

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 1147

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## 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,*

1 **SECTION 1. SHORT TITLE; FINDINGS; PURPOSES.**

2 (a) **SHORT TITLE.**—This Act may be cited as the  
3 “Prevent All Cigarette Trafficking Act of 2009” or  
4 “PACT Act”.

5 (b) **FINDINGS.**—Congress finds that—

6 (1) the sale of illegal cigarettes and smokeless  
7 tobacco products significantly reduces Federal,  
8 State, and local government revenues, with Internet  
9 sales alone accounting for billions of dollars of lost  
10 Federal, State, and local tobacco tax revenue each  
11 year;

12 (2) Hezbollah, Hamas, al Qaeda, and other ter-  
13 rorist organizations have profited from trafficking in  
14 illegal cigarettes or counterfeit cigarette tax stamps;

15 (3) terrorist involvement in illicit cigarette traf-  
16 ficking will continue to grow because of the large  
17 profits such organizations can earn;

18 (4) the sale of illegal cigarettes and smokeless  
19 tobacco over the Internet, and through mail, fax, or  
20 phone orders, makes it cheaper and easier for chil-  
21 dren to obtain tobacco products;

22 (5) the majority of Internet and other remote  
23 sales of cigarettes and smokeless tobacco are being  
24 made without adequate precautions to protect  
25 against sales to children, without the payment of ap-  
26 plicable taxes, and without complying with the nomi-

1       nal registration and reporting requirements in exist-  
2       ing Federal law;

3               (6) unfair competition from illegal sales of ciga-  
4       rettes and smokeless tobacco is taking billions of dol-  
5       lars of sales away from law-abiding retailers  
6       throughout the United States;

7               (7) with rising State and local tobacco tax  
8       rates, the incentives for the illegal sale of cigarettes  
9       and smokeless tobacco have increased;

10              (8) the number of active tobacco investigations  
11       being conducted by the Bureau of Alcohol, Tobacco,  
12       Firearms, and Explosives rose to 452 in 2005;

13              (9) the number of Internet vendors in the  
14       United States and in foreign countries that sell ciga-  
15       rettes and smokeless tobacco to buyers in the United  
16       States increased from only about 40 in 2000 to  
17       more than 500 in 2005; and

18              (10) the intrastate sale of illegal cigarettes and  
19       smokeless tobacco over the Internet has a substan-  
20       tial effect on interstate commerce.

21       (c) PURPOSES.—It is the purpose of this Act to—

22              (1) require Internet and other remote sellers of  
23       cigarettes and smokeless tobacco to comply with the  
24       same laws that apply to law-abiding tobacco retail-  
25       ers;

1           (2) create strong disincentives to illegal smug-  
2           gling of tobacco products;

3           (3) provide government enforcement officials  
4           with more effective enforcement tools to combat to-  
5           bacco smuggling;

6           (4) make it more difficult for cigarette and  
7           smokeless tobacco traffickers to engage in and profit  
8           from their illegal activities;

9           (5) increase collections of Federal, State, and  
10          local excise taxes on cigarettes and smokeless to-  
11          bacco; and

12          (6) prevent and reduce youth access to inexpen-  
13          sive cigarettes and smokeless tobacco through illegal  
14          Internet or contraband sales.

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

17          (a) DEFINITIONS.—The Act of October 19, 1949 (15  
18 U.S.C. 375 et seq.; commonly referred to as the “Jenkins  
19 Act”) (referred to in this Act as the “Jenkins Act”), is  
20 amended by striking the first section and inserting the fol-  
21 lowing:

22 **“SECTION 1. DEFINITIONS.**

23          “As used in this Act, the following definitions apply:

24                 “(1) ATTORNEY GENERAL.—The term ‘attorney  
25                 general’, with respect to a State, means the attorney

1 general or other chief law enforcement officer of the  
2 State.

3 “(2) CIGARETTE.—

4 “(A) IN GENERAL.—The term ‘cigarette’—

5 “(i) has the meaning given that term  
6 in section 2341 of title 18, United States  
7 Code; and

8 “(ii) includes roll-your-own tobacco  
9 (as defined in section 5702 of the Internal  
10 Revenue Code of 1986).

11 “(B) EXCEPTION.—The term ‘cigarette’  
12 does not include a cigar (as defined in section  
13 5702 of the Internal Revenue Code of 1986).

14 “(3) COMMON CARRIER.—The term ‘common  
15 carrier’ means any person (other than a local mes-  
16 senger service or the United States Postal Service)  
17 that holds itself out to the general public as a pro-  
18 vider for hire of the transportation by water, land,  
19 or air of merchandise (regardless of whether the per-  
20 son actually operates the vessel, vehicle, or aircraft  
21 by which the transportation is provided) between a  
22 port or place and a port or place in the United  
23 States.

24 “(4) CONSUMER.—The term ‘consumer’—

1           “(A) means any person that purchases  
2 cigarettes or smokeless tobacco; and

3           “(B) does not include any person lawfully  
4 operating as a manufacturer, distributor, whole-  
5 saler, or retailer of cigarettes or smokeless to-  
6 bacco.

7           “(5) DELIVERY SALE.—The term ‘delivery sale’  
8 means any sale of cigarettes or smokeless tobacco to  
9 a consumer if—

10           “(A) the consumer submits the order for  
11 the sale by means of a telephone or other meth-  
12 od of voice transmission, the mails, or the  
13 Internet or other online service, or the seller is  
14 otherwise not in the physical presence of the  
15 buyer when the request for purchase or order is  
16 made; or

17           “(B) the cigarettes or smokeless tobacco  
18 are delivered to the buyer by common carrier,  
19 private delivery service, or other method of re-  
20 mote delivery, or the seller is not in the physical  
21 presence of the buyer when the buyer obtains  
22 possession of the cigarettes or smokeless to-  
23 bacco.

24           “(6) DELIVERY SELLER.—The term ‘delivery  
25 seller’ means a person who makes a delivery sale.

1           “(7) INDIAN COUNTRY.—The term ‘Indian  
2 country’—

3           “(A) has the meaning given that term in  
4 section 1151 of title 18, United States Code,  
5 except that within the State of Alaska that  
6 term applies only to the Metlakatla Indian  
7 Community, Annette Island Reserve; and

8           “(B) includes any other land held by the  
9 United States in trust or restricted status for  
10 one or more Indian tribes.

11           “(8) INDIAN TRIBE.—The term ‘Indian tribe’,  
12 ‘tribe’, or ‘tribal’ refers to an Indian tribe as defined  
13 in section 4(e) of the Indian Self-Determination and  
14 Education Assistance Act (25 U.S.C. 450b(e)) or as  
15 listed pursuant to section 104 of the Federally Rec-  
16 ognized Indian Tribe List Act of 1994 (25 U.S.C.  
17 479a–1).

18           “(9) INTERSTATE COMMERCE.—

19           “(A) IN GENERAL.—The term ‘interstate  
20 commerce’ means commerce between a State  
21 and any place outside the State, commerce be-  
22 tween a State and any Indian country in the  
23 State, or commerce between points in the same  
24 State but through any place outside the State  
25 or through any Indian country.

1           “(B) INTO A STATE, PLACE, OR LOCAL-  
2           ITY.—A sale, shipment, or transfer of cigarettes  
3           or smokeless tobacco that is made in interstate  
4           commerce, as defined in this paragraph, shall  
5           be deemed to have been made into the State,  
6           place, or locality in which such cigarettes or  
7           smokeless tobacco are delivered.

8           “(10) PERSON.—The term ‘person’ means an  
9           individual, corporation, company, association, firm,  
10          partnership, society, State government, local govern-  
11          ment, Indian tribal government, governmental orga-  
12          nization of such a government, or joint stock com-  
13          pany.

14          “(11) STATE.—The term ‘State’ means each of  
15          the several States of the United States, the District  
16          of Columbia, the Commonwealth of Puerto Rico, or  
17          any territory or possession of the United States.

18          “(12) SMOKELESS TOBACCO.—The term  
19          ‘smokeless tobacco’ means any finely cut, ground,  
20          powdered, or leaf tobacco, or other product con-  
21          taining tobacco, that is intended to be placed in the  
22          oral or nasal cavity or otherwise consumed without  
23          being combusted.

24          “(13) TOBACCO TAX ADMINISTRATOR.—The  
25          term ‘tobacco tax administrator’ means the State,

1 local, or tribal official duly authorized to collect the  
2 tobacco tax or administer the tax law of a State, lo-  
3 cality, or tribe, respectively.

4 “(14) USE.—The term ‘use’ includes the con-  
5 sumption, storage, handling, or disposal of cigarettes  
6 or smokeless tobacco.”.

