

108TH CONGRESS
1ST SESSION

H. R. 3047

To prevent the sale of tobacco products to minors by means of electronic or mail-order sales, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 9, 2003

Mr. MEEHAN introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To prevent the sale of tobacco products to minors by means of electronic or mail-order sales, 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 “Tobacco Free Internet
5 for Kids Act of 2003”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

8 (1) The term “attorney general”, with respect
9 to a State, means the attorney general or other chief

1 law enforcement officer of the State, or the designee
2 of that officer.

3 (2) The term “consumer” means an individual
4 who purchases or arranges or attempts to purchase
5 a tobacco product either for the consumer or on be-
6 half of some other person.

7 (3) The term “delivery sale” means any sale of
8 tobacco products for personal consumption in or af-
9 fecting interstate commerce to a consumer if—

10 (A) the consumer submits the order for
11 such sale by means of a telephone or other
12 method 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 tobacco product is not delivered di-
18 rectly to a consumer by the seller at the time
19 and place of purchase; or

20 (C) the tobacco product is delivered by use
21 of a common carrier, private delivery service, or
22 the mails, or the seller is not in the physical
23 presence of the buyer when the buyer obtains
24 personal possession of the delivered cigarettes
25 or smokeless tobacco; and

1 (D) notwithstanding the foregoing, any de-
2 livery of tobacco products to a home or residen-
3 tial address by a person in the business of man-
4 ufacturing, distributing, or selling tobacco prod-
5 ucts, whether any fee is charged for the tobacco
6 products or not, shall be considered a delivery
7 sale.

8 (4) The term “delivery seller” means any per-
9 son making a delivery sale.

10 (5) The term “interstate commerce” means
11 commerce between a State and any place outside the
12 State, commerce between a State and any Indian
13 lands in the State, or commerce between points in
14 the same State but through any place outside the
15 State or through any Indian lands.

16 (6) The term “minor” means an individual who
17 has not attained the age of 18 years or, if older, the
18 minimum age for the purchase of a tobacco product
19 under applicable Federal, State, local, or Indian
20 tribal law.

21 (7) The term “person” means any corporation,
22 company, partnership, joint stock companies, foun-
23 dation, association, organization, individual, State or
24 local government, Indian Tribal government, govern-
25 mental organization, or any group thereof.

1 (8) The term “State” includes the District of
2 Columbia, the Commonwealth of Puerto Rico, and
3 any other commonwealth, territory, or possession of
4 the United States.

5 (9) The term “tobacco product” has the mean-
6 ing given that term in section 5702(c) of the Inter-
7 nal Revenue Code of 1986, and also includes any
8 other product that contains tobacco and is meant for
9 human consumption.

10 **SEC. 3. DELIVERY SALE REQUIREMENTS.**

11 (a) **NO SALES TO MINORS.**—No delivery seller shall
12 sell or deliver a tobacco product to a minor or cause any
13 tobacco product to be sold or delivered to a minor.

14 (b) **NO UNREQUESTED DELIVERIES OF TOBACCO**
15 **PRODUCTS.**—No person in the business of manufacturing,
16 distributing, or selling tobacco products shall deliver any
17 tobacco products to any home or residence or to any con-
18 sumer for personal consumption, unless the person receiv-
19 ing the tobacco products has specifically requested the de-
20 livery of the tobacco products and paid for them.

21 (c) **STATE REGISTRATION.**—A delivery seller shall
22 not make any delivery sale or related delivery to a con-
23 sumer physically located in a State unless the delivery sell-
24 er has already registered with that State as a delivery sell-
25 er of tobacco products. Registration with the State pursu-

1 ant to section 2 of the Act of October 19, 1949, commonly
2 referred to as the “Jenkins Act” (15 U.S.C. 376) shall
3 satisfy the registration requirement of this subsection.

4 (d) VERIFICATION OF CONSUMER AGE, IDENTITY,
5 AND ADDRESS AT PURCHASE.—No person shall accept a
6 delivery sale order from a person or make a delivery sale
7 or initiate any related tobacco product delivery to any per-
8 son without first verifying the consumer’s age, identity,
9 and residential address by one of the following means—

10 (1) obtaining from the consumer the con-
11 sumer’s name, address, birth date and residential
12 address and verifying that information through the
13 use of a commercially available database or aggre-
14 gate of databases consisting of age and identity in-
15 formation from government-issued identification sup-
16 plemented by age and identity information from
17 other government or validated commercial sources
18 that is regularly used by government and businesses
19 for the purpose of identity verification and authen-
20 tication. But no database or databases being used
21 for such age and identity verification shall be in the
22 possession or under the control of the delivery seller
23 or be subject to any changes or supplementation by
24 the delivery seller; and

