

111TH CONGRESS
2^D SESSION

S. 1147

AN ACT

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

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

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

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Prevent All Cigarette Trafficking Act of 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 ciga-
4 rettes and smokeless tobacco is taking billions of dol-
5 lars of sales away from law-abiding retailers
6 throughout the United States;

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

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

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

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

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

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

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

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

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

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

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

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

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

22 **“SECTION 1. DEFINITIONS.**

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

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

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

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.—

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

1 “(B) INTO A STATE, PLACE, OR LOCAL-
2 ITY.—A sale, shipment, or transfer of cigarettes
3 or smokeless tobacco that is made in interstate
4 commerce, as defined in this paragraph, shall
5 be deemed to have been made into the State,
6 place, or locality in which such cigarettes or
7 smokeless tobacco are delivered.

8 “(10) PERSON.—The term ‘person’ means an
9 individual, corporation, company, association, firm,
10 partnership, society, State government, local govern-
11 ment, Indian tribal government, governmental orga-
12 nization of such a government, or joint stock com-
13 pany.

14 “(11) STATE.—The term ‘State’ means each of
15 the several States of the United States, the District
16 of Columbia, the Commonwealth of Puerto Rico, or
17 any territory or possession of the United States.

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

24 “(13) TOBACCO TAX ADMINISTRATOR.—The
25 term ‘tobacco tax administrator’ means the State,

1 local, or tribal official duly authorized to collect the
 2 tobacco tax or administer the tax law of a State, lo-
 3 cality, or tribe, respectively.

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

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

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

13 (2) in subsection (a)—

14 (A) in the matter preceding paragraph

15 (1)—

16 (i) by inserting “CONTENTS.—” after
 17 “(a)”;

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

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

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

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

4 (B) in paragraph (1)—

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

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

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

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

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

10 (3) in subsection (b)—

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

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

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

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

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

1 personal information in the memorandum or invoice except
2 as required for such purposes.”.

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

6 **“SEC. 2A. DELIVERY SALES.**

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

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

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

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

19 “(A) excise taxes;

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

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

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

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

3 “(b) SHIPPING AND PACKAGING.—

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

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

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

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

12 “(4) AGE VERIFICATION.—

13 “(A) IN GENERAL.—A delivery seller who
14 mails or ships tobacco products—

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

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

23 “(I) the purchaser placing the
24 delivery sale order, or an adult who is
25 at least the minimum age required for

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

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

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

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

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

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

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

16 “(c) RECORDS.—

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

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

1 until the end of the 4th full calendar year that be-
2 gins after the date of the delivery sale.

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

14 “(d) DELIVERY.—

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

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

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

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

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

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

20 “(1) IN GENERAL.—

21 “(A) INITIAL LIST.—Not later than 90
22 days after this subsection goes into effect under
23 the Prevent All Cigarette Trafficking Act of
24 2009, the Attorney General of the United
25 States shall compile a list of delivery sellers of

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

6 “(i) distribute the list to—

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

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

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

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

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

1 States shall include, for each delivery seller on
2 the list 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 cus-
6 tomers;

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

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

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

18 “(C) UPDATING.—The Attorney General of
19 the United States shall update and distribute
20 the list described in subparagraph (A) at least
21 once every 4 months, and may distribute the
22 list and any updates by regular mail, electronic
23 mail, or any other reasonable means, or by pro-
24 viding recipients with access to the list through

1 a nonpublic website that the Attorney General
2 of the United States regularly updates.

3 “(D) STATE, LOCAL, OR TRIBAL ADDI-
4 TIONS.—The Attorney General of the United
5 States shall include in the list described in sub-
6 paragraph (A) any noncomplying delivery sell-
7 ers identified by any State, local, or tribal gov-
8 ernment under paragraph (6), and shall dis-
9 tribute the list to the attorney general or chief
10 law enforcement official and the tax adminis-
11 trator of any government submitting any such
12 information, and to any common carriers or
13 other persons who deliver small packages to
14 consumers identified by any government pursu-
15 ant to paragraph (6).

