

107TH CONGRESS
2D SESSION

H. R. 5264

To amend the Internal Revenue Code of 1986 to deter the smuggling of tobacco products into the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 26, 2002

Mr. DOGGETT (for himself, Mr. WAXMAN, Mr. HANSEN, Mr. BECERRA, Mr. CARDIN, Mr. COYNE, Mr. LEVIN, Mr. LEWIS of Georgia, Mr. MATSUI, Mr. McDERMOTT, Mr. McNULTY, Mr. STARK, Mr. ABERCROMBIE, Mr. ACKERMAN, Mr. ALLEN, Mr. ANDREWS, Ms. BALDWIN, Mr. BENTSEN, Mr. BERMAN, Mr. BLUMENAUER, Mr. BROWN of Ohio, Mrs. CAPPs, Mr. CAPUANO, Mr. CARSON of Oklahoma, Mr. CROWLEY, Mr. DAVIS of Illinois, Mr. DEFazio, Ms. DEGETTE, Mr. DELAHUNT, Ms. ESHOO, Mr. EVANS, Mr. FARR of California, Mr. FILNER, Mr. GUTIERREZ, Mr. HINOJOSA, Mr. HOEFFEL, Mr. HOLT, Mr. HONDA, Ms. JACKSON-LEE of Texas, Mr. JACKSON of Illinois, Ms. KAPTUR, Mr. KENNEDY of Rhode Island, Mr. KILDEE, Mr. KIND, Mr. KUCINICH, Mr. LAFALCE, Mr. LAMPSON, Mr. LANGEVIN, Mr. LANTOS, Ms. LEE, Ms. LOFGREN, Mr. LYNCH, Mrs. MCCARTHY of New York, Ms. MCCARTHY of Missouri, Mr. MCGOVERN, Mrs. MALONEY of New York, Mr. MATHESON, Mr. MEEHAN, Mr. MEEKS of New York, Mr. GEORGE MILLER of California, Mrs. MINK of Hawaii, Mr. NADLER, Mrs. NAPOLITANO, Mr. OBERSTAR, Mr. OLVER, Mr. OWENS, Mr. PALLONE, Mr. PASCRELL, Ms. PELOSI, Mr. RODRIGUEZ, Mr. ROTHMAN, Ms. ROYBAL-ALLARD, Mr. RUSH, Ms. SANCHEZ, Mr. SANDERS, Ms. SCHAKOWSKY, Mr. SCHIFF, Mr. SERRANO, Mr. SHERMAN, Ms. SLAUGHTER, Ms. SOLIS, Mr. TIERNEY, Mr. UDALL of Colorado, Mr. UDALL of New Mexico, Ms. VELÁZQUEZ, Ms. WATERS, Ms. WATSON of California, Mr. WEINER, Ms. WOOLSEY, Mr. WU, and Ms. MILLENDER-McDONALD) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Internal Revenue Code of 1986 to deter the smuggling of tobacco products into the United States, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Tobacco Smuggling Eradication Act of 2002”.

6 **TITLE I—AMENDMENTS TO IN-**
7 **TERNAL REVENUE CODE OF**
8 **1986**

9 **SEC. 101. AMENDMENT OF 1986 CODE.**

10 Except as otherwise expressly provided, whenever in
11 this title an amendment or repeal is expressed in terms
12 of an amendment to, or repeal of, a section or other provi-
13 sion, the reference shall be considered to be made to a
14 section or other provision of the Internal Revenue Code
15 of 1986.

16 **SEC. 102. IMPROVED MARKING AND LABELING.**

17 (a) IN GENERAL.—Subsection (b) of section 5723
18 (relating to marks, labels, and notices) is amended—

19 (1) by striking “, if any,” and

1 (2) by adding at the end the following: “Such
2 marks, labels, and notices shall include marks and
3 notices relating to the following:

4 “(1) IDENTIFICATION.—The Secretary shall
5 promulgate regulations that require each manufac-
6 turer or importer of tobacco products to legibly print
7 a unique serial number on all packages of tobacco
8 products manufactured or imported for sale or dis-
9 tribution. Such serial number shall be designed to
10 enable the Secretary to identify the manufacturer or
11 importer of the product, and the location and date
12 of manufacture or importation. The Secretary shall
13 determine the size and location of the serial number.

