

108TH CONGRESS
1ST SESSION

S. 1177

To ensure the collection of all cigarette taxes, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 3, 2003

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

A BILL

To ensure the collection of all cigarette 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.**

4 This Act may be cited as the “Prevent All Cigarette
5 Trafficking Act” or “PACT Act”.

6 **SEC. 2. COLLECTION OF STATE CIGARETTE TAXES.**

7 (a) DEFINITIONS.—Section 1 of the Act of October
8 19, 1949 (15 U.S.C. 375; commonly referred to as the
9 “Jenkins Act”), is amended—

10 (1) in paragraph (1), by inserting “and other
11 legal entities” after “individuals”;

1 (2) by striking paragraph (3);

2 (3) by redesignating paragraphs (4) through
3 (7) as paragraphs (3) through (6), respectively; and

4 (4) by adding at the end the following new
5 paragraphs:

6 “(7) The term ‘delivery sale’ means any sale of
7 cigarettes to a consumer if—

8 “(A) the consumer submits the order for
9 such sale by means of a telephone or other
10 method of voice transmission, the mails, or the
11 Internet or other online service; or

12 “(B) the cigarettes are delivered by use of
13 a common carrier.

14 “(8) The term ‘common carrier’ means any per-
15 son (other than a local messenger service or the
16 United States Postal Service (as defined in section
17 102 of title 39, United States Code)) that holds
18 itself out to the general public as a provider for hire
19 of the transportation by water, land, or air of mer-
20 chandise, whether or not the person actually oper-
21 ates the vessel, vehicle, or aircraft by which the
22 transportation is provided, between a port or place
23 and a port or place in the United States.”.

1 (b) REPORTS TO STATE TOBACCO TAX ADMINISTRA-
2 TIONS.—Section 2 of that Act (15 U.S.C. 376) is amend-
3 ed—

4 (1) in subsection (a)—

5 (A) by striking “or transfers” and insert-
6 ing “, transfers, or ships”; and

7 (B) by striking “to other than a dis-
8 tributor licensed by or located in such State,”;
9 and

10 (2) in subsection (b)—

11 (A) by striking “(1)”; and

12 (B) by striking “, and (2)” and all that
13 follows and inserting a period.

14 (c) REQUIREMENTS FOR DELIVERY SALES.—That
15 Act is further amended by inserting after section 2 the
16 following new section:

17 “SEC. 2A. (a) Each person making a delivery sale
18 into a State shall comply with—

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

21 “(2) the recordkeeping requirements set forth
22 in subsection (c); and

23 “(3) all laws of the State generally applicable to
24 sales of cigarettes that occur entirely within the
25 State, including laws imposing—

1 “(A) excise taxes;

2 “(B) sales taxes;

3 “(C) licensing and tax-stamping require-
4 ments; and

5 “(D) other payment obligations.

6 “(b)(1) Each person who takes a delivery sale order
7 shall include on the bill of lading included with the ship-
8 ping package containing cigarettes sold pursuant to such
9 order a clear and conspicuous statement providing as fol-
10 lows: ‘CIGARETTES: FEDERAL LAW REQUIRES
11 THE PAYMENT OF ALL APPLICABLE EXCISE
12 AND SALES TAXES, AND COMPLIANCE WITH AP-
13 PPLICABLE LICENSING AND TAX-STAMPING OB-
14 LIGATIONS’.

15 “(2) Any shipping package described in paragraph
16 (1) that is not labeled in accordance with that paragraph
17 shall be treated as non-deliverable matter by common car-
18 riers.

19 “(c)(1) Each person making delivery sales into a
20 State shall keep a record of all delivery sales so made,
21 organized by State into which such delivery sales are so
22 made.

23 “(2) Records of delivery sales shall be kept under
24 paragraph (1) in the year in which made and for the next
25 four years.

1 “(3) Records kept under paragraph (1) shall be made
2 available to tobacco tax administrators of the States in
3 order to ensure the compliance of persons making delivery
4 sales with the requirements of this Act.

5 “(d) Each State shall have the authority to require
6 any person making a delivery sale of cigarettes into such
7 State—

8 “(1) to collect or pay the taxes referred to in
9 subsection (a)(3); and

10 “(2) to provide evidence that the manufacturer
11 of the cigarettes sold in such State is in compliance
12 with all Federal, State, or local laws generally appli-
13 cable to the sale or distribution of cigarettes.”.

