

111TH CONGRESS
1ST SESSION

S. 1147

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

IN THE SENATE OF THE UNITED STATES

MAY 21, 2009

Mr. KOHL (for himself and Mr. LEAHY) introduced the following bill; which
was read twice and referred to the Committee on the Judiciary

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

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

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

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

8 (1) the sale of illegal cigarettes and smokeless
9 tobacco products significantly reduces Federal,
10 State, and local government revenues, with Internet

1 sales alone accounting for billions of dollars of lost
2 Federal, State, and local tobacco tax revenue each
3 year;

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

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

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

14 (5) the majority of Internet and other remote
15 sales of cigarettes and smokeless tobacco are being
16 made without adequate precautions to protect
17 against sales to children, without the payment of ap-
18 plicable taxes, and without complying with the nomi-
19 nal registration and reporting requirements in exist-
20 ing Federal law;

21 (6) unfair competition from illegal sales of eiga-
22 rettes and smokeless tobacco is taking billions of dol-
23 lars of sales away from law-abiding retailers
24 throughout the United States;

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

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

7 (9) the number of Internet vendors in the
8 United States and in foreign countries that sell ciga-
9 rettes and smokeless tobacco to buyers in the United
10 States increased from only about 40 in 2000 to
11 more than 500 in 2005; and

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

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

16 (1) require Internet and other remote sellers of
17 cigarettes and smokeless tobacco to comply with the
18 same laws that apply to law-abiding tobacco retail-
19 ers;

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

22 (3) provide government enforcement officials
23 with more effective enforcement tools to combat to-
24 bacco smuggling;

1 (4) make it more difficult for cigarette and
2 smokeless tobacco traffickers to engage in and profit
3 from their illegal activities;

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

7 (6) prevent and reduce youth access to inexpen-
8 sive cigarettes and smokeless tobacco through illegal
9 Internet or contraband sales.

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

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

17 **“SECTION 1. DEFINITIONS.**

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

19 “(1) ATTORNEY GENERAL.—The term ‘attorney
20 general’, with respect to a State, means the attorney
21 general or other chief law enforcement officer of the
22 State.

23 “(2) CIGARETTE.—

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

1 “(i) has the meaning given that term
2 in section 2341 of title 18, United States
3 Code; and

4 “(ii) includes roll-your-own tobacco
5 (as defined in section 5702 of the Internal
6 Revenue Code of 1986).

7 “(B) EXCEPTION.—The term ‘cigarette’
8 does not include a cigar (as defined in section
9 5702 of the Internal Revenue Code of 1986).

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

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

21 “(A) means any person that purchases
22 cigarettes or smokeless tobacco; and

23 “(B) does not include any person lawfully
24 operating as a manufacturer, distributor, whole-

1 saler, or retailer of cigarettes or smokeless to-
2 bacco.

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

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

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

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

22 “(7) INDIAN COUNTRY.—The term ‘Indian
23 country’—

24 “(A) has the meaning given that term in
25 section 1151 of title 18, United States Code,

1 except that within the State of Alaska that
2 term applies only to the Metlakatla Indian
3 Community, Annette Island Reserve; and

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

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

14 “(9) INTERSTATE COMMERCE.—The term
15 ‘interstate commerce’ means commerce between a
16 State and any place outside the State, commerce be-
17 tween a State and any Indian country in the State,
18 or commerce between points in the same State but
19 through any place outside the State or through any
20 Indian country.

21 “(10) PERSON.—The term ‘person’ means an
22 individual, corporation, company, association, firm,
23 partnership, society, State government, local govern-
24 ment, Indian tribal government, governmental orga-

1 nization of such a government, or joint stock com-
2 pany.

3 “(11) STATE.—The term ‘State’ means each of
4 the several States of the United States, the District
5 of Columbia, the Commonwealth of Puerto Rico, or
6 any territory or possession of the United States.

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

13 “(13) TOBACCO TAX ADMINISTRATOR.—The
14 term ‘tobacco tax administrator’ means the State,
15 local, or tribal official duly authorized to collect the
16 tobacco tax or administer the tax law of a State, lo-
17 cality, or tribe, respectively.

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

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

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

4 (2) in subsection (a)—

5 (A) in the matter preceding paragraph

6 (1)—

7 (i) by inserting “CONTENTS.—” after
8 “(a)”;

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

11 (iii) by inserting “, locality, or Indian
12 country of an Indian tribe” after “a
13 State”;

14 (iv) by striking “to other than a dis-
15 tributor licensed by or located in such
16 State,”; and

17 (v) by striking “or transfer and ship-
18 ment” and inserting “, transfer, or ship-
19 ment”;

20 (B) in paragraph (1)—

21 (i) by striking “with the tobacco tax
22 administrator of the State” and inserting
23 “with the Attorney General of the United
24 States and with the tobacco tax adminis-
25 trators of the State and place”; and

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

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

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

18 “(3) with respect to each memorandum or in-
19 voice filed with a State under paragraph (2), also
20 file copies of the memorandum or invoice with the
21 tobacco tax administrators and chief law enforce-
22 ment officers of the local governments and Indian
23 tribes operating within the borders of the State that
24 apply their own local or tribal taxes on cigarettes or
25 smokeless tobacco.”;

1 (3) in subsection (b)—

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

4 (B) by striking “(1) that” and inserting
5 “that”; and

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

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

9 “(c) USE OF INFORMATION.—A tobacco tax adminis-
10 trator or chief law enforcement officer who receives a
11 memorandum or invoice under paragraph (2) or (3) of
12 subsection (a) shall use the memorandum or invoice solely
13 for the purposes of the enforcement of this Act and the
14 collection of any taxes owed on related sales of cigarettes
15 and smokeless tobacco, and shall keep confidential any
16 personal information in the memorandum or invoice except
17 as required for such purposes.”.

18 (c) REQUIREMENTS FOR DELIVERY SALES.—The
19 Jenkins Act is amended by inserting after section 2 the
20 following:

21 **“SEC. 2A. DELIVERY SALES.**

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

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

3 “(2) the recordkeeping requirements set forth
4 in subsection (c);

5 “(3) all State, local, tribal, and other laws gen-
6 erally applicable to sales of cigarettes or smokeless
7 tobacco as if the delivery sales occurred entirely
8 within the specific State and place, including laws
9 imposing—

10 “(A) excise taxes;

11 “(B) licensing and tax-stamping require-
12 ments;

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

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

17 “(4) the tax collection requirements set forth in
18 subsection (d).

19 “(b) SHIPPING AND PACKAGING.—

20 “(1) REQUIRED STATEMENT.—For any ship-
21 ping package containing cigarettes or smokeless to-
22 bacco, the delivery seller shall include on the bill of
23 lading, if any, and on the outside of the shipping
24 package, on the same surface as the delivery ad-
25 dress, a clear and conspicuous statement providing

1 as follows: ‘CIGARETTES/SMOKELESS TO-
2 BACCO: FEDERAL LAW REQUIRES THE PAY-
3 MENT OF ALL APPLICABLE EXCISE TAXES,
4 AND COMPLIANCE WITH APPLICABLE LI-
5 CENSING AND TAX-STAMPING OBLIGA-
6 TIONS’.