14 “(2) MARKING REQUIREMENTS FOR EX-
15 PORTS.—Each package of a tobacco product that is
16 exported shall be marked for export from the United
17 States. The Secretary shall promulgate regulations
18 to determine the size and location of the mark and
19 under what circumstances a waiver of this para-
20 graph shall be granted.”.

21 (b) SALES ON INDIAN RESERVATIONS.—Section
22 5723 is amended by adding at the end the following new
23 subsections:

24 “(f) SALES ON INDIAN RESERVATIONS.—The Sec-
25 retary, in consultation with the Secretary of the Interior,

1 shall promulgate regulations that require that each pack-
2 age of a tobacco product that is sold on an Indian reserva-
3 tion (as defined in section 403(9) of the Indian Child Pro-
4 tection and Family Violence Prevention Act (25 U.S.C.
5 3202(9)) be labeled as such. Such regulations shall include
6 requirements for the size and location of the label.

7 “(g) DEFINITION OF PACKAGE.—For purposes of
8 this section, the term ‘package’ means the innermost
9 sealed container irrespective of the material from which
10 such container is made, in which a tobacco product is
11 placed by the manufacturer and in which such tobacco
12 product is offered for sale to a member of the general pub-
13 lic.”.

14 **SEC. 103. WHOLESALERS REQUIRED TO HAVE PERMIT.**

15 Section 5712 (relating to application for permit) is
16 amended by inserting “, wholesaler,” after “manufac-
17 turer”.

18 **SEC. 104. CONDITIONS OF PERMIT.**

19 Subsection (a) of section 5713 (relating to issuance
20 of permit) is amended to read as follows:

21 “(a) ISSUANCE.—

22 “(1) IN GENERAL.—A person shall not engage
23 in business as a manufacturer, wholesaler, or im-
24 porter of tobacco products or as an export ware-
25 house proprietor without a permit to engage in such

1 business. Such permit shall be issued in such form
2 and in such manner as the Secretary shall by regula-
3 tion prescribe, to every person properly qualified
4 under sections 5711 and 5712. A new permit may
5 be required at such other time as the Secretary shall
6 by regulation prescribe.

7 “(2) CONDITIONS.—The issuance of a permit
8 under this section shall be conditioned upon the
9 compliance with the requirements of this chapter
10 and the Contraband Cigarette Trafficking Act (18
11 U.S.C. chapter 114), and any regulations issued
12 pursuant to such statutes.”.

13 **SEC. 105. RECORDS TO BE MAINTAINED.**

14 Section 5741 (relating to records to be maintained)
15 is amended—

16 (1) by inserting “(a) IN GENERAL.—” before
17 “Every manufacturer”,

18 (2) by inserting “every wholesaler,” after
19 “every importer,”,

20 (3) by striking “such records” and inserting
21 “records concerning the chain of custody of the to-
22 bacco products and such other records”, and

23 (4) by adding at the end the following new sub-
24 section:

1 “(b) RETAILERS.—Retailers shall maintain records
2 of receipt of tobacco products, and such records shall be
3 available to the Secretary for inspection and audit. An or-
4 dinary commercial record or invoice shall satisfy the re-
5 quirements of this subsection if such record shows the date
6 of receipt, from whom tobacco products were received, and
7 the quantity of tobacco products received.”.

8 **SEC. 106. REPORTS.**

9 Section 5722 (relating to reports) is amended—

10 (1) by inserting “(a) IN GENERAL.—” before
11 “Every manufacturer”, and

12 (2) by adding at the end the following new sub-
13 section:

14 “(b) REPORTS BY EXPORT WAREHOUSE PROPRI-
15 ETORS.—

16 “(1) IN GENERAL.—Prior to exportation of to-
17 bacco products from the United States, the export
18 warehouse proprietor shall submit a report (in such
19 manner and form as the Secretary may by regula-
20 tion prescribe) to enable the Secretary to identify
21 the shipment and assure that it reaches its intended
22 destination.

