

108TH CONGRESS
1ST SESSION

S. 1177

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Prevent All Cigarette
5 Trafficking Act” or “PACT Act”.

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

3 (a) DEFINITIONS.—Section 1 of the Act of October
 4 19, 1949 (15 U.S.C. 375; commonly referred to as the
 5 “Jenkins Act”), is amended—

6 (1) by striking paragraphs (1), (2), and (3) and
 7 inserting the following new paragraphs:

8 “(1) The term ‘attorney general’, with respect
 9 to a State, means the attorney general or other chief
 10 law enforcement officer of the State, or the designee
 11 of that officer.

12 “(2) The term ‘cigarette’ means—

13 “(A) any roll of tobacco wrapped in paper
 14 or in any substance not containing tobacco
 15 which is to be heated or burned;

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

22 “(C) any roll of tobacco wrapped in any
 23 substance that because of its appearance, the
 24 type of tobacco used in the filler, or its pack-
 25 aging or labeling, is likely to be offered to, or
 26 purchased by, consumers as a cigarette; or

1 “(D) loose rolling tobacco that, because of
 2 its appearance, type, packaging, or labeling, is
 3 likely to be offered to, or purchased by, con-
 4 sumers as tobacco for making cigarettes.

5 “(3) The term ‘smokeless tobacco’ means any
 6 finely cut, ground, powdered, or leaf tobacco that is
 7 intended to be placed in the oral or nasal cavity or
 8 otherwise consumed without being combusted.”;

9 (2) in paragraph (5)—

10 (A) by inserting “, local, or Tribal” after
 11 “the State”;

12 (B) by striking “administer the cigarette
 13 tax law” and inserting “collect the tobacco tax
 14 or administer the tax law”; and

15 (C) by inserting “, locality, or Tribe, re-
 16 spectively” after “a State”.

17 (3) by striking paragraph (6) and inserting the
 18 following new paragraph (6):

19 “(6) The term ‘delivery sale’ means any sale of
 20 cigarettes or smokeless tobacco in interstate com-
 21 merce to a consumer if—

22 “(A) the consumer submits the order for
 23 such sale by means of a telephone or other
 24 method of voice transmission, the mails, or the
 25 Internet or other online service, or the seller is

1 otherwise not in the physical presence of the
2 buyer when the request for purchase or order is
3 made; or

4 “(B) the cigarettes or smokeless tobacco
5 are delivered by use of a common carrier, pri-
6 vate delivery service, or the mails, or the seller
7 is not in the physical presence of the buyer
8 when the buyer obtains personal possession of
9 the delivered cigarettes or smokeless tobacco.”;
10 and

11 (4) by adding at the end the following new
12 paragraphs:

13 “(8) The term ‘delivery seller’ means a person
14 who makes a delivery sale.

15 “(9) The term ‘common carrier’ means any per-
16 son (other than a local messenger service or the
17 United States Postal Service (as defined in section
18 102 of title 39, United States Code)) that holds
19 itself out to the general public as a provider for hire
20 of the transportation by water, land, or air of mer-
21 chandise, whether or not the person actually oper-
22 ates the vessel, vehicle, or aircraft by which the
23 transportation is provided, between a port or place
24 and a port or place in the United States.

1 “(10) The term ‘interstate commerce’ means
 2 commerce between a State and any place outside the
 3 State, commerce between a State and any Indian
 4 lands in the State, or commerce between points in
 5 the same State but through any place outside the
 6 State or through any Indian lands.

7 “(11) The term ‘person’ means an individual,
 8 corporation, company, association, firm, partnership,
 9 society, State government, local government, Indian
 10 tribal government, governmental organization of
 11 such government, or joint stock company.

12 “(12) 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 “(13) The term ‘Indian Country’ has the mean-
 17 ing given that term in section 1151 of title 18,
 18 United States Code, except that within the State of
 19 Alaska that term applies only to the Metlakatla In-
 20 dian Community, Annette Island Reserve.

21 “(14) The term ‘Indian Tribe’, ‘Tribe’, or
 22 ‘Tribal’ refers to an Indian tribe as defined in the
 23 Indian Self-Determination and Education Assistance
 24 Act (25 U.S.C. 450b(e)) or as listed pursuant to sec-
 25 tion 104 of the Federally Recognized Indian Tribe

1 List Act of 1994 (Public Law 103–454; 25 U.S.C.
2 479a–1).

3 “(15) The term ‘tobacco tax administrator’, in
4 the case of a State, local, or Tribal government,
5 means the official of the government duly authorized
6 to collect the tobacco tax or administer the tax law
7 of the government.”.

8 (b) REPORTS TO STATE TOBACCO TAX ADMINISTRA-
9 TIONS.—Section 2 of that Act (15 U.S.C. 376) is
10 amended—

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

14 (2) in subsection (a)—

15 (A) in the matter preceding paragraph

16 (1)—

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

19 (ii) by inserting “, locality, or Indian
20 Country of an Indian Tribe” after “a
21 State”; and

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

25 (B) in paragraph (1)—

1 (i) by striking “administrator of the
2 State” and inserting “administrators of
3 the State and place”; and

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

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

20 (D) by adding at the end the following new
21 paragraph:

22 “(3) with respect to each memorandum or in-
23 voice filed with a State under paragraph (2), also
24 file copies of such memorandum or invoice with the
25 tobacco tax administrators and chief law enforce-

1 ment officers of the local governments and Indian
 2 Tribes operating within the borders of the State that
 3 apply their own local or Tribal taxes on cigarettes or
 4 smokeless tobacco.”; and

5 (3) in subsection (b)—

6 (A) by striking “(1)”; and

7 (B) by striking “, and (2)” and all that
 8 follows and inserting a period.

9 (c) REQUIREMENTS FOR DELIVERY SALES.—That
 10 Act is further amended by inserting after section 2 the
 11 following new section:

12 “SEC. 2A. (a) With respect to delivery sales into a
 13 specific State and place, each delivery seller shall comply
 14 with—

15 “(1) the shipping requirements set forth in sub-
 16 section (b);

17 “(2) the recordkeeping requirements set forth
 18 in subsection (c);

19 “(3) all State, local, Tribal, and other laws gen-
 20 erally applicable to sales of cigarettes or smokeless
 21 tobacco as if such delivery sales occurred entirely
 22 within the specific State and place, including laws
 23 imposing—

24 “(A) excise taxes;

1 “(B) licensing and tax-stamping require-
2 ments; and

3 “(C) other payment obligations or legal re-
4 quirements relating to the sale, distribution, or
5 delivery of cigarettes or smokeless tobacco; and

6 “(4) the tax collection requirements set forth in
7 subsection (d).

