

111TH CONGRESS  
1ST SESSION

# H. R. 1400

To amend title 39, United States Code, to make cigarettes and certain other tobacco products nonmailable, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

MARCH 9, 2009

Mr. MCHUGH introduced the following bill; which was referred to the Committee on Oversight and Government Reform

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## A BILL

To amend title 39, United States Code, to make cigarettes and certain other tobacco products nonmailable, and for other purposes.

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

3 **SECTION 1. NONMAILABILITY OF CERTAIN TOBACCO PROD-**  
4 **UCTS.**

5 (a) IN GENERAL.—Chapter 30 of title 39, United  
6 States Code, is amended by inserting after section 3002a  
7 the following:

1 **“§ 3002b. Nonmailability of certain tobacco products**

2 “(a) IN GENERAL.—Except as provided in sub-  
3 sections (g) and (h), cigarettes, smokeless tobacco, and  
4 roll-your-own-tobacco—

5 “(1) are nonmailable matter;

6 “(2) shall not be—

7 “(A) deposited in the mails; or

8 “(B) carried or delivered through the  
9 mails; and

10 “(3) shall be disposed of as the Postal Service  
11 directs.

12 “(b) CIVIL PENALTY.—

13 “(1) IN GENERAL.—Any person who violates  
14 subsection (a)(2)(A) shall be liable to the United  
15 States for a civil penalty in an amount not to exceed  
16 \$100,000 for each violation.

17 “(2) HEARINGS.—

18 “(A) IN GENERAL.—The Postal Service  
19 may determine that a person has violated sub-  
20 section (a)(2)(A) only after notice and an op-  
21 portunity for a hearing. Proceedings under this  
22 paragraph shall be conducted in accordance  
23 with section 3001(m).

24 “(B) PENALTY CONSIDERATIONS.—In de-  
25 termining the amount of a civil penalty under

1           this paragraph, the Postal Service shall con-  
2           sider—

3                   “(i) the nature, circumstances, extent,  
4                   and gravity of the violation;

5                   “(ii) with respect to the violator, the  
6                   degree of culpability, ability to pay, and  
7                   any history of prior violations; and

8                   “(iii) such other matters as justice  
9                   may require.

10           “(3) CIVIL ACTIONS.—The Postal Service may  
11           bring a civil action in an appropriate district court  
12           of the United States, in accordance with section  
13           409(g)(2), to enjoin violations of subsection  
14           (a)(2)(A), to collect a civil penalty under this sec-  
15           tion, or to seek such other relief with respect to vio-  
16           lations of subsection (a)(2)(A) as the court may  
17           deem appropriate.

18           “(4) DISPOSITION OF AMOUNTS.—Amounts re-  
19           ceived in payment of any civil penalties under this  
20           subsection shall be deposited as miscellaneous re-  
21           ceipts in the Treasury of the United States.

22           “(c) ORDERS.—Upon evidence satisfactory to the  
23           Postal Service that any person is engaged in the sending  
24           of mail matter which is nonmailable under this section,  
25           the Postal Service may issue an order which—

1           “(1) directs any postmaster, to whom any mail-  
2           ing originating with such person or his representa-  
3           tive is tendered for transmission through the mails  
4           (other than a mailing that consists only of one or  
5           more sealed letters), to refuse to accept any such  
6           mailing, unless such person or his representative  
7           first establishes to the satisfaction of the postmaster  
8           that the mailing does not contain any matter which  
9           is nonmailable under this section; and

10           “(2) requires the person or his representative to  
11           cease and desist from mailing any mail matter which  
12           is nonmailable under this section.

13           “(d) PRIMA FACIE EVIDENCE.—For the purposes of  
14           this section, prima facie evidence that a person is engaged  
15           in the mailing of matter which is nonmailable under this  
16           section may include a statement on a publicly available  
17           website, or an advertisement, by any person that such per-  
18           son will mail matter which is nonmailable under this sec-  
19           tion in return for payment or other consideration.

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

1       “(f) ACTIONS BY STATES RELATING TO CERTAIN TO-  
2 BACCO PRODUCTS.—

3           “(1) AUTHORITY OF STATES.—Whenever the  
4 attorney general of a State has reason to believe  
5 that any person has engaged or is engaging in mail-  
6 ings to residents of that State in violation of sub-  
7 section (a)(2)(A), the State may bring, in an appro-  
8 priate district court of the United States, a civil ac-  
9 tion—

10                   “(A) to enjoin such mailings;

11                   “(B) to carry out paragraphs (1) and (4)  
12 of subsection (b) with respect to such mailings;  
13 or

14                   “(C) to carry out subparagraphs (A) and  
15 (B).

16 In the course of any such action, the State may seek  
17 damages equal to the amount of any unpaid taxes on  
18 tobacco products mailed in violation of subsection  
19 (a)(2)(A) to residents of the State and such other  
20 relief as the court may deem appropriate.