7 “(2) FAILURE TO LABEL.—Any shipping pack-
8 age described in paragraph (1) that is not labeled in
9 accordance with that paragraph shall be treated as
10 nondeliverable matter by a common carrier or other
11 delivery service, if the common carrier or other deliv-
12 ery service knows or should know the package con-
13 tains cigarettes or smokeless tobacco. If a common
14 carrier or other delivery service believes a package is
15 being submitted for delivery in violation of para-
16 graph (1), it may require the person submitting the
17 package for delivery to establish that it is not being
18 sent in violation of paragraph (1) before accepting
19 the package for delivery. Nothing in this paragraph
20 shall require the common carrier or other delivery
21 service to open any package to determine its con-
22 tents.

23 “(3) WEIGHT RESTRICTION.—A delivery seller
24 shall not sell, offer for sale, deliver, or cause to be
25 delivered in any single sale or single delivery any

1 cigarettes or smokeless tobacco weighing more than
2 10 pounds.

3 “(4) AGE VERIFICATION.—

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

6 “(i) shall not sell, deliver, or cause to
7 be delivered any tobacco products to a per-
8 son under the minimum age required for
9 the legal sale or purchase of tobacco prod-
10 ucts, as determined by the applicable law
11 at the place of delivery;

12 “(ii) shall use a method of mailing or
13 shipping that requires—

14 “(I) the purchaser placing the
15 delivery sale order, or an adult who is
16 at least the minimum age required for
17 the legal sale or purchase of tobacco
18 products, as determined by the appli-
19 cable law at the place of delivery, to
20 sign to accept delivery of the shipping
21 container at the delivery address; and

22 “(II) the person who signs to ac-
23 cept delivery of the shipping container
24 to provide proof, in the form of a
25 valid, government-issued identification

1 bearing a photograph of the indi-
2 vidual, that the person is at least the
3 minimum age required for the legal
4 sale or purchase of tobacco products,
5 as determined by the applicable law at
6 the place of delivery; and

7 “(iii) shall not accept a delivery sale
8 order from a person without—

9 “(I) obtaining the full name,
10 birth date, and residential address of
11 that person; and

12 “(II) verifying the information
13 provided in subclause (I), through the
14 use of a commercially available data-
15 base or aggregate of databases, con-
16 sisting primarily of data from govern-
17 ment sources, that are regularly used
18 by government and businesses for the
19 purpose of age and identity
20 verification and authentication, to en-
21 sure that the purchaser is at least the
22 minimum age required for the legal
23 sale or purchase of tobacco products,
24 as determined by the applicable law at
25 the place of delivery.

1 “(B) LIMITATION.—No database being
2 used for age and identity verification under
3 subparagraph (A)(iii) shall be in the possession
4 or under the control of the delivery seller, or be
5 subject to any changes or supplementation by
6 the delivery seller.

7 “(c) RECORDS.—

8 “(1) IN GENERAL.—Each delivery seller shall
9 keep a record of any delivery sale, including all of
10 the information described in section 2(a)(2), orga-
11 nized by the State, and within the State, by the city
12 or town and by zip code, into which the delivery sale
13 is so made.

14 “(2) RECORD RETENTION.—Records of a deliv-
15 ery sale shall be kept as described in paragraph (1)
16 until the end of the 4th full calendar year that be-
17 gins after the date of the delivery sale.

18 “(3) ACCESS FOR OFFICIALS.—Records kept
19 under paragraph (1) shall be made available to to-
20 bacco tax administrators of the States, to local gov-
21 ernments and Indian tribes that apply local or tribal
22 taxes on cigarettes or smokeless tobacco, to the at-
23 torneys general of the States, to the chief law en-
24 forcement officers of the local governments and In-
25 dian tribes, and to the Attorney General of the

1 United States in order to ensure the compliance of
2 persons making delivery sales with the requirements
3 of this Act.

4 “(d) DELIVERY.—

5 “(1) IN GENERAL.—Except as provided in para-
6 graph (2), no delivery seller may sell or deliver to
7 any consumer, or tender to any common carrier or
8 other delivery service, any cigarettes or smokeless to-
9 bacco pursuant to a delivery sale unless, in advance
10 of the sale, delivery, or tender—

11 “(A) any cigarette or smokeless tobacco ex-
12 cise tax that is imposed by the State in which
13 the cigarettes or smokeless tobacco are to be
14 delivered has been paid to the State;

15 “(B) any cigarette or smokeless tobacco
16 excise tax that is imposed by the local govern-
17 ment of the place in which the cigarettes or
18 smokeless tobacco are to be delivered has been
19 paid to the local government; and

20 “(C) any required stamps or other indicia
21 that the excise tax has been paid are properly
22 affixed or applied to the cigarettes or smokeless
23 tobacco.

24 “(2) EXCEPTION.—Paragraph (1) does not
25 apply to a delivery sale of smokeless tobacco if the

1 law of the State or local government of the place
2 where the smokeless tobacco is to be delivered re-
3 quires or otherwise provides that delivery sellers col-
4 lect the excise tax from the consumer and remit the
5 excise tax to the State or local government, and the
6 delivery seller complies with the requirement.

7 “(e) LIST OF UNREGISTERED OR NONCOMPLIANT
8 DELIVERY SELLERS.—

9 “(1) IN GENERAL.—

10 “(A) INITIAL LIST.—Not later than 90
11 days after this subsection goes into effect under
12 the Prevent All Cigarette Trafficking Act of
13 2009, the Attorney General of the United
14 States shall compile a list of delivery sellers of
15 cigarettes or smokeless tobacco that have not
16 registered with the Attorney General of the
17 United States pursuant to section 2(a), or that
18 are otherwise not in compliance with this Act,
19 and—

20 “(i) distribute the list to—

21 “(I) the attorney general and tax
22 administrator of every State;

23 “(II) common carriers and other
24 persons that deliver small packages to
25 consumers in interstate commerce, in-

1 including the United States Postal Serv-
2 ice; and

3 “(III) any other person that the
4 Attorney General of the United States
5 determines can promote the effective
6 enforcement of this Act; and

7 “(ii) publicize and make the list avail-
8 able to any other person engaged in the
9 business of interstate deliveries or who de-
10 livers cigarettes or smokeless tobacco in or
11 into any State.

12 “(B) LIST CONTENTS.—To the extent
13 known, the Attorney General of the United
14 States shall include, for each delivery seller on
15 the list described in subparagraph (A)—

16 “(i) all names the delivery seller uses
17 or has used in the transaction of its busi-
18 ness or on packages delivered to cus-
19 tomers;

20 “(ii) all addresses from which the de-
21 livery seller does or has done business, or
22 ships or has shipped cigarettes or smoke-
23 less tobacco;

1 “(iii) the website addresses, primary
2 e-mail address, and phone number of the
3 delivery seller; and

4 “(iv) any other information that the
5 Attorney General of the United States de-
6 termines would facilitate compliance with
7 this subsection by recipients of the list.

8 “(C) UPDATING.—The Attorney General of
9 the United States shall update and distribute
10 the list described in subparagraph (A) at least
11 once every 4 months, and may distribute the
12 list and any updates by regular mail, electronic
13 mail, or any other reasonable means, or by pro-
14 viding recipients with access to the list through
15 a nonpublic website that the Attorney General
16 of the United States regularly updates.