8 “(b)(1) Each delivery seller shall include on the bill
9 of lading included with the shipping package containing
10 cigarettes or smokeless tobacco sold pursuant to such
11 order a clear and conspicuous statement providing as fol-
12 lows: ‘CIGARETTES/SMOKELESS TOBACCO: FED-
13 ERAL LAW REQUIRES THE PAYMENT OF ALL AP-
14 PLICABLE EXCISE TAXES, AND COMPLIANCE
15 WITH APPLICABLE LICENSING AND TAX-STAMP-
16 ING OBLIGATIONS’.

17 “(2) Any shipping package described in paragraph
18 (1) that is not labeled in accordance with that paragraph
19 shall be treated as non-deliverable matter by a common
20 carrier or the United States Postal Service if the common
21 carrier or the United States Postal Service, as the case
22 may be, knows or should know the contents of the pack-
23 age.

24 “(c)(1) Each delivery seller shall keep a record of all
25 delivery sales so made, including all of the information de-

1 scribed in section 2(a)(2), organized by the State, and
2 within such State, by the city or town and by zip code,
3 into which such delivery sales are so made.

4 “(2) Records of delivery sales shall be kept under
5 paragraph (1) in the year in which made and for the next
6 four years.

7 “(3) Records kept under paragraph (1) shall be made
8 available to tobacco tax administrators of the States, to
9 local governments and Indian Tribes that apply their own
10 local or Tribal taxes on cigarettes or smokeless tobacco,
11 to the attorneys general of the States, to the chief law
12 enforcement officers of such local governments and Indian
13 Tribes, and to the Attorney General of the United States
14 in order to ensure the compliance of persons making deliv-
15 ery sales with the requirements of this Act.

16 “(d)(1) Except as provided in paragraph (2), no ciga-
17 rettes or smokeless tobacco may be delivered pursuant to
18 a delivery sale in interstate commerce unless in advance
19 of the delivery—

20 “(A) any cigarette or smokeless tobacco excise
21 tax that is imposed by the State in which the ciga-
22 rettes or smokeless tobacco are to be delivered has
23 been paid to the State;

24 “(B) any cigarette or smokeless tobacco excise
25 tax that is imposed by the local government of the

1 place in which the cigarette or smokeless tobacco are
2 to be delivered has been paid to the local govern-
3 ment; and

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

7 “(2) Paragraph (1) does not apply to a delivery sale
8 of smokeless tobacco if the law of the State or local gov-
9 ernment of the place where the smokeless tobacco is to
10 be delivered requires or otherwise provides that delivery
11 sellers collect the excise tax from the consumer and remit
12 the excise tax to the State or local government, and the
13 delivery seller complies with the requirement.

14 “(e)(1) Each State, and each local government or In-
15 dian Tribal government that levies a tax subject to sub-
16 section (a)(3), may compile a list of delivery sellers who
17 are in compliance with this Act with respect to such State,
18 locality, or Indian Tribe. If a State, local government, or
19 Indian Tribe posts a list pursuant to this subsection that
20 specifically refers to this subsection, no common carrier
21 or other person may knowingly deliver cigarettes or
22 smokeless tobacco to consumers in such State or locality
23 or in the Indian Country of such Indian Tribe unless the
24 delivery seller is on the list at the time of delivery.

1 “(2)(A) Each State, and each local government or In-
2 dian Tribal government that levies a tax subject to sub-
3 section (a)(3), may compile a list of delivery sellers who
4 are not in compliance with this Act with respect to such
5 State, locality, or Indian Tribe.

6 “(B) A State, locality, or Indian Tribal government
7 may provide such a list to a common carrier, the United
8 States Postal Service, or other person. Such a list shall
9 be confidential, and a common carrier, the United States
10 Postal Service, or other person that receives such a list
11 shall maintain the confidentiality of such list.

12 “(C) If a State, local government, or Indian Tribal
13 government provides such a list pursuant to this sub-
14 section that specifically refers to this subsection, no com-
15 mon carrier, the United States Postal Service, or other
16 person may knowingly deliver any item to a consumer in
17 such State or locality or in the Indian Country of such
18 Indian Tribe for a delivery seller on such list unless the
19 common carrier, the United States Postal Service, or per-
20 son in good faith determines that the item does not include
21 cigarettes or smokeless tobacco.

22 “(f) For purposes of this Act, a delivery sale shall
23 be deemed to have occurred in the State and place where
24 the buyer obtains personal possession of the cigarettes or
25 smokeless tobacco, and a delivery pursuant to a delivery

1 sale is deemed to have been initiated or ordered by the
2 delivery seller.”.

3 (d) PENALTIES.—Section 3 of that Act (15 U.S.C.
4 377) is amended—

5 (1) by inserting “(a)” before “Whoever”;

6 (2) in subsection (a), as so designated—

7 (A) by inserting “(except for a State, local,
8 or Tribal government)” after “this Act”; and

9 (B) by striking “shall be guilty of a mis-
10 demeanor and shall be fined not more than
11 \$1,000, or imprisoned not more than 6
12 months” and inserting “shall be guilty of a fel-
13 ony, fined under subchapter C of chapter 227
14 of title 18, United States Code, imprisoned not
15 more than three years, or both”; and

16 (3) by adding at the end the following new sub-
17 section:

18 “(b)(1) Whoever violates any provision of this Act
19 shall be subject to a civil penalty in an amount not to
20 exceed the greater of—

21 “(A) \$5,000 in the case of the first violation, or
22 \$10,000 for any other violation; or

23 “(B) for any violation, 2 percent of the gross
24 sales of cigarettes or smokeless tobacco of such per-

1 son during the one-year period ending on the date
2 of the violation.

3 “(2) A civil penalty under paragraph (1) for a viola-
4 tion of this Act is in addition to any criminal penalty
5 under subsection (a) for the violation.”.

6 (e) ENFORCEMENT.—Section 4 of that Act (15
7 U.S.C. 378) is amended—

8 (1) by inserting “(a)” before “The United
9 States district courts”;

10 (2) in subsection (a), as so designated, by in-
11 serting before the period the following: “, and to
12 provide other appropriate injunctive or equitable re-
13 lief, including money damages, for such violations”;
14 and

15 (3) by adding at the end the following new sub-
16 sections:

17 “(b) The Attorney General of the United States shall
18 administer and enforce the provisions of this Act.