21           “(2) RIGHTS OF THE POSTAL SERVICE.—The  
22 State shall serve prior written notice of any action  
23 under paragraph (1) upon the Postal Service and  
24 provide the Postal Service with a copy of its com-  
25 plaint, except in any case in which such prior notice

1 is not feasible, in which case the State shall serve  
2 such notice immediately upon instituting such ac-  
3 tion. The Postal Service, in accordance with section  
4 409(g)(2), shall have the right (A) to intervene in  
5 the action, (B) upon so intervening, to be heard on  
6 all matters arising therein, and (C) to file petitions  
7 for appeal.

8 “(3) EFFECT ON STATE COURT PRO-  
9 CEEDINGS.—Nothing contained in this section shall  
10 be considered to prohibit an authorized State official  
11 from proceeding in State court on the basis of an al-  
12 leged violation of any general civil or criminal stat-  
13 ute of such State.

14 “(4) LIMITATION.—Whenever the Postal Serv-  
15 ice institutes a civil action under subsection (a)(3)  
16 for a violation of subsection (a)(2)(A), no State may,  
17 during the pendency of such action, institute a sepa-  
18 rate civil action for any violation of subsection  
19 (a)(2)(A) against any defendant named in the Postal  
20 Service’s complaint.

21 “(g) MAILINGS BETWEEN LEGAL TOBACCO INDUS-  
22 TRY BUSINESSES AND GOVERNMENT AGENCIES.—

23 “(1) IN GENERAL.—Tobacco products otherwise  
24 made nonmailable by subsection (a) may, beginning

1 on the effective date of regulations prescribed under  
2 paragraph (2), be mailed—

3 “(A) for business purposes between busi-  
4 nesses that—

5 “(i) have all government licenses or  
6 permits that are required in order to do  
7 business; and

8 “(ii) are engaged in tobacco product  
9 manufacturing, distribution, wholesale, ex-  
10 port, import, testing, investigation, or re-  
11 search; or

12 “(B) for regulatory purposes between any  
13 business described in subparagraph (A) and any  
14 government agency.

15 “(2) REGULATIONS.—The Postal Service may  
16 prescribe regulations governing mailings under this  
17 subsection, including regulations to carry out the fol-  
18 lowing:

19 “(A) The Postal Service shall verify that  
20 any person depositing any otherwise non-  
21 mailable tobacco product into the mails under  
22 this subsection is a business or government  
23 agency permitted to make such mailing under  
24 this subsection.

1           “(B) The Postal Service shall ensure that  
2 any recipient of any otherwise nonmailable to-  
3 bacco product sent through the mails under this  
4 subsection is a business or government agency  
5 permitted to receive such mailing under this  
6 subsection.

7           “(C) The mailing shall be sent using a  
8 method that provides for the tracking and con-  
9 firmation of delivery.

10           “(D) The identity of the business or gov-  
11 ernment agency from which the mailing is sent,  
12 and the identity of the business or government  
13 agency to which the mailing is sent, shall be  
14 clearly set forth on the envelope or outside  
15 cover or wrapper in which such mailing is sent,  
16 and all of that information shall, for a period  
17 of at least 3 years from the date of the mailing,  
18 be kept in Postal Service records and made  
19 available to persons enforcing subsection  
20 (a)(2)(A).

21           “(E) The mailing shall be marked with a  
22 Postal Service label or marking that makes it  
23 clear that such mailing—

24                   “(i) is a permissible mailing of other-  
25 wise nonmailable tobacco products; and



1           “(ii) may be delivered only to a busi-  
2           ness described in paragraph (1)(A) or a  
3           government employee or entity.

4           “(F) The mailing shall be delivered only to  
5           a verified employee or agent of the recipient  
6           business or government agency, who—

7                   “(i) has been duly authorized to ac-  
8                   cept such mailing; and

9                   “(ii) shall be required to sign for the  
10                  mailing.

11           “(3) RULE OF CONSTRUCTION.—Nothing in  
12           this subsection shall be considered to subject a gov-  
13           ernment agency or any government employee or  
14           agent to any penalty or other restriction in connec-  
15           tion with any mailing made by such employee or  
16           agent, acting within the scope of his employment or  
17           agency.

18           “(h) MAILINGS BETWEEN INDIVIDUALS.—

19                   “(1) IN GENERAL.—Tobacco products otherwise  
20                   made nonmailable by subsection (a) may be mailed  
21                   between individuals (other than in any of the cir-  
22                   cumstances to which subsection (g) applies), for non-  
23                   moneymaking purposes, beginning on the effective  
24                   date of regulations prescribed under paragraph (2).

