation of any gen-*  
 3 *eral civil or criminal statute of the State.*

4 “(i) *DEFINITION.*—*In this section, the term ‘State’ has*  
 5 *the meaning given that term in section 1716(k).”.*

6 (b) *CLERICAL AMENDMENT.*—*The table of sections for*  
 7 *chapter 83 of title 18 is amended by inserting after the item*  
 8 *relating to section 1716D the following:*

*“1716E. Tobacco products as nonmailable.”.*

9 ***SEC. 4. INSPECTION BY BUREAU OF ALCOHOL, TOBACCO,***  
 10 ***FIREARMS, AND EXPLOSIVES OF RECORDS OF***  
 11 ***CERTAIN CIGARETTE AND SMOKELESS TO-***  
 12 ***BACCO SELLERS; CIVIL PENALTY.***

13 *Section 2343(c) of title 18, United States Code, is*  
 14 *amended to read as follows:*

15 “(c)(1) *Any officer of the Bureau of Alcohol, Tobacco,*  
 16 *Firearms, and Explosives may, during normal business*  
 17 *hours, enter the premises of any person described in sub-*  
 18 *section (a) or (b) for the purposes of inspecting—*

19 “(A) *any records or information required to be*  
 20 *maintained by the person under this chapter; or*

21 “(B) *any cigarettes or smokeless tobacco kept or*  
 22 *stored by the person at the premises.*

23 “(2) *The district courts of the United States shall have*  
 24 *the authority in a civil action under this subsection to com-*  
 25 *pel inspections authorized by paragraph (1).*

1       “(3) Whoever denies access to an officer under para-  
 2 graph (1), or who fails to comply with an order issued  
 3 under paragraph (2), shall be subject to a civil penalty in  
 4 an amount not to exceed \$10,000.”.

5       **SEC. 5. EXCLUSIONS REGARDING INDIAN TRIBES AND TRIB-**  
 6                                   **AL MATTERS.**

7       (a) *IN GENERAL.*—Nothing in this Act or the amend-  
 8 ments made by this Act shall be construed to amend, mod-  
 9 ify, or otherwise affect—

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

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

22                   (3) any limitations under Federal or State law,  
 23 including Federal common law and treaties, on State,  
 24 local, and tribal tax and regulatory authority with  
 25 respect to the sale, use, or distribution of cigarettes



1       *and smokeless tobacco by or to Indian tribes, tribal*  
2       *members, tribal enterprises, or in Indian country;*

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

9               (5) *any State or local government authority to*  
10       *bring enforcement actions against persons located in*  
11       *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 shall be construed to authorize, deputize, or com-*  
4 *mission States or local governments as instrumentalities of*  
5 *the United States.*

6           (d) *ENFORCEMENT WITHIN INDIAN COUNTRY.—Noth-*  
7 *ing in this Act or the amendments made by this Act shall*  
8 *prohibit, limit, or restrict enforcement by the Attorney Gen-*  
9 *eral of the United States of this Act or an amendment made*  
10 *by this Act 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          (f) *DEFINITIONS.—In this section—*

15               (1) *the term “Indian country” has the meaning*  
16 *given that term in section 1 of the Jenkins Act, as*  
17 *amended by this Act; and*

18               (2) *the term “tribal enterprise” means any busi-*  
19 *ness enterprise, regardless of whether incorporated or*  
20 *unincorporated under Federal or tribal law, of an In-*  
21 *Indian tribe or group of Indian tribes.*

22 **SEC. 6. EFFECTIVE DATE.**

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

1           (b) *BATFE AUTHORITY.*—*The amendments made by*  
2 *section 4 shall take effect on the date of enactment of this*  
3 *Act.*

4 **SEC. 7. SEVERABILITY.**

5           *If any provision of this Act, or any amendment made*  
6 *by this Act, or the application thereof to any person or cir-*  
7 *cumstance, is held invalid, the remainder of the Act and*  
8 *the application of the Act to any other person or cir-*  
9 *cumstance shall not be affected thereby.*

10 **SEC. 8. SENSE OF CONGRESS CONCERNING THE PRECE-**  
11 **DENTIAL EFFECT OF THIS ACT.**

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

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



Calendar No. 216

11<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session

**S. 1147**

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**A BILL**

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

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NOVEMBER 19, 2009

Reported with an amendment