19 “(c)(1)(A) A State, through its attorney general (or
20 a designee thereof), or a local government or Indian Tribe
21 that levies a tax subject to section 2A(a)(3), through its
22 chief law enforcement officer (or a designee thereof), may
23 bring an action in the United States district courts to pre-
24 vent and restrain violations of this Act by any person (or
25 by any person controlling such person) or to obtain any

1 other appropriate relief from any person (or from any per-
2 son controlling such person) for violations of this Act, in-
3 cluding civil penalties, money damages, and injunctive or
4 other equitable relief.

5 “(B) Nothing in this Act shall be deemed to abrogate
6 or constitute a waiver of any sovereign immunity of a
7 State or local government or Indian Tribe against any
8 unconsented lawsuit under this Act, or otherwise to re-
9 strict, expand, or modify any sovereign immunity of a
10 State or local government or Indian Tribe.

11 “(2) A State, through its attorney general, or a local
12 government or Indian Tribe that levies a tax subject to
13 section 2A(a)(3), through its chief law enforcement officer
14 (or a designee thereof), may provide evidence of a violation
15 of this Act by any person not subject to State, local, or
16 Tribal government enforcement actions for violations of
17 this Act to the Attorney General of the United States or
18 a United State Attorney, who shall take appropriate ac-
19 tions to enforce the provisions of this Act.

20 “(3)(A) Notwithstanding any other provision of law
21 and subject to subparagraph (B), an amount equal to 50
22 percent of any criminal and civil penalties collected by the
23 United States Government in enforcing the provisions of
24 this Act shall be available to the Department of Justice

1 for purposes of enforcing the provisions of this Act and
2 other laws relating to contraband tobacco products.

3 “(B) Of the amount available to the Department
4 under subparagraph (A), not less than 50 percent shall
5 be made available only to the agencies and offices within
6 the Department that were responsible for the enforcement
7 actions in which the penalties concerned were imposed.

8 “(4) The remedies available under this subsection are
9 in addition to any other remedies available under Federal,
10 State, local, Tribal, or other law.

11 “(5) Nothing in this Act shall be construed to ex-
12 pand, restrict, or otherwise modify any right of an author-
13 ized State official to proceed in State court, or take other
14 enforcement actions, on the basis of an alleged violation
15 of State or other law.

16 “(6) Nothing in this Act shall be construed to ex-
17 pand, restrict, or otherwise modify any right of an author-
18 ized Indian Tribal government official to proceed in Tribal
19 court, or take other enforcement actions, on the basis of
20 an alleged violation of Tribal law.

21 “(7) Nothing in this Act shall be construed to ex-
22 pand, restrict, or otherwise modify any right of an author-
23 ized local government official to proceed in State court,
24 or take other enforcement actions, on the basis of an al-
25 leged violation of local or other law.

1 “(d) Any person who holds a permit under section
2 5712 of the Internal Revenue Code of 1986 may bring
3 an action in the United States district courts to prevent
4 and restrain violations of this Act by any person (or by
5 any person controlling such person) other than a State,
6 local, or Tribal government.

7 “(e)(1) Any person who commences a civil action
8 under subsection (d) shall inform the Attorney General of
9 the United States of the action.

10 “(2) It is the sense of Congress that any attorney
11 general of a State, or chief law enforcement officer of a
12 locality or Tribe, who commences a civil action under this
13 section should inform the Attorney General of the United
14 States of the action.

15 “(f)(1) The Attorney General of the United States
16 shall make available to the public, by posting such infor-
17 mation on the Internet and by other means, information
18 about all enforcement actions undertaken by the Attorney
19 General or United States Attorneys, or reported to the At-
20 torney General, under this section, including information
21 on the resolution of such actions and, in particular, infor-
22 mation on how the Attorney General and the United
23 States Attorney have responded to referrals of evidence
24 of violations pursuant to subsection (b)(2).

1 “(2) The Attorney General shall submit to Congress
 2 each year a report containing the information described
 3 in paragraph (1).”.

4 **SEC. 3. TREATMENT OF CIGARETTES AND SMOKELESS TO-**
 5 **BACCO AS NONMAILABLE MATTER.**

6 Section 1716 of title 18, United States Code, is
 7 amended—

8 (1) by redesignating subsections (j) and (k) as
 9 subsections (k) and (l), respectively; and

10 (2) by inserting after subsection (i) the fol-
 11 lowing new subsection (j):

12 “(j)(1) Except as provided in paragraph (2), the
 13 transmission in the mails of any tobacco product, includ-
 14 ing cigarettes (as that term is defined in section 1(2) of
 15 the Act of October 19, 1949 (15 U.S.C. 375; commonly
 16 referred to as the ‘Jenkins Act’)) and smokeless tobacco
 17 (as that term is defined in section 1(3) of that Act), is
 18 prohibited, and tobacco products are nonmailable and
 19 shall not be deposited in or carried through the mails.

20 “(2) Paragraph (1) shall apply only to States that
 21 are contiguous with at least one other State of the United
 22 States.”.

1 **SEC. 4. PENAL PROVISIONS REGARDING TRAFFICKING IN**
 2 **CONTRABAND CIGARETTES OR SMOKELESS**
 3 **TOBACCO.**

4 (a) THRESHOLD QUANTITY FOR TREATMENT AS
 5 CONTRABAND CIGARETTES.—(1) Section 2341(2) of title
 6 18, United States Code, is amended by striking “60,000
 7 cigarettes” and inserting “10,000 cigarettes”.

8 (2) Section 2342(b) of that title is amended by strik-
 9 ing “60,000” and inserting “10,000”.

10 (3) Section 2343 of that title is amended—

11 (A) in subsection (a), by striking “60,000” and
 12 inserting “10,000”; and

13 (B) in subsection (b), by striking “60,000” and
 14 inserting “10,000”.