16 “(E) ACCURACY AND COMPLETENESS OF
17 LIST OF NONCOMPLYING DELIVERY SELLERS.—
18 In preparing and revising the list described in
19 subparagraph (A), the Attorney General of the
20 United States shall—

21 “(i) use reasonable procedures to en-
22 sure maximum possible accuracy and com-
23 pleteness of the records and information
24 relied on for the purpose of determining

1 that a delivery seller is not in compliance
2 with this Act;

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

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

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

23 “(v) if the Attorney General of the
24 United States determines that the basis for
25 including a delivery seller on the list is in-

1 accurate, based on incomplete information,
2 or cannot be verified, promptly remove the
3 delivery seller from the list as appropriate
4 and notify each appropriate Federal, State,
5 tribal, and local authority of the deter-
6 mination.

7 “(F) CONFIDENTIALITY.—The list de-
8 scribed in subparagraph (A) shall be confiden-
9 tial, and any person receiving the list shall
10 maintain the confidentiality of the list and may
11 deliver the list, for enforcement purposes, to
12 any government official or to any common car-
13 rier or other person that delivers tobacco prod-
14 ucts or small packages to consumers. Nothing
15 in this section shall prohibit a common carrier,
16 the United States Postal Service, or any other
17 person receiving the list from discussing with a
18 listed delivery seller the inclusion of the delivery
19 seller on the list and the resulting effects on
20 any services requested by the listed delivery
21 seller.

22 “(2) PROHIBITION ON DELIVERY.—

23 “(A) IN GENERAL.—Commencing on the
24 date that is 60 days after the date of the initial
25 distribution or availability of the list described

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

8 “(i) the person making the delivery
9 knows or believes in good faith that the
10 item does not include cigarettes or smoke-
11 less tobacco;

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

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

22 “(B) IMPLEMENTATION OF UPDATES.—
23 Commencing on the date that is 30 days after
24 the date of the distribution or availability of
25 any updates or corrections to the list described

1 in paragraph (1)(A), all recipients and all com-
2 mon carriers or other persons that deliver ciga-
3 rettes or smokeless tobacco to consumers shall
4 be subject to subparagraph (A) in regard to the
5 corrections or updates.

6 “(3) EXEMPTIONS.—

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

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

15 “(ii) if a settlement agreement de-
16 scribed in subparagraph (B) to which the
17 common carrier is a party is terminated or
18 otherwise becomes inactive, is admin-
19 istering and enforcing policies and prac-
20 tices throughout the United States that
21 are at least as stringent as the agreement.

22 “(B) SETTLEMENT AGREEMENT.—A set-
23 tlement agreement described in this subpara-
24 graph—

1 “(i) is a settlement agreement relating
2 to tobacco product deliveries to consumers;
3 and

4 “(ii) includes—

5 “(I) the Assurance of Discontinu-
6 ance entered into by the Attorney
7 General of New York and DHL Hold-
8 ings USA, Inc. and DHL Express
9 (USA), Inc. on or about July 1, 2005,
10 the Assurance of Discontinuance en-
11 tered into by the Attorney General of
12 New York and United Parcel Service,
13 Inc. on or about October 21, 2005,
14 and the Assurance of Compliance en-
15 tered into by the Attorney General of
16 New York and Federal Express Cor-
17 poration and FedEx Ground Package
18 Systems, Inc. on or about February 3,
19 2006, if each of those agreements is
20 honored throughout the United States
21 to block illegal deliveries of cigarettes
22 or smokeless tobacco to consumers;
23 and

24 “(II) any other active agreement
25 between a common carrier and a

1 State that operates throughout the
2 United States to ensure that no deliv-
3 eries of cigarettes or smokeless to-
4 bacco shall be made to consumers or
5 illegally operating Internet or mail-
6 order sellers and that any such deliv-
7 eries to consumers shall not be made
8 to minors or without payment to the
9 States and localities where the con-
10 sumers are located of all taxes on the
11 tobacco products.

