

108TH CONGRESS  
1ST SESSION

# H. R. 2824

To revise and reform the Act commonly called the Jenkins Act, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 23, 2003

Mr. GREEN of Wisconsin (for himself, Mr. MEEHAN, Ms. PRYCE of Ohio, Mr. FEENEY, Mr. PENCE, Ms. LOFGREN, Ms. BALDWIN, Mr. WEINER, Mr. ISAKSON, Mr. CONYERS, Mr. SHUSTER, Mr. CARTER, and Mrs. BLACKBURN) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To revise and reform the Act commonly called the Jenkins Act, 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.**

4       This Act may be cited as the “Internet Tobacco Sales  
5       Enforcement Act”.

6       **SEC. 2. REVISION OF ACT OF OCTOBER 19, 1949.**

7       The Act of October 19, 1949, entitled “An Act to  
8       assist States in collecting sales and use taxes on ciga-  
9       rettes” (15 U.S.C. 375 et seq.) is amended by striking

1 “That for the purposes of this Act” and all that follows  
2 through the end of the Act and inserting the following:

3 **“SECTION 1. SHORT TITLE.**

4 “This Act may be cited as the ‘Jenkins Act’.

5 **“SEC. 2. INTERSTATE SALES OF CIGARETTES AND SMOKE-**  
6 **LESS TOBACCO.**

7 “(a) COMPLIANCE WITH LAWS.—

8 “(1) Each person who engages in an interstate  
9 sale of cigarettes or smokeless tobacco or in an  
10 interstate distribution of cigarettes or smokeless to-  
11 bacco shall comply with all the excise, sales, and use  
12 tax laws applicable to the sale or other transfer of  
13 cigarettes or smokeless tobacco in the State and  
14 place in which the cigarettes or smokeless tobacco  
15 are delivered as though the person were physically  
16 located in that State or place.

17 “(2) Unless the law of the State and place in  
18 which cigarettes or smokeless tobacco are delivered  
19 pursuant to an interstate sale requires otherwise for  
20 the payment of an excise tax imposed on that sale,  
21 the cigarettes or smokeless tobacco may not be deliv-  
22 ered to the buyer unless in advance of the delivery—

23 “(A) the excise tax has been paid; and

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

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

3           “(3)(A) Each State may compile a list of inter-  
4           state sellers of cigarettes or smokeless tobacco who  
5           are in compliance with this Act with respect to that  
6           State. If a State posts a list pursuant to this sub-  
7           section, no person may knowingly make an interstate  
8           distribution of cigarettes or smokeless tobacco into  
9           that State other than to a person engaged in the  
10          business of manufacturing, distributing or selling  
11          cigarettes or smokeless tobacco unless the person  
12          initiating or ordering the delivery is on the list at  
13          the time of delivery.

14          “(B) Each State may also compile a list of  
15          interstate sellers of cigarettes or smokeless tobacco  
16          who are not in compliance with this Act with respect  
17          to that State. If a State posts a list pursuant to this  
18          subsection, no person make an interstate distribu-  
19          tion of any item into that State for a person on the  
20          list unless—

21                  “(i) the person in good faith determines  
22                  that the item does not include cigarettes or  
23                  smokeless tobacco; or

1           “(ii) the delivery is made to a person en-  
2           gaged in the business of manufacturing, distrib-  
3           uting or selling cigarettes or smokeless tobacco.

4           “(b) RECORDKEEPING AND REPORTING.—Each per-  
5           son who engages in an interstate sale of cigarettes or  
6           smokeless tobacco, or who advertises, or offers to engage  
7           in, such a sale, shall—

8           “(1) first file with the tobacco tax adminis-  
9           trator of the State and place in which the cigarettes  
10          or smokeless tobacco are to be offered, advertised, or  
11          delivered, a statement setting forth the person’s  
12          name and trade name (if any), and the address of  
13          that person’s principal place of business and any  
14          other place of business, as well as telephone numbers  
15          for each place of business, a principal electronic mail  
16          address, any website addresses, and the name, ad-  
17          dress and telephone number of an agent authorized  
18          to accept service on behalf of that person;

19          “(2) not later than the 10th day of each cal-  
20          endar month, file with that tobacco tax adminis-  
21          trator a memorandum or copy of the invoice cov-  
22          ering each and every interstate sale of cigarettes or  
23          smokeless tobacco by the filer into that State or  
24          place, and each interstate distribution of cigarettes  
25          or smokeless tobacco pursuant to that sale, during

1 the previous calendar month, and such memorandum  
2 or invoice shall include the name and address of the  
3 person to whom the cigarettes or smokeless tobacco  
4 are delivered, the brand, and the type, the quantity  
5 delivered, and the name, address, and phone number  
6 of the person delivering; and

7 “(3) maintain records, including the informa-  
8 tion specified in paragraph (2), for not less than 5  
9 years after the date of an interstate sale of ciga-  
10 rettes or smokeless tobacco and of each interstate  
11 distribution of cigarettes or smokeless tobacco pur-  
12 suant to that sale, and make those records available  
13 for inspection upon the lawful demand of the Attor-  
14 ney General of the United States, an Attorney Gen-  
15 eral of a State, the Commissioner of Internal Rev-  
16 enue, or the chief tax collection official of a State.