7 (b) REPORTS TO STATE TOBACCO TAX ADMINISTRA-  
8 TORS.—Section 2 of the Jenkins Act (15 U.S.C. 376) is  
9 amended—

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

13 (2) in subsection (a)—

14 (A) in the matter preceding paragraph

15 (1)—

16 (i) by inserting “CONTENTS.—” after  
17 “(a)”;

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

20 (iii) by inserting “, locality, or Indian  
21 country of an Indian tribe” after “a  
22 State”;

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

1 (v) by striking “or transfer and ship-  
2 ment” and inserting “, transfer, or ship-  
3 ment”;

4 (B) in paragraph (1)—

5 (i) by striking “with the tobacco tax  
6 administrator of the State” and inserting  
7 “with the Attorney General of the United  
8 States and with the tobacco tax adminis-  
9 trators of the State and place”; and

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

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

1 (D) by adding at the end the following:

2 “(3) with respect to each memorandum or in-  
3 voice filed with a State under paragraph (2), also  
4 file copies of the memorandum or invoice with the  
5 tobacco tax administrators and chief law enforce-  
6 ment officers of the local governments and Indian  
7 tribes operating within the borders of the State that  
8 apply their own local or tribal taxes on cigarettes or  
9 smokeless tobacco.”;

10 (3) in subsection (b)—

11 (A) by inserting “PRESUMPTIVE EVI-  
12 DENCE.—” after “(b)”;

13 (B) by striking “(1) that” and inserting  
14 “that”; and

15 (C) by striking “, and (2)” and all that  
16 follows and inserting a period; and

17 (4) by adding at the end the following:

18 “(c) USE OF INFORMATION.—A tobacco tax adminis-  
19 trator or chief law enforcement officer who receives a  
20 memorandum or invoice under paragraph (2) or (3) of  
21 subsection (a) shall use the memorandum or invoice solely  
22 for the purposes of the enforcement of this Act and the  
23 collection of any taxes owed on related sales of cigarettes  
24 and smokeless tobacco, and shall keep confidential any

1 personal information in the memorandum or invoice except  
2 as required for such purposes.”.

3 (c) REQUIREMENTS FOR DELIVERY SALES.—The  
4 Jenkins Act is amended by inserting after section 2 the  
5 following:

6 **“SEC. 2A. DELIVERY SALES.**

7 “(a) IN GENERAL.—With respect to delivery sales  
8 into a specific State and place, each delivery seller shall  
9 comply with—

10 “(1) the shipping requirements set forth in sub-  
11 section (b);

12 “(2) the recordkeeping requirements set forth  
13 in subsection (c);

14 “(3) all State, local, tribal, and other laws gen-  
15 erally applicable to sales of cigarettes or smokeless  
16 tobacco as if the delivery sales occurred entirely  
17 within the specific State and place, including laws  
18 imposing—

19 “(A) excise taxes;

20 “(B) licensing and tax-stamping require-  
21 ments;

22 “(C) restrictions on sales to minors; and

23 “(D) other payment obligations or legal re-  
24 quirements relating to the sale, distribution, or  
25 delivery of cigarettes or smokeless tobacco; and

1           “(4) the tax collection requirements set forth in  
2 subsection (d).

3           “(b) SHIPPING AND PACKAGING.—

4           “(1) REQUIRED STATEMENT.—For any ship-  
5 ping package containing cigarettes or smokeless to-  
6 bacco, the delivery seller shall include on the bill of  
7 lading, if any, and on the outside of the shipping  
8 package, on the same surface as the delivery ad-  
9 dress, a clear and conspicuous statement providing  
10 as follows: ‘CIGARETTES/SMOKELESS TO-  
11 BACCO: FEDERAL LAW REQUIRES THE PAY-  
12 MENT OF ALL APPLICABLE EXCISE TAXES,  
13 AND COMPLIANCE WITH APPLICABLE LI-  
14 CENSING AND TAX-STAMPING OBLIGA-  
15 TIONS’.

16           “(2) FAILURE TO LABEL.—Any shipping pack-  
17 age described in paragraph (1) that is not labeled in  
18 accordance with that paragraph shall be treated as  
19 nondeliverable matter by a common carrier or other  
20 delivery service, if the common carrier or other deliv-  
21 ery service knows or should know the package con-  
22 tains cigarettes or smokeless tobacco. If a common  
23 carrier or other delivery service believes a package is  
24 being submitted for delivery in violation of para-  
25 graph (1), it may require the person submitting the

1 package for delivery to establish that it is not being  
2 sent in violation of paragraph (1) before accepting  
3 the package for delivery. Nothing in this paragraph  
4 shall require the common carrier or other delivery  
5 service to open any package to determine its con-  
6 tents.

7 “(3) WEIGHT RESTRICTION.—A delivery seller  
8 shall not sell, offer for sale, deliver, or cause to be  
9 delivered in any single sale or single delivery any  
10 cigarettes or smokeless tobacco weighing more than  
11 10 pounds.

12 “(4) AGE VERIFICATION.—

13 “(A) IN GENERAL.—A delivery seller who  
14 mails or ships tobacco products—

15 “(i) shall not sell, deliver, or cause to  
16 be delivered any tobacco products to a per-  
17 son under the minimum age required for  
18 the legal sale or purchase of tobacco prod-  
19 ucts, as determined by the applicable law  
20 at the place of delivery;

21 “(ii) shall use a method of mailing or  
22 shipping that requires—

23 “(I) the purchaser placing the  
24 delivery sale order, or an adult who is  
25 at least the minimum age required for

1 the legal sale or purchase of tobacco  
2 products, as determined by the appli-  
3 cable law at the place of delivery, to  
4 sign to accept delivery of the shipping  
5 container at the delivery address; and

6 “(II) the person who signs to ac-  
7 cept delivery of the shipping container  
8 to provide proof, in the form of a  
9 valid, government-issued identification  
10 bearing a photograph of the indi-  
11 vidual, that the person is at least the  
12 minimum age required for the legal  
13 sale or purchase of tobacco products,  
14 as determined by the applicable law at  
15 the place of delivery; and

16 “(iii) shall not accept a delivery sale  
17 order from a person without—

18 “(I) obtaining the full name,  
19 birth date, and residential address of  
20 that person; and

21 “(II) verifying the information  
22 provided in subclause (I), through the  
23 use of a commercially available data-  
24 base or aggregate of databases, con-  
25 sisting primarily of data from govern-

1           ment sources, that are regularly used  
2           by government and businesses for the  
3           purpose of age and identity  
4           verification and authentication, to en-  
5           sure that the purchaser is at least the  
6           minimum age required for the legal  
7           sale or purchase of tobacco products,  
8           as determined by the applicable law at  
9           the place of delivery.

10           “(B) LIMITATION.—No database being  
11           used for age and identity verification under  
12           subparagraph (A)(iii) shall be in the possession  
13           or under the control of the delivery seller, or be  
14           subject to any changes or supplementation by  
15           the delivery seller.

16           “(c) RECORDS.—

17           “(1) IN GENERAL.—Each delivery seller shall  
18           keep a record of any delivery sale, including all of  
19           the information described in section 2(a)(2), orga-  
20           nized by the State, and within the State, by the city  
21           or town and by zip code, into which the delivery sale  
22           is so made.

23           “(2) RECORD RETENTION.—Records of a deliv-  
24           ery sale shall be kept as described in paragraph (1)

1       until the end of the 4th full calendar year that be-  
2       gins after the date of the delivery sale.

3               “(3) ACCESS FOR OFFICIALS.—Records kept  
4       under paragraph (1) shall be made available to to-  
5       bacco tax administrators of the States, to local gov-  
6       ernments and Indian tribes that apply local or tribal  
7       taxes on cigarettes or smokeless tobacco, to the at-  
8       torneys general of the States, to the chief law en-  
9       forcement officers of the local governments and In-  
10      dian tribes, and to the Attorney General of the  
11      United States in order to ensure the compliance of  
12      persons making delivery sales with the requirements  
13      of this Act.

14              “(d) DELIVERY.—

15               “(1) IN GENERAL.—Except as provided in para-  
16      graph (2), no delivery seller may sell or deliver to  
17      any consumer, or tender to any common carrier or  
18      other delivery service, any cigarettes or smokeless to-  
19      bacco pursuant to a delivery sale unless, in advance  
20      of the sale, delivery, or tender—

21               “(A) any cigarette or smokeless tobacco ex-  
22      cise tax that is imposed by the State in which  
23      the cigarettes or smokeless tobacco are to be  
24      delivered has been paid to the State;

1           “(B) any cigarette or smokeless tobacco  
2           excise tax that is imposed by the local govern-  
3           ment of the place in which the cigarettes or  
4           smokeless tobacco are to be delivered has been  
5           paid to the local government; and

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

10          “(2) EXCEPTION.—Paragraph (1) does not  
11          apply to a delivery sale of smokeless tobacco if the  
12          law of the State or local government of the place  
13          where the smokeless tobacco is to be delivered re-  
14          quires or otherwise provides that delivery sellers col-  
15          lect the excise tax from the consumer and remit the  
16          excise tax to the State or local government, and the  
17          delivery seller complies with the requirement.

18          “(e) LIST OF UNREGISTERED OR NONCOMPLIANT  
19          DELIVERY SELLERS.—

20                 “(1) IN GENERAL.—

21                         “(A) INITIAL LIST.—Not later than 90  
22                         days after this subsection goes into effect under  
23                         the Prevent All Cigarette Trafficking Act of  
24                         2009, the Attorney General of the United  
25                         States shall compile a list of delivery sellers of

1 cigarettes or smokeless tobacco that have not  
2 registered with the Attorney General of the  
3 United States pursuant to section 2(a), or that  
4 are otherwise not in compliance with this Act,  
5 and—

6 “(i) distribute the list to—

7 “(I) the attorney general and tax  
8 administrator of every State;

9 “(II) common carriers and other  
10 persons that deliver small packages to  
11 consumers in interstate commerce, in-  
12 cluding the United States Postal Serv-  
13 ice; and

14 “(III) any other person that the  
15 Attorney General of the United States  
16 determines can promote the effective  
17 enforcement of this Act; and

18 “(ii) publicize and make the list avail-  
19 able to any other person engaged in the  
20 business of interstate deliveries or who de-  
21 livers cigarettes or smokeless tobacco in or  
22 into any State.

23 “(B) LIST CONTENTS.—To the extent  
24 known, the Attorney General of the United

1 States shall include, for each delivery seller on  
2 the list described in subparagraph (A)—

3 “(i) all names the delivery seller uses  
4 or has used in the transaction of its busi-  
5 ness or on packages delivered to cus-  
6 tomers;

7 “(ii) all addresses from which the de-  
8 livery seller does or has done business, or  
9 ships or has shipped cigarettes or smoke-  
10 less tobacco;

11 “(iii) the website addresses, primary  
12 e-mail address, and phone number of the  
13 delivery seller; and

14 “(iv) any other information that the  
15 Attorney General of the United States de-  
16 termines would facilitate compliance with  
17 this subsection by recipients of the list.

18 “(C) UPDATING.—The Attorney General of  
19 the United States shall update and distribute  
20 the list described in subparagraph (A) at least  
21 once every 4 months, and may distribute the  
22 list and any updates by regular mail, electronic  
23 mail, or any other reasonable means, or by pro-  
24 viding recipients with access to the list through

1 a nonpublic website that the Attorney General  
2 of the United States regularly updates.

3 “(D) STATE, LOCAL, OR TRIBAL ADDI-  
4 TIONS.—The Attorney General of the United  
5 States shall include in the list described in sub-  
6 paragraph (A) any noncomplying delivery sell-  
7 ers identified by any State, local, or tribal gov-  
8 ernment under paragraph (6), and shall dis-  
9 tribute the list to the attorney general or chief  
10 law enforcement official and the tax adminis-  
11 trator of any government submitting any such  
12 information, and to any common carriers or  
13 other persons who deliver small packages to  
14 consumers identified by any government pursu-  
15 ant to paragraph (6).

16 “(E) ACCURACY AND COMPLETENESS OF  
17 LIST OF NONCOMPLYING DELIVERY SELLERS.—  
18 In preparing and revising the list described in  
19 subparagraph (A), the Attorney General of the  
20 United States shall—

21 “(i) use reasonable procedures to en-  
22 sure maximum possible accuracy and com-  
23 pleteness of the records and information  
24 relied on for the purpose of determining

1 that a delivery seller is not in compliance  
2 with this Act;

3 “(ii) not later than 14 days before in-  
4 cluding a delivery seller on the list, make  
5 a reasonable attempt to send notice to the  
6 delivery seller by letter, electronic mail, or  
7 other means that the delivery seller is  
8 being placed on the list, which shall cite  
9 the relevant provisions of this Act and the  
10 specific reasons for which the delivery sell-  
11 er is being placed on the list;

12 “(iii) provide an opportunity to the  
13 delivery seller to challenge placement on  
14 the list;

15 “(iv) investigate each challenge de-  
16 scribed in clause (iii) by contacting the rel-  
17 evant Federal, State, tribal, and local law  
18 enforcement officials, and provide the spe-  
19 cific findings and results of the investiga-  
20 tion to the delivery seller not later than 30  
21 days after the date on which the challenge  
22 is made; and

23 “(v) if the Attorney General of the  
24 United States determines that the basis for  
25 including a delivery seller on the list is in-

1           accurate, based on incomplete information,  
2           or cannot be verified, promptly remove the  
3           delivery seller from the list as appropriate  
4           and notify each appropriate Federal, State,  
5           tribal, and local authority of the deter-  
6           mination.

7           “(F) CONFIDENTIALITY.—The list de-  
8           scribed in subparagraph (A) shall be confiden-  
9           tial, and any person receiving the list shall  
10          maintain the confidentiality of the list and may  
11          deliver the list, for enforcement purposes, to  
12          any government official or to any common car-  
13          rier or other person that delivers tobacco prod-  
14          ucts or small packages to consumers. Nothing  
15          in this section shall prohibit a common carrier,  
16          the United States Postal Service, or any other  
17          person receiving the list from discussing with a  
18          listed delivery seller the inclusion of the delivery  
19          seller on the list and the resulting effects on  
20          any services requested by the listed delivery  
21          seller.

22          “(2) PROHIBITION ON DELIVERY.—

23                 “(A) IN GENERAL.—Commencing on the  
24                 date that is 60 days after the date of the initial  
25                 distribution or availability of the list described

1 in paragraph (1)(A), no person who receives the  
2 list under paragraph (1), and no person who  
3 delivers cigarettes or smokeless tobacco to con-  
4 sumers, shall knowingly complete, cause to be  
5 completed, or complete its portion of a delivery  
6 of any package for any person whose name and  
7 address are on the list, unless—

8 “(i) the person making the delivery  
9 knows or believes in good faith that the  
10 item does not include cigarettes or smoke-  
11 less tobacco;

12 “(ii) the delivery is made to a person  
13 lawfully engaged in the business of manu-  
14 facturing, distributing, or selling cigarettes  
15 or smokeless tobacco; or

16 “(iii) the package being delivered  
17 weighs more than 100 pounds and the per-  
18 son making the delivery does not know or  
19 have reasonable cause to believe that the  
20 package contains cigarettes or smokeless  
21 tobacco.

22 “(B) IMPLEMENTATION OF UPDATES.—  
23 Commencing on the date that is 30 days after  
24 the date of the distribution or availability of  
25 any updates or corrections to the list described

1 in paragraph (1)(A), all recipients and all com-  
2 mon carriers or other persons that deliver ciga-  
3 rettes or smokeless tobacco to consumers shall  
4 be subject to subparagraph (A) in regard to the  
5 corrections or updates.

6 “(3) EXEMPTIONS.—

7 “(A) IN GENERAL.—Subsection (b)(2) and  
8 any requirements or restrictions placed directly  
9 on common carriers under this subsection, in-  
10 cluding subparagraphs (A) and (B) of para-  
11 graph (2), shall not apply to a common carrier  
12 that—

13 “(i) is subject to a settlement agree-  
14 ment described in subparagraph (B); or

15 “(ii) if a settlement agreement de-  
16 scribed in subparagraph (B) to which the  
17 common carrier is a party is terminated or  
18 otherwise becomes inactive, is admin-  
19 istering and enforcing policies and prac-  
20 tices throughout the United States that  
21 are at least as stringent as the agreement.

22 “(B) SETTLEMENT AGREEMENT.—A set-  
23 tlement agreement described in this subpara-  
24 graph—

1           “(i) is a settlement agreement relating  
2           to tobacco product deliveries to consumers;  
3           and

4           “(ii) includes—

5                   “(I) the Assurance of Discontinu-  
6                   ance entered into by the Attorney  
7                   General of New York and DHL Hold-  
8                   ings USA, Inc. and DHL Express  
9                   (USA), Inc. on or about July 1, 2005,  
10                  the Assurance of Discontinuance en-  
11                  tered into by the Attorney General of  
12                  New York and United Parcel Service,  
13                  Inc. on or about October 21, 2005,  
14                  and the Assurance of Compliance en-  
15                  tered into by the Attorney General of  
16                  New York and Federal Express Cor-  
17                  poration and FedEx Ground Package  
18                  Systems, Inc. on or about February 3,  
19                  2006, if each of those agreements is  
20                  honored throughout the United States  
21                  to block illegal deliveries of cigarettes  
22                  or smokeless tobacco to consumers;  
23                  and

24                   “(II) any other active agreement  
25                  between a common carrier and a

1 State that operates throughout the  
2 United States to ensure that no deliv-  
3 eries of cigarettes or smokeless to-  
4 bacco shall be made to consumers or  
5 illegally operating Internet or mail-  
6 order sellers and that any such deliv-  
7 eries to consumers shall not be made  
8 to minors or without payment to the  
9 States and localities where the con-  
10 sumers are located of all taxes on the  
11 tobacco products.

12 “(4) SHIPMENTS FROM PERSONS ON LIST.—

13 “(A) IN GENERAL.—If a common carrier  
14 or other delivery service delays or interrupts the  
15 delivery of a package in the possession of the  
16 common carrier or delivery service because the  
17 common carrier or delivery service determines  
18 or has reason to believe that the person order-  
19 ing the delivery is on a list described in para-  
20 graph (1)(A) and that clauses (i), (ii), and (iii)  
21 of paragraph (2)(A) do not apply—

22 “(i) the person ordering the delivery  
23 shall be obligated to pay—

24 “(I) the common carrier or other  
25 delivery service as if the delivery of

1 the package had been timely com-  
2 pleted; and

3 “(II) if the package is not deliv-  
4 erable, any reasonable additional fee  
5 or charge levied by the common car-  
6 rier or other delivery service to cover  
7 any extra costs and inconvenience and  
8 to serve as a disincentive against such  
9 noncomplying delivery orders; and

10 “(ii) if the package is determined not  
11 to be deliverable, the common carrier or  
12 other delivery service shall offer to provide  
13 the package and its contents to a Federal,  
14 State, or local law enforcement agency.

15 “(B) RECORDS.—A common carrier or  
16 other delivery service shall maintain, for a pe-  
17 riod of 5 years, any records kept in the ordi-  
18 nary course of business relating to any delivery  
19 interrupted under this paragraph and provide  
20 that information, upon request, to the Attorney  
21 General of the United States or to the attorney  
22 general or chief law enforcement official or tax  
23 administrator of any State, local, or tribal gov-  
24 ernment.

1           “(C) CONFIDENTIALITY.—Any person re-  
2           ceiving records under subparagraph (B) shall—

3                   “(i) use the records solely for the pur-  
4                   poses of the enforcement of this Act and  
5                   the collection of any taxes owed on related  
6                   sales of cigarettes and smokeless tobacco;  
7                   and

8                   “(ii) keep confidential any personal  
9                   information in the records not otherwise  
10                  required for such purposes.

11          “(5) PREEMPTION.—

12               “(A) IN GENERAL.—No State, local, or  
13               tribal government, nor any political authority of  
14               2 or more State, local, or tribal governments,  
15               may enact or enforce any law or regulation re-  
16               lating to delivery sales that restricts deliveries  
17               of cigarettes or smokeless tobacco to consumers  
18               by common carriers or other delivery services  
19               on behalf of delivery sellers by—

20                   “(i) requiring that the common carrier  
21                   or other delivery service verify the age or  
22                   identity of the consumer accepting the de-  
23                   livery by requiring the person who signs to  
24                   accept delivery of the shipping container to  
25                   provide proof, in the form of a valid, gov-

1           ernment-issued identification bearing a  
2           photograph of the individual, that the per-  
3           son is at least the minimum age required  
4           for the legal sale or purchase of tobacco  
5           products, as determined by either State or  
6           local law at the place of delivery;

7           “(ii) requiring that the common car-  
8           rier or other delivery service obtain a sig-  
9           nature from the consumer accepting the  
10          delivery;

11          “(iii) requiring that the common car-  
12          rier or other delivery service verify that all  
13          applicable taxes have been paid;

14          “(iv) requiring that packages delivered  
15          by the common carrier or other delivery  
16          service contain any particular labels, no-  
17          tice, or markings; or

18          “(v) prohibiting common carriers or  
19          other delivery services from making deliv-  
20          eries on the basis of whether the delivery  
21          seller is or is not identified on any list of  
22          delivery sellers maintained and distributed  
23          by any entity other than the Federal Gov-  
24          ernment.

1           “(B) RELATIONSHIP TO OTHER LAWS.—  
2           Except as provided in subparagraph (C), noth-  
3           ing in this paragraph shall be construed to nul-  
4           lify, expand, restrict, or otherwise amend or  
5           modify—

6                   “(i) section 14501(c)(1) or  
7                   41713(b)(4) of title 49, United States  
8                   Code;

9                   “(ii) any other restrictions in Federal  
10                  law on the ability of State, local, or tribal  
11                  governments to regulate common carriers;  
12                  or

13                  “(iii) any provision of State, local, or  
14                  tribal law regulating common carriers that  
15                  is described in section 14501(c)(2) or  
16                  41713(b)(4)(B) of title 49 of the United  
17                  States Code.

18           “(C) STATE LAWS PROHIBITING DELIVERY  
19           SALES.—

20                   “(i) IN GENERAL.—Except as pro-  
21                   vided in clause (ii), nothing in the Prevent  
22                   All Cigarette Trafficking Act of 2009, the  
23                   amendments made by that Act, or in any  
24                   other Federal statute shall be construed to  
25                   preempt, supersede, or otherwise limit or

1 restrict State laws prohibiting the delivery  
2 sale, or the shipment or delivery pursuant  
3 to a delivery sale, of cigarettes or other to-  
4 bacco products to individual consumers or  
5 personal residences.

6 “(ii) EXEMPTIONS.—No State may  
7 enforce against a common carrier a law  
8 prohibiting the delivery of cigarettes or  
9 other tobacco products to individual con-  
10 sumers or personal residences without  
11 proof that the common carrier is not ex-  
12 empt under paragraph (3) of this sub-  
13 section.

14 “(6) STATE, LOCAL, AND TRIBAL ADDITIONS.—

15 “(A) IN GENERAL.—Any State, local, or  
16 tribal government shall provide the Attorney  
17 General of the United States with—

18 “(i) all known names, addresses,  
19 website addresses, and other primary con-  
20 tact information of any delivery seller  
21 that—

22 “(I) offers for sale or makes  
23 sales of cigarettes or smokeless to-  
24 bacco in or into the State, locality, or  
25 tribal land; and

1           “(II) has failed to register with  
2           or make reports to the respective tax  
3           administrator as required by this Act,  
4           or that has been found in a legal pro-  
5           ceeding to have otherwise failed to  
6           comply with this Act; and

7           “(ii) a list of common carriers and  
8           other persons who make deliveries of ciga-  
9           rettes or smokeless tobacco in or into the  
10          State, locality, or tribal land.

11          “(B) UPDATES.—Any government pro-  
12          viding a list to the Attorney General of the  
13          United States under subparagraph (A) shall  
14          also provide updates and corrections every 4  
15          months until such time as the government noti-  
16          fies the Attorney General of the United States  
17          in writing that the government no longer de-  
18          sires to submit information to supplement the  
19          list described in paragraph (1)(A).

20          “(C) REMOVAL AFTER WITHDRAWAL.—  
21          Upon receiving written notice that a govern-  
22          ment no longer desires to submit information  
23          under subparagraph (A), the Attorney General  
24          of the United States shall remove from the list  
25          described in paragraph (1)(A) any persons that

1 are on the list solely because of the prior sub-  
2 missions of the government of the list of the  
3 government of noncomplying delivery sellers of  
4 cigarettes or smokeless tobacco or a subsequent  
5 update or correction by the government.

6 “(7) DEADLINE TO INCORPORATE ADDI-  
7 TIONS.—The Attorney General of the United States  
8 shall—

9 “(A) include any delivery seller identified  
10 and submitted by a State, local, or tribal gov-  
11 ernment under paragraph (6) in any list or up-  
12 date that is distributed or made available under  
13 paragraph (1) on or after the date that is 30  
14 days after the date on which the information is  
15 received by the Attorney General of the United  
16 States; and

17 “(B) distribute any list or update de-  
18 scribed in subparagraph (A) to any common  
19 carrier or other person who makes deliveries of  
20 cigarettes or smokeless tobacco that has been  
21 identified and submitted by a government pur-  
22 suant to paragraph (6).

23 “(8) NOTICE TO DELIVERY SELLERS.—Not  
24 later than 14 days before including any delivery sell-  
25 er on the initial list described in paragraph (1)(A),

1 or on an update to the list for the first time, the At-  
2 torney General of the United States shall make a  
3 reasonable attempt to send notice to the delivery  
4 seller by letter, electronic mail, or other means that  
5 the delivery seller is being placed on the list or up-  
6 date, with that notice citing the relevant provisions  
7 of this Act.

8 “(9) LIMITATIONS.—

9 “(A) IN GENERAL.—Any common carrier  
10 or other person making a delivery subject to  
11 this subsection shall not be required or other-  
12 wise obligated to—

13 “(i) determine whether any list dis-  
14 tributed or made available under para-  
15 graph (1) is complete, accurate, or up-to-  
16 date;

17 “(ii) determine whether a person or-  
18 dering a delivery is in compliance with this  
19 Act; or

20 “(iii) open or inspect, pursuant to this  
21 Act, any package being delivered to deter-  
22 mine its contents.

23 “(B) ALTERNATE NAMES.—Any common  
24 carrier or other person making a delivery sub-  
25 ject to this subsection—

1           “(i) shall not be required to make any  
2           inquiries or otherwise determine whether a  
3           person ordering a delivery is a delivery sell-  
4           er on the list described in paragraph  
5           (1)(A) who is using a different name or  
6           address in order to evade the related deliv-  
7           ery restrictions; and

8           “(ii) shall not knowingly deliver any  
9           packages to consumers for any delivery  
10          seller on the list described in paragraph  
11          (1)(A) who the common carrier or other  
12          delivery service knows is a delivery seller  
13          who is on the list and is using a different  
14          name or address to evade the delivery re-  
15          strictions of paragraph (2).

16          “(C) PENALTIES.—Any common carrier or  
17          person in the business of delivering packages on  
18          behalf of other persons shall not be subject to  
19          any penalty under section 14101(a) of title 49,  
20          United States Code, or any other provision of  
21          law for—

22                 “(i) not making any specific delivery,  
23                 or any deliveries at all, on behalf of any  
24                 person on the list described in paragraph  
25                 (1)(A);

1           “(ii) refusing, as a matter of regular  
2           practice and procedure, to make any deliv-  
3           eries, or any deliveries in certain States, of  
4           any cigarettes or smokeless tobacco for any  
5           person or for any person not in the busi-  
6           ness of manufacturing, distributing, or  
7           selling cigarettes or smokeless tobacco; or

8           “(iii) delaying or not making a deliv-  
9           ery for any person because of reasonable  
10          efforts to comply with this Act.

11          “(D) OTHER LIMITS.—Section 2 and sub-  
12          sections (a), (b), (c), and (d) of this section  
13          shall not be interpreted to impose any respon-  
14          sibilities, requirements, or liability on common  
15          carriers.

16          “(f) PRESUMPTION.—For purposes of this Act, a de-  
17          livery sale shall be deemed to have occurred in the State  
18          and place where the buyer obtains personal possession of  
19          the cigarettes or smokeless tobacco, and a delivery pursu-  
20          ant to a delivery sale is deemed to have been initiated or  
21          ordered by the delivery seller.”.

22          (d) PENALTIES.—The Jenkins Act is amended by  
23          striking section 3 and inserting the following:

24          **“SEC. 3. PENALTIES.**

25          “(a) CRIMINAL PENALTIES.—

1           “(1) IN GENERAL.—Except as provided in para-  
2 graph (2), whoever knowingly violates this Act shall  
3 be imprisoned for not more than 3 years, fined  
4 under title 18, United States Code, or both.

5           “(2) EXCEPTIONS.—

6           “(A) GOVERNMENTS.—Paragraph (1) shall  
7 not apply to a State, local, or tribal govern-  
8 ment.

9           “(B) DELIVERY VIOLATIONS.—A common  
10 carrier or independent delivery service, or em-  
11 ployee of a common carrier or independent de-  
12 livery service, shall be subject to criminal pen-  
13 alties under paragraph (1) for a violation of  
14 section 2A(e) only if the violation is committed  
15 knowingly—

16           “(i) as consideration for the receipt  
17 of, or as consideration for a promise or  
18 agreement to pay, anything of pecuniary  
19 value; or

20           “(ii) for the purpose of assisting a de-  
21 livery seller to violate, or otherwise evading  
22 compliance with, section 2A.

23           “(b) CIVIL PENALTIES.—

1           “(1) IN GENERAL.—Except as provided in para-  
2 graph (3), whoever violates this Act shall be subject  
3 to a civil penalty in an amount not to exceed—

4           “(A) in the case of a delivery seller, the  
5 greater of—

6           “(i) \$5,000 in the case of the first  
7 violation, or \$10,000 for any other viola-  
8 tion; or

9           “(ii) for any violation, 2 percent of  
10 the gross sales of cigarettes or smokeless  
11 tobacco of the delivery seller during the 1-  
12 year period ending on the date of the viola-  
13 tion.

14           “(B) in the case of a common carrier or  
15 other delivery service, \$2,500 in the case of a  
16 first violation, or \$5,000 for any violation with-  
17 in 1 year of a prior violation.

18           “(2) RELATION TO OTHER PENALTIES.—A civil  
19 penalty imposed under paragraph (1) for a violation  
20 of this Act shall be imposed in addition to any crimi-  
21 nal penalty under subsection (a) and any other dam-  
22 ages, equitable relief, or injunctive relief awarded by  
23 the court, including the payment of any unpaid taxes  
24 to the appropriate Federal, State, local, or tribal  
25 governments.

1           “(3) EXCEPTIONS.—

2                   “(A) DELIVERY VIOLATIONS.—An em-  
3           ployee of a common carrier or independent de-  
4           livery service shall be subject to civil penalties  
5           under paragraph (1) for a violation of section  
6           2A(e) only if the violation is committed inten-  
7           tionally—

8                   “(i) as consideration for the receipt  
9           of, or as consideration for a promise or  
10          agreement to pay, anything of pecuniary  
11          value; or

12                  “(ii) for the purpose of assisting a de-  
13          livery seller to violate, or otherwise evading  
14          compliance with, section 2A.

15                  “(B) OTHER LIMITATIONS.—No common  
16          carrier or independent delivery service shall be  
17          subject to civil penalties under paragraph (1)  
18          for a violation of section 2A(e) if—

19                  “(i) the common carrier or inde-  
20          pendent delivery service has implemented  
21          and enforces effective policies and practices  
22          for complying with that section; or

23                  “(ii) the violation consists of an em-  
24          ployee of the common carrier or inde-  
25          pendent delivery service who physically re-

1 ceives and processes orders, picks up pack-  
2 ages, processes packages, or makes deliv-  
3 eries, taking actions that are outside the  
4 scope of employment of the employee, or  
5 that violate the implemented and enforced  
6 policies of the common carrier or inde-  
7 pendent delivery service described in clause  
8 (i).”.

9 (e) ENFORCEMENT.—The Jenkins Act is amended by  
10 striking section 4 and inserting the following:

11 **“SEC. 4. ENFORCEMENT.**

12 “(a) IN GENERAL.—The United States district  
13 courts shall have jurisdiction to prevent and restrain viola-  
14 tions of this Act and to provide other appropriate injunc-  
15 tive or equitable relief, including money damages, for the  
16 violations.

17 “(b) AUTHORITY OF THE ATTORNEY GENERAL.—  
18 The Attorney General of the United States shall admin-  
19 ister and enforce this Act.

20 “(c) STATE, LOCAL, AND TRIBAL ENFORCEMENT.—

21 “(1) IN GENERAL.—

22 “(A) STANDING.—A State, through its at-  
23 torney general, or a local government or Indian  
24 tribe that levies a tax subject to section  
25 2A(a)(3), through its chief law enforcement of-

1           ficer, may bring an action in a United States  
2           district court to prevent and restrain violations  
3           of this Act by any person or to obtain any other  
4           appropriate relief from any person for violations  
5           of this Act, including civil penalties, money  
6           damages, and injunctive or other equitable re-  
7           lief.

8           “(B) SOVEREIGN IMMUNITY.—Nothing in  
9           this Act shall be deemed to abrogate or con-  
10          stitute a waiver of any sovereign immunity of a  
11          State or local government or Indian tribe  
12          against any unconsented lawsuit under this Act,  
13          or otherwise to restrict, expand, or modify any  
14          sovereign immunity of a State or local govern-  
15          ment or Indian tribe.

16          “(2) PROVISION OF INFORMATION.—A State,  
17          through its attorney general, or a local government  
18          or Indian tribe that levies a tax subject to section  
19          2A(a)(3), through its chief law enforcement officer,  
20          may provide evidence of a violation of this Act by  
21          any person not subject to State, local, or tribal gov-  
22          ernment enforcement actions for violations of this  
23          Act to the Attorney General of the United States or  
24          a United States attorney, who shall take appropriate  
25          actions to enforce this Act.

1           “(3) USE OF PENALTIES COLLECTED.—

2                   “(A) IN GENERAL.—There is established a  
3 separate account in the Treasury known as the  
4 ‘PACT Anti-Trafficking Fund’. Notwith-  
5 standing any other provision of law and subject  
6 to subparagraph (B), an amount equal to 50  
7 percent of any criminal and civil penalties col-  
8 lected by the Federal Government in enforcing  
9 this Act shall be transferred into the PACT  
10 Anti-Trafficking Fund and shall be available to  
11 the Attorney General of the United States for  
12 purposes of enforcing this Act and other laws  
13 relating to contraband tobacco products.

14                   “(B) ALLOCATION OF FUNDS.—Of the  
15 amount available to the Attorney General of the  
16 United States under subparagraph (A), not less  
17 than 50 percent shall be made available only to  
18 the agencies and offices within the Department  
19 of Justice that were responsible for the enforce-  
20 ment actions in which the penalties concerned  
21 were imposed or for any underlying investiga-  
22 tions.

23           “(4) NONEXCLUSIVITY OF REMEDY.—

24                   “(A) IN GENERAL.—The remedies avail-  
25 able under this section and section 3 are in ad-

1           dition to any other remedies available under  
2           Federal, State, local, tribal, or other law.

3           “(B) STATE COURT PROCEEDINGS.—Noth-  
4           ing in this Act shall be construed to expand, re-  
5           strict, or otherwise modify any right of an au-  
6           thorized State official to proceed in State court,  
7           or take other enforcement actions, on the basis  
8           of an alleged violation of State or other law.

9           “(C) TRIBAL COURT PROCEEDINGS.—  
10          Nothing in this Act shall be construed to ex-  
11          pand, restrict, or otherwise modify any right of  
12          an authorized Indian tribal government official  
13          to proceed in tribal court, or take other enforce-  
14          ment actions, on the basis of an alleged viola-  
15          tion of tribal law.

16          “(D) LOCAL GOVERNMENT ENFORCE-  
17          MENT.—Nothing in this Act shall be construed  
18          to expand, restrict, or otherwise modify any  
19          right of an authorized local government official  
20          to proceed in State court, or take other enforce-  
21          ment actions, on the basis of an alleged viola-  
22          tion of local or other law.

23          “(d) PERSONS DEALING IN TOBACCO PRODUCTS.—  
24          Any person who holds a permit under section 5712 of the  
25          Internal Revenue Code of 1986 (regarding permitting of

1 manufacturers and importers of tobacco products and ex-  
2 port warehouse proprietors) may bring an action in an ap-  
3 propriate United States district court to prevent and re-  
4 strain violations of this Act by any person other than a  
5 State, local, or tribal government.

6 “(e) NOTICE.—

7 “(1) PERSONS DEALING IN TOBACCO PROD-  
8 UCTS.—Any person who commences a civil action  
9 under subsection (d) shall inform the Attorney Gen-  
10 eral of the United States of the action.

11 “(2) STATE, LOCAL, AND TRIBAL ACTIONS.—It  
12 is the sense of Congress that the attorney general of  
13 any State, or chief law enforcement officer of any lo-  
14 cality or tribe, that commences a civil action under  
15 this section should inform the Attorney General of  
16 the United States of the action.

17 “(f) PUBLIC NOTICE.—

18 “(1) IN GENERAL.—The Attorney General of  
19 the United States shall make available to the public,  
20 by posting information on the Internet and by other  
21 appropriate means, information regarding all en-  
22 forcement actions brought by the United States, or  
23 reported to the Attorney General of the United  
24 States, under this section, including information re-  
25 garding the resolution of the enforcement actions

1 and how the Attorney General of the United States  
2 has responded to referrals of evidence of violations  
3 pursuant to subsection (c)(2).

4 “(2) REPORTS TO CONGRESS.—Not later than  
5 1 year after the date of enactment of the Prevent All  
6 Cigarette Trafficking Act of 2009, and every year  
7 thereafter until the date that is 5 years after such  
8 date of enactment, the Attorney General of the  
9 United States shall submit to Congress a report con-  
10 taining the information described in paragraph  
11 (1).”.

12 **SEC. 3. TREATMENT OF CIGARETTES AND SMOKELESS TO-**  
13 **BACCO AS NONMAILABLE MATTER.**

14 (a) IN GENERAL.—Chapter 83 of title 18, United  
15 States Code, is amended by inserting after section 1716D  
16 the following:

17 **“§ 1716E. Tobacco products as nonmailable**

18 “(a) PROHIBITION.—

19 “(1) IN GENERAL.—All cigarettes and smoke-  
20 less tobacco (as those terms are defined in section  
21 1 of the Act of October 19, 1949, commonly referred  
22 to as the Jenkins Act) are nonmailable and shall not  
23 be deposited in or carried through the mails. The  
24 United States Postal Service shall not accept for de-  
25 livery or transmit through the mails any package

1 that it knows or has reasonable cause to believe con-  
2 tains any cigarettes or smokeless tobacco made non-  
3 mailable by this paragraph.

4 “(2) REASONABLE CAUSE.—For the purposes  
5 of this subsection reasonable cause includes—

6 “(A) a statement on a publicly available  
7 website, or an advertisement, by any person  
8 that the person will mail matter which is non-  
9 mailable under this section in return for pay-  
10 ment; or

11 “(B) the fact that the person is on the list  
12 created under section 2A(e) of the Jenkins Act.

13 “(b) EXCEPTIONS.—

14 “(1) CIGARS.—Subsection (a) shall not apply to  
15 cigars (as defined in section 5702(a) of the Internal  
16 Revenue Code of 1986).

17 “(2) GEOGRAPHIC EXCEPTION.—Subsection (a)  
18 shall not apply to mailings within the State of Alas-  
19 ka or within the State of Hawaii.

20 “(3) BUSINESS PURPOSES.—

21 “(A) IN GENERAL.—Subsection (a) shall  
22 not apply to tobacco products mailed only—

23 “(i) for business purposes between le-  
24 gally operating businesses that have all ap-  
25 plicable State and Federal Government li-

1 censes or permits and are engaged in to-  
2 bacco product manufacturing, distribution,  
3 wholesale, export, import, testing, inves-  
4 tigation, or research; or

5 “(ii) for regulatory purposes between  
6 any business described in clause (i) and an  
7 agency of the Federal Government or a  
8 State government.

9 “(B) RULES.—

10 “(i) IN GENERAL.—Not later than  
11 180 days after the date of enactment of  
12 the Prevent All Cigarette Trafficking Act  
13 of 2009, the Postmaster General shall  
14 issue a final rule which shall establish the  
15 standards and requirements that apply to  
16 all mailings described in subparagraph (A).

17 “(ii) CONTENTS.—The final rule  
18 issued under clause (i) shall require—

19 “(I) the United States Postal  
20 Service to verify that any person sub-  
21 mitting an otherwise nonmailable to-  
22 bacco product into the mails as au-  
23 thorized under this paragraph is a  
24 business or government agency per-

1           mitted to make a mailing under this  
2           paragraph;

3           “(II) the United States Postal  
4           Service to ensure that any recipient of  
5           an otherwise nonmailable tobacco  
6           product sent through the mails under  
7           this paragraph is a business or gov-  
8           ernment agency that may lawfully re-  
9           ceive the product;

10          “(III) that any mailing described  
11          in subparagraph (A) shall be sent  
12          through the systems of the United  
13          States Postal Service that provide for  
14          the tracking and confirmation of the  
15          delivery;

16          “(IV) that the identity of the  
17          business or government entity submit-  
18          ting the mailing containing otherwise  
19          nonmailable tobacco products for de-  
20          livery and the identity of the business  
21          or government entity receiving the  
22          mailing are clearly set forth on the  
23          package;

24          “(V) the United States Postal  
25          Service to maintain identifying infor-

1 mation described in subclause (IV)  
2 during the 3-year period beginning on  
3 the date of the mailing and make the  
4 information available to the Postal  
5 Service, the Attorney General of the  
6 United States, and to persons eligible  
7 to bring enforcement actions under  
8 section 3(d) of the Prevent All Ciga-  
9 rette Trafficking Act of 2009;

10 “(VI) that any mailing described  
11 in subparagraph (A) be marked with  
12 a United States Postal Service label  
13 or marking that makes it clear to em-  
14 ployees of the United States Postal  
15 Service that it is a permitted mailing  
16 of otherwise nonmailable tobacco  
17 products that may be delivered only to  
18 a permitted government agency or  
19 business and may not be delivered to  
20 any residence or individual person;  
21 and

22 “(VII) that any mailing described  
23 in subparagraph (A) be delivered only  
24 to a verified employee of the recipient  
25 business or government agency, who is

1 not a minor and who shall be required  
2 to sign for the mailing.

3 “(C) DEFINITION.—In this paragraph, the  
4 term ‘minor’ means an individual who is less  
5 than the minimum age required for the legal  
6 sale or purchase of tobacco products as deter-  
7 mined by applicable law at the place the indi-  
8 vidual is located.

9 “(4) CERTAIN INDIVIDUALS.—

10 “(A) IN GENERAL.—Subsection (a) shall  
11 not apply to tobacco products mailed by individ-  
12 uals who are not minors for noncommercial  
13 purposes, including the return of a damaged or  
14 unacceptable tobacco product to the manufac-  
15 turer.

16 “(B) RULES.—

17 “(i) IN GENERAL.—Not later than  
18 180 days after the date of enactment of  
19 the Prevent All Cigarette Trafficking Act  
20 of 2009, the Postmaster General shall  
21 issue a final rule which shall establish the  
22 standards and requirements that apply to  
23 all mailings described in subparagraph (A).

24 “(ii) CONTENTS.—The final rule  
25 issued under clause (i) shall require—

1           “(I) the United States Postal  
2           Service to verify that any person sub-  
3           mitting an otherwise nonmailable to-  
4           bacco product into the mails as au-  
5           thorized under this paragraph is the  
6           individual identified on the return ad-  
7           dress label of the package and is not  
8           a minor;

9           “(II) for a mailing to an indi-  
10          vidual, the United States Postal Serv-  
11          ice to require the person submitting  
12          the otherwise nonmailable tobacco  
13          product into the mails as authorized  
14          by this paragraph to affirm that the  
15          recipient is not a minor;

16          “(III) that any package mailed  
17          under this paragraph shall weigh not  
18          more than 10 ounces;

19          “(IV) that any mailing described  
20          in subparagraph (A) shall be sent  
21          through the systems of the United  
22          States Postal Service that provide for  
23          the tracking and confirmation of the  
24          delivery;

1           “(V) that a mailing described in  
2           subparagraph (A) shall not be deliv-  
3           ered or placed in the possession of any  
4           individual who has not been verified  
5           as not being a minor;

6           “(VI) for a mailing described in  
7           subparagraph (A) to an individual,  
8           that the United States Postal Service  
9           shall deliver the package only to a re-  
10          cipient who is verified not to be a  
11          minor at the recipient address or  
12          transfer it for delivery to an Air/Army  
13          Postal Office or Fleet Postal Office  
14          number designated in the recipient  
15          address; and

16          “(VII) that no person may ini-  
17          tiate more than 10 mailings described  
18          in subparagraph (A) during any 30-  
19          day period.