17 “(D) STATE, LOCAL, OR TRIBAL ADDI-
18 TIONS.—The Attorney General of the United
19 States shall include in the list described in sub-
20 paragraph (A) any noncomplying delivery sell-
21 ers identified by any State, local, or tribal gov-
22 ernment under paragraph (6), and shall dis-
23 tribute the list to the attorney general or chief
24 law enforcement official and the tax adminis-
25 trator of any government submitting any such

1 information, and to any common carriers or
2 other persons who deliver small packages to
3 consumers identified by any government pursu-
4 ant to paragraph (6).

5 “(E) ACCURACY AND COMPLETENESS OF
6 LIST OF NONCOMPLYING DELIVERY SELLERS.—
7 In preparing and revising the list described in
8 subparagraph (A), the Attorney General of the
9 United States shall—

10 “(i) use reasonable procedures to en-
11 sure maximum possible accuracy and com-
12 pleteness of the records and information
13 relied on for the purpose of determining
14 that a delivery seller is not in compliance
15 with this Act;

16 “(ii) not later than 14 days before in-
17 cluding a delivery seller on the list, make
18 a reasonable attempt to send notice to the
19 delivery seller by letter, electronic mail, or
20 other means that the delivery seller is
21 being placed on the list, which shall cite
22 the relevant provisions of this Act and the
23 specific reasons for which the delivery sell-
24 er is being placed on the list;

1 “(iii) provide an opportunity to the
2 delivery seller to challenge placement on
3 the list;

4 “(iv) investigate each challenge de-
5 scribed in clause (iii) by contacting the rel-
6 evant Federal, State, tribal, and local law
7 enforcement officials, and provide the spe-
8 cific findings and results of the investiga-
9 tion to the delivery seller not later than 30
10 days after the date on which the challenge
11 is made; and

12 “(v) if the Attorney General of the
13 United States determines that the basis for
14 including a delivery seller on the list is in-
15 accurate, based on incomplete information,
16 or cannot be verified, promptly remove the
17 delivery seller from the list as appropriate
18 and notify each appropriate Federal, State,
19 tribal, and local authority of the deter-
20 mination.

21 “(F) CONFIDENTIALITY.—The list de-
22 scribed in subparagraph (A) shall be confiden-
23 tial, and any person receiving the list shall
24 maintain the confidentiality of the list and may
25 deliver the list, for enforcement purposes, to

1 any government official or to any common car-
2 rier or other person that delivers tobacco prod-
3 ucts or small packages to consumers. Nothing
4 in this section shall prohibit a common carrier,
5 the United States Postal Service, or any other
6 person receiving the list from discussing with a
7 listed delivery seller the inclusion of the delivery
8 seller on the list and the resulting effects on
9 any services requested by the listed delivery
10 seller.

11 “(2) PROHIBITION ON DELIVERY.—

12 “(A) IN GENERAL.—Commencing on the
13 date that is 60 days after the date of the initial
14 distribution or availability of the list described
15 in paragraph (1)(A), no person who receives the
16 list under paragraph (1), and no person who
17 delivers cigarettes or smokeless tobacco to con-
18 sumers, shall knowingly complete, cause to be
19 completed, or complete its portion of a delivery
20 of any package for any person whose name and
21 address are on the list, unless—

22 “(i) the person making the delivery
23 knows or believes in good faith that the
24 item does not include cigarettes or smoke-
25 less tobacco;

1 “(ii) the delivery is made to a person
2 lawfully engaged in the business of manu-
3 facturing, distributing, or selling cigarettes
4 or smokeless tobacco; or

5 “(iii) the package being delivered
6 weighs more than 100 pounds and the per-
7 son making the delivery does not know or
8 have reasonable cause to believe that the
9 package contains cigarettes or smokeless
10 tobacco.

11 “(B) IMPLEMENTATION OF UPDATES.—
12 Commencing on the date that is 30 days after
13 the date of the distribution or availability of
14 any updates or corrections to the list described
15 in paragraph (1)(A), all recipients and all com-
16 mon carriers or other persons that deliver ciga-
17 rettes or smokeless tobacco to consumers shall
18 be subject to subparagraph (A) in regard to the
19 corrections or updates.

20 “(3) EXEMPTIONS.—

21 “(A) IN GENERAL.—Subsection (b)(2) and
22 any requirements or restrictions placed directly
23 on common carriers under this subsection, in-
24 cluding subparagraphs (A) and (B) of para-

1 graph (2), shall not apply to a common carrier
2 that—

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

5 “(ii) if a settlement agreement de-
6 scribed in subparagraph (B) to which the
7 common carrier is a party is terminated or
8 otherwise becomes inactive, is admin-
9 istering and enforcing policies and prac-
10 tices throughout the United States that
11 are at least as stringent as the agreement.

12 “(B) SETTLEMENT AGREEMENT.—A set-
13 tlement agreement described in this subpara-
14 graph—

15 “(i) is a settlement agreement relating
16 to tobacco product deliveries to consumers;
17 and

18 “(ii) includes—

19 “(I) the Assurance of Discontinu-
20 ance entered into by the Attorney
21 General of New York and DHL Hold-
22 ings USA, Inc. and DHL Express
23 (USA), Inc. on or about July 1, 2005,
24 the Assurance of Discontinuance en-
25 tered into by the Attorney General of

1 New York and United Parcel Service,
2 Inc. on or about October 21, 2005,
3 and the Assurance of Compliance en-
4 tered into by the Attorney General of
5 New York and Federal Express Cor-
6 poration and FedEx Ground Package
7 Systems, Inc. on or about February 3,
8 2006, if each of those agreements is
9 honored throughout the United States
10 to block illegal deliveries of cigarettes
11 or smokeless tobacco to consumers;
12 and

13 “(II) any other active agreement
14 between a common carrier and a
15 State that operates throughout the
16 United States to ensure that no deliv-
17 eries of cigarettes or smokeless to-
18 bacco shall be made to consumers or
19 illegally operating Internet or mail-
20 order sellers and that any such deliv-
21 eries to consumers shall not be made
22 to minors or without payment to the
23 States and localities where the con-
24 sumers are located of all taxes on the
25 tobacco products.

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

2 “(A) IN GENERAL.—If a common carrier
3 or other delivery service delays or interrupts the
4 delivery of a package in the possession of the
5 common carrier or delivery service because the
6 common carrier or delivery service determines
7 or has reason to believe that the person order-
8 ing the delivery is on a list described in para-
9 graph (1)(A) and that the package contains
10 cigarettes or smokeless tobacco—

11 “(i) the person ordering the delivery
12 shall be obligated to pay—

13 “(I) the common carrier or other
14 delivery service as if the delivery of
15 the package had been timely com-
16 pleted; and

17 “(II) if the package is not deliv-
18 erable, any reasonable additional fee
19 or charge levied by the common car-
20 rier or other delivery service to cover
21 any extra costs and inconvenience and
22 to serve as a disincentive against such
23 noncomplying delivery orders; and

24 “(ii) if the package is determined not
25 to be deliverable, the common carrier or

1 other delivery service shall offer to provide
2 the package and its contents to a Federal,
3 State, or local law enforcement agency.