23 “(2) AGREEMENTS WITH FOREIGN GOVERN-
24 MENTS.—Notwithstanding section 6103 of this title,
25 the Secretary is authorized to enter into agreements

1 with foreign governments to exchange or share infor-
2 mation contained in reports received from export
3 warehouse proprietors of tobacco products if—

4 “(A) the Secretary believes that such
5 agreement will assist in—

6 “(i) ensuring compliance with the pro-
7 visions of this chapter or regulations pro-
8 mulgated thereunder, or

9 “(ii) preventing or detecting violations
10 of the provisions of this chapter or regula-
11 tions promulgated thereunder, and

12 “(B) the Secretary obtains assurances
13 from such government that the information will
14 be held in confidence and used only for the pur-
15 poses specified in clauses (i) and (ii) of sub-
16 paragraph (A).

17 No information may be exchanged or shared with
18 any government that has violated such assurances.”.

19 **SEC. 107. FRAUDULENT OFFENSES.**

20 (a) IN GENERAL.—Subsection (a) of section 5762
21 (relating to fraudulent offenses) is amended by striking
22 paragraph (1) and redesignating paragraphs (2) through
23 (6) as paragraphs (1) through (5), respectively.

24 (b) OFFENSES RELATING TO DISTRIBUTION OF TO-
25 BACCO PRODUCTS.—Section 5762 is amended—

1 (1) by redesignating subsection (b) as sub-
2 section (c),

3 (2) in subsection (c) (as so redesignated), by in-
4 serting “or (b)” after “(a)”, and

5 (3) by inserting after subsection (a) the fol-
6 lowing new subsection:

7 “(b) OFFENSES RELATING TO DISTRIBUTION OF TO-
8 BACCO PRODUCTS.—It shall be unlawful—

9 “(1) for any person to engage in the business
10 as a manufacturer or importer of tobacco products
11 or cigarette papers and tubes, or to engage in the
12 business as a wholesaler or an export warehouse pro-
13 prietor, without filing the bond and obtaining the
14 permit where required by this chapter or regulations
15 thereunder;

16 “(2) for a manufacturer, importer, or whole-
17 saler permitted under this chapter intentionally to
18 ship, transport, deliver, or receive any tobacco prod-
19 ucts from or to any person other than a person per-
20 mitted under this chapter or a retailer, except a per-
21 mitted importer may receive foreign tobacco prod-
22 ucts from a foreign manufacturer or a foreign dis-
23 tributor that have not previously entered the United
24 States;

1 “(3) for any person (other than the original
2 manufacturer of such tobacco products or an export
3 warehouse proprietor authorized to receive any to-
4 bacco products that have previously been exported
5 and returned to the United States) to receive any to-
6 bacco products that have previously been exported
7 and returned to the United States;

8 “(4) for any export warehouse proprietor inten-
9 tionally to ship, transport, sell, or deliver for sale
10 any tobacco products to any person other than the
11 original manufacturer of such tobacco products, an-
12 other export warehouse proprietor, or a foreign pur-
13 chaser;

14 “(5) for any person (other than a manufacturer
15 or an export warehouse proprietor permitted under
16 this chapter) intentionally to ship, transport, receive,
17 or possess, for purposes of resale, any tobacco prod-
18 uct in packages marked pursuant to regulations
19 issued under section 5723, other than for direct re-
20 turn to a manufacturer for repacking or for re-ex-
21 portation or to an export warehouse proprietor for
22 re-exportation;

23 “(6) for any manufacturer, importer, export
24 warehouse proprietor, or wholesaler permitted under
25 this chapter to make intentionally any false entry in,

1 to fail willfully to make appropriate entry in, or to
2 fail willfully to maintain properly any record or re-
3 port that such person is required to keep as required
4 by this chapter or the regulations promulgated
5 thereunder; and

6 “(7) for any person to alter, mutilate, destroy,
7 obliterate, or remove any mark or label required
8 under this chapter upon a tobacco product held for
9 sale, except pursuant to regulations of the Secretary
10 authorizing relabeling for purposes of compliance
11 with the requirements of this section or of State law.