12 “(4) SHIPMENTS FROM PERSONS ON LIST.—

13 “(A) IN GENERAL.—If a common carrier
14 or other delivery service delays or interrupts the
15 delivery of a package in the possession of the
16 common carrier or delivery service because the
17 common carrier or delivery service determines
18 or has reason to believe that the person order-
19 ing the delivery is on a list described in para-
20 graph (1)(A) and that clauses (i), (ii), and (iii)
21 of paragraph (2)(A) do not apply—

22 “(i) the person ordering the delivery
23 shall be obligated to pay—

24 “(I) the common carrier or other
25 delivery service as if the delivery of

1 the package had been timely com-
2 pleted; and

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

10 “(ii) if the package is determined not
11 to be deliverable, the common carrier or
12 other delivery service shall offer to provide
13 the package and its contents to a Federal,
14 State, or local law enforcement agency.

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

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

3 “(i) use the records solely for the pur-
4 poses of the enforcement of this Act and
5 the collection of any taxes owed on related
6 sales of cigarettes and smokeless tobacco;
7 and

8 “(ii) keep confidential any personal
9 information in the records not otherwise
10 required for such purposes.

11 “(5) PREEMPTION.—

12 “(A) IN GENERAL.—No State, local, or
13 tribal government, nor any political authority of
14 2 or more State, local, or tribal governments,
15 may enact or enforce any law or regulation re-
16 lating to delivery sales that restricts deliveries
17 of cigarettes or smokeless tobacco to consumers
18 by common carriers or other delivery services
19 on behalf of delivery sellers by—

20 “(i) requiring that the common carrier
21 or other delivery service verify the age or
22 identity of the consumer accepting the de-
23 livery by requiring the person who signs to
24 accept delivery of the shipping container to
25 provide proof, in the form of a valid, gov-

1 ernment-issued identification bearing a
2 photograph of the individual, that the per-
3 son is at least the minimum age required
4 for the legal sale or purchase of tobacco
5 products, as determined by either State or
6 local law at the place of delivery;

7 “(ii) requiring that the common car-
8 rier or other delivery service obtain a sig-
9 nature from the consumer accepting the
10 delivery;

11 “(iii) requiring that the common car-
12 rier or other delivery service verify that all
13 applicable taxes have been paid;

14 “(iv) requiring that packages delivered
15 by the common carrier or other delivery
16 service contain any particular labels, no-
17 tice, or markings; or

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

1 “(B) RELATIONSHIP TO OTHER LAWS.—
2 Except as provided in subparagraph (C), noth-
3 ing in this paragraph shall be construed to nul-
4 lify, expand, restrict, or otherwise amend or
5 modify—

6 “(i) section 14501(c)(1) or
7 41713(b)(4) of title 49, United States
8 Code;

9 “(ii) any other restrictions in Federal
10 law on the ability of State, local, or tribal
11 governments to regulate common carriers;
12 or

13 “(iii) any provision of State, local, or
14 tribal law regulating common carriers that
15 is described in section 14501(c)(2) or
16 41713(b)(4)(B) of title 49 of the United
17 States Code.

18 “(C) STATE LAWS PROHIBITING DELIVERY
19 SALES.—

20 “(i) IN GENERAL.—Except as pro-
21 vided in clause (ii), nothing in the Prevent
22 All Cigarette Trafficking Act of 2009, the
23 amendments made by that Act, or in any
24 other Federal statute shall be construed to
25 preempt, supersede, or otherwise limit or

1 restrict State laws prohibiting the delivery
2 sale, or the shipment or delivery pursuant
3 to a delivery sale, of cigarettes or other to-
4 bacco products to individual consumers or
5 personal residences.