4 “(B) RECORDS.—A common carrier or
5 other delivery service shall maintain, for a pe-
6 riod of 5 years, any records kept in the ordi-
7 nary course of business relating to any delivery
8 interrupted under this paragraph and provide
9 that information, upon request, to the Attorney
10 General of the United States or to the attorney
11 general or chief law enforcement official or tax
12 administrator of any State, local, or tribal gov-
13 ernment.

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

16 “(i) use the records solely for the pur-
17 poses of the enforcement of this Act and
18 the collection of any taxes owed on related
19 sales of cigarettes and smokeless tobacco;
20 and

21 “(ii) keep confidential any personal
22 information in the records not otherwise
23 required for such purposes.

24 “(5) PREEMPTION.—

1 “(A) IN GENERAL.—No State, local, or
2 tribal government, nor any political authority of
3 2 or more State, local, or tribal governments,
4 may enact or enforce any law or regulation re-
5 lating to delivery sales that restricts deliveries
6 of cigarettes or smokeless tobacco to consumers
7 by common carriers or other delivery services
8 on behalf of delivery sellers by—

9 “(i) requiring that the common carrier
10 or other delivery service verify the age or
11 identity of the consumer accepting the de-
12 livery by requiring the person who signs to
13 accept delivery of the shipping container to
14 provide proof, in the form of a valid, gov-
15 ernment-issued identification bearing a
16 photograph of the individual, that the per-
17 son is at least the minimum age required
18 for the legal sale or purchase of tobacco
19 products, as determined by either State or
20 local law at the place of delivery;

21 “(ii) requiring that the common car-
22 rier or other delivery service obtain a sig-
23 nature from the consumer accepting the
24 delivery;

1 “(iii) requiring that the common car-
2 rier or other delivery service verify that all
3 applicable taxes have been paid;

4 “(iv) requiring that packages delivered
5 by the common carrier or other delivery
6 service contain any particular labels, no-
7 tice, or markings; or

8 “(v) prohibiting common carriers or
9 other delivery services from making deliv-
10 eries on the basis of whether the delivery
11 seller is or is not identified on any list of
12 delivery sellers maintained and distributed
13 by any entity other than the Federal Gov-
14 ernment.

15 “(B) RELATIONSHIP TO OTHER LAWS.—
16 Except as provided in subparagraph (C), noth-
17 ing in this paragraph shall be construed to nul-
18 lify, expand, restrict, or otherwise amend or
19 modify—

20 “(i) section 14501(c)(1) or
21 41713(b)(4) of title 49, United States
22 Code;

23 “(ii) any other restrictions in Federal
24 law on the ability of State, local, or tribal

1 governments to regulate common carriers;
2 or

3 “(iii) any provision of State, local, or
4 tribal law regulating common carriers that
5 is described in section 14501(e)(2) or
6 41713(b)(4)(B) of title 49 of the United
7 States Code.

8 “(C) STATE LAWS PROHIBITING DELIVERY
9 SALES.—

10 “(i) IN GENERAL.—Except as pro-
11 vided in clause (ii), nothing in the Prevent
12 All Cigarette Trafficking Act of 2009, the
13 amendments made by that Act, or in any
14 other Federal statute shall be construed to
15 preempt, supersede, or otherwise limit or
16 restrict State laws prohibiting the delivery
17 sale, or the shipment or delivery pursuant
18 to a delivery sale, of cigarettes or other to-
19 bacco products to individual consumers or
20 personal residences.

21 “(ii) EXEMPTIONS.—No State may
22 enforce against a common carrier a law
23 prohibiting the delivery of cigarettes or
24 other tobacco products to individual con-
25 sumers or personal residences without

1 proof that the common carrier is not ex-
2 empt under paragraph (3) of this sub-
3 section.

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

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

8 “(i) all known names, addresses,
9 website addresses, and other primary con-
10 tact information of any delivery seller
11 that—

12 “(I) offers for sale or makes
13 sales of cigarettes or smokeless to-
14 bacco in or into the State, locality, or
15 tribal land; and

16 “(II) has failed to register with
17 or make reports to the respective tax
18 administrator as required by this Act,
19 or that has been found in a legal pro-
20 ceeding to have otherwise failed to
21 comply with this Act; and

22 “(ii) a list of common carriers and
23 other persons who make deliveries of ciga-
24 rettes or smokeless tobacco in or into the
25 State, locality, or tribal land.

1 “(B) UPDATES.—Any government pro-
2 viding a list to the Attorney General of the
3 United States under subparagraph (A) shall
4 also provide updates and corrections every 4
5 months until such time as the government noti-
6 fies the Attorney General of the United States
7 in writing that the government no longer de-
8 sires to submit information to supplement the
9 list described in paragraph (1)(A).

10 “(C) REMOVAL AFTER WITHDRAWAL.—
11 Upon receiving written notice that a govern-
12 ment no longer desires to submit information
13 under subparagraph (A), the Attorney General
14 of the United States shall remove from the list
15 described in paragraph (1)(A) any persons that
16 are on the list solely because of the prior sub-
17 missions of the government of the list of the
18 government of noncomplying delivery sellers of
19 cigarettes or smokeless tobacco or a subsequent
20 update or correction by the government.

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

24 “(A) include any delivery seller identified
25 and submitted by a State, local, or tribal gov-

1 ernment under paragraph (6) in any list or up-
2 date that is distributed or made available under
3 paragraph (1) on or after the date that is 30
4 days after the date on which the information is
5 received by the Attorney General of the United
6 States; and

7 “(B) distribute any list or update de-
8 scribed in subparagraph (A) to any common
9 carrier or other person who makes deliveries of
10 cigarettes or smokeless tobacco that has been
11 identified and submitted by a government pur-
12 suant to paragraph (6).

13 “(8) NOTICE TO DELIVERY SELLERS.—Not
14 later than 14 days before including any delivery sell-
15 er on the initial list described in paragraph (1)(A),
16 or on an update to the list for the first time, the At-
17 torney General of the United States shall make a
18 reasonable attempt to send notice to the delivery
19 seller by letter, electronic mail, or other means that
20 the delivery seller is being placed on the list or up-
21 date, with that notice citing the relevant provisions
22 of this Act.

23 “(9) LIMITATIONS.—

24 “(A) IN GENERAL.—Any common carrier
25 or other person making a delivery subject to

1 this subsection shall not be required or other-
2 wise obligated to—

3 “(i) determine whether any list dis-
4 tributed or made available under para-
5 graph (1) is complete, accurate, or up-to-
6 date;

7 “(ii) determine whether a person or-
8 dering a delivery is in compliance with this
9 Act; or

10 “(iii) open or inspect, pursuant to this
11 Act, any package being delivered to deter-
12 mine its contents.

13 “(B) ALTERNATE NAMES.—Any common
14 carrier or other person making a delivery sub-
15 ject to this subsection—

16 “(i) shall not be required to make any
17 inquiries or otherwise determine whether a
18 person ordering a delivery is a delivery sell-
19 er on the list described in paragraph
20 (1)(A) who is using a different name or
21 address in order to evade the related deliv-
22 ery restrictions; and

23 “(ii) shall not knowingly deliver any
24 packages to consumers for any delivery
25 seller on the list described in paragraph

1 (1)(A) who the common carrier or other
2 delivery service knows is a delivery seller
3 who is on the list and is using a different
4 name or address to evade the delivery re-
5 strictions of paragraph (2).