20          “(C) DEFINITION.—In this paragraph, the  
21          term ‘minor’ means an individual who is less  
22          than the minimum age required for the legal  
23          sale or purchase of tobacco products as deter-  
24          mined by applicable law at the place the indi-  
25          vidual is located.

1           “(5) EXCEPTION FOR MAILINGS FOR CONSUMER  
2 TESTING BY MANUFACTURERS.—

3           “(A) IN GENERAL.—Subject to subpara-  
4 graph (B), subsection (a) shall not preclude a  
5 legally operating cigarette manufacturer or a le-  
6 gally authorized agent of a legally operating  
7 cigarette manufacturer from using the United  
8 States Postal Service to mail cigarettes to  
9 verified adult smoker solely for consumer test-  
10 ing purposes, if—

11           “(i) the cigarette manufacturer has a  
12 permit, in good standing, issued under sec-  
13 tion 5713 of the Internal Revenue Code of  
14 1986;

15           “(ii) the package of cigarettes mailed  
16 under this paragraph contains not more  
17 than 12 packs of cigarettes (240 ciga-  
18 rettes);

19           “(iii) the recipient does not receive  
20 more than 1 package of cigarettes from  
21 any 1 cigarette manufacturer under this  
22 paragraph during any 30-day period;

23           “(iv) all taxes on the cigarettes mailed  
24 under this paragraph levied by the State  
25 and locality of delivery are paid to the

1 State and locality before delivery, and tax  
2 stamps or other tax-payment indicia are  
3 affixed to the cigarettes as required by law;  
4 and

5 “(v)(I) the recipient has not made any  
6 payments of any kind in exchange for re-  
7 ceiving the cigarettes;

8 “(II) the recipient is paid a fee by the  
9 manufacturer or agent of the manufacturer  
10 for participation in consumer product  
11 tests; and

12 “(III) the recipient, in connection  
13 with the tests, evaluates the cigarettes and  
14 provides feedback to the manufacturer or  
15 agent.

16 “(B) LIMITATIONS.—Subparagraph (A)  
17 shall not—

18 “(i) permit a mailing of cigarettes to  
19 an individual located in any State that pro-  
20 hibits the delivery or shipment of ciga-  
21 rettes to individuals in the State, or pre-  
22 empt, limit, or otherwise affect any related  
23 State laws; or

24 “(ii) permit a manufacturer, directly  
25 or through a legally authorized agent, to

1 mail cigarettes in any calendar year in a  
2 total amount greater than 1 percent of the  
3 total cigarette sales of the manufacturer in  
4 the United States during the calendar year  
5 before the date of the mailing.

6 “(C) RULES.—

7 “(i) IN GENERAL.—Not later than  
8 180 days after the date of enactment of  
9 the Prevent All Cigarette Trafficking Act  
10 of 2009, the Postmaster General shall  
11 issue a final rule which shall establish the  
12 standards and requirements that apply to  
13 all mailings described in subparagraph (A).

14 “(ii) CONTENTS.—The final rule  
15 issued under clause (i) shall require—

16 “(I) the United States Postal  
17 Service to verify that any person sub-  
18 mitting a tobacco product into the  
19 mails under this paragraph is a le-  
20 gally operating cigarette manufacturer  
21 permitted to make a mailing under  
22 this paragraph, or an agent legally  
23 authorized by the legally operating  
24 cigarette manufacturer to submit the

1 tobacco product into the mails on be-  
2 half of the manufacturer;

3 “(II) the legally operating ciga-  
4 rette manufacturer submitting the  
5 cigarettes into the mails under this  
6 paragraph to affirm that—

7 “(aa) the manufacturer or  
8 the legally authorized agent of  
9 the manufacturer has verified  
10 that the recipient is an adult es-  
11 tablished smoker;

12 “(bb) the recipient has not  
13 made any payment for the ciga-  
14 rettes;

15 “(cc) the recipient has  
16 signed a written statement that  
17 is in effect indicating that the re-  
18 cipient wishes to receive the mail-  
19 ings; and

20 “(dd) the manufacturer or  
21 the legally authorized agent of  
22 the manufacturer has offered the  
23 opportunity for the recipient to  
24 withdraw the written statement  
25 described in item (cc) not less

1 frequently than once in every 3-  
2 month period;

3 “(III) the legally operating ciga-  
4 rette manufacturer or the legally au-  
5 thorized agent of the manufacturer  
6 submitting the cigarettes into the  
7 mails under this paragraph to affirm  
8 that any package mailed under this  
9 paragraph contains not more than 12  
10 packs of cigarettes (240 cigarettes) on  
11 which all taxes levied on the cigarettes  
12 by the State and locality of delivery  
13 have been paid and all related State  
14 tax stamps or other tax-payment indi-  
15 cia have been applied;

16 “(IV) that any mailing described  
17 in subparagraph (A) shall be sent  
18 through the systems of the United  
19 States Postal Service that provide for  
20 the tracking and confirmation of the  
21 delivery;

22 “(V) the United States Postal  
23 Service to maintain records relating to  
24 a mailing described in subparagraph  
25 (A) during the 3-year period begin-

1           ning on the date of the mailing and  
2           make the information available to per-  
3           sons enforcing this section;

4                   “(VI) that any mailing described  
5           in subparagraph (A) be marked with  
6           a United States Postal Service label  
7           or marking that makes it clear to em-  
8           ployees of the United States Postal  
9           Service that it is a permitted mailing  
10          of otherwise nonmailable tobacco  
11          products that may be delivered only to  
12          the named recipient after verifying  
13          that the recipient is an adult; and

14                   “(VII) the United States Postal  
15          Service shall deliver a mailing de-  
16          scribed in subparagraph (A) only to  
17          the named recipient and only after  
18          verifying that the recipient is an  
19          adult.

20          “(D) DEFINITIONS.—In this paragraph—

21                   “(i) the term ‘adult’ means an indi-  
22          vidual who is not less than 21 years of age;  
23          and

24                   “(ii) the term ‘consumer testing’  
25          means testing limited to formal data collec-

1           tion and analysis for the specific purpose  
2           of evaluating the product for quality assur-  
3           ance and benchmarking purposes of ciga-  
4           rette brands or sub-brands among existing  
5           adult smokers.

6           “(6) FEDERAL GOVERNMENT AGENCIES.—An  
7           agency of the Federal Government involved in the  
8           consumer testing of tobacco products solely for pub-  
9           lic health purposes may mail cigarettes under the  
10          same requirements, restrictions, and rules and pro-  
11          cedures that apply to consumer testing mailings of  
12          cigarettes by manufacturers under paragraph (5),  
13          except that the agency shall not be required to pay  
14          the recipients for participating in the consumer test-  
15          ing.

16          “(c) SEIZURE AND FORFEITURE.—Any cigarettes or  
17          smokeless tobacco made nonmailable by this subsection  
18          that are deposited in the mails shall be subject to seizure  
19          and forfeiture, pursuant to the procedures set forth in  
20          chapter 46 of this title. Any tobacco products seized and  
21          forfeited under this subsection shall be destroyed or re-  
22          tained by the Federal Government for the detection or  
23          prosecution of crimes or related investigations and then  
24          destroyed.

1       “(d) ADDITIONAL PENALTIES.—In addition to any  
2 other fines and penalties under this title for violations of  
3 this section, any person violating this section shall be sub-  
4 ject to an additional civil penalty in the amount equal to  
5 10 times the retail value of the nonmailable cigarettes or  
6 smokeless tobacco, including all Federal, State, and local  
7 taxes.

8       “(e) CRIMINAL PENALTY.—Whoever knowingly de-  
9 posits for mailing or delivery, or knowingly causes to be  
10 delivered by mail, according to the direction thereon, or  
11 at any place at which it is directed to be delivered by the  
12 person to whom it is addressed, anything that is non-  
13 mailable matter under this section shall be fined under  
14 this title, imprisoned not more than 1 year, or both.

15       “(f) USE OF PENALTIES.—There is established a sep-  
16 arate account in the Treasury, to be known as the ‘PACT  
17 Postal Service Fund’. Notwithstanding any other provi-  
18 sion of law, an amount equal to 50 percent of any criminal  
19 fines, civil penalties, or other monetary penalties collected  
20 by the Federal Government in enforcing this section shall  
21 be transferred into the PACT Postal Service Fund and  
22 shall be available to the Postmaster General for the pur-  
23 pose of enforcing this subsection.

24       “(g) COORDINATION OF EFFORTS.—The Postmaster  
25 General shall cooperate and coordinate efforts to enforce

1 this section with related enforcement activities of any  
2 other Federal agency or agency of any State, local, or trib-  
3 al government, whenever appropriate.

