

110TH CONGRESS
2D SESSION

H. R. 5912

To amend title 39, United States Code, to make cigarettes and certain other tobacco products nonmailable, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 29, 2008

Mr. McHUGH (for himself, Mr. WAXMAN, Mr. DAVIS of Illinois, Mr. TOM DAVIS of Virginia, Mrs. CAPPS, and Mr. MORAN of Virginia) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

A BILL

To amend title 39, United States Code, to make cigarettes and certain other tobacco products nonmailable, 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. NONMAILABILITY OF CERTAIN TOBACCO PROD-**
4 **UCTS.**

5 (a) IN GENERAL.—Chapter 30 of title 39, United
6 States Code, is amended by inserting after section 3002a
7 the following:

1 **“§ 3002b. Nonmailability of certain tobacco products**

2 “(a) IN GENERAL.—Cigarettes, smokeless tobacco,
3 and roll-your-own-tobacco—

4 “(1) are nonmailable matter;

5 “(2) shall not be—

6 “(A) deposited in the mails; or

7 “(B) carried or delivered through the
8 mails; and

9 “(3) shall be disposed of as the Postal Service
10 directs.

11 “(b) CIVIL PENALTY.—

12 “(1) IN GENERAL.—Any person who violates
13 subsection (a)(2)(A) shall be liable to the United
14 States for a civil penalty in an amount not to exceed
15 \$100,000 for each violation.

16 “(2) HEARINGS.—

17 “(A) IN GENERAL.—The Postal Service
18 may determine that a person has violated sub-
19 section (a)(2)(A) only after notice and an op-
20 portunity for a hearing. Proceedings under this
21 paragraph shall be conducted in accordance
22 with section 3001(m).

23 “(B) PENALTY CONSIDERATIONS.—In de-
24 termining the amount of a civil penalty under
25 this paragraph, the Postal Service shall con-
26 sider—

1 “(i) the nature, circumstances, extent,
2 and gravity of the violation;

3 “(ii) with respect to the violator, the
4 degree of culpability, ability to pay, and
5 any history of prior violations; and

6 “(iii) such other matters as justice
7 may require.

8 “(3) CIVIL ACTIONS TO COLLECT.—The Postal
9 Service may bring a civil action in an appropriate
10 district court of the United States, in accordance
11 with section 409(g)(2), to collect a civil penalty
12 under this section.

13 “(4) DISPOSITION OF AMOUNTS.—Amounts re-
14 ceived in payment of any civil penalties under this
15 subsection shall be deposited as miscellaneous re-
16 cepts in the Treasury of the United States.

17 “(c) ORDERS.—Upon evidence satisfactory to the
18 Postal Service that any person is, for commercial or
19 money-making purposes, engaged in the sending of mail
20 matter which is nonmailable under this section, the Postal
21 Service may issue an order which—

22 “(1) directs any postmaster, to whom any mail-
23 ing originating with such person or his representa-
24 tive is tendered for transmission through the mails
25 (other than a mailing that consists only of one or

1 more sealed letters), to refuse to accept any such
2 mailing, unless such person or his representative
3 first establishes to the satisfaction of the postmaster
4 that the mailing does not contain any matter which
5 is nonmailable under this section; and

6 “(2) requires the person or his representative to
7 cease and desist from mailing any mail matter which
8 is nonmailable under this section.

9 “(d) PRIMA FACIE EVIDENCE OF PURPOSE.—For
10 the purposes of this section, the repeated mailing of mat-
11 ter which is nonmailable under this section by any person
12 or the advertisement by any person that the person will
13 mail cigarettes, smokeless tobacco, or roll-your-own to-
14 bacco in return for payment shall constitute prima facie
15 evidence that such person is engaged, for commercial or
16 money-making purposes, in the mailing of matter which
17 is nonmailable under this section.

18 “(e) COORDINATION OF EFFORTS.—In the enforce-
19 ment of this section, the Postal Service shall cooperate and
20 coordinate its efforts with related activities of any other
21 Federal agency or of any State or local government, when-
22 ever appropriate.

23 “(f) ACTIONS BY STATES RELATING TO CERTAIN TO-
24 BACCO PRODUCTS.—

25 “(1) AUTHORITY OF STATES.—

1 “(A) IN GENERAL.—Whenever the attor-
2 ney general of a State (or an official or agency
3 of a State or local government designated by
4 the State) has reason to believe that any person
5 has engaged or is engaging in mailings to resi-
6 dents of that State in violation of subsection
7 (a)(2)(A), the State (or designee) may bring, in
8 an appropriate district court of the United
9 States, a civil action to enjoin such mailings or
10 to enforce subsection (b).