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

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

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

18 “(i) all known names, addresses,
19 website addresses, and other primary con-
20 tact information of any delivery seller
21 that—

22 “(I) offers for sale or makes
23 sales of cigarettes or smokeless to-
24 bacco in or into the State, locality, or
25 tribal land; and

1 “(II) has failed to register with
2 or make reports to the respective tax
3 administrator as required by this Act,
4 or that has been found in a legal pro-
5 ceeding to have otherwise failed to
6 comply with this Act; and

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

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

20 “(C) REMOVAL AFTER WITHDRAWAL.—
21 Upon receiving written notice that a govern-
22 ment no longer desires to submit information
23 under subparagraph (A), the Attorney General
24 of the United States shall remove from the list
25 described in paragraph (1)(A) any persons that

1 are on the list solely because of the prior sub-
2 missions of the government of the list of the
3 government of noncomplying delivery sellers of
4 cigarettes or smokeless tobacco or a subsequent
5 update or correction by the government.

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

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

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

23 “(8) NOTICE TO DELIVERY SELLERS.—Not
24 later than 14 days before including any delivery sell-
25 er on the initial list described in paragraph (1)(A),

1 or on an update to the list for the first time, the At-
2 torney General of the United States shall make a
3 reasonable attempt to send notice to the delivery
4 seller by letter, electronic mail, or other means that
5 the delivery seller is being placed on the list or up-
6 date, with that notice citing the relevant provisions
7 of this Act.

8 “(9) LIMITATIONS.—

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

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

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

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

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

1 “(i) shall not be required to make any
2 inquiries or otherwise determine whether a
3 person ordering a delivery is a delivery sell-
4 er on the list described in paragraph
5 (1)(A) who is using a different name or
6 address in order to evade the related deliv-
7 ery restrictions; and

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

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

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

1 “(ii) refusing, as a matter of regular
2 practice and procedure, to make any deliv-
3 eries, or any deliveries in certain States, of
4 any cigarettes or smokeless tobacco for any
5 person or for any person not in the busi-
6 ness of manufacturing, distributing, or
7 selling cigarettes or smokeless tobacco; or

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

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

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

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

24 **“SEC. 3. PENALTIES.**

25 “(a) CRIMINAL PENALTIES.—

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

5 “(2) EXCEPTIONS.—

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

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

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

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

23 “(b) CIVIL PENALTIES.—

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

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

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

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

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

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

1 “(3) EXCEPTIONS.—

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

8 “(i) as consideration for the receipt
9 of, or as consideration for a promise or
10 agreement to pay, anything of pecuniary
11 value; 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) OTHER LIMITATIONS.—No common
16 carrier or independent delivery service shall be
17 subject to civil penalties under paragraph (1)
18 for a violation of section 2A(e) if—

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

23 “(ii) the violation consists of an em-
24 ployee of the common carrier or inde-
25 pendent delivery service who physically re-

1 ceives and processes orders, picks up pack-
2 ages, processes packages, or makes deliv-
3 eries, taking actions that are outside the
4 scope of employment of the employee, or
5 that violate the implemented and enforced
6 policies of the common carrier or inde-
7 pendent delivery service described in clause
8 (i).”.

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

11 **“SEC. 4. ENFORCEMENT.**

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

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

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

21 “(1) IN GENERAL.—

22 “(A) STANDING.—A State, through its at-
23 torney general, or a local government or Indian
24 tribe that levies a tax subject to section
25 2A(a)(3), through its chief law enforcement of-

1 ficer, may bring an action in a United States
2 district court to prevent and restrain violations
3 of this Act by any person or to obtain any other
4 appropriate relief from any person for violations
5 of this Act, including civil penalties, money
6 damages, and injunctive or other equitable re-
7 lief.

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

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

1 “(3) USE OF PENALTIES COLLECTED.—

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

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

23 “(4) NONEXCLUSIVITY OF REMEDY.—

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

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

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

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

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

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

1 manufacturers and importers of tobacco products and ex-
2 port warehouse proprietors) may bring an action in an ap-
3 propriate United States district court to prevent and re-
4 strain violations of this Act by any person other than a
5 State, local, or tribal government.