15 (b) CONTRABAND SMOKELESS TOBACCO.—(1) Sec-
 16 tion 2341 of that title is amended—

17 (A) in paragraph (4), by striking “and” at the
 18 end;

19 (B) in paragraph (5), by striking the period at
 20 the end and inserting a semicolon; and

21 (C) by adding at the end the following new
 22 paragraphs:

23 “(6) the term ‘smokeless tobacco’ means any
 24 finely cut, ground, powdered, or leaf tobacco that is
 25 intended to be placed in the oral or nasal cavity or
 26 otherwise consumed without being combusted;

1 “(7) the term ‘contraband smokeless tobacco’
 2 means a quantity in excess of 500 single-unit con-
 3 sumer-sized cans or packages of smokeless tobacco,
 4 or their equivalent, that are in the possession of any
 5 person other than—

6 “(A) a person holding a permit issued pur-
 7 suant to chapter 52 of the Internal Revenue
 8 Code of 1986 as manufacturer of tobacco prod-
 9 ucts or as an export warehouse proprietor, a
 10 person operating a customs bonded warehouse
 11 pursuant to section 311 or 555 of the Tariff
 12 Act of 1930 (19 U.S.C. 1311, 1555), or an
 13 agent of such person;

14 “(B) a common carrier transporting such
 15 smokeless tobacco under a proper bill of lading
 16 or freight bill which states the quantity, source,
 17 and designation of such smokeless tobacco;

18 “(C) a person who—

19 “(i) is licensed or otherwise author-
 20 ized by the State where such smokeless to-
 21 bacco is found to engage in the business of
 22 selling or distributing tobacco products or,
 23 for smokeless tobacco found in Indian
 24 Country, is licensed or otherwise author-
 25 ized by the Tribal government of such In-

1 dian Country to account for and pay
 2 smokeless tobacco taxes imposed by the
 3 Tribal government; and

4 “(ii) has complied with the account-
 5 ing, tax, and payment requirements relat-
 6 ing to such license or authorization with
 7 respect to such smokeless tobacco; or

8 “(D) an officer, employee, or agent of the
 9 United States or a State or a Tribe, or any de-
 10 partment, agency, or instrumentality of the
 11 United States, a State (including any political
 12 subdivision of a State), or a Tribe (including
 13 any political subdivision of a Tribe), having pos-
 14 session of such smokeless tobacco in connection
 15 with the performance of official duties;”.

16 (2) Section 2342(a) of that title is amended by insert-
 17 ing “or contraband smokeless tobacco” after “contraband
 18 cigarettes”.

19 (3) Section 2343(a) of that title is amended by insert-
 20 ing “, or any quantity of smokeless tobacco in excess of
 21 500 single-unit consumer-sized cans or packages,” before
 22 “in a single transaction”.

23 (4) Section 2344(c) of that title is amended by insert-
 24 ing “or contraband smokeless tobacco” after “contraband
 25 cigarettes”.

1 (5) Section 2345 of that title is amended by inserting
 2 “or smokeless tobacco” after “cigarettes” each place it ap-
 3 pears.

4 (c) ADDITIONAL DEFINITIONAL MATTERS.—Section
 5 2341 of such title is further amended—

6 (1) in paragraph (2), as amended by subsection
 7 (a)(1) of this section—

8 (A) in the matter preceding subparagraph
 9 (A), by striking “State cigarette taxes in the
 10 State where such cigarettes are found, if the
 11 State” and inserting “State, local, or Tribal
 12 cigarette taxes in the State, locality, or Indian
 13 Country where such cigarettes are found, if the
 14 State, local or Tribal government”;

15 (B) in subparagraph (C)(i), by inserting
 16 before the semicolon the following: “, or, for
 17 cigarettes found in Indian County, is licensed or
 18 otherwise authorized by the Tribal government
 19 of such Indian Country to account for and pay
 20 cigarette taxes imposed by the Tribal govern-
 21 ment”; and

22 (C) in subparagraph (D)—

23 (i) by inserting “or a Tribe” after “a
 24 State” the first place it appears; and

1 (ii) by striking “or a State (or any po-
 2 litical subdivision of a State)” and insert-
 3 ing “, a State (or any political subdivision
 4 of a State), or a Tribe (including any polit-
 5 ical subdivision of a Tribe)”;

6 (2) in paragraph (3), by inserting before the
 7 semicolon the following: “, or, for a carrier making
 8 a delivery entirely within Indian Country, under
 9 equivalent operating authority from the Indian Trib-
 10 al government of such Indian Country”; and

11 (3) by adding at the end the following new
 12 paragraphs:

13 “(8) the term ‘Indian Country’ has the meaning
 14 given that term in section 1151 of title 18, United
 15 States Code, except that within the State of Alaska
 16 that term applies only to the Metlakatla Indian
 17 Community, Annette Island Reserve; and

18 “(9) the term ‘Indian Tribe’, ‘Tribe’, or ‘Tribal’
 19 refers to an Indian tribe as defined in the Indian
 20 Self-Determination and Education Assistance Act
 21 (25 U.S.C. 450b(e)) or as listed pursuant to section
 22 104 of the Federally Recognized Indian Tribe List
 23 Act of 1994 (Public Law 103–454; 25 U.S.C. 479a–
 24 1).”.

1 (d) RECORDKEEPING, REPORTING, AND INSPEC-
 2 TION.—Section 2343 of that title, as amended by this sec-
 3 tion, is further amended—

4 (1) in subsection (a)—

5 (A) in the matter preceding paragraph (1),
 6 by striking “only—” and inserting “such infor-
 7 mation as the Attorney General considers ap-
 8 propriate for purposes of enforcement of this
 9 chapter, including—”; and

10 (B) in the flush matter following para-
 11 graph (3), by striking the second sentence;

12 (2) by redesignating subsection (b) as sub-
 13 section (c);

14 (3) by inserting after subsection (a) the fol-
 15 lowing new subsection (b):

16 “(b) Any person who engages in a delivery sale, and
 17 who ships, sells, or distributes any quantity in excess of
 18 10,000 cigarettes, or any quantity in excess of 500 single-
 19 unit consumer-sized cans or packages of smokeless to-
 20 bacco, or their equivalent, within a single month, shall
 21 submit to the Attorney General, pursuant to rules or regu-
 22 lations prescribed by the Attorney General, a report that
 23 sets forth the following:

1 “(1) The person’s beginning and ending inven-
2 tory of cigarettes and cans or packages of smokeless
3 tobacco (in total) for such month.

4 “(2) The total quantity of cigarettes and cans
5 or packages of smokeless tobacco that the person re-
6 ceived within such month from each other person
7 (itemized by name and address).