14 (d) PENALTIES.—Section 3 of that Act (15 U.S.C.
15 377) is amended—

16 (1) by inserting “(a)” before “Whoever”;

17 (2) in subsection (a), as so designated, by strik-
18 ing “shall be guilty of a misdemeanor and shall be
19 fined not more than \$1,000, or imprisoned not more
20 than 6 months” and inserting “shall be fined not
21 more than \$100,000, imprisoned not more than 2
22 years”; and

23 (3) by adding at the end the following new sub-
24 section:

1 “(b)(1) Whoever violates any provision of this Act
2 shall be subject to a civil penalty in an amount not to
3 exceed 2 percent of the gross sales of cigarettes of such
4 person during the one-year period ending on the date of
5 the violation.

6 “(2) A civil penalty under paragraph (1) for a viola-
7 tion of this Act is in addition to any criminal penalty
8 under subsection (a) for the violation.”.

9 (e) INJUNCTIONS.—Section 4 of that Act (15 U.S.C.
10 378) is amended—

11 (1) by inserting “(a)” before “The United
12 States district courts”; and

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

15 “(b)(1) A State, through its attorney general, or any
16 person who holds a permit under section 5712 of the In-
17 ternal Revenue Code of 1986, may bring an action in the
18 United States district courts to prevent and restrain viola-
19 tions of this Act by any person (or by any person control-
20 ling such person).

21 “(2) Nothing in this section shall be construed to pro-
22 hibit an authorized State official from proceeding in State
23 court on the basis of an alleged violation of State law.

24 “(c) The Attorney General, acting through the Direc-
25 tor of the Bureau of Alcohol, Tobacco, Firearms, and Ex-

1 plosives, shall administer and enforce the provisions of this
2 Act.”.

3 **SEC. 3. TREATMENT OF CIGARETTES AS NONMAILABLE**
4 **MATTER.**

5 Section 1716 of title 18, United States Code, is
6 amended—

7 (1) by redesignating subsection (j) as sub-
8 section (k); and

9 (2) by inserting after subsection (i) the fol-
10 lowing new subsection (j):

11 “(j) The transmission in the mails of cigarettes (as
12 that term is defined in section 2341(1) of this title) for
13 purposes of sale is prohibited, and cigarettes for such pur-
14 poses are nonmailable and shall not be deposited in or car-
15 ried through the mails.”.

16 **SEC. 4. PENAL PROVISIONS REGARDING TRAFFICKING IN**
17 **CONTRABAND CIGARETTES.**

18 (a) **THRESHOLD QUANTITY FOR TREATMENT AS**
19 **CONTRABAND.**—(1) Section 2341(2) of title 18, United
20 States Code, is amended by striking “60,000 cigarettes”
21 and inserting “10,000 cigarettes”.

22 (2) Section 2342(b) of that title is amended by strik-
23 ing “60,000” and inserting “10,000”.

24 (3) Section 2343 of that title is amended—

1 (A) in subsection (a), by striking “60,000” and
2 inserting “10,000”; and

3 (B) in subsection (b), by striking “60,000” and
4 inserting “10,000”.

5 (b) RECORDKEEPING, REPORTING, AND INSPEC-
6 TION.—Section 2343 of that title, as amended by sub-
7 section (a)(3) of this section, is further amended—

8 (1) in subsection (a)—

9 (A) in the matter preceding paragraph (1),
10 by striking “only—” and inserting “such infor-
11 mation as the Attorney General considers ap-
12 propriate for purposes of enforcement of this
13 chapter, including—”; and

14 (B) in the flush matter following para-
15 graph (3), by striking the second sentence;

16 (2) by redesignating subsection (b) as sub-
17 section (c);

18 (3) by inserting after subsection (a) the fol-
19 lowing new subsection (b):

20 “(b) Any person who engages in a delivery sale, and
21 who ships, sells, distributes, or receives any quantity in
22 excess of 10,000 cigarettes within a single month, shall
23 submit to the Attorney General, pursuant to rules or regu-
24 lations prescribed by the Attorney General, a report that
25 sets forth the following:

1 “(1) The person’s beginning and ending inven-
2 tory of cigarettes (in total) for such month.

3 “(2) The total quantity of cigarettes that the
4 person received within such month from each other
5 person (itemized by name and address).

6 “(3) The total quantity of cigarettes that the
7 person distributed within such month to each person
8 (itemized by name and address) other than a retail
9 purchaser.”; and

10 (4) by adding at the end the following new sub-
11 sections:

12 “(d) Any report required to be submitted under this
13 chapter to the Attorney General shall also be submitted
14 to the Secretary of the Treasury.