6 “(C) PENALTIES.—Any common carrier or
7 person in the business of delivering packages on
8 behalf of other persons shall not be subject to
9 any penalty under section 14101(a) of title 49,
10 United States Code, or any other provision of
11 law for—

12 “(i) not making any specific delivery,
13 or any deliveries at all, on behalf of any
14 person on the list described in paragraph
15 (1)(A);

16 “(ii) refusing, as a matter of regular
17 practice and procedure, to make any deliv-
18 eries, or any deliveries in certain States, of
19 any cigarettes or smokeless tobacco for any
20 person or for any person not in the busi-
21 ness of manufacturing, distributing, or
22 selling cigarettes or smokeless tobacco; or

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

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

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

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

14 **“SEC. 3. PENALTIES.**

15 “(a) CRIMINAL PENALTIES.—

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

20 “(2) EXCEPTIONS.—

21 “(A) GOVERNMENTS.—Paragraph (1) shall
22 not apply to a State, local, or tribal govern-
23 ment.

24 “(B) DELIVERY VIOLATIONS.—A common
25 carrier or independent delivery service, or em-

1 employee of a common carrier or independent de-
 2 livery service, shall be subject to criminal pen-
 3 alties under paragraph (1) for a violation of
 4 section 2A(e) only if the violation is committed
 5 knowingly—

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

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

13 “(b) CIVIL PENALTIES.—

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

17 “(A) in the case of a delivery seller, the
 18 greater of—

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

22 “(ii) for any violation, 2 percent of
 23 the gross sales of cigarettes or smokeless
 24 tobacco of the delivery seller during the 1-

1 year period ending on the date of the viola-
2 tion.

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

7 “(2) RELATION TO OTHER PENALTIES.—A civil
8 penalty imposed under paragraph (1) for a violation
9 of this Act shall be imposed in addition to any crimi-
10 nal penalty under subsection (a) and any other dam-
11 ages, equitable relief, or injunctive relief awarded by
12 the court, including the payment of any unpaid taxes
13 to the appropriate Federal, State, local, or tribal
14 governments.

15 “(3) EXCEPTIONS.—

16 “(A) DELIVERY VIOLATIONS.—An em-
17 ployee of a common carrier or independent de-
18 livery service shall be subject to civil penalties
19 under paragraph (1) for a violation of section
20 2A(e) only if the violation is committed inten-
21 tionally—

22 “(i) as consideration for the receipt
23 of, or as consideration for a promise or
24 agreement to pay, anything of pecuniary
25 value; or

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

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

8 “(i) the common carrier or inde-
9 pendent delivery service has implemented
10 and enforces effective policies and practices
11 for complying with that section; or

12 “(ii) the violation consists of an em-
13 ployee of the common carrier or inde-
14 pendent delivery service who physically re-
15 ceives and processes orders, picks up pack-
16 ages, processes packages, or makes deliv-
17 eries, taking actions that are outside the
18 scope of employment of the employee, or
19 that violate the implemented and enforced
20 policies of the common carrier or inde-
21 pendent delivery service described in clause
22 (i).”.

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

1 **“SEC. 4. ENFORCEMENT.**

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

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

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

11 “(1) IN GENERAL.—

12 “(A) STANDING.—A State, through its at-
13 torney general, or a local government or Indian
14 tribe that levies a tax subject to section
15 2A(a)(3), through its chief law enforcement of-
16 ficer, may bring an action in a United States
17 district court to prevent and restrain violations
18 of this Act by any person or to obtain any other
19 appropriate relief from any person for violations
20 of this Act, including civil penalties, money
21 damages, and injunctive or other equitable re-
22 lief.

23 “(B) SOVEREIGN IMMUNITY.—Nothing in
24 this Act shall be deemed to abrogate or con-
25 stitute a waiver of any sovereign immunity of a
26 State or local government or Indian tribe

1 against any unconsented lawsuit under this Act,
2 or otherwise to restrict, expand, or modify any
3 sovereign immunity of a State or local govern-
4 ment or Indian tribe.

5 “(2) PROVISION OF INFORMATION.—A State,
6 through its attorney general, or a local government
7 or Indian tribe that levies a tax subject to section
8 2A(a)(3), through its chief law enforcement officer,
9 may provide evidence of a violation of this Act by
10 any person not subject to State, local, or tribal gov-
11 ernment enforcement actions for violations of this
12 Act to the Attorney General of the United States or
13 a United States attorney, who shall take appropriate
14 actions to enforce this Act.

15 “(3) USE OF PENALTIES COLLECTED.—

16 “(A) IN GENERAL.—There is established a
17 separate account in the Treasury known as the
18 ‘PACT Anti-Trafficking Fund’. Notwith-
19 standing any other provision of law and subject
20 to subparagraph (B), an amount equal to 50
21 percent of any criminal and civil penalties col-
22 lected by the Federal Government in enforcing
23 this Act shall be transferred into the PACT
24 Anti-Trafficking Fund and shall be available to
25 the Attorney General of the United States for

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

3 “(B) ALLOCATION OF FUNDS.—Of the
4 amount available to the Attorney General of the
5 United States under subparagraph (A), not less
6 than 50 percent shall be made available only to
7 the agencies and offices within the Department
8 of Justice that were responsible for the enforce-
9 ment actions in which the penalties concerned
10 were imposed or for any underlying investiga-
11 tions.

12 “(4) NONEXCLUSIVITY OF REMEDY.—

13 “(A) IN GENERAL.—The remedies avail-
14 able under this section and section 3 are in ad-
15 dition to any other remedies available under
16 Federal, State, local, tribal, or other law.

17 “(B) STATE COURT PROCEEDINGS.—Noth-
18 ing in this Act shall be construed to expand, re-
19 strict, or otherwise modify any right of an au-
20 thorized State official to proceed in State court,
21 or take other enforcement actions, on the basis
22 of an alleged violation of State or other law.

23 “(C) TRIBAL COURT PROCEEDINGS.—
24 Nothing in this Act shall be construed to ex-
25 pand, restrict, or otherwise modify any right of

1 an authorized Indian tribal government official
2 to proceed in tribal court, or take other enforce-
3 ment actions, on the basis of an alleged viola-
4 tion of tribal law.

5 “(D) LOCAL GOVERNMENT ENFORCE-
6 MENT.—Nothing in this Act shall be construed
7 to expand, restrict, or otherwise modify any
8 right of an authorized local government official
9 to proceed in State court, or take other enforce-
10 ment actions, on the basis of an alleged viola-
11 tion of local or other law.

12 “(d) PERSONS DEALING IN TOBACCO PRODUCTS.—
13 Any person who holds a permit under section 5712 of the
14 Internal Revenue Code of 1986 (regarding permitting of
15 manufacturers and importers of tobacco products and ex-
16 port warehouse proprietors) may bring an action in an ap-
17 propriate United States district court to prevent and re-
18 strain violations of this Act by any person other than a
19 State, local, or tribal government.