8 “(3) The total quantity of cigarettes and cans
9 or packages of smokeless tobacco that the person
10 distributed within such month to each person
11 (itemized by name and address) other than a retail
12 purchaser.”; and

13 (4) by adding at the end the following new sub-
14 sections:

15 “(d) Any report required to be submitted under this
16 chapter to the Attorney General shall also be submitted
17 to the Secretary of the Treasury and to the attorneys gen-
18 eral and the tax administrators of the States from where
19 the shipments, deliveries, or distributions both originated
20 and concluded, and to the chief law enforcement officer
21 and tax administrator of the Tribe for shipments, deliv-
22 eries or distributions that originated or concluded on the
23 Indian Country of the Indian Tribe.

1 “(e) In this section, the term ‘delivery sale’ means
2 any sale of cigarettes or smokeless tobacco in interstate
3 commerce to a consumer if—

4 “(A) the consumer submits the order for
5 such sale by means of a telephone or other
6 method of voice transmission, the mails, or the
7 Internet or other online service, or by any other
8 means where the consumer is not in the same
9 physical location as the seller when the pur-
10 chase or offer of sale is made; or

11 “(B) the cigarettes or smokeless tobacco
12 are delivered by use of the mails, common car-
13 rier, private delivery service, or any other
14 means where the consumer is not in the same
15 physical location as the seller when the con-
16 sumer obtains physical possession of the ciga-
17 rettes or smokeless tobacco.

18 “(f) In this section, the term ‘interstate commerce’
19 means commerce between a State and any place outside
20 the State, commerce between a State and any Indian lands
21 in the State, or commerce between points in the same
22 State but through any place outside the State or through
23 any Indian lands.”.

24 (e) DISPOSAL OR USE OF FORFEITED CIGARETTES
25 AND SMOKELESS TOBACCO.—Section 2344(c) of that

1 title, as amended by this section, is further amended by
 2 striking “seizure and forfeiture,” and all that follows and
 3 inserting “seizure and forfeiture, and any cigarettes or
 4 smokeless tobacco so seized and forfeited shall be either—

5 “(1) destroyed and not resold; or

6 “(2) used for undercover investigative oper-
 7 ations for the detection and prosecution of crimes,
 8 and then destroyed and not resold.”.

9 (f) EFFECT ON STATE, LOCAL, AND TRIBAL LAW.—
 10 Section 2345 of that title is amended—

11 (1) in subsection (a), by striking “a State to
 12 enact and enforce” and inserting “a State, local gov-
 13 ernment, or Tribe to enact and enforce its own”;
 14 and

15 (2) in subsection (b), by striking “of States,
 16 through interstate compact or otherwise, to provide
 17 for the administration of State” and inserting “of
 18 State, local, or Tribal governments, through inter-
 19 state compact or otherwise, to provide for the ad-
 20 ministration of State, local, or Tribal”.

21 (g) ENFORCEMENT.—Section 2346 of that title is
 22 amended—

23 (1) by inserting “(a)” before “The Attorney
 24 General”; and

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

3 “(b)(1) A State, through its attorney general, a local
4 government or Indian Tribe, through its chief law enforce-
5 ment officer (or a designee thereof), or any person who
6 holds a permit under section 5712 of the Internal Revenue
7 Code of 1986, may bring an action in the United States
8 district courts to prevent and restrain violations of this
9 chapter by any person (or by any person controlling such
10 person), except that any person who holds a permit under
11 section 5712 of the Internal Revenue Code of 1986 may
12 not bring such an action against a State, local, or Tribal
13 government.

14 “(2) A State, through its attorney general, or a local
15 government or Indian Tribe, through its chief law enforce-
16 ment officer (or a designee thereof), may in a civil action
17 under paragraph (1) also obtain any other appropriate re-
18 lief for violations of this chapter from any person (or by
19 any person controlling such person), including civil pen-
20 alties, money damages, and injunctive or other equitable
21 relief. Nothing in this chapter shall be deemed to abrogate
22 or constitute a waiver of any sovereign immunity of a
23 State or local government or Indian Tribe against any
24 unconsented lawsuit under this chapter, or otherwise to

1 restrict, expand, or modify any sovereign immunity of a
 2 State or local government or Indian Tribe.

3 “(3) The remedies under paragraphs (1) and (2) are
 4 an addition to any other remedies under Federal, State,
 5 local, Tribal, or other law.

6 “(4) Nothing in this chapter shall be construed to
 7 expand, restrict, or otherwise modify any right of an au-
 8 thorized State official to proceed in State court, or take
 9 other enforcement actions, on the basis of an alleged viola-
 10 tion of State or other law.

11 “(5) Nothing in this chapter shall be construed to
 12 expand, restrict, or otherwise modify any right of an au-
 13 thorized Indian Tribal government official to proceed in
 14 Tribal court, or take other enforcement actions, on the
 15 basis of an alleged violation of Tribal law.

16 “(6) Nothing in this chapter shall be construed to
 17 expand, restrict, or otherwise modify any right of an au-
 18 thorized local government official to proceed in State
 19 court, or take other enforcement actions, on the basis of
 20 an alleged violation of local or other law.”.

21 (h) CONFORMING AND CLERICAL AMENDMENTS.—

22 (1) The section heading for section 2343 of that title is
 23 amended to read as follows:

1 **“§ 2343. Recordkeeping, reporting, and inspection”.**

2 (2) The section heading for section 2345 of such title
3 is amended to read as follows:

4 **“§ 2345. Effect on State, Tribal, and local law”.**

5 (3) The table of sections at the beginning of chapter
6 114 of that title is amended—

7 (A) by striking the item relating to section
8 2343 and inserting the following new item:

“2343. Recordkeeping, reporting, and inspection.”;

9 and

10 (B) by striking the item relating to section
11 2345 and insert the following new item:

“2345. Effect on State, Tribal, and local law.”.

12 (4)(A) The heading for chapter 114 of that title is
13 amended to read as follows:

14 **“CHAPTER 114—TRAFFICKING IN CONTRA-**
15 **BAND CIGARETTES AND SMOKELESS**
16 **TOBACCO”.**

17 (B) The table of chapters at the beginning of part
18 I of that title is amended by striking the item relating
19 to section 114 and inserting the following new item:

**“114. Trafficking in contraband cigarettes and smokeless
tobacco 2341”.**

20 **SEC. 5. COMPLIANCE WITH MODEL STATUTE OR QUALI-**
21 **FYING STATUTE.**

22 (a) IN GENERAL.—A Tobacco Product Manufacturer
23 or importer may not sell in, deliver to, or place for delivery

1 sale, or cause to be sold in, delivered to, or placed for deliv-
 2 ery sale in, a State that is a party to the Master Settle-
 3 ment Agreement any cigarette manufactured by a Tobacco
 4 Product Manufacturer that is not in full compliance with
 5 the terms of the Model Statute or Qualifying Statute en-
 6 acted by such State requiring funds to be placed into a
 7 qualified escrow account under specified conditions, or any
 8 regulations promulgated pursuant to such terms.