4 “(h) ACTIONS BY STATE, LOCAL, OR TRIBAL GOV-  
5 ERNMENTS RELATING TO CERTAIN TOBACCO PROD-  
6 UCTS.—

7 “(1) IN GENERAL.—A State, through its attor-  
8 ney general, or a local government or Indian tribe  
9 that levies an excise tax on tobacco products,  
10 through its chief law enforcement officer, may in a  
11 civil action in a United States district court obtain  
12 appropriate relief with respect to a violation of this  
13 section. Appropriate relief includes injunctive and  
14 equitable relief and damages equal to the amount of  
15 unpaid taxes on tobacco products mailed in violation  
16 of this section to addressees in that State, locality,  
17 or tribal land.

18 “(2) SOVEREIGN IMMUNITY.—Nothing in this  
19 subsection shall be deemed to abrogate or constitute  
20 a waiver of any sovereign immunity of a State or  
21 local government or Indian tribe against any  
22 unconsented lawsuit under paragraph (1), or other-  
23 wise to restrict, expand, or modify any sovereign im-  
24 munity of a State or local government or Indian  
25 tribe.

1           “(3) ATTORNEY GENERAL REFERRAL.—A  
2 State, through its attorney general, or a local gov-  
3 ernment or Indian tribe that levies an excise tax on  
4 tobacco products, through its chief law enforcement  
5 officer, may provide evidence of a violation of this  
6 section for commercial purposes by any person not  
7 subject to State, local, or tribal government enforce-  
8 ment actions for violations of this section to the At-  
9 torney General of the United States, who shall take  
10 appropriate actions to enforce this section.

11           “(4) NONEXCLUSIVITY OF REMEDIES.—The  
12 remedies available under this subsection are in addi-  
13 tion to any other remedies available under Federal,  
14 State, local, tribal, or other law. Nothing in this sub-  
15 section shall be construed to expand, restrict, or oth-  
16 erwise modify any right of an authorized State,  
17 local, or tribal government official to proceed in a  
18 State, tribal, or other appropriate court, or take  
19 other enforcement actions, on the basis of an alleged  
20 violation of State, local, tribal, or other law.

21           “(5) OTHER ENFORCEMENT ACTIONS.—Noth-  
22 ing in this subsection shall be construed to prohibit  
23 an authorized State official from proceeding in State  
24 court on the basis of an alleged violation of any gen-  
25 eral civil or criminal statute of the State.

1       “(i) DEFINITION.—In this section, the term ‘State’  
2 has the meaning given that term in section 1716(k).”.

3       (b) CLERICAL AMENDMENT.—The table of sections  
4 for chapter 83 of title 18 is amended by inserting after  
5 the item relating to section 1716D the following:

“1716E. Tobacco products as nonmailable.”.

6 **SEC. 4. INSPECTION BY BUREAU OF ALCOHOL, TOBACCO,**  
7 **FIREARMS, AND EXPLOSIVES OF RECORDS**  
8 **OF CERTAIN CIGARETTE AND SMOKELESS**  
9 **TOBACCO SELLERS; CIVIL PENALTY.**

10       Section 2343(c) of title 18, United States Code, is  
11 amended to read as follows:

12       “(c)(1) Any officer of the Bureau of Alcohol, To-  
13 bacco, Firearms, and Explosives may, during normal busi-  
14 ness hours, enter the premises of any person described in  
15 subsection (a) or (b) for the purposes of inspecting—

16               “(A) any records or information required to be  
17 maintained by the person under this chapter; or

18               “(B) any cigarettes or smokeless tobacco kept  
19 or stored by the person at the premises.

20       “(2) The district courts of the United States shall  
21 have the authority in a civil action under this subsection  
22 to compel inspections authorized by paragraph (1).

23       “(3) Whoever denies access to an officer under para-  
24 graph (1), or who fails to comply with an order issued

1 under paragraph (2), shall be subject to a civil penalty  
2 in an amount not to exceed \$10,000.”.

3 **SEC. 5. EXCLUSIONS REGARDING INDIAN TRIBES AND**  
4 **TRIBAL MATTERS.**

5 (a) IN GENERAL.—Nothing in this Act or the amend-  
6 ments made by this Act shall be construed to amend, mod-  
7 ify, or otherwise affect—

8 (1) any agreements, compacts, or other inter-  
9 governmental arrangements between any State or  
10 local government and any government of an Indian  
11 tribe (as that term is defined in section 4(e) of the  
12 Indian Self-Determination and Education Assistance  
13 Act (25 U.S.C. 450b(e)) relating to the collection of  
14 taxes on cigarettes or smokeless tobacco sold in In-  
15 dian country;

16 (2) any State laws that authorize or otherwise  
17 pertain to any such intergovernmental arrangements  
18 or create special rules or procedures for the collec-  
19 tion of State, local, or tribal taxes on cigarettes or  
20 smokeless tobacco sold in Indian country;

21 (3) any limitations under Federal or State law,  
22 including Federal common law and treaties, on  
23 State, local, and tribal tax and regulatory authority  
24 with respect to the sale, use, or distribution of ciga-  
25 rattes and smokeless tobacco by or to Indian tribes,

1 tribal members, tribal enterprises, or in Indian coun-  
2 try;

3 (4) any Federal law, including Federal common  
4 law and treaties, regarding State jurisdiction, or  
5 lack thereof, over any tribe, tribal members, tribal  
6 enterprises, tribal reservations, or other lands held  
7 by the United States in trust for one or more Indian  
8 tribes; or

9 (5) any State or local government authority to  
10 bring enforcement actions against persons located in  
11 Indian country.

12 (b) COORDINATION OF LAW ENFORCEMENT.—Noth-  
13 ing in this Act or the amendments made by this Act shall  
14 be construed to inhibit or otherwise affect any coordinated  
15 law enforcement effort by 1 or more States or other juris-  
16 dictions, including Indian tribes, through interstate com-  
17 pact or otherwise, that—

18 (1) provides for the administration of tobacco  
19 product laws or laws pertaining to interstate sales or  
20 other sales of tobacco products;

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

24 (3) establishes cooperative programs for the ad-  
25 ministration of such laws.

1 (c) TREATMENT OF STATE AND LOCAL GOVERN-  
2 MENTS.—Nothing in this Act or the amendments made  
3 by this Act shall be construed to authorize, deputize, or  
4 commission States or local governments as instrumental-  
5 ities of the United States.

6 (d) ENFORCEMENT WITHIN INDIAN COUNTRY.—  
7 Nothing in this Act or the amendments made by this Act  
8 shall prohibit, limit, or restrict enforcement by the Attor-  
9 ney General of the United States of this Act or an amend-  
10 ment made by this Act within Indian country.

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

14 (f) DEFINITIONS.—In this section—

15 (1) the term “Indian country” has the meaning  
16 given that term in section 1 of the Jenkins Act, as  
17 amended by this Act; and

18 (2) the term “tribal enterprise” means any  
19 business enterprise, regardless of whether incor-  
20 porated or unincorporated under Federal or tribal  
21 law, of an Indian tribe or group of Indian tribes.

22 **SEC. 6. EFFECTIVE DATE.**

23 (a) IN GENERAL.—Except as provided in subsection  
24 (b), this Act shall take effect on the date that is 90 days  
25 after the date of enactment of this Act.

1 (b) BATFE AUTHORITY.—The amendments made by  
2 section 4 shall take effect on the date of enactment of this  
3 Act.

4 **SEC. 7. SEVERABILITY.**

5 If any provision of this Act, or any amendment made  
6 by this Act, or the application thereof to any person or  
7 circumstance, is held invalid, the remainder of the Act and  
8 the application of the Act to any other person or cir-  
9 cumstance shall not be affected thereby.

10 **SEC. 8. SENSE OF CONGRESS CONCERNING THE PRECE-**  
11 **DENTIAL EFFECT OF THIS ACT.**

12 It is the sense of Congress that unique harms are  
13 associated with online cigarette sales, including problems  
14 with verifying the ages of consumers in the digital market  
15 and the long-term health problems associated with the use  
16 of certain tobacco products. This Act was enacted recog-  
17 nizing the longstanding interest of Congress in urging  
18 compliance with States' laws regulating remote sales of  
19 certain tobacco products to citizens of those States, includ-  
20 ing the passage of the Jenkins Act over 50 years ago,  
21 which established reporting requirements for out-of-State  
22 companies that sell certain tobacco products to citizens of  
23 the taxing States, and which gave authority to the Depart-  
24 ment of Justice and the Bureau of Alcohol, Tobacco, Fire-  
25 arms, and Explosives to enforce the Jenkins Act. In light

1 of the unique harms and circumstances surrounding the  
2 online sale of certain tobacco products, this Act is in-  
3 tended to help collect cigarette excise taxes, to stop to-  
4 bacco sales to underage youth, and to help the States en-  
5 force their laws that target the online sales of certain to-  
6 bacco products only. This Act is in no way meant to create  
7 a precedent regarding the collection of State sales or use  
8 taxes by, or the validity of efforts to impose other types  
9 of taxes on, out-of-State entities that do not have a phys-  
10 ical presence within the taxing State.

Passed the Senate March 11, 2010.

Attest:

*Secretary.*

11TH CONGRESS  
2D SESSION

**S. 1147**

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**AN ACT**

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