1 (2) obtaining a statement signed by the con-
2 sumer (which may be a statement provided or ob-
3 tained and signed electronically) providing certifi-
4 cation from the consumer that—

5 (A) all of the information provided by the
6 consumer, including the consumer’s name, ad-
7 dress, and birth date, are correct;

8 (B) the consumer understands that forging
9 another person’s signature is illegal; and

10 (C) the consumer understands that tobacco
11 product sales to persons under the applicable
12 legal minimum age (which must be specified,
13 numerically, in the statement) are illegal and
14 that tobacco product purchases by a person
15 under the legal minimum age or by any person
16 for the subsequent delivery or sale to persons
17 under the legal minimum age may subject the
18 person to monetary fines or imprisonment, or
19 both, under applicable state law; or

20 (3) using any other age and identity verification
21 procedure established by the United States Attorney
22 General that employs new technologies to provide
23 even more stringent and accurate identity and age
24 verification than the procedure in subsection (1).

1 (e) CONFIDENTIALITY OF CONSUMER INFORMA-
2 TION.—A delivery seller shall not use any of the age and
3 identity information they obtain from a prospective or ac-
4 tual consumer, including any information that could be
5 used to contact the consumer, for any other purposes
6 other than to complete the delivery sale or to comply with
7 this Act or other laws unless the consumer affirmatively
8 provides authorization for such specified other use and the
9 delivery seller regularly provides the consumer with clear
10 and conspicuous opportunities to revoke that authoriza-
11 tion. This subsection shall not be construed to limit, re-
12 strict, or reduce any other laws protecting the disclosure
13 or unauthorized use of personal or consumer information.

14 (f) PAYMENT METHODS.—A delivery seller shall ac-
15 cept payment from a consumer only by debit card, charge
16 card, or credit card issued to the consumer identified
17 under subsection (d) with the same residential address,
18 and the delivery seller shall ensure that any related re-
19 ceipt, invoice, or summary of a payment provided by a
20 debit card, credit card, or charge card company to the con-
21 sumer clearly indicates (by including the use of the word
22 “tobacco” or “cigarette”, and by other means) that the
23 delivery seller is a seller of tobacco products or that the
24 transaction is a sale of a tobacco product.

1 (g) VERIFICATION OF ORDER.—At least five business
2 days prior to delivering any tobacco product to a con-
3 sumer, a delivery seller shall send to the name and address
4 provided by the consumer pursuant to subsection (d) a let-
5 ter that describes the order and asks that the recipient
6 reply immediately (to a specified toll-free phone number
7 or email address) if the recipient did not place the order
8 or otherwise desires to cancel it.

9 (h) DELIVERY ADDRESSES.—Any tobacco product
10 sold through or delivered pursuant to a delivery sale shall
11 not be delivered to any address outside the United States,
12 and shall be delivered only to a consumer’s residential ad-
13 dress unless the consumer is a verified member of the U.S.
14 Armed Forces, as evidenced by a document issued by the
15 U.S. Department of Defense that includes a photograph
16 of the consumer, in which case the delivery may be made
17 to the consumer at the address for the consumer in the
18 Department of Defense identification document.

19 (i) DELIVERY REQUIREMENTS.—

20 (1) A delivery seller shall use a method of deliv-
21 ery to the consumer that ensures that the person
22 physically making the delivery delivers the tobacco
23 product only after the consumer or another adult re-
24 siding at the consumer’s address who has been des-
25 igned at the time of purchase by the consumer as

1 an alternative recipient and whose age and identity
2 have been verified by the delivery seller pursuant to
3 the process described in subsection (d)—

4 (A) signs to accept delivery of the ciga-
5 rettes or smokeless tobacco;

6 (B) provides proof of identity, age, and
7 residence, in the form of a valid, government-
8 issued identification bearing a photograph of
9 the person; and

10 (C) if not the consumer, signs a statement
11 confirming that he or she knows the consumer
12 and that the consumer is not under the legal
13 minimum purchase age.

14 (2) If the compliance costs would not be pro-
15 hibitively expensive, the Attorney General may re-
16 quire that delivery sellers ensure that the age and
17 identity of any individual accepting delivery of ciga-
18 rettes or smokeless tobacco delivered pursuant to a
19 delivery sale be verified at the point of delivery in
20 accordance with subsection (d).