9 (b) JURISDICTION TO PREVENT AND RESTRAIN VIO-
 10 LATIONS.—(1) The United States district courts shall
 11 have jurisdiction to prevent and restrain violations of sub-
 12 section (a) in accordance with this subsection.

13 (2) A State, through its attorney general, may bring
 14 an action in the United States district courts to prevent
 15 and restrain violations of subsection (a) by any person (or
 16 by any person controlling such person).

17 (3) In any action under paragraph (2), a State,
 18 through its attorney general, shall be entitled to reason-
 19 able attorney fees from a person found to have willfully
 20 and knowingly violated subsection (a).

21 (4) The remedy available under paragraph (2) is in
 22 addition to any other remedies available under Federal,
 23 State, or other law.

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

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

3 (6) The Attorney General may administer and en-
 4 force subsection (a).

5 (c) DEFINITIONS.—In this section:

6 (1) MASTER SETTLEMENT AGREEMENT.— The
 7 term “Master Settlement Agreement” means the
 8 agreement executed November 23, 1998, by the At-
 9 torneys General of 46 States, the District of Colum-
 10 bia, the Commonwealth of Puerto Rico, and four
 11 Territories of the United States, on the one hand,
 12 and certain tobacco manufacturers on the other
 13 hand.

14 (2) TOBACCO PRODUCT MANUFACTURER.—The
 15 term “Tobacco Product Manufacturer” has the
 16 meaning given that term in section II(uu) of the
 17 Master Settlement Agreement.

18 (3) IMPORTER.—The term “importer” means
 19 each of the following:

20 (A) Any person in the United States to
 21 whom non-tax-paid tobacco products manufac-
 22 tured in a foreign country, Puerto Rico, the
 23 Virgin Islands, or a possession of the United
 24 States are shipped or consigned.

1 (B) Any person who removes cigars or
 2 cigarettes for sale or consumption in the United
 3 States from a customs bonded manufacturing
 4 warehouse.

5 (C) Any person who smuggles or otherwise
 6 unlawfully brings tobacco products into the
 7 United States.

8 (4) MODEL STATUTE; QUALIFYING STATUTE.—
 9 The terms “Model Statute” and “Qualifying Stat-
 10 ute” means a statute as defined in section
 11 IX(d)(2)(e) of the Master Settlement Agreement.

12 (5) DELIVERY SALE.—The term “delivery sale”
 13 means any sale of cigarettes or smokeless tobacco in
 14 interstate commerce to a consumer if—

15 (A) the consumer submits the order for
 16 such sale by means of a telephone or other
 17 method of voice transmission, the mails, or the
 18 Internet or other online service, or the seller is
 19 otherwise not in the physical presence of the
 20 buyer when the request for purchase or order is
 21 made; or

22 (B) the cigarettes or smokeless tobacco are
 23 delivered by use of a common carrier, private
 24 delivery service, or the mails, or the seller is not
 25 in the physical presence of the buyer when the

1 buyer obtains personal possession of the deliv-
 2 ered cigarettes or smokeless tobacco.

3 (6) INTERSTATE COMMERCE.—The term “inter-
 4 state commerce” means commerce between a State
 5 and any place outside the State, commerce between
 6 a State and any Indian lands in the State, or com-
 7 merce between points in the same State but through
 8 any place outside the State or through any Indian
 9 lands.

10 **SEC. 6. UNDERCOVER CRIMINAL INVESTIGATIONS OF THE**
 11 **BUREAU OF ALCOHOL, TOBACCO, FIREARMS,**
 12 **AND EXPLOSIVES.**

13 (a) IN GENERAL.—(1) Commencing as of the date
 14 of the enactment of this Act and without fiscal year limita-
 15 tion, the authorities in section 102(b) of the Department
 16 of Justice and Related Agencies Appropriations Act, 1993
 17 (title I of Public Law 102–395; 106 Stat. 1838) shall be
 18 available to the Bureau of Alcohol, Tobacco, Firearms,
 19 and Explosives for undercover investigative operations of
 20 the Bureau which are necessary for the detection and
 21 prosecution of crimes against the United States.

22 (2) For purposes of the exercise of the authorities
 23 referred to in paragraph (1) by the Bureau, a reference
 24 in such section 102(b) to the Federal Bureau of Investiga-
 25 tion shall be deemed to be a reference to the Bureau of

1 Alcohol, Tobacco, Firearms, and Explosives, and a ref-
 2 erence to the Director of the Federal Bureau of Investiga-
 3 tion shall be deemed to be a reference to the Director of
 4 the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

5 (b) LIMITATIONS IN APPROPRIATIONS ACTS.—The
 6 exercise of the authorities referred to in subsection (a)(1)
 7 by the Bureau of Alcohol, Tobacco, Firearms, and Explo-
 8 sives shall be subject to the provisions of appropriations
 9 Acts.

10 **SEC. 7. INSPECTION BY BUREAU OF ALCOHOL, TOBACCO,**
 11 **FIREARMS, AND EXPLOSIVES OF RECORDS**
 12 **OF CERTAIN CIGARETTE AND SMOKELESS**
 13 **TOBACCO SELLERS.**

14 (a) IN GENERAL.—Any officer of the Bureau of Alco-
 15 hol, Tobacco, Firearms, and Explosives may, during nor-
 16 mal business hours, enter the premises of any person de-
 17 scribed in subsection (b) for the purposes of inspecting—

18 (1) any records or information required to be
 19 maintained by such person under the provisions of
 20 law referred to in subsection (d); or

21 (2) any cigarettes or smokeless tobacco kept or
 22 stored by such person at such premises.

23 (b) COVERED PERSONS.—A person described in this
 24 subsection is any person who engages in a delivery sale,
 25 and who ships, sells, distributes, or receives any quantity

1 in excess of 10,000 cigarettes, or any quantity in excess
 2 of 500 single-unit consumer-sized cans or packages of
 3 smokeless tobacco, within a single month.

4 (c) RELIEF.—(1) The district courts of the United
 5 States shall have the authority in a civil action under this
 6 subsection to compel inspections authorized by subsection
 7 (a).