20 “(e) NOTICE.—

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

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

7 “(f) PUBLIC NOTICE.—

8 “(1) IN GENERAL.—The Attorney General of
9 the United States shall make available to the public,
10 by posting information on the Internet and by other
11 appropriate means, information regarding all en-
12 forcement actions brought by the United States, or
13 reported to the Attorney General of the United
14 States, under this section, including information re-
15 garding the resolution of the enforcement actions
16 and how the Attorney General of the United States
17 has responded to referrals of evidence of violations
18 pursuant to subsection (c)(2).

19 “(2) REPORTS TO CONGRESS.—Not later than
20 1 year after the date of enactment of the Prevent All
21 Cigarette Trafficking Act of 2009, and every year
22 thereafter until the date that is 5 years after such
23 date of enactment, the Attorney General of the
24 United States shall submit to Congress a report con-

1 taining the information described in paragraph
2 (1).”.

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

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

8 **“§ 1716E. Tobacco products as nonmailable**

9 “(a) PROHIBITION.—

10 “(1) IN GENERAL.—All cigarettes and smoke-
11 less tobacco (as those terms are defined in section
12 1 of the Act of October 19, 1949, commonly referred
13 to as the Jenkins Act) are nonmailable and shall not
14 be deposited in or carried through the mails. The
15 United States Postal Service shall not accept for de-
16 livery or transmit through the mails any package
17 that it knows or has reasonable cause to believe con-
18 tains any cigarettes or smokeless tobacco made non-
19 mailable by this paragraph.

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

22 “(A) a statement on a publicly available
23 website, or an advertisement, by any person
24 that the person will mail matter which is non-

1 mailable under this section in return for pay-
2 ment; or

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

5 “(b) EXCEPTIONS.—

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

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

12 “(3) BUSINESS PURPOSES.—

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

15 “(i) for business purposes between le-
16 gally operating businesses that have all ap-
17 plicable State and Federal Government li-
18 censes or permits and are engaged in to-
19 bacco product manufacturing, distribution,
20 wholesale, export, import, testing, inves-
21 tigation, or research; or

22 “(ii) for regulatory purposes between
23 any business described in clause (i) and an
24 agency of the Federal Government or a
25 State government.

1 “(B) RULES.—

2 “(i) IN GENERAL.—Not later than
3 180 days after the date of enactment of
4 the Prevent All Cigarette Trafficking Act
5 of 2009, the Postmaster General shall
6 issue a final rule which shall establish the
7 standards and requirements that apply to
8 all mailings described in subparagraph (A).

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

11 “(I) the United States Postal
12 Service to verify that any person sub-
13 mitting an otherwise nonmailable to-
14 bacco product into the mails as au-
15 thorized under this paragraph is a
16 business or government agency per-
17 mitted to make a mailing under this
18 paragraph;

19 “(II) the United States Postal
20 Service to ensure that any recipient of
21 an otherwise nonmailable tobacco
22 product sent through the mails under
23 this paragraph is a business or gov-
24 ernment agency that may lawfully re-
25 ceive the product;

1 “(III) that any mailing described
2 in subparagraph (A) shall be sent
3 through the systems of the United
4 States Postal Service that provide for
5 the tracking and confirmation of the
6 delivery;

7 “(IV) that the identity of the
8 business or government entity submit-
9 ting the mailing containing otherwise
10 nonmailable tobacco products for de-
11 livery and the identity of the business
12 or government entity receiving the
13 mailing are clearly set forth on the
14 package;

15 “(V) the United States Postal
16 Service to maintain identifying infor-
17 mation described in subclause (IV)
18 during the 3-year period beginning on
19 the date of the mailing and make the
20 information available to the Postal
21 Service, the Attorney General of the
22 United States, and to persons eligible
23 to bring enforcement actions under
24 section 3(d) of the Prevent All Ciga-
25 rette Trafficking Act of 2009;

1 “(VI) that any mailing described
2 in subparagraph (A) be marked with
3 a United States Postal Service label
4 or marking that makes it clear to em-
5 ployees of the United States Postal
6 Service that it is a permitted mailing
7 of otherwise nonmailable tobacco
8 products that may be delivered only to
9 a permitted government agency or
10 business and may not be delivered to
11 any residence or individual person;
12 and

13 “(VII) that any mailing described
14 in subparagraph (A) be delivered only
15 to a verified employee of the recipient
16 business or government agency, who is
17 not a minor and who shall be required
18 to sign for the mailing.

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

25 “(4) CERTAIN INDIVIDUALS.—

1 “(A) IN GENERAL.—Subsection (a) shall
2 not apply to tobacco products mailed by individ-
3 uals who are not minors for noncommercial
4 purposes, including the return of a damaged or
5 unacceptable tobacco product to the manufac-
6 turer.

7 “(B) RULES.—

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

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

17 “(I) the United States Postal
18 Service to verify that any person sub-
19 mitting an otherwise nonmailable to-
20 bacco product into the mails as au-
21 thorized under this paragraph is the
22 individual identified on the return ad-
23 dress label of the package and is not
24 a minor;

1 “(II) for a mailing to an indi-
2 vidual, the United States Postal Serv-
3 ice to require the person submitting
4 the otherwise nonmailable tobacco
5 product into the mails as authorized
6 by this paragraph to affirm that the
7 recipient is not a minor;

8 “(III) that any package mailed
9 under this paragraph shall weigh not
10 more than 10 ounces;

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

17 “(V) that a mailing described in
18 subparagraph (A) shall not be deliv-
19 ered or placed in the possession of any
20 individual who has not been verified
21 as not being a minor;

22 “(VI) for a mailing described in
23 subparagraph (A) to an individual,
24 that the United States Postal Service
25 shall deliver the package only to a re-

1 recipient who is verified not to be a
2 minor at the recipient address or
3 transfer it for delivery to an Air/Army
4 Postal Office or Fleet Postal Office
5 number designated in the recipient
6 address; and

7 “(VII) that no person may ini-
8 tiate more than 10 mailings described
9 in subparagraph (A) during any 30-
10 day period.

11 “(C) DEFINITION.—In this paragraph, the
12 term ‘minor’ means an individual who is less
13 than the minimum age required for the legal
14 sale or purchase of tobacco products as deter-
15 mined by applicable law at the place the indi-
16 vidual is located.

17 “(5) EXCEPTION FOR MAILINGS FOR CONSUMER
18 TESTING BY MANUFACTURERS.—

19 “(A) IN GENERAL.—Subject to subpara-
20 graph (B), subsection (a) shall not preclude a
21 legally operating cigarette manufacturer or a le-
22 gally authorized agent of a legally operating
23 cigarette manufacturer from using the United
24 States Postal Service to mail cigarettes to

1 verified adult smoker solely for consumer test-
2 ing purposes, if—

3 “(i) the cigarette manufacturer has a
4 permit, in good standing, issued under sec-
5 tion 5713 of the Internal Revenue Code of
6 1986;

7 “(ii) the package of cigarettes mailed
8 under this paragraph contains not more
9 than 12 packs of cigarettes (240 ciga-
10 rettes);

11 “(iii) the recipient does not receive
12 more than 1 package of cigarettes from
13 any 1 cigarette manufacturer under this
14 paragraph during any 30-day period;

15 “(iv) all taxes on the cigarettes mailed
16 under this paragraph levied by the State
17 and locality of delivery are paid to the
18 State and locality before delivery, and tax
19 stamps or other tax-payment indicia are
20 affixed to the cigarettes as required by law;
21 and

22 “(v)(I) the recipient has not made any
23 payments of any kind in exchange for re-
24 ceiving the cigarettes;

1 “(II) the recipient is paid a fee by the
2 manufacturer or agent of the manufacturer
3 for participation in consumer product
4 tests; and

5 “(III) the recipient, in connection
6 with the tests, evaluates the cigarettes and
7 provides feedback to the manufacturer or
8 agent.