6 “(e) NOTICE.—

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

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

17 “(f) PUBLIC NOTICE.—

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

1 and how the Attorney General of the United States
2 has responded to referrals of evidence of violations
3 pursuant to subsection (c)(2).

4 “(2) REPORTS TO CONGRESS.—Not later than
5 1 year after the date of enactment of the Prevent All
6 Cigarette Trafficking Act of 2009, and every year
7 thereafter until the date that is 5 years after such
8 date of enactment, the Attorney General of the
9 United States shall submit to Congress a report con-
10 taining the information described in paragraph
11 (1).”.

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

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

17 **“§ 1716E. Tobacco products as nonmailable**

18 “(a) PROHIBITION.—

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

1 that it knows or has reasonable cause to believe con-
2 tains any cigarettes or smokeless tobacco made non-
3 mailable by this paragraph.

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

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

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

13 “(b) EXCEPTIONS.—

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

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

20 “(3) BUSINESS PURPOSES.—

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

23 “(i) for business purposes between le-
24 gally operating businesses that have all ap-
25 plicable State and Federal Government li-

1 censes or permits and are engaged in to-
2 bacco product manufacturing, distribution,
3 wholesale, export, import, testing, inves-
4 tigation, or research; or

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

9 “(B) RULES.—

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

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

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

1 mitted to make a mailing under this
2 paragraph;

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

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

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

24 “(V) the United States Postal
25 Service to maintain identifying infor-

1 mation described in subclause (IV)
2 during the 3-year period beginning on
3 the date of the mailing and make the
4 information available to the Postal
5 Service, the Attorney General of the
6 United States, and to persons eligible
7 to bring enforcement actions under
8 section 3(d) of the Prevent All Ciga-
9 rette Trafficking Act of 2009;

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

22 “(VII) that any mailing described
23 in subparagraph (A) be delivered only
24 to a verified employee of the recipient
25 business or government agency, who is

1 not a minor and who shall be required
2 to sign for the mailing.

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

9 “(4) CERTAIN INDIVIDUALS.—

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

16 “(B) RULES.—

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

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

1 “(I) the United States Postal
2 Service to verify that any person sub-
3 mitting an otherwise nonmailable to-
4 bacco product into the mails as au-
5 thorized under this paragraph is the
6 individual identified on the return ad-
7 dress label of the package and is not
8 a minor;

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

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

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

1 “(V) that a mailing described in
2 subparagraph (A) shall not be deliv-
3 ered or placed in the possession of any
4 individual who has not been verified
5 as not being a minor;

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

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

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

1 “(5) EXCEPTION FOR MAILINGS FOR CONSUMER
2 TESTING BY MANUFACTURERS.—

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

11 “(i) the cigarette manufacturer has a
12 permit, in good standing, issued under sec-
13 tion 5713 of the Internal Revenue Code of
14 1986;

15 “(ii) the package of cigarettes mailed
16 under this paragraph contains not more
17 than 12 packs of cigarettes (240 ciga-
18 rettes);

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

23 “(iv) all taxes on the cigarettes mailed
24 under this paragraph levied by the State
25 and locality of delivery are paid to the

1 State and locality before delivery, and tax
2 stamps or other tax-payment indicia are
3 affixed to the cigarettes as required by law;
4 and

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

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

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

16 “(B) LIMITATIONS.—Subparagraph (A)
17 shall not—

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

24 “(ii) permit a manufacturer, directly
25 or through a legally authorized agent, to

1 mail cigarettes in any calendar year in a
2 total amount greater than 1 percent of the
3 total cigarette sales of the manufacturer in
4 the United States during the calendar year
5 before the date of the mailing.

