

Union Calendar No. 452

110TH CONGRESS
2D SESSION

H. R. 5912

[Report No. 110-711]

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

JUNE 12, 2008

Additional sponsors: Mr. SHERMAN and Ms. DEGETTE

JUNE 12, 2008

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on April 29, 2008]

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:*

8 **“§ 3002b. Nonmailability of certain tobacco products**

9 *“(a) IN GENERAL.—Cigarettes, smokeless tobacco, and*
 10 *roll-your-own-tobacco—*

11 *“(1) are nonmailable matter;*

12 *“(2) shall not be—*

13 *“(A) deposited in the mails; or*

14 *“(B) carried or delivered through the mails;*

15 *and*

16 *“(3) shall be disposed of as the Postal Service di-*
 17 *rects.*

18 *“(b) CIVIL PENALTY.—*

19 *“(1) IN GENERAL.—Any person who violates sub-*
 20 *section (a)(2)(A) shall be liable to the United States*
 21 *for a civil penalty in an amount not to exceed*
 22 *\$100,000 for each violation.*

23 *“(2) HEARINGS.—*

24 *“(A) IN GENERAL.—The Postal Service may*
 25 *determine that a person has violated subsection*

1 *(a)(2)(A) only after notice and an opportunity*
 2 *for a hearing. Proceedings under this paragraph*
 3 *shall be conducted in accordance with section*
 4 *3001(m).*

5 “(B) *PENALTY CONSIDERATIONS.—In deter-*
 6 *mining the amount of a civil penalty under this*
 7 *paragraph, the Postal Service shall consider—*

8 “(i) *the nature, circumstances, extent,*
 9 *and gravity of the violation;*

10 “(ii) *with respect to the violator, the*
 11 *degree of culpability, ability to pay, and*
 12 *any history of prior violations; and*

13 “(iii) *such other matters as justice*
 14 *may require.*

15 “(3) *CIVIL ACTIONS TO COLLECT.—The Postal*
 16 *Service may bring a civil action in an appropriate*
 17 *district court of the United States, in accordance with*
 18 *section 409(g)(2), to collect a civil penalty under this*
 19 *section.*

20 “(4) *DISPOSITION OF AMOUNTS.—Amounts re-*
 21 *ceived in payment of any civil penalties under this*
 22 *subsection shall be deposited as miscellaneous receipts*
 23 *in the Treasury of the United States.*

24 “(c) *ORDERS.—Upon evidence satisfactory to the Post-*
 25 *al Service that any person is, for commercial or money-*

1 *making purposes, engaged in the sending of mail matter*
2 *which is nonmailable under this section, the Postal Service*
3 *may issue an order which—*

4 “(1) *directs any postmaster, to whom any mail-*
5 *ing originating with such person or his representative*
6 *is tendered for transmission through the mails (other*
7 *than a mailing that consists only of one or more*
8 *sealed letters), to refuse to accept any such mailing,*
9 *unless such person or his representative first estab-*
10 *lishes to the satisfaction of the postmaster that the*
11 *mailing does not contain any matter which is non-*
12 *mailable under this section; and*

13 “(2) *requires the person or his representative to*
14 *cease and desist from mailing any mail matter which*
15 *is nonmailable under this section.*

16 “(d) *PRIMA FACIE EVIDENCE OF PURPOSE.—For the*
17 *purposes of this section, the repeated mailing of matter*
18 *which is nonmailable under this section by any person or*
19 *the advertisement by any person that the person will mail*
20 *cigarettes, smokeless tobacco, or roll-your-own tobacco in re-*
21 *turn for payment shall constitute prima facie evidence that*
22 *such person is engaged, for commercial or money-making*
23 *purposes, in the mailing of matter which is nonmailable*
24 *under this section.*

1 “(e) *COORDINATION OF EFFORTS.*—*In the enforcement*
2 *of this section, the Postal Service shall cooperate and coordi-*
3 *nate its efforts with related activities of any other Federal*
4 *agency or of any State or local government, whenever ap-*
5 *propriate.*

6 “(f) *ACTIONS BY STATES RELATING TO CERTAIN TO-*
7 *BACCO PRODUCTS.*—

8 “(1) *AUTHORITY OF STATES.*—*Whenever the at-*
9 *torney general of a State (or an official or agency of*
10 *a State or local government designated by the State)*
11 *has reason to believe that any person has engaged or*
12 *is engaging in mailings to residents of that State in*
13 *violation of subsection (a)(2)(A), the State (or des-*
14 *ignee) may bring, in an appropriate district court of*
15 *the United States, a civil action to enjoin such mail-*
16 *ings, to carry out paragraphs (1) and (4) of sub-*
17 *section (b), or to obtain such other relief as the court*
18 *may deem appropriate.*

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

1 *tuting such action. The Postal Service, in accordance*
 2 *with section 409(g)(2), shall have the right (A) to in-*
 3 *tervene in the action, (B) upon so intervening, to be*
 4 *heard on all matters arising therein, and (C) to file*
 5 *petitions for appeal.*

6 “(3) *EFFECT ON STATE COURT PROCEEDINGS.—*
 7 *Nothing contained in this section shall be construed*
 8 *to prohibit an authorized State official from pro-*
 9 *ceeding in State court on the basis of an alleged viola-*
 10 *tion of any general civil or criminal statute of such*
 11 *State.*

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

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

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

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

1 “(3) the term ‘State’ includes the District of Co-
 2 lumbia, the Commonwealth of Puerto Rico, and the
 3 Virgin Islands.”.

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

7 (c) *ENFORCEMENT OF POSTAL SERVICE ORDERS*.—
 8 Section 3012 of title 39, United States Code, is amended—
 9 (1) in subsection (a)—

10 (A) in paragraph (1), by striking “section
 11 3005(a)(1) or” and inserting “section
 12 3002b(c)(1), 3005(a)(1), or”; and

13 (B) in paragraph (2), by inserting
 14 “3002b(c)(2) or” before “3005(a)(3)”;

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

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

19 (d) *SEMIANNUAL REPORTS*.—Section 3013 of title 39,
 20 United States Code, is amended—

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

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

1 (e) *CLERICAL AMENDMENT.*—*The table of sections for*
 2 *chapter 30 of title 39, United States Code, is amended by*
 3 *inserting after the item relating to section 3002a the fol-*
 4 *lowing:*

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

5 (f) *EFFECTIVE DATES.*—

6 (1) *IN GENERAL.*—*Except as provided in para-*
 7 *graph (2), the amendments made by this section shall*
 8 *take effect on the 60th day after the date of the enact-*
 9 *ment of this Act, and shall apply with respect to any*
 10 *mail matter mailed on or after such 60th day.*

11 (2) *SEMIANNUAL REPORTS.*—*The amendments*
 12 *made by subsection (d) shall apply beginning with the*
 13 *report submitted for the reporting period in which oc-*
 14 *curs the 60th day after the date of the enactment of*
 15 *this Act.*

16 **SEC. 2. TECHNICAL CORRECTION.**

17 (a) *IN GENERAL.*—*Sections 3007(a)(1), 3012(b)(1),*
 18 *and 3018(f)(1) of title 39, United States Code, are amended*
 19 *by striking “409(d)” and inserting “409(g)(2)”.*

20 (b) *EFFECTIVE DATE.*—*The amendments made by sub-*
 21 *section (a) shall take effect as if included in the enactment*
 22 *of the Postal Accountability and Enhancement Act (Public*
 23 *Law 109–435).*

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