1           “(2) REGULATIONS.—The Postal Service may  
2           prescribe regulations establishing the standards and  
3           requirements which shall govern all mailings under  
4           this subsection, including regulations to carry out  
5           the following:

6                   “(A) The Postal Service shall verify that  
7                   the person depositing the otherwise nonmailable  
8                   tobacco product into the mails is properly iden-  
9                   tified on the return address of the mailing.

10                   “(B) The Postal Service shall require the  
11                   person depositing the otherwise nonmailable to-  
12                   bacco product into the mails to affirm that the  
13                   recipient is an individual who is of legal age to  
14                   purchase tobacco products.

15                   “(C) The Postal Service shall require the  
16                   person depositing the otherwise nonmailable to-  
17                   bacco product into the mails to affirm that the  
18                   product is not being sent for moneymaking pur-  
19                   poses.

20                   “(D) The mailing shall weigh not more  
21                   than 10 ounces.

22                   “(E) The mailing shall be sent using a  
23                   method that provides for the tracking and con-  
24                   firmation of delivery.

1           “(F) The Postal Service shall deliver the  
2 mailing only to the verified recipient (as de-  
3 scribed in subparagraph (B)) at the recipient’s  
4 address, including an Air/Army Postal Office  
5 (APO) or Fleet Postal Office (FPO) address.

6           “(i) DEFINITIONS.—For purposes of this section—

7           “(1) the terms ‘cigarette’ and ‘roll-your-own-to-  
8 bacco’ have the meanings given them by section  
9 5702 of the Internal Revenue Code of 1986;

10           “(2) the term ‘smokeless tobacco’ has the  
11 meaning given such term by section 2341 of title 18;  
12 and

13           “(3) the term ‘State’ includes the District of  
14 Columbia, the Commonwealth of Puerto Rico, the  
15 Virgin Islands, American Samoa, Guam, and the  
16 Commonwealth of the Northern Mariana Islands.”.

17           (b) ADMINISTRATIVE SUBPOENAS.—Section 3016(a)  
18 of title 39, United States Code, is amended in paragraphs  
19 (1)(A) and (2) by inserting “3002b or” before “3005(a)”.

20           (c) ENFORCEMENT OF POSTAL SERVICE ORDERS.—  
21 Section 3012 of title 39, United States Code, is amend-  
22 ed—

23           (1) in subsection (b), by striking “or (d)” each  
24 place it appears and inserting “(d), or (e)”;

1           (2) by redesignating subsections (e) and (f) as  
2 subsections (f) and (g), respectively; and

3           (3) by inserting after subsection (d) the fol-  
4 lowing:

5           “(e) Any person who fails to comply with an order  
6 issued under section 3002b(c)(2) shall be liable to the  
7 United States for a civil penalty—

8           “(1) not to exceed \$10,000 for each mailing of  
9 fewer than 10 pieces;

10           “(2) not to exceed \$50,000 for each mailing of  
11 10 to 50 pieces; and

12           “(3) not to exceed \$100,000 for each mailing of  
13 more than 50 pieces.”; and

14           (4) in subsection (g) (as so redesignated by  
15 paragraph (2)), by inserting “3002b(c)(2) or” before  
16 “3005” each place it appears.

17           (d) SEMIANNUAL REPORTS.—Section 3013 of title  
18 39, United States Code, is amended—

19           (1) in paragraph (1), by inserting “3002b(b)  
20 or” before “3005”;

21           (2) in paragraph (2), by inserting “3002b(c)  
22 or” before “3005(e)”;

23           (3) in paragraph (3), by striking “section 3007  
24 of this title” and inserting “section 3002b(c) or sec-  
25 tion 3007, respectively”.

1 (e) CLERICAL AMENDMENT.—The table of sections  
2 for chapter 30 of title 39, United States Code, is amended  
3 by inserting after the item relating to section 3002a the  
4 following:

“3002b. Nonmailability of certain tobacco products.”.

5 (f) EFFECTIVE DATES.—

6 (1) IN GENERAL.—Except as provided in para-  
7 graph (2), the amendments made by this section  
8 shall take effect on the 60th day after the date of  
9 the enactment of this Act, and shall apply with re-  
10 spect to any mail matter mailed on or after such  
11 60th day.

12 (2) SEMIANNUAL REPORTS.—The amendments  
13 made by subsection (d) shall apply beginning with  
14 the report submitted for the reporting period in  
15 which occurs the 60th day after the date of the en-  
16 actment of this Act.

17 **SEC. 2. TECHNICAL CORRECTION.**

18 (a) IN GENERAL.—Sections 3007(a)(1), 3012(b)(1),  
19 and 3018(f)(1) of title 39, United States Code, are amend-  
20 ed by striking “409(d)” and inserting “409(g)(2)”.

21 (b) EFFECTIVE DATE.—The amendments made by  
22 subsection (a) shall take effect as if included in the enact-  
23 ment of the Postal Accountability and Enhancement Act  
24 (Public Law 109–435).

○