12 Any person violating any of the provisions of this sub-
13 section shall, upon conviction, be fined as provided in sec-
14 tion 3571 of title 18, United States Code, imprisoned for
15 not more than 5 years, or both.”.

16 (c) INTENTIONALLY DEFINED.—Section 5762 is
17 amended by adding at the end the following:

18 “(d) DEFINITION OF INTENTIONALLY.—For pur-
19 poses of this section and section 5761, the term ‘inten-
20 tionally’ means doing an act, or omitting to do an act,
21 deliberately, and not due to accident, inadvertence, or mis-
22 take, regardless of whether the person knew that the act
23 or omission constituted an offense.”.

1 **SEC. 108. CIVIL PENALTIES.**

2 Subsection (a) of section 5761 (relating to civil pen-
3 alties) is amended—

4 (1) by striking “willfully” and inserting “inten-
5 tionally”, and

6 (2) by striking “\$1,000” and inserting
7 “\$10,000”.

8 **SEC. 109. DEFINITIONS.**

9 (a) EXPORT WAREHOUSE PROPRIETOR.—Subsection
10 (i) of section 5702 (relating to definition of export ware-
11 house proprietor) is amended by inserting before the pe-
12 riod the following: “or any person engaged in the business
13 of exporting tobacco products from the United States for
14 purposes of sale or distribution. Any duty free store that
15 sells, offers for sale, or otherwise distributes to any person
16 in any single transaction more than 30 packages of ciga-
17 rettes, or its equivalent for other tobacco products as the
18 Secretary shall by regulation prescribe, shall be deemed
19 an export warehouse proprietor under this chapter”.

20 (b) RETAILER; WHOLESALER.—Section 5702 is
21 amended by adding at the end the following:

22 “(p) RETAILER.—The term ‘retailer’ means any deal-
23 er who sells, or offers for sale, any tobacco product at re-
24 tail. The term ‘retailer’ includes any duty-free store that
25 sells, offers for sale, or otherwise distributes at retail in

1 any single transaction 30 or less packages, or its equiva-
2 lent for other tobacco products.

3 “(q) WHOLESALER.—The term ‘wholesaler’ means
4 any person engaged in the business of purchasing tobacco
5 products for resale at wholesale, or any person acting as
6 an agent or broker for any person engaged in the business
7 of purchasing tobacco products for resale at wholesale.”.

8 **SEC. 110. EFFECTIVE DATE.**

9 The amendments made by this title shall take effect
10 on January 1, 2003.

11 **TITLE II—AMENDMENTS TO THE**
12 **CONTRABAND CIGARETTE**
13 **TRAFFICKING ACT**

14 **SEC. 201. AMENDMENTS TO THE CONTRABAND CIGARETTE**
15 **TRAFFICKING ACT.**

16 (a) DEFINITIONS.—Section 2341 of title 18, United
17 States Code, is amended—

18 (1) in paragraph (2)—

19 (A) by striking “60,000” and inserting
20 “30,000”, and

21 (B) by inserting “or importer” after “as a
22 manufacturer”;

23 (2) in paragraph (4), by striking “and” at the
24 end;

1 (3) in paragraph (5), by striking the period and
2 inserting a semicolon; and

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

4 “(6) the term ‘tobacco product’ means cigars,
5 cigarettes, smokeless tobacco, and pipe tobacco (as
6 such terms are defined in section 5701 of the Inter-
7 nal Revenue Code of 1986); and

8 “(7) the term ‘contraband tobacco product’
9 means a quantity of tobacco product that is equiva-
10 lent to or more than 30,000 cigarettes as determined
11 by regulation, which bear no evidence of the pay-
12 ment of applicable State tobacco taxes in the State
13 where such tobacco products are found, if such State
14 requires a stamp, impression, or other indication to
15 be placed on packages or other containers of product
16 to evidence payment of tobacco taxes.”