8 (2) Whoever violates subsection (a) or an order issued
 9 pursuant to paragraph (1) shall be subject to a civil pen-
 10 alty in an amount not to exceed \$10,000 for each viola-
 11 tion.

12 (d) COVERED PROVISIONS OF LAW.—The provisions
 13 of law referred to in this subsection are as follows:

14 (1) The Act of October 19, 1949 (15 U.S.C.
 15 375; commonly referred to as the “Jenkins Act”).

16 (2) Chapter 114 of title 18, United States
 17 Code.

18 (3) This Act.

19 (e) DELIVERY SALE DEFINED.—In this section, the
 20 term “delivery sale” has the meaning given that term in
 21 2343(e)(1) of title 18, United States Code, as amended
 22 by section 4(b)(3) of this Act.

23 **SEC. 8. COMPLIANCE WITH TARIFF ACT OF 1930.**

24 (a) INAPPLICABILITY OF EXEMPTIONS FROM RE-
 25 QUIREMENTS FOR ENTRY OF CERTAIN CIGARETTES.—

1 Subsection (b)(1) of section 802 of the Tariff Act of 1930
 2 (19 U.S.C. 1681a) is amended by adding at the end the
 3 following new sentence: “The preceding sentence shall not
 4 apply to any cigarettes sold in connection with a delivery
 5 sale (as that term is defined in section 1 of the Act of
 6 October 19, 1949 (15 U.S.C. 375; commonly referred to
 7 as the ‘Jenkins Act’)).”.

8 (b) STATE AND TRIBAL ACCESS TO CUSTOMS CER-
 9 TIFICATIONS.—Section 802 of that Act is further amended
 10 by adding at the end the following new subsection:

11 “(d) STATE AND TRIBAL ACCESS TO CUSTOMS CER-
 12 TIFICATIONS.—A State, through its attorney general, and
 13 an Indian tribe (as that term is defined in the Indian Self-
 14 Determination and Education Assistance Act (25 U.S.C.
 15 450b(e)) through its chief law enforcement officer, shall
 16 be entitled to obtain copies of any certification required
 17 pursuant to subsection (c) directly—

18 “(1) upon request to the agency of the United
 19 States responsible for collecting such certification; or

20 “(2) upon request to the importer, manufac-
 21 turer, or authorized official of such importer or
 22 manufacturer.”.

23 (c) ENFORCEMENT PROVISIONS.—Section 803 of
 24 such Act (19 U.S.C. 1681b) is amended—

25 (1) in subsection (b)—

1 (A) in the first sentence—

2 (i) by inserting “any of” before “the
3 United States” the first and second places
4 it appears; and

5 (ii) by inserting before the period the
6 following: “, to any State in which such to-
7 bacco product, cigarette papers, or tube
8 was imported, or to the Indian Tribe of
9 any Indian Country (as that term is de-
10 fined in section 1151 of title 18, United
11 States Code) in which such tobacco prod-
12 uct, cigarette papers, or tube was im-
13 ported”; and

14 (B) in the second sentence, by inserting “,
15 or to any State or Indian Tribe,” after “the
16 United States”; and

17 (2) by adding at the end the following new sub-
18 section:

19 “(c) ACTIONS BY STATES AND OTHERS.—

20 “(1) IN GENERAL.—Any person who holds a
21 permit under section 5712 of the Internal Revenue
22 Code of 1986 may bring an action in the United
23 States district courts to prevent and restrain viola-
24 tions of this title by any person (or by any person

1 controlling such person), other than by a State,
 2 local, or Tribal government.

3 “(2) RELIEF FOR STATE, LOCAL, AND TRIBAL
 4 GOVERNMENTS.—A State, through its attorney gen-
 5 eral, or a local government or Tribe through its chief
 6 law enforcement officer (or a designee thereof), may
 7 in a civil action under this title to prevent and re-
 8 strain violations of this title by any person (or by
 9 any person controlling such person) or to obtain any
 10 other appropriate relief for violations of this title by
 11 any person (or from any person controlling such per-
 12 son), including civil penalties, money damages, and
 13 injunctive or other equitable relief.

14 “(3) CONSTRUCTION GENERALLY.—

15 “(A) IN GENERAL.—Nothing in this sub-
 16 section shall be deemed to abrogate or con-
 17 stitute a waiver of any sovereign immunity of a
 18 State or local government or Indian Tribe
 19 against any unconsented lawsuit under this title
 20 or to otherwise restrict, expand, or modify any
 21 sovereign immunity of a State local government
 22 or Indian Tribe.

23 “(B) CONSTRUCTION WITH OTHER RE-
 24 LIEF.—The remedies available under this sub-
 25 section are in addition to any other remedies

1 available under Federal, State, local, Tribal, or
2 other law.

3 “(4) CONSTRUCTION WITH FORFEITURE PROVI-
4 SIONS.—Nothing in this subsection shall be con-
5 strued to require a State or Indian Tribe to first
6 bring an action pursuant to paragraph (1) when
7 pursuing relief under subsection (b).

8 “(d) CONSTRUCTION WITH OTHER AUTHORITIES.—

9 “(1) STATE AUTHORITIES.—Nothing in this
10 title shall be construed to expand, restrict, or other-
11 wise modify the right of an authorized State official
12 from proceeding in State court, or taking other en-
13 forcement actions, on the basis of alleged violation
14 of State or other law.

15 “(2) TRIBAL AUTHORITIES.—Nothing in this
16 title shall be construed to expand, restrict, or other-
17 wise modify the right of an authorized Indian Tribal
18 government official from proceeding in Tribal court,
19 or taking other enforcement actions, on the basis of
20 alleged violation of Tribal law.

21 (d) INCLUSION OF SMOKELESS TOBACCO.—(1) Sec-
22 tions 802 and 803(a) of such Act are further amended
23 by inserting “or smokeless tobacco products” after “ciga-
24 rettes” each place it appears.