21 (3) A delivery seller shall ensure that the bill of
22 lading for any tobacco product delivered pursuant to
23 a delivery sale clearly states the above requirements
24 of this subsection and specifies that federal law re-

1 quires compliance with the requirements prior to the
2 completion of any delivery.

3 (4) A delivery seller shall provide to any person
4 making deliveries of a tobacco product on the deliv-
5 ery seller's behalf—

6 (A) notice that the delivery seller is placing
7 (or intends to place) a tobacco product for de-
8 livery by the delivery service as part of a deliv-
9 ery sale;

10 (B) documentation that the delivery seller
11 has registered as an interstate seller of tobacco
12 products with the State in which the physical
13 delivery to the consumer is being made; and

14 (C) for each delivery, the name, age, and
15 birth date of the consumer and any other per-
16 son designated by the consumer as an alternate
17 recipient of the delivery.

18 (j) DELIVERY SERVICE DUTIES.—

19 (1) A common carrier, private delivery service,
20 or any other person shall not knowingly make any
21 delivery of any tobacco product on behalf of a deliv-
22 ery seller that does not fully comply with the re-
23 quirements of subsection (h), and shall not know-
24 ingly deliver any tobacco product to any person
25 under the legal minimum age.

1 (2) No common carrier or other delivery service
2 shall be subject to any liability or penalty under any
3 federal or other laws for choosing as a matter of pol-
4 icy not to deliver to any tobacco products or any
5 particular tobacco products to any homes or resi-
6 dences or not to deliver any delivery sale tobacco
7 products or particular tobacco products in any or all
8 states.

9 (k) MINIMUM AND MAXIMUM SALE AMOUNTS.—

10 (1) No delivery seller shall make any single sale
11 or delivery to a consumer of less than 400 ciga-
12 rettes, 20 single consumer-sized packages of smoke-
13 less tobacco, or 40 cigars; and the Attorney General
14 may set minimum sale amounts for other types of
15 tobacco products.

16 (2) In any 10-day period, no delivery seller shall
17 make any sale or delivery or multiple sales and deliv-
18 eries to any single consumer of in an amount in ex-
19 cess of 2,000 cigarettes, 100 single consumer-sized
20 packages of smokeless tobacco, or 200 cigars; and
21 the Attorney General may set maximum delivery sale
22 amounts for other types of tobacco products.

23 (l) DELIVERY SALE WEBSITES.—A delivery seller
24 shall not offer any tobacco product for sale through an
25 Internet website unless—

1 (1) a person cannot access any website page
2 that offers tobacco products for sale or transacts
3 any tobacco product sale until the delivery seller has
4 first satisfied the requirements of subsection (d) in
5 relation to that person; and

6 (2) any Internet website pages used by the de-
7 livery seller to comply with the requirements of sub-
8 section (d), including any website pages a consumer
9 must access prior to accessing the age and identify
10 verification website pages, are not used for any other
11 purpose than to fulfill the requirements of sub-
12 section (d) or to provide access to the website pages
13 used to comply with those requirements; and consist
14 only of nonmoving black text on a white background,
15 with no graphics or other pictorial depictions.

16 **SEC. 4. PENALTIES.**

17 (a) CIVIL PENALTIES.—

18 (1) Any delivery seller who violates this Act (or
19 any person willfully participating in any such viola-
20 tion, including but not limited to any person who
21 owns, controls, or manages the delivery seller) is
22 subject to a civil penalty not to exceed \$5,000 for a
23 first violation and not to exceed \$10,000 for any sec-
24 ond or additional violation.

1 (2) Any common carrier, private delivery serv-
2 ice, or other person who delivers tobacco products on
3 behalf of a delivery seller (or any person willfully
4 participating in any such violation, including but not
5 limited to any person who owns, controls, or man-
6 ages the person who makes the delivery on behalf of
7 the delivery seller) who knowingly violates this Act
8 is subject to a civil penalty not to exceed \$5,000 for
9 a first violation and not to exceed \$10,000 for any
10 second or additional violation.

11 (3) A civil penalty for a violation of this Act
12 under this subsection is in addition to any criminal
13 penalty under subsection (b) for the violation and in
14 addition to any other injunctive or equitable relief,
15 including money damages, for such violations.

16 (b) **CRIMINAL PENALTIES.**—A delivery seller that
17 knowingly violates this Act (or any person willfully partici-
18 pating in any such violation, including but not limited to
19 any person who owns, controls, or manages the delivery
20 seller) shall be guilty of a felony, fined under subchapter
21 C of chapter 227 of title 18, imprisoned not more than
22 three years, or both.