15 “(e) In this section:

16 “(1) The term ‘delivery sale’ means any sale of
17 cigarettes to a consumer if—

18 “(A) the consumer submits the order for
19 such sale by means of a telephone or other
20 method of voice transmission, the mails, or the
21 Internet or other online service; or

22 “(B) the cigarettes are delivered by use of
23 a common carrier.

24 “(2) The term ‘common carrier’ means any per-
25 son (other than a local messenger service or the

1 United States Postal Service (as defined in section
2 102 of title 39, United States Code)) that holds
3 itself out to the general public as a provider for hire
4 of the transportation by water, land, or air of mer-
5 chandise, whether or not the person actually oper-
6 ates the vessel, vehicle, or aircraft by which the
7 transportation is provided, between a port or place
8 and a port or place in the United States.”.

9 (c) DISPOSAL OR USE OF FORFEITED CIGA-
10 RETTES.—Section 2344(c) of that title is amended by
11 striking “seizure and forfeiture,” and all that follows and
12 inserting “seizure and forfeiture, and any cigarettes so
13 seized and forfeited shall be either—

14 “(1) destroyed and not resold; or

15 “(2) used for undercover investigative oper-
16 ations for the detection and prosecution of crimes,
17 and then destroyed and not resold.”.

18 (d) ENFORCEMENT.—Section 2346 of that title is
19 amended—

20 (1) by inserting “(a)” before “The Attorney
21 General”; and

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

24 “(b) A State, through its attorney general, or any
25 person who holds a permit under section 5712 of the In-

1 ternal Revenue Code of 1986, may bring an action in the
 2 United States district courts to prevent and restrain viola-
 3 tions of this chapter by any person (or by any person con-
 4 trolling such person).”.

5 (e) CONFORMING AND CLERICAL AMENDMENTS.—

6 (1) The section heading for section 2343 of that title is
 7 amended to read as follows:

8 **“§ 2343. Recordkeeping, reporting, and inspection”.**

9 (2) The table of sections at the beginning of chapter
 10 114 of that title is amended by striking the item relating
 11 to section 2343 and inserting the following new item:

“2343. Recordkeeping, reporting, and inspection.”.

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

14 (a) IN GENERAL.—An interstate tobacco seller may
 15 not sell in, deliver to, or place for delivery to a State that
 16 is a party to the Master Settlement Agreement any ciga-
 17 rette manufactured by a Tobacco Product Manufacturer
 18 that is not in full compliance with the terms of the Model
 19 Statute or Qualifying Statute enacted by such State re-
 20 quiring funds to be placed into a qualified escrow account
 21 under specified conditions, or any regulations promulgated
 22 pursuant to such statute.

23 (b) PENALTIES.—(1) Whoever shall knowingly and
 24 willfully violate subsection (a) shall be fined not more than
 25 \$100,000, imprisoned not more than 2 years, or both.

1 (2) Whoever shall violate subsection (a) shall be sub-
2 ject to a civil penalty in an amount not to exceed 2 percent
3 of the gross sales of cigarettes of such person during the
4 one-year period ending on the date of the violation.

5 (3) A civil penalty under paragraph (2) for a violation
6 of subsection (a) is in addition to any criminal penalty
7 under paragraph (1) for the violation.

8 (c) JURISDICTION TO PREVENT AND RESTRAIN VIO-
9 LATIONS.—(1) The United States district courts shall
10 have jurisdiction to prevent and restrain violations of sub-
11 section (a).

12 (2) A State, through its attorney general, or any per-
13 son who holds a permit under section 5712 of the Internal
14 Revenue Code of 1986, may bring an action in the United
15 States district courts to prevent and restrain violations of
16 subsection (a) by any person (or by any person controlling
17 such person).

18 (3) Nothing in this subsection shall be construed to
19 prohibit an authorized State official from proceeding in
20 State court on the basis of an alleged violation of State
21 law.

22 (4) The Attorney General, acting through the Direc-
23 tor of the Bureau of Alcohol, Tobacco, Firearms, and Ex-
24 plosives, shall administer and enforce subsection (a).

25 (d) DEFINITIONS.—In this section:

1 (1) MASTER SETTLEMENT AGREEMENT.— The
2 term “Master Settlement Agreement” means the
3 agreement executed November 23, 1998, by the At-
4 torneys General of 46 States, the District of Colum-
5 bia, the Commonwealth of Puerto Rico, and four
6 Territories of the United States, on the one hand,
7 and certain tobacco manufacturers on the other
8 hand.

9 (2) TOBACCO PRODUCT MANUFACTURER.—The
10 term “Tobacco Product Manufacturer” has the
11 meaning given that term in section II(uