

109TH CONGRESS  
1ST SESSION

# H. R. 1377

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

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 17, 2005

Mr. DOGGETT (for himself, Mr. ABERCROMBIE, Mr. ACKERMAN, Mr. ALLEN, Mr. ANDREWS, Ms. BALDWIN, Mr. BECERRA, Mr. BERMAN, Mr. BLUMENAUER, Mr. BROWN of Ohio, Mrs. CAPPS, Mr. CAPUANO, Mr. CONYERS, Mr. CROWLEY, Mr. DAVIS of Illinois, Mrs. DAVIS of California, Mr. DEFAZIO, Ms. DEGETTE, Mr. DELAHUNT, Ms. DELAURO, Ms. ESHOO, Mr. EVANS, Mr. FARR, Mr. FILNER, Mr. FRANK of Massachusetts, Mr. GENE GREEN of Texas, Mr. GRIJALVA, Mr. GUTIERREZ, Mr. HINCHEY, Mr. HINOJOSA, Mr. HOLT, Mr. HONDA, Ms. HOOLEY, Mr. JACKSON of Illinois, Ms. JACKSON-LEE of Texas, Ms. EDDIE BERNICE JOHNSON of Texas, Ms. KAPTUR, Mr. KENNEDY of Rhode Island, Ms. KILPATRICK of Michigan, Mr. KIND, Mr. KUCINICH, Mr. LANGEVIN, Mr. LANTOS, Ms. LEE, Mr. LEVIN, Mr. LEWIS of Georgia, Mr. LIPINSKI, Ms. ZOE LOFGREN of California, Mr. LYNCH, Mrs. MALONEY, Mr. MARKEY, Mr. MATHESON, Mrs. MCCARTHY, Mr. McDERMOTT, Mr. MCGOVERN, Mr. McNULTY, Mr. MEEHAN, Mr. MEEKS of New York, Ms. MILLENDER-McDONALD, Mr. GEORGE MILLER of California, Mr. NADLER, Mrs. NAPOLITANO, Mr. NEAL of Massachusetts, Mr. OBERSTAR, Mr. OLVER, Mr. OWENS, Mr. PALLONE, Mr. PASCRELL, Mr. PLATTS, Mr. ROTHMAN, Ms. ROYBAL-ALLARD, Mr. RUSH, Mr. RYAN of Ohio, Ms. LINDA T. SÁNCHEZ of California, Ms. LORETTA SANCHEZ of California, Mr. SANDERS, Ms. SCHAKOWSKY, Mr. SCHIFF, Mr. SERRANO, Mr. SHERMAN, Ms. SLAUGHTER, Mr. SNYDER, Ms. SOLIS, Mr. STARK, Mrs. TAUSCHER, Mr. TIERNEY, Mrs. JONES of Ohio, Mr. UDALL of New Mexico, Mr. VAN HOLLEN, Ms. VELÁZQUEZ, Ms. WATERS, Ms. WATSON, Mr. WAXMAN, Mr. WEINER, Ms. WOOLSEY, and Mr. WU) 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.**

4        This Act may be cited as the “Smuggled Tobacco  
 5        Prevention Act of 2005”.

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; EXPORT**  
 17        **BONDS.**

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

20                (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.—Each person who is a  
5 manufacturer or importer of tobacco products shall  
6 (in accordance with regulations prescribed by the  
7 Secretary) legibly print a unique serial number on  
8 all packages of tobacco products manufactured or  
9 imported by such person for sale or distribution.  
10 Such serial number shall be designed to enable the  
11 Secretary to identify the manufacturer of the prod-  
12 uct (and, in the case of importation, the manufac-  
13 turer and importer of the product), the location and  
14 date of manufacture (and, if imported, the location  
15 and date of importation), and any other information  
16 the Secretary determines necessary or appropriate  
17 for the proper administration of the chapter. The  
18 Secretary shall determine the size and location of  
19 the serial number.

20           “(2) MARKING REQUIREMENTS FOR EX-  
21 PORTS.—Each package of a tobacco product that is  
22 exported shall be marked for export from the United  
23 States and shall be marked as to the foreign country  
24 which is to be the final destination of such product.  
25 Such marking shall be visible and prominent and

1 shall be in English and in the primary language of  
2 such foreign country. The Secretary shall promul-  
3 gate regulations to determine the size and location  
4 of the mark.”.

5 (b) SALES ON INDIAN RESERVATIONS; PACKAGE DE-  
6 FINED.—Section 5723 is amended by adding at the end  
7 the following new subsections:

8 “(f) SALES ON INDIAN RESERVATIONS.—Each pack-  
9 age of a tobacco product that is sold on an Indian reserva-  
10 tion (as defined in section 403(9) of the Indian Child Pro-  
11 tection and Family Violence Prevention Act (25 U.S.C.  
12 3202(9)) shall be visibly and prominently labeled as such.  
13 The Secretary, in consultation with the Secretary of the  
14 Interior, shall promulgate regulations with respect to such  
15 labeling, including requirements for the size and location  
16 of the label.

17 “(g) DEFINITION OF PACKAGE.—For purposes of  
18 this section, the term ‘package’ means the innermost  
19 sealed container visible from the outside of the individual  
20 container irrespective of the material from which such con-  
21 tainer is made, in which a tobacco product is placed by  
22 the manufacturer and in which such tobacco product is  
23 offered for sale to a member of the general public.”.

24 (c) REQUIREMENTS FOR TRACKING OF TOBACCO  
25 PRODUCTS.—

1           (1) IN GENERAL.—Subchapter B of chapter 52  
2           is amended by adding at the end the following new  
3           section:

4   **“SEC. 5714. EXPORT BONDS.**

5           “(a) POSTING OF BOND.—

6           “(1) IN GENERAL.—It shall be unlawful for any  
7           person to export any tobacco product unless such  
8           person—

9                   “(A) has posted with the Secretary a to-  
10                  bacco product bond in accordance with this sec-  
11                  tion for such product that contains a disclosure  
12                  of the country to which such product will be ex-  
13                  ported; and

14                   “(B) receives a written statement from the  
15                  recipient of the tobacco products involved that  
16                  such person—

17                           “(i) will not knowingly and willfully  
18                          violate or cause to be violated any law or  
19                          regulation of such country, the United  
20                          States, any State, the District of Colum-  
21                          bia, or any possession of the United States  
22                          with respect to such products; and

23                           “(ii) has never been convicted of any  
24                          offense with respect to tobacco products.

1           “(2) REGULATIONS.—The Secretary shall pro-  
2 mulgate regulations that determine the frequency  
3 and the amount of each bond that must be posted  
4 under paragraph (1), but in no case shall such  
5 amount be less than an amount equal to the tax im-  
6 posed under this chapter on the value of the ship-  
7 ment of the products involved if such products were  
8 consumed within the United States.

9           “(3) EXPORT.—For purposes of this subsection,  
10 property shall be treated as exported if it is shipped  
11 to a foreign country, Puerto Rico, the Virgin Is-  
12 lands, or a possession of the United States, or for  
13 consumption beyond the jurisdiction of the internal  
14 revenue laws of the United States.

15           “(b) RETURN OF BOND.—The Secretary shall return  
16 a bond posted under subsection (a)—

17           “(1) upon a determination by the Secretary  
18 (based on documentation provided by the person who  
19 posted the bond in accordance with regulations pro-  
20 mulgated by the Secretary) that the items to which  
21 the bond applies have been received in the country  
22 of final destination as designated in the bond, or

23           “(2) under such other circumstance as the Sec-  
24 retary may specify.”.

1           (2) CLERICAL AMENDMENT.—The table of sec-  
2           tions for such subchapter B is amended by adding  
3           at the end the following new item:

“Sec. 5714. Export bonds.”.

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

5           Section 5712 (relating to application for permit) is  
6           amended by inserting “, wholesaler,” after “manufac-  
7           turer”.

8   **SEC. 104. CONDITIONS OF PERMIT.**

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

11          “(a) ISSUANCE.—

12                 “(1) IN GENERAL.—A person shall not engage  
13                 in business as a manufacturer, wholesaler, or im-  
14                 porter of tobacco products or as an export ware-  
15                 house proprietor without a permit to engage in such  
16                 business. Such permit shall be issued in such form  
17                 and in such manner as the Secretary shall by regula-  
18                 tion prescribe, to every person properly qualified  
19                 under sections 5711 and 5712. A new permit may  
20                 be required at such other time as the Secretary shall  
21                 by regulation prescribe.

22                 “(2) CONDITIONS.—The issuance of a permit  
23                 under this section shall be conditioned upon the  
24                 compliance with the requirements of—

25                         “(A) this chapter,

1           “(B) the Contraband Cigarette Trafficking  
2           Act (18 U.S.C. chapter 114),

3           “(C) the Act of October 19, 1949 (15  
4           U.S.C. chapter 10A),

5           “(D) any regulations issued pursuant to  
6           such statutes, and

7           “(E) any other federal laws or regulations  
8           relating to the taxation, sale, or transportation  
9           of tobacco products.”.

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

11         Section 5741 (relating to records to be maintained)  
12 is amended—

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

15           (2) by inserting “every wholesaler,” after  
16           “every importer,”,

17           (3) by striking “such records” and inserting  
18           “records concerning the chain of custody of the to-  
19           bacco products (including the foreign country of  
20           final destination for packages marked for export)  
21           and such other records”, and

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

24           “(b) RETAILERS.—Retailers shall maintain records  
25 of receipt of tobacco products, and such records shall be



1 available to the Secretary for inspection and audit. An or-  
2 dinary commercial record or invoice shall satisfy the re-  
3 quirements of this subsection if such record shows the date  
4 of receipt, from whom tobacco products were received, and  
5 the quantity of tobacco products received. The preceding  
6 provisions of this subsection shall not be construed to limit  
7 or preclude other recordkeeping requirements imposed on  
8 any retailer.”.

9 **SEC. 106. REPORTS.**

10 Section 5722 (relating to reports) is amended—

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

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

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

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

24 “(2) AGREEMENTS WITH FOREIGN GOVERN-  
25 MENTS.—Notwithstanding section 6103 of this title,

1 the Secretary is authorized to enter into agreements  
2 with foreign governments to exchange or share infor-  
3 mation contained in reports received from export  
4 warehouse proprietors of tobacco products if—

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

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

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

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

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

20 **SEC. 107. FRAUDULENT OFFENSES.**

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

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

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

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

7 (3) by inserting after subsection (a) the fol-  
8 lowing new subsection:

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

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

18 “(2) for a manufacturer, importer, or whole-  
19 saler permitted under this chapter intentionally to  
20 ship, transport, deliver, or receive any tobacco prod-  
21 ucts from or to any person other than a person per-  
22 mitted under this chapter or a retailer, except a per-  
23 mitted importer may receive foreign tobacco prod-  
24 ucts from a foreign manufacturer or a foreign dis-

1 tributor that have not previously entered the United  
2 States;

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

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

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

1           “(6) for any manufacturer, importer, export  
2           warehouse proprietor, or wholesaler permitted under  
3           this chapter to make intentionally any false entry in,  
4           to fail willfully to make appropriate entry in, or to  
5           fail willfully to maintain properly any record or re-  
6           port that such person is required to keep as required  
7           by this chapter or the regulations promulgated  
8           thereunder;

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

16          “(8) for any person to sell at retail more than  
17          5,000 cigarettes in a single transaction or in a series  
18          of related transactions, or, in the case of other to-  
19          bacco products, an equivalent quantity as deter-  
20          mined by regulation.

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

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

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

9 **SEC. 108. CIVIL PENALTIES.**

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

12 (1) by striking “willfully” and inserting “inten-  
13 tionally”, and

14 (2) by striking “\$1,000” and inserting  
15 “\$10,000”.

16 **SEC. 109. DEFINITIONS.**

17 (a) EXPORT WAREHOUSE PROPRIETOR.—Subsection  
18 (i) of section 5702 (relating to definition of export ware-  
19 house proprietor) is amended by inserting before the pe-  
20 riod the following: “or any person engaged in the business  
21 of exporting tobacco products from the United States for  
22 purposes of sale or distribution. Any duty free store that  
23 sells, offers for sale, or otherwise distributes to any person  
24 in any single transaction more than 30 packages of ciga-  
25 rettes, or its equivalent for other tobacco products as the

1 Secretary shall by regulation prescribe, shall be deemed  
2 an export warehouse proprietor under this chapter”.

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

5 “(p) RETAILER.—The term ‘retailer’ means any deal-  
6 er who sells, or offers for sale, any tobacco product at re-  
7 tail. The term ‘retailer’ includes any duty-free store that  
8 sells, offers for sale, or otherwise distributes at retail in  
9 any single transaction 30 or fewer packages of cigarettes  
10 or its equivalent for other tobacco products.

11 “(q) WHOLESALER.—The term ‘wholesaler’ means  
12 any person engaged in the business of purchasing tobacco  
13 products for resale at wholesale, or any person acting as  
14 an agent or broker for any person engaged in the business  
15 of purchasing tobacco products for resale at wholesale.”.

16 **SEC. 110. EFFECTIVE DATE.**

17 The amendments made by this title shall take effect  
18 on January 1, 2006.

19 **TITLE II—AMENDMENTS TO THE**  
20 **CONTRABAND CIGARETTE**  
21 **TRAFFICKING ACT**

22 **SEC. 201. AMENDMENTS TO THE CONTRABAND CIGARETTE**  
23 **TRAFFICKING ACT.**

24 (a) EXPANSION OF ACT TO COVER OTHER TOBACCO  
25 PRODUCTS.—

1           (1) Paragraphs (1) and (2) of section 2341 of  
2 title 18, United States Code, are amended to read  
3 as follows:

4           “(1) the term ‘tobacco product’ has the mean-  
5 ing given to such term by section 5702 of the Inter-  
6 nal Revenue Code of 1986;

7           “(2) the term ‘contraband tobacco product’  
8 means any tobacco product if—

9           “(A)(i) in the case of cigarettes, such ciga-  
10 rettes are in a quantity in excess of 2,000 ciga-  
11 rettes; or

12           “(ii) in the case of a tobacco product other  
13 than a cigarette, such product is in a quantity  
14 in excess of the equivalent of 2,000 cigarettes  
15 as determined under rules made by the Attor-  
16 ney General;

17           “(B)(i) if the State in which such tobacco  
18 product is found requires a stamp, impression,  
19 or other indication to be placed on packages or  
20 other containers of product to evidence payment  
21 of tobacco taxes, such tobacco product bears no  
22 evidence of such payment; or

23           “(ii) if such State has no such require-  
24 ment, applicable tobacco taxes are found to be  
25 not paid; and



1           “(C) such tobacco product is in the posses-  
2           sion of any person other than—

3                   “(i) a person holding a permit issued  
4                   pursuant to chapter 52 of the Internal  
5                   Revenue Code of 1986 as a manufacturer  
6                   or importer of tobacco products or as an  
7                   export warehouse proprietor, or a person  
8                   operating a customs bonded warehouse  
9                   pursuant to section 311 or 555 of the Tar-  
10                  riff Act of 1930 (19 U.S.C. 1311 or 1555)  
11                  or an agent of such person;

12                   “(ii) a common or contract carrier  
13                   transporting the tobacco product involved  
14                   under a proper bill of lading or freight bill  
15                   which states the quantity, source, and des-  
16                   tination of such product;