23 **SEC. 5. ENFORCEMENT.**

24 (a) **DISTRICT COURT JURISDICTION.**—The United
25 States district courts shall have primary jurisdiction to

1 prevent and restrain violations of this Act, provide other
2 appropriate injunctive or equitable relief, including money
3 damages, award civil penalties, and impose criminal pen-
4 alties for such violations.

5 (b) FEDERAL ENFORCEMENT.—The Attorney Gen-
6 eral shall administer and enforce the provisions of this
7 Act.

8 (c) ENFORCEMENT BY STATES AND INDIAN
9 TRIBES.—

10 (1) A State, through its attorney general and
11 an Indian Tribe through its chief law enforcement
12 officer, or designee thereof, may bring a civil action
13 under this Act in the United States district courts
14 to prevent and restrain violations of this Act by any
15 person (or by any person controlling such person) or
16 to obtain any other appropriate relief from any per-
17 son (or from any person controlling such person) for
18 violations of this Act, including civil penalties,
19 money damages, and injunctive or other equitable
20 relief.

21 (2) The remedies available under this sub-
22 section are in addition to any other remedies avail-
23 able under Federal, State, Tribal, or other law.

24 (3) Nothing in this Act shall be construed to
25 prohibit an authorized State official from proceeding

1 in State court, or taking other enforcement actions,
2 on the basis of an alleged violation of State or other
3 law.

4 (4) Nothing in this Act shall be construed to
5 prohibit an authorized Tribal official from pro-
6 ceeding in Tribal court, or taking other enforcement
7 actions, on the basis of an alleged violation of Tribal
8 or other law.

9 (d) ENFORCEMENT BY OTHER PARTIES.—Any per-
10 son who holds a permit under section 5712 of the Internal
11 Revenue Code of 1986, may bring an action in the United
12 States district courts to prevent and restrain violations of
13 this Act by any person (or by any person controlling such
14 person) other than a State government, local government,
15 Indian tribal government, or governmental organization of
16 any such government.

17 (e) COORDINATION OF ENFORCEMENT EFFORTS.—

18 (1) Any person who holds a permit under sec-
19 tion 5712 of the Internal Revenue Code of 1986 who
20 commences a civil action under paragraph this sec-
21 tion shall inform the Attorney General of the United
22 States of the action.

23 (2) It is the sense of Congress that any attor-
24 ney general of a State or chief law enforcement offi-
25 cial of an Indian Tribe who commences a civil action

1 under this section should inform the Attorney Gen-
2 eral of the United States of the action.

3 (3) The Attorney General of the United States
4 shall make available to the public information about
5 all enforcement actions undertaken by the Attorney
6 General or reported to the Attorney General under
7 this section, including the resolution of such actions,
8 by posting such information on the Internet and by
9 other means.

10 **SEC. 6. RELATION TO OTHER LAWS.**

11 (a) MORE STRINGENT LAWS NOT AFFECTED.—
12 Nothing in this Act may be construed to limit or interfere
13 with any other Federal, State, local, or Tribal law that
14 place additional, or more stringent, restrictions or pen-
15 alties on delivery sales or other sales of tobacco products.

16 (b) EFFECT ON COORDINATED LAW ENFORCEMENT
17 EFFORTS.—Nothing in this chapter may be construed to
18 inhibit or otherwise affect any coordinated law enforce-
19 ment effort by one or more States or other jurisdictions,
20 including Indian Tribes, through interstate compact or
21 otherwise, that—

22 (1) provides for the administration of tobacco
23 product laws or laws pertaining to delivery sales or
24 other sales of tobacco products;

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

4 (3) establishes cooperative programs for the ad-
5 ministration of such laws.

6 (c) **BUSINESS ENTITIES NOT SUBJECT TO LIABIL-**
7 **ITY.**—This Act does not create any new Federal require-
8 ments or potential liability of any kind for business enti-
9 ties providing communication technologies (e.g., phone
10 companies or internet service providers), computer soft-
11 ware or related services, or credit or debit card services;
12 nor does this Act limit, amend, or expand any existing
13 Federal requirements or potential liability for any such en-
14 tities, except to the extent that those entities are delivery
15 sellers, persons that deliver tobacco products on behalf of
16 delivery sellers, or otherwise directly engaged in the sale
17 or delivery of tobacco products.

18 **SEC. 7. EFFECTIVE DATE.**

19 This Act shall go into effect 90 days after it is passed
20 into law.

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