9 “(B) LIMITATIONS.—Subparagraph (A)
10 shall not—

11 “(i) permit a mailing of cigarettes to
12 an individual located in any State that pro-
13 hibits the delivery or shipment of ciga-
14 rettes to individuals in the State, or pre-
15 empt, limit, or otherwise affect any related
16 State laws; or

17 “(ii) permit a manufacturer, directly
18 or through a legally authorized agent, to
19 mail cigarettes in any calendar year in a
20 total amount greater than 1 percent of the
21 total cigarette sales of the manufacturer in
22 the United States during the calendar year
23 before the date of the mailing.

24 “(C) RULES.—

1 “(i) IN GENERAL.—Not later than
2 180 days after the date of enactment of
3 the Prevent All Cigarette Trafficking Act
4 of 2009, the Postmaster General shall
5 issue a final rule which shall establish the
6 standards and requirements that apply to
7 all mailings described in subparagraph (A).

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

10 “(I) the United States Postal
11 Service to verify that any person sub-
12 mitting a tobacco product into the
13 mails under this paragraph is a le-
14 gally operating cigarette manufacturer
15 permitted to make a mailing under
16 this paragraph, or an agent legally
17 authorized by the legally operating
18 cigarette manufacturer to submit the
19 tobacco product into the mails on be-
20 half of the manufacturer;

21 “(II) the legally operating ciga-
22 rette manufacturer submitting the
23 cigarettes into the mails under this
24 paragraph to affirm that—

1 “(aa) the manufacturer or
2 the legally authorized agent of
3 the manufacturer has verified
4 that the recipient is an adult es-
5 tablished smoker;

6 “(bb) the recipient has not
7 made any payment for the ciga-
8 rettes;

9 “(cc) the recipient has
10 signed a written statement that
11 is in effect indicating that the re-
12 cipient wishes to receive the mail-
13 ings; and

14 “(dd) the manufacturer or
15 the legally authorized agent of
16 the manufacturer has offered the
17 opportunity for the recipient to
18 withdraw the written statement
19 described in item (cc) not less
20 frequently than once in every 3-
21 month period;

22 “(III) the legally operating ciga-
23 rette manufacturer or the legally au-
24 thorized agent of the manufacturer
25 submitting the cigarettes into the

1 mails under this paragraph to affirm
2 that any package mailed under this
3 paragraph contains not more than 12
4 packs of cigarettes (240 cigarettes) on
5 which all taxes levied on the cigarettes
6 by the State and locality of delivery
7 have been paid and all related State
8 tax stamps or other tax-payment indi-
9 cia have been applied;

10 “(IV) 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 “(V) the United States Postal
17 Service to maintain records relating to
18 a mailing described in subparagraph
19 (A) during the 3-year period begin-
20 ning on the date of the mailing and
21 make the information available to per-
22 sons enforcing this section;

23 “(VI) that any mailing described
24 in subparagraph (A) be marked with
25 a United States Postal Service label

1 or marking that makes it clear to em-
2 ployees of the United States Postal
3 Service that it is a permitted mailing
4 of otherwise nonmailable tobacco
5 products that may be delivered only to
6 the named recipient after verifying
7 that the recipient is an adult; and

8 “(VII) the United States Postal
9 Service shall deliver a mailing de-
10 scribed in subparagraph (A) only to
11 the named recipient and only after
12 verifying that the recipient is an
13 adult.

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

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

18 “(ii) the term ‘consumer testing’
19 means testing limited to formal data collec-
20 tion and analysis for the specific purpose
21 of evaluating the product for quality assur-
22 ance and benchmarking purposes of ciga-
23 rette brands or sub-brands among existing
24 adult smokers.

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

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

20 “(d) ADDITIONAL PENALTIES.—In addition to any
21 other fines and penalties under this title for violations of
22 this section, any person violating this section shall be sub-
23 ject to an additional civil penalty in the amount equal to
24 10 times the retail value of the nonmailable cigarettes or

1 smokeless tobacco, including all Federal, State, and local
2 taxes.

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

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

19 “(g) COORDINATION OF EFFORTS.—The Postmaster
20 General shall cooperate and coordinate efforts to enforce
21 this section with related enforcement activities of any
22 other Federal agency or agency of any State, local, or trib-
23 al government, whenever appropriate.

1 “(h) ACTIONS BY STATE, LOCAL, OR TRIBAL GOV-
2 ERNMENTS RELATING TO CERTAIN TOBACCO PROD-
3 UCTS.—

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

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

23 “(3) ATTORNEY GENERAL REFERRAL.—A
24 State, through its attorney general, or a local gov-
25 ernment or Indian tribe that levies an excise tax on

1 tobacco products, through its chief law enforcement
2 officer, may provide evidence of a violation of this
3 section for commercial purposes by any person not
4 subject to State, local, or tribal government enforce-
5 ment actions for violations of this section to the At-
6 torney General of the United States, who shall take
7 appropriate actions to enforce this section.

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

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

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

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

“1716E. Tobacco products as nonmailable.”.

4 **SEC. 4. COMPLIANCE WITH MODEL STATUTE OR QUALI-**
5 **FYING STATUTE.**

6 (a) IN GENERAL.—A Tobacco Product Manufacturer
7 or importer may not sell in, deliver to, or place for delivery
8 sale, or cause to be sold in, delivered to, or placed for deliv-
9 ery sale in a State that is a party to the Master Settlement
10 Agreement, any cigarette manufactured by a Tobacco
11 Product Manufacturer that is not in full compliance with
12 the terms of the Model Statute or Qualifying Statute en-
13 acted by the State requiring funds to be placed into a
14 qualified escrow account under specified conditions, and
15 with any regulations promulgated pursuant to the statute.

16 (b) JURISDICTION TO PREVENT AND RESTRAIN VIO-
17 LATIONS.—

18 (1) IN GENERAL.—The United States district
19 courts shall have jurisdiction to prevent and restrain
20 violations of subsection (a) in accordance with this
21 subsection.

22 (2) INITIATION OF ACTION.—A State, through
23 its attorney general, may bring an action in an ap-
24 propriate United States district court to prevent and
25 restrain violations of subsection (a) by any person.

1 (3) ATTORNEY FEES.—In any action under
2 paragraph (2), a State, through its attorney general,
3 shall be entitled to reasonable attorney fees from a
4 person found to have knowingly violated subsection
5 (a).