11 “(B) OTHER RELIEF.—A State, through
12 its attorney general (or an official or agency of
13 a State or local government designated by the
14 State), may in a civil action under subpara-
15 graph (A) also obtain damages equal to the
16 amount that would be owed as State and local
17 tobacco taxes by residents of the State and such
18 further and other relief as the court may deem
19 appropriate.

20 “(2) RIGHTS OF THE POSTAL SERVICE.—The
21 State (or designee) shall serve prior written notice of
22 any action under paragraph (1) upon the Postal
23 Service and provide the Postal Service with a copy
24 of its complaint, except in any case where such prior
25 notice is not feasible, in which case the State (or

1 designee) shall serve such notice immediately upon
2 instituting such action. The Postal Service, in ac-
3 cordance with section 409(g)(2), shall have the right
4 (A) to intervene in the action, (B) upon so inter-
5 vening, to be heard on all matters arising therein,
6 and (C) to file petitions for appeal.

7 “(3) EFFECT ON STATE COURT PRO-
8 CEEDINGS.—Nothing contained in this section shall
9 be construed to prohibit an authorized State official
10 from proceeding in State court on the basis of an al-
11 leged violation of any general civil or criminal stat-
12 ute of such State.

13 “(4) LIMITATION.—Whenever the Postal Serv-
14 ice institutes a civil action for violation of subsection
15 (a)(2)(A), no State may, during the pendency of
16 such action instituted by the Postal Service, subse-
17 quently institute a separate civil action for any viola-
18 tion of subsection (a)(2)(A) against any defendant
19 named in the Postal Service’s complaint.

20 “(g) DEFINITIONS.—For purposes of this section—

21 “(1) the terms ‘cigarette’ and ‘roll-your-own-to-
22 bacco’ have the meanings given them by section
23 5702 of the Internal Revenue Code of 1986;

1 “(2) the term ‘smokeless tobacco’ has the
2 meaning given such term by section 2341 of title 18;
3 and

4 “(3) the term ‘State’ includes the District of
5 Columbia, the Commonwealth of Puerto Rico, and
6 the Virgin Islands.”.

7 (b) ADMINISTRATIVE SUBPOENAS.—Section 3016(a)
8 of title 39, United States Code, is amended in paragraphs
9 (1)(A) and (2) by inserting “3002b or” before “3005(a)”.

10 (c) ENFORCEMENT OF POSTAL SERVICE ORDERS.—
11 Section 3012 of title 39, United States Code, is amend-
12 ed—

13 (1) in subsection (a)—

14 (A) in paragraph (1), by striking “section
15 3005(a)(1) or” and inserting “section
16 3002b(c)(1), 3005(a)(1), or”; and

17 (B) in paragraph (2), by inserting
18 “3002b(c)(2) or” before “3005(a)(3)”;

19 (2) in subsection (c), by inserting “3002b(c)
20 or” before “3005(a)” each place it appears; and

21 (3) in subsection (f), by inserting “3002b(c)
22 or” before “3005” each place it appears.

23 (d) SEMIANNUAL REPORTS.—Section 3013 of title
24 39, United States Code, is amended—

1 (1) in paragraph (1), by inserting “3002b(b)
2 or” before “3005”; and

3 (2) in paragraph (3), by striking “section 3007
4 of this title” and inserting “section 3002b(c) or sec-
5 tion 3007, respectively.”.

6 (e) CLERICAL AMENDMENT.—The table of sections
7 for chapter 30 of title 39, United States Code, is amended
8 by inserting after the item relating to section 3002a the
9 following:

“3002b. Nonmailability of certain tobacco products.”.

10 (f) EFFECTIVE DATES.—

11 (1) IN GENERAL.—Except as provided in para-
12 graph (2), the amendments made by this section
13 shall take effect on the 60th day after the date of
14 the enactment of this Act, and shall apply with re-
15 spect to any mail matter mailed on or after such
16 60th day.

17 (2) SEMIANNUAL REPORTS.—The amendments
18 made by subsection (d) shall apply beginning with
19 the report submitted for the reporting period in
20 which occurs the 60th day after the date of the en-
21 actment of this Act.

22 **SEC. 2. TECHNICAL CORRECTION.**

23 (a) IN GENERAL.—Sections 3007(a)(1), 3012(b)(1),
24 and 3018(f)(1) of title 39, United States Code, are amend-
25 ed by striking “409(d)” and inserting “409(g)(2)”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 subsection (a) shall take effect as if included in the enact-
3 ment of the Postal Accountability and Enhancement Act
4 (Public Law 109–435).

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