17 “(c) DEEMING RULE.—For the purposes of this sec-  
18 tion—

19 “(1) an interstate sale or delivery of cigarettes  
20 or smokeless tobacco shall be deemed to have oc-  
21 curred in the State and place where the buyer ob-  
22 tains personal possession of the cigarettes or smoke-  
23 less tobacco; and

1           “(2) a delivery pursuant to an interstate sale is  
2       deemed to have been initiated or ordered by the sell-  
3       er.

4   **“SEC. 3. CIVIL ACTION.**

5       “(a) IN GENERAL.—In addition to any other rem-  
6       edies available under other Federal or State or local law,  
7       the Attorney General of a State may in a civil action ob-  
8       tain any appropriate relief, including money damages  
9       where appropriate, against—

10           “(1) any person who violates, or is about to en-  
11       gage in a violation of, section 2; or

12           “(2) any person who knowingly assists or par-  
13       ticipates, or knowingly is about to engage, in such  
14       a violation.

15       “(b) NOTICE.—It is the sense of Congress that, if  
16       the Attorney General of a State commences a civil action  
17       under subsection (a), that Attorney General should inform  
18       the Attorney General of the United States, and that the  
19       Attorney General of the United States should make infor-  
20       mation about the case publicly available, through posting  
21       the information on the Internet and through other means.

22   **“SEC. 4. CIVIL PENALTY.**

23       “Whoever violates section 2 is subject to a civil pen-  
24       alty not to exceed \$5,000 in the case of a first violation,  
25       and not to exceed \$10,000 in any other case.

1 **“SEC. 5. CRIMINAL PENALTY.**

2 “Whoever violates section 2 shall be fined under title  
3 18, United States Code, or imprisoned not more than 6  
4 months, or both.

5 **“SEC. 6. NONPREEMPTION.**

6 “This Act does not limit the remedies provided by  
7 State or Federal law with respect to alleged violations of  
8 State or Federal law relating to a sale or distribution of  
9 cigarettes or smokeless tobacco, in connection with an  
10 interstate sale or distribution of cigarettes or smokeless  
11 tobacco.

12 **“SEC. 7. DEFINITIONS.**

13 “As used in this Act—

14 “(1) the term ‘Attorney General’, with respect  
15 to a State, means the chief law enforcement officer  
16 of that State, or the designee of that officer;

17 “(2) the term ‘cigarette’ means—

18 “(A) any roll of tobacco wrapped in paper  
19 or in any substance not containing tobacco  
20 which is to be burned;

21 “(B) any roll of tobacco wrapped in any  
22 substance containing tobacco that, because of  
23 its appearance, the type of tobacco used in the  
24 filler, or its packaging or labeling is likely to be  
25 offered to, or purchased by consumers as a cig-  
26 arette described in subparagraph (A);

1           “(C) any roll of tobacco wrapped in any  
2           substance that because of its appearance, the  
3           type of tobacco used in the filler, or its pack-  
4           aging or labeling is likely to be offered to, or  
5           purchased by consumers as a cigarette; or

6           “(D) loose rolling tobacco that, because of  
7           its appearance, type, packaging, or labeling, is  
8           likely to be offered to, or purchased by, con-  
9           sumers as tobacco for making cigarettes;

10          “(3) the term ‘smokeless tobacco’ has the  
11          meaning given that term in section 9 of the Com-  
12          prehensive Smokeless Tobacco Health Education Act  
13          of 1986 (15 U.S.C. 4408);

14          “(4) the term ‘interstate sale of cigarettes or  
15          smokeless tobacco’ means any sale of cigarettes or  
16          smokeless tobacco in interstate or foreign commerce  
17          to a person, other than a person licensed as a dis-  
18          tributor in the State where the cigarettes or smoke-  
19          less tobacco is delivered, in which the buyer is either  
20          not in the seller’s physical presence at the time the  
21          request for purchase is made or not in the seller’s  
22          physical presence at the time the buyer obtains per-  
23          sonal possession of the cigarettes or smokeless to-  
24          bacco;



1           “(5) the term ‘interstate or foreign commerce’  
2           means commerce between a State and any place out-  
3           side that State, commerce between a State and any  
4           Indian lands in that State, or commerce between  
5           points in the same State but through any place out-  
6           side that State;

7           “(6) the term ‘interstate distribution of ciga-  
8           rettes or smokeless tobacco’ means a delivery or  
9           other distribution of cigarettes or smokeless tobacco  
10          pursuant to an interstate sale of cigarettes or  
11          smokeless tobacco;

12          “(7) the term ‘State’ means a State of the  
13          United States, the District of Columbia, the Com-  
14          monwealth of Puerto Rico, or any territory or pos-  
15          session of the United States;

16          “(8) the term ‘person’ means an individual, a  
17          corporation, company, association, firm, partnership,  
18          society, joint stock company, an Indian tribal organi-  
19          zation, or an Indian tribal government;

20          “(9) the term ‘tribal organization’ has the  
21          meaning given that term in section 4 of the Indian  
22          Self-Determination and Education Assistance Act  
23          (25 U.S.C. 450b); and

24          “(10) the term ‘Indian lands’ has the meaning  
25          given that term in section 3 of the Archaeological

1       Resources Protection Act of 1979 (16 U.S.C.  
2       470bb).”.

3   **SEC. 3. EFFECTIVE DATE.**

4       The amendment made by this Act shall take effect  
5   on the first day of the first month beginning on or after  
6   60 days after the date of the enactment of this Act.

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