6 (4) NONEXCLUSIVITY OF REMEDIES.—The rem-
7 edy available under paragraph (2) is in addition to
8 any other remedies available under Federal, State,
9 or other law. No provision of this Act or any other
10 Federal law shall be held or construed to prohibit or
11 preempt the Master Settlement Agreement, the
12 Model Statute (as defined in the Master Settlement
13 Agreement), any legislation amending or complemen-
14 tary to the Model Statute in effect as of June 1,
15 2006, or any legislation substantially similar to such
16 existing, amending, or complementary legislation en-
17 acted after the date of enactment of this Act.

18 (5) OTHER ENFORCEMENT ACTIONS.—Nothing
19 in this subsection shall be construed to prohibit an
20 authorized State official from proceeding in State
21 court or taking other enforcement actions on the
22 basis of an alleged violation of State or other law.

23 (6) AUTHORITY OF THE ATTORNEY GEN-
24 ERAL.—The Attorney General of the United States
25 may bring an action in an appropriate United States

1 district court to prevent and restrain violations of
2 subsection (a) by any person.

3 (c) DEFINITIONS.—In this section the following defi-
4 nitions apply:

5 (1) DELIVERY SALE.—The term “delivery sale”
6 means any sale of cigarettes or smokeless tobacco to
7 a consumer if—

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

14 (B) the cigarettes or smokeless tobacco are
15 delivered to the buyer by common carrier, pri-
16 vate delivery service, or other method of remote
17 delivery, or the seller is not in the physical pres-
18 ence of the buyer when the buyer obtains pos-
19 session of the cigarettes or smokeless tobacco.

20 (2) IMPORTER.—The term “importer” means
21 each of the following:

22 (A) SHIPPING OR CONSIGNING.—Any per-
23 son in the United States to whom nontaxpaid
24 tobacco products manufactured in a foreign
25 country, Puerto Rico, the Virgin Islands, or a

1 possession of the United States are shipped or
2 consigned.

3 (B) MANUFACTURING WAREHOUSES.—Any
4 person who removes cigars or cigarettes for sale
5 or consumption in the United States from a
6 customs-bonded manufacturing warehouse.

7 (C) UNLAWFUL IMPORTING.—Any person
8 who smuggles or otherwise unlawfully brings to-
9 bacco products into the United States.

10 (3) MASTER SETTLEMENT AGREEMENT.—The
11 term “Master Settlement Agreement” means the
12 agreement executed November 23, 1998, between
13 the attorneys general of 46 States, the District of
14 Columbia, the Commonwealth of Puerto Rico, and 4
15 territories of the United States and certain tobacco
16 manufacturers.

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

21 (5) TOBACCO PRODUCT MANUFACTURER.—The
22 term “Tobacco Product Manufacturer” has the
23 meaning given that term in section II(uu) of the
24 Master Settlement Agreement.

1 **SEC. 5. INSPECTION BY BUREAU OF ALCOHOL, TOBACCO,**
2 **FIREARMS, AND EXPLOSIVES OF RECORDS**
3 **OF CERTAIN CIGARETTE AND SMOKELESS**
4 **TOBACCO SELLERS; CIVIL PENALTY.**

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

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

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

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

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

18 “(3) Whoever denies access to an officer under para-
19 graph (1), or who fails to comply with an order issued
20 under paragraph (2), shall be subject to a civil penalty
21 in an amount not to exceed \$10,000.”.

22 **SEC. 6. EXCLUSIONS REGARDING INDIAN TRIBES AND**
23 **TRIBAL MATTERS.**

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

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

9 (2) any State laws that authorize or otherwise
10 pertain to any such intergovernmental arrangements
11 or create special rules or procedures for the collec-
12 tion of State, local, or tribal taxes on cigarettes or
13 smokeless tobacco sold in Indian country;

14 (3) any limitations under Federal or State law,
15 including Federal common law and treaties, on
16 State, local, and tribal tax and regulatory authority
17 with respect to the sale, use, or distribution of ciga-
18 rettes and smokeless tobacco by or to Indian tribes,
19 tribal members, tribal enterprises, or in Indian coun-
20 try;

21 (4) any Federal law, including Federal common
22 law and treaties, regarding State jurisdiction, or
23 lack thereof, over any tribe, tribal members, tribal
24 enterprises, tribal reservations, or other lands held

1 by the United States in trust for one or more Indian
2 tribes; or

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

6 (b) COORDINATION OF LAW ENFORCEMENT.—Noth-
7 ing in this Act or the amendments made by this Act shall
8 be construed to inhibit or otherwise affect any coordinated
9 law enforcement effort by 1 or more States or other juris-
10 dictions, including Indian tribes, through interstate com-
11 pact or otherwise, that—

12 (1) provides for the administration of tobacco
13 product laws or laws pertaining to interstate sales or
14 other sales of tobacco products;

15 (2) provides for the seizure of tobacco products
16 or other property related to a violation of such laws;
17 or

18 (3) establishes cooperative programs for the ad-
19 ministration of such laws.

20 (c) TREATMENT OF STATE AND LOCAL GOVERN-
21 MENTS.—Nothing in this Act or the amendments made
22 by this Act shall be construed to authorize, deputize, or
23 commission States or local governments as instrumental-
24 ities of the United States.

1 (d) ENFORCEMENT WITHIN INDIAN COUNTRY.—
2 Nothing in this Act or the amendments made by this Act
3 shall prohibit, limit, or restrict enforcement by the Attor-
4 ney General of the United States of this Act or an amend-
5 ment made by this Act within Indian country.

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

9 (f) DEFINITIONS.—In this section—

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

13 (2) the term “tribal enterprise” means any
14 business enterprise, regardless of whether incor-
15 porated or unincorporated under Federal or tribal
16 law, of an Indian tribe or group of Indian tribes.

17 **SEC. 7. ENHANCED CONTRABAND TOBACCO ENFORCE-**
18 **MENT.**

19 (a) REQUIREMENTS.—The Director of the Bureau of
20 Alcohol, Tobacco, Firearms, and Explosives shall—

21 (1) not later than the end of the 3-year period
22 beginning on the effective date of this Act, create a
23 regional contraband tobacco trafficking team in each
24 of New York, New York, the District of Columbia,

1 Detroit, Michigan, Los Angeles, California, Seattle,
2 Washington, and Miami, Florida;

3 (2) create a Tobacco Intelligence Center to
4 oversee investigations and monitor and coordinate
5 ongoing investigations and to serve as the coordi-
6 nator for all ongoing tobacco diversion investigations
7 within the Bureau of Alcohol, Tobacco, Firearms,
8 and Explosives, in the United States and, where ap-
9 plicable, with law enforcement organizations around
10 the world;

11 (3) establish a covert national warehouse for
12 undercover operations; and

13 (4) create a computer database that will track
14 and analyze information from retail sellers of to-
15 bacco products that sell through the Internet or by
16 mail order or make other non-face-to-face sales.

17 (b) **AUTHORIZATION OF APPROPRIATIONS.**—There is
18 authorized to be appropriated to carry out subsection (a)
19 \$8,500,000 for each of fiscal years 2010 through 2014.

20 **SEC. 8. EFFECTIVE DATE.**

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

1 (b) BATFE AUTHORITY.—The amendments made by
2 section 5 shall take effect on the date of enactment of this
3 Act.

4 **SEC. 9. 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. 10. 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.

○