17                   “(iii) a person—

18                           “(I) who is licensed or otherwise  
19                           authorized by the State where the to-  
20                           bacco product is found to account for  
21                           and pay tobacco taxes imposed by  
22                           such State; and

23                           “(II) who has complied with the  
24                           accounting and payment requirements  
25                           relating to such license or authoriza-

1                   tion with respect to the tobacco prod-  
2                   uct involved; or

3                   “(iv) an officer, employee, or other  
4                   agent of the United States or a State, or  
5                   any department, agency, or instrumentality  
6                   of the United States or a State (including  
7                   any political subdivision of a State) having  
8                   possession of such tobacco product in con-  
9                   nection with the performance of official du-  
10                  ties;”.

11                  (2) Section 2345 of title 18, United States  
12                  Code, is amended—

13                         (A) by striking “cigarette tax laws” each  
14                         place it appears and inserting “tobacco tax  
15                         laws”, and

16                         (B) by striking “cigarettes” and inserting  
17                         “tobacco products”.

18                  (b) UNLAWFUL ACTS.—Section 2342 of title 18,  
19                  United States Code, is amended to read as follows:

20                  “**§ 2342. Unlawful acts**

21                         “(a) It shall be unlawful for any person knowingly  
22                         to ship, transport, receive, possess, sell, distribute, or pur-  
23                         chase contraband tobacco products.

24                         “(b)(1) It shall be unlawful for any person know-  
25                         ingly—

1           “(A) to make any false statement or represen-  
2           tation with respect to the information required by  
3           this chapter to be kept in the records or reports of  
4           any person who ships, sells, or distributes (in a sin-  
5           gle transaction or in a series of related transactions)  
6           any quantity of tobacco product in excess of the  
7           quantity specified in or pursuant to section  
8           2341(2)(A) with respect to such product, or

9           “(B) to fail to maintain records or reports,  
10          alter or obliterate required markings, or interfere  
11          with any inspection, required under this chapter,  
12          with respect to such quantity of tobacco product.

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

16          (c) CONFORMING AMENDMENTS RELATING TO REC-  
17          ORDKEEPING.—

18                 (1) Subsections (a) and (b) of section 2343 of  
19                 title 18, United States Code, are each amended by  
20                 striking “any quantity of cigarettes in excess of  
21                 60,000 in a single transaction” and inserting “(in a  
22                 single transaction or in a series of related trans-  
23                 actions) any quantity of tobacco product in excess of  
24                 the quantity specified in or pursuant to section  
25                 2341(2)(A) with respect to such product”.

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

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

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

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

12 (e) JENKINS ACT AMENDMENTS.—

13 (1) Section 4 of the Act of October 19, 1949  
14 (15 U.S.C. 378) is amended by adding at the end  
15 the following: “A State tobacco tax authority may  
16 commence a civil action to obtain appropriate relief  
17 with respect to a violation of this Act.”.

18 (2) Paragraph (2) of section 1 of such Act is  
19 amended to read as follows:

20 “(2) The term ‘tobacco product’ has the mean-  
21 ing given to such term by section 5702 of the Inter-  
22 nal Revenue Code of 1986.”.

23 (3) Such Act is further amended by striking  
24 “cigarette” and “cigarettes” each place either ap-

1       pears and inserting “tobacco product” and “tobacco  
2       products” respectively.

3       (f) NON-PREEMPTION.—Nothing in this title or the  
4       amendments made by this title shall be construed to pro-  
5       hibit an authorized State official from proceeding in State  
6       court on the basis of an alleged violation of State law.