17 (b) UNLAWFUL ACTS.—Section 2342 of title 18,
18 United States Code, is amended—

19 (1) in subsection (a), by inserting “or contra-
20 band tobacco products” before the period;

21 (2) by amending subsection (b) to read as fol-
22 lows:

23 “(b)(1) It shall be unlawful for any person—

24 “(A) knowingly to make any false statement or
25 representation with respect to the information re-

1 quired by this chapter to be kept in the records or
2 reports of any person who ships, sells, or
3 distributes—

4 “(i) any quantity of cigarettes in excess of
5 30,000 in a single transaction or in a series of
6 related transactions, or

7 “(ii) tobacco products in such equivalent
8 quantities as shall be determined by regulation,
9 or

10 “(B) knowingly to fail to maintain records or
11 reports, alter or obliterate required markings, or
12 interfere with any inspection, required under this
13 chapter, with respect to such quantity of cigarettes
14 or other tobacco products.”; and

15 (3) by adding at the end the following:

16 “(c) It shall be unlawful for any person knowingly
17 to transport tobacco products under a false bill of lading
18 or without any bill of lading.”.

19 (c) RECORDKEEPING.—Section 2343 of title 18,
20 United States Code, is amended—

21 (1) in subsection (a), by striking “60,000 in a
22 single transaction” and inserting “30,000 in a single
23 transaction or in a series of related transactions, or,
24 in the case of other tobacco products an equivalent
25 quantity as determined by regulation,”;

1 (2) by amending the last sentence of subsection
2 (a) to read as follows: “Except as provided in sub-
3 section (c) of this section, nothing contained herein
4 shall authorize the Secretary to require reporting
5 under this section.”;

6 (3) in subsection (b), by striking “60,000 in a
7 single transaction” and inserting “30,000 in a single
8 transaction or in a series of related transactions, or,
9 in the case of other tobacco products an equivalent
10 quantity as determined by regulation,”; and

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

12 “(c)(1) Any person who ships, sells, or distributes to-
13 bacco products for resale in interstate commerce, whereby
14 such tobacco products are shipped into a State taxing the
15 sale or use of such tobacco products or who advertises or
16 offers tobacco products for such sale or transfer and ship-
17 ment shall—

18 “(A) first file with the tobacco tax adminis-
19 trator of the State into which such shipment is made
20 or in which such advertisement or offer is dissemi-
21 nated, a statement setting for the person’s name,
22 and trade name (if any), and the address of the per-
23 son’s principal place of business and of any other
24 place of business; and

1 “(B) not later than the 10th of each calendar
2 month, file with the tobacco tax administrator of the
3 State into which such shipment is made a memo-
4 randum or a copy of the invoice covering each and
5 every shipment of tobacco products made during the
6 previous calendar month into such State; the memo-
7 randum or invoice in each case to include the name
8 and address of the person to whom the shipment
9 was made, the brand, and the quantity thereof.

10 “(2) The fact that any person ships or delivers for
11 shipment any tobacco products shall, if such shipment is
12 into a State in which such person has filed a statement
13 with the tobacco tax administrator under paragraph
14 (1)(A) of this subsection, be presumptive evidence that
15 such tobacco products were sold, shipped, or distributed
16 for resale by such person.

17 “(3) For purposes of this subsection—

18 “(A) the term ‘use’ in addition to its ordinary
19 meaning, means consumption, storage, handling, or
20 disposal of tobacco products; and

21 “(B) the term ‘tobacco tax administrator’
22 means the State official authorized to administer to-
23 bacco tax laws of the State.”.

24 (d) PENALTIES.—Section 2344 of title 18, United
25 States Code, is amended—

1 (1) in subsection (b), by inserting “or (c)” after
2 “section 2342(b)” and by inserting “or (c)” after
3 section 2343(a)”; and

4 (2) by striking subsection (c) and inserting the
5 following new subsection:

6 “(c) Any contraband cigarettes or contraband tobacco
7 products involved in any violation of the provisions of this
8 chapter shall be subject to seizure and forfeiture, and all
9 provisions of section 9703(o) of title 31, United States
10 Code, shall, so far as applicable, extend to seizures and
11 forfeitures under the provisions of this chapter.”

12 (e) REPEAL.—The Act of October 19, 1949, entitled
13 “An Act to assist States in collecting sales and use taxes
14 on cigarettes”, 63 Stat. 884 (chapter 10A of title 15,
15 U.S.C.), is hereby repealed.

○