6 “(C) RULES.—

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

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

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

1 tobacco product into the mails on be-
2 half of the manufacturer;

3 “(II) the legally operating ciga-
4 rette manufacturer submitting the
5 cigarettes into the mails under this
6 paragraph to affirm that—

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

12 “(bb) the recipient has not
13 made any payment for the ciga-
14 rettes;

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

20 “(dd) the manufacturer or
21 the legally authorized agent of
22 the manufacturer has offered the
23 opportunity for the recipient to
24 withdraw the written statement
25 described in item (cc) not less

1 frequently than once in every 3-
2 month period;

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

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

22 “(V) the United States Postal
23 Service to maintain records relating to
24 a mailing described in subparagraph
25 (A) during the 3-year period begin-

1 ning on the date of the mailing and
2 make the information available to per-
3 sons enforcing this section;

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

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

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

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

24 “(ii) the term ‘consumer testing’
25 means testing limited to formal data collec-

1 tion and analysis for the specific purpose
2 of evaluating the product for quality assur-
3 ance and benchmarking purposes of ciga-
4 rette brands or sub-brands among existing
5 adult smokers.

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

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

1 “(d) ADDITIONAL PENALTIES.—In addition to any
2 other fines and penalties under this title for violations of
3 this section, any person violating this section shall be sub-
4 ject to an additional civil penalty in the amount equal to
5 10 times the retail value of the nonmailable cigarettes or
6 smokeless tobacco, including all Federal, State, and local
7 taxes.

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

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

24 “(g) COORDINATION OF EFFORTS.—The Postmaster
25 General shall cooperate and coordinate efforts to enforce

1 this section with related enforcement activities of any
2 other Federal agency or agency of any State, local, or trib-
3 al government, whenever appropriate.

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

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

18 “(2) SOVEREIGN IMMUNITY.—Nothing in this
19 subsection shall be deemed to abrogate or constitute
20 a waiver of any sovereign immunity of a State or
21 local government or Indian tribe against any
22 unconsented lawsuit under paragraph (1), or other-
23 wise to restrict, expand, or modify any sovereign im-
24 munity of a State or local government or Indian
25 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. INSPECTION BY BUREAU OF ALCOHOL, TOBACCO,**
7 **FIREARMS, AND EXPLOSIVES OF RECORDS**
8 **OF CERTAIN CIGARETTE AND SMOKELESS**
9 **TOBACCO SELLERS; CIVIL PENALTY.**

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

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

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

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

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

23 “(3) Whoever denies access to an officer under para-
24 graph (1), or who fails to comply with an order issued

1 under paragraph (2), shall be subject to a civil penalty
2 in an amount not to exceed \$10,000.”.

3 **SEC. 5. EXCLUSIONS REGARDING INDIAN TRIBES AND**
4 **TRIBAL MATTERS.**

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

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

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

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

1 tribal members, tribal enterprises, or in Indian coun-
2 try;

3 (4) any Federal law, including Federal common
4 law and treaties, regarding State jurisdiction, or
5 lack thereof, over any tribe, tribal members, tribal
6 enterprises, tribal reservations, or other lands held
7 by the United States in trust for one or more Indian
8 tribes; 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.—Noth-
13 ing in this Act or the amendments made by this Act shall
14 be construed to inhibit or otherwise affect any coordinated
15 law enforcement effort by 1 or more States or other juris-
16 dictions, including Indian tribes, through interstate com-
17 pact or otherwise, 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
22 or other property related to a violation of such laws;
23 or

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

1 (c) TREATMENT OF STATE AND LOCAL GOVERN-
2 MENTS.—Nothing in this Act or the amendments made
3 by this Act shall be construed to authorize, deputize, or
4 commission States or local governments as instrumental-
5 ities of the United States.

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

11 (e) AMBIGUITY.—Any ambiguity between the lan-
12 guage of this section or its application and any other pro-
13 vision 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
19 business enterprise, regardless of whether incor-
20 porated or unincorporated under Federal or tribal
21 law, of an 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
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. 8. 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.

Passed the Senate March 11, 2010.

Attest:

Secretary.

11TH CONGRESS
2D SESSION

S. 1147

AN ACT

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