## 7       **TITLE III—WHISTLEBLOWER** 8       **PROTECTION PROVISIONS**

### 9       **SEC. 301. WHISTLEBLOWER PROTECTION.**

10       (a) IN GENERAL.—Chapter 73 of title 18, United  
11       States Code, is amended by inserting after section 1514  
12       the following:

#### 13       **“§ 1514B. Civil action to protect against retaliation in** 14       **contraband tobacco cases**

15       “(a) WHISTLEBLOWER PROTECTION FOR CONTRA-  
16       BAND TOBACCO.—No person may discharge, demote, sus-  
17       pend, threaten, harass, or in any other manner discrimi-  
18       nate against an employee in the terms and conditions of  
19       employment because of any lawful act done by the em-  
20       ployee—

21               “(1) to provide information, cause information  
22       to be provided, or otherwise assist in an investiga-  
23       tion regarding any conduct which the employee rea-  
24       sonably believes constitutes a violation of section  
25       2342 or any other provision of Federal law relating

1 to contraband tobacco, when the information or as-  
2 sistance is provided to or the investigation is con-  
3 ducted by—

4 “(A) a Federal regulatory or law enforce-  
5 ment agency;

6 “(B) any Member of Congress or any com-  
7 mittee of Congress; or

8 “(C) a person with supervisory authority  
9 over the employee (or such other person work-  
10 ing for the employer who has the authority to  
11 investigate, discover, or terminate misconduct);

12 or

13 “(2) to file, cause to be filed, testify, participate  
14 in, or otherwise assist in a proceeding filed or about  
15 to be filed (with any knowledge of the employer) re-  
16 lating to an alleged violation of section 2342, or any  
17 provision of Federal law relating to contraband to-  
18 bacco.

19 “(b) ENFORCEMENT ACTION.—

20 “(1) IN GENERAL.—A person who alleges dis-  
21 charge or other discrimination by any person in vio-  
22 lation of subsection (a) may seek relief under sub-  
23 section (c), by—

24 “(A) filing a complaint with the Secretary  
25 of Labor; or

1           “(B) if the Secretary has not issued a final  
2 decision within 180 days of the filing of the  
3 complaint and there is no showing that such  
4 delay is due to the bad faith of the claimant,  
5 bringing an action at law or equity for de novo  
6 review in the appropriate district court of the  
7 United States, which shall have jurisdiction  
8 over such an action without regard to the  
9 amount in controversy.

10           “(2) PROCEDURE.—

11           “(A) IN GENERAL.—An action under para-  
12 graph (1)(A) shall be governed under the rules  
13 and procedures set forth in section 42121(b) of  
14 title 49, United States Code.

15           “(B) EXCEPTION.—Notification made  
16 under section 42121(b)(1) of title 49, United  
17 States Code, shall be made to the person named  
18 in the complaint and to the employer.

19           “(C) BURDENS OF PROOF.—An action  
20 brought under paragraph (1)(B) shall be gov-  
21 erned by the legal burdens of proof set forth in  
22 section 42121(b) of title 49, United States  
23 Code.

24           “(D) STATUTE OF LIMITATIONS.—An ac-  
25 tion under paragraph (1) shall be commenced

1 not later than 90 days after the date on which  
2 the violation occurs.

3 “(c) REMEDIES.—

4 “(1) IN GENERAL.—An employee prevailing in  
5 any action under subsection (b)(1) shall be entitled  
6 to all relief necessary to make the employee whole.

7 “(2) COMPENSATORY DAMAGES.—Relief for any  
8 action under paragraph (1) shall include—

9 “(A) reinstatement with the same seniority  
10 status that the employee would have had, but  
11 for the discrimination;

12 “(B) the amount of back pay, with inter-  
13 est; and

14 “(C) compensation for any special damages  
15 sustained as a result of the discrimination, in-  
16 cluding litigation costs, expert witness fees, and  
17 reasonable attorney fees.

18 “(d) RIGHTS RETAINED BY EMPLOYEE.—Nothing in  
19 this section shall be deemed to diminish the rights, privi-  
20 leges, or remedies of any employee under any Federal or  
21 State law, or under any collective bargaining agreement.”.

22 (b) CLERICAL AMENDMENT.—The table of sections  
23 at the beginning of chapter 73 of title 18, United States  
24 Code, is amended by inserting after the item relating to  
25 section 1514 the following new item:



“1514B. Civil action to protect against retaliation in contraband tobacco cases.”.