25 (2) Section 802 of such Act is further amended—

1 (A) in subsection (a)—

2 (i) in paragraph (1), by inserting “or sec-
3 tion 4 of the Comprehensive Smokeless Tobacco
4 Health Education Act of 1986 (15 U.S.C.
5 4403), respectively” after “section 7 of the
6 Federal Cigarette Labeling and Advertising Act
7 (15 U.S.C. 1335a)”;

8 (ii) in paragraph (2), by inserting “or sec-
9 tion 3 of the Comprehensive Smokeless Tobacco
10 Health Education Act of 1986 (15 U.S.C.
11 4402), respectively,” after “section 4 of the
12 Federal Cigarette Labeling and Advertising Act
13 (15 U.S.C. 1333)”;

14 (iii) in paragraph (3), by inserting “or sec-
15 tion 3(c) of the Comprehensive Smokeless To-
16 bacco Health Education Act of 1986 (15 U.S.C.
17 4402(c)), respectively,” after “section 4(c) of
18 the Federal Cigarette Labeling and Advertising
19 Act (15 U.S.C. 1333(c))”;

20 (B) in subsection (b)—

21 (i) in the paragraph caption of paragraph
22 (1), by inserting “OR SMOKELESS TOBACCO”
23 after “CIGARETTES”; and

1 (ii) in the paragraph caption of paragraphs
 2 (2) and (3), by inserting “OR SMOKELESS TO-
 3 BACCO” after “CIGARETTES”; and
 4 (C) in subsection (c)—

5 (i) in the subsection caption, by inserting
 6 “OR SMOKELESS TOBACCO” after “CIGA-
 7 RETTE”;

8 (ii) in paragraph (1), by inserting “or sec-
 9 tion 4 of the Comprehensive Smokeless Tobacco
 10 Health Education Act of 1986 (15 U.S.C.
 11 4403), respectively” after “section 7 of the
 12 Federal Cigarette Labeling and Advertising Act
 13 (15 U.S.C. 1335a)”;

14 (iii) in paragraph (2)(A), “or section 3 of
 15 the Comprehensive Smokeless Tobacco Health
 16 Education Act of 1986 (15 U.S.C. 4402), re-
 17 spectively,” after “section 4 of the Federal Cig-
 18 arette Labeling and Advertising Act (15 U.S.C.
 19 1333)”;

20 (iv) in paragraph (2)(B), by inserting “or
 21 section 3(c) of the Comprehensive Smokeless
 22 Tobacco Health Education Act of 1986 (15
 23 U.S.C. 4402(c)), respectively” after “section
 24 4(c) of the Federal Cigarette Labeling and Ad-
 25 vertising Act (15 U.S.C. 1333(c))”.

1 (3) Section 803(c) of such Act, as amended by sub-
 2 section (b)(1) of this section, is further amended by insert-
 3 ing “, or any smokeless tobacco product,” after “or tube”
 4 the first place it appears.

5 (4)(A) The heading of title VIII of such Act is
 6 amended by inserting “**AND SMOKELESS TO-**
 7 **BACCO**” after “**CIGARETTES**”.

8 (B) The heading of section 802 of such Act is amend-
 9 ed by inserting “**AND SMOKELESS TOBACCO**”
 10 after “**CIGARETTES**”.

11 **SEC. 9. EXCLUSIONS REGARDING INDIAN TRIBES AND**
 12 **TRIBAL MATTERS.**

13 (a) IN GENERAL.—Nothing in this Act or the amend-
 14 ments made by this Act is intended nor shall be construed
 15 to affect, amend, or modify—

16 (1) any agreements, compacts, or other inter-
 17 governmental arrangements between any State or
 18 local government and any government of an Indian
 19 tribe (as that term is defined in the Indian Self-De-
 20 termination and Education Assistance Act (25
 21 U.S.C. 450b(e)) relating to the collection of taxes on
 22 cigarettes or smokeless tobacco sold in Indian Coun-
 23 try (as that term is defined section 1151 of title 18,
 24 United States Code);

1 (2) any State laws that authorize or otherwise
2 pertain to any such intergovernmental arrangements
3 or create special rules or procedures for the collec-
4 tion of State, local, or tribal taxes on cigarettes or
5 smokeless tobacco sold in Indian Country;

6 (3) any limitations under existing Federal law,
7 including Federal common law and treaties, on
8 State, local, and tribal tax and regulatory authority
9 with respect to the sale, use, or distribution of ciga-
10 rettes and smokeless tobacco by or to Indian Tribes
11 or tribal members or in Indian Country;

12 (4) any existing Federal law, including Federal
13 common law and treaties, regarding State jurisdic-
14 tion, or lack thereof, over any Tribe, tribal members
15 or tribal reservations; and

16 (5) any existing State or local government au-
17 thority to bring enforcement actions against persons
18 located in Indian Country.

19 (b) COORDINATION OF LAW ENFORCEMENT.—Noth-
20 ing in this Act or the amendments made by this Act shall
21 be construed to inhibit or otherwise affect any coordinated
22 law enforcement effort by 1 or more States or other juris-
23 dictions, including Indian Tribes, through interstate com-
24 pact or otherwise, that—

1 (1) provides for the administration of tobacco
 2 product laws or laws pertaining to interstate sales or
 3 other sales of tobacco products;

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

7 (3) establishes cooperative programs for the ad-
 8 ministration of such laws.

9 (c) TREATMENT OF STATE AND LOCAL GOVERN-
 10 MENTS.—Notwithstanding any other provision of this Act,
 11 the provisions of this Act are not intended and shall not
 12 be construed to authorize, deputize, or commission States
 13 or local governments as instrumentalities of the United
 14 States.

15 (d) ENFORCEMENT WITHIN INDIAN COUNTRY.—
 16 Nothing in this Act or the amendments made by this Act
 17 is intended to prohibit, limit, or restrict enforcement by
 18 the Attorney General of the United States of the provi-
 19 sions herein within Indian Country.

20 (e) AMBIGUITY.—Any ambiguity between the lan-
 21 guage of this section or its application, and any other pro-
 22 vision of this Act shall be resolved in favor of this section.

1 **SEC. 10. EFFECTIVE DATE.**

2 (a) IN GENERAL.—Except as provided in subsection
 3 (b), this Act shall take effect 90 days after the date of
 4 the enactment of this Act.

5 (b) BATFE AUTHORITY.—

6 (1) IN GENERAL.—Sections 6 and 7 shall take
 7 effect on the date of the enactment of this Act.

8 (2) DEFINITION.—For purposes of section 7,
 9 the definition of delivery sale in section 2343(e)(1)
 10 of title 18, United States Code, as amended by sec-
 11 tion 4(b)(3) of this Act, shall take effect on the date
 12 of the enactment of this Act.

Passed the Senate December 9, 2003.

Attest:

Secretary.

108TH CONGRESS
1ST SESSION

S. 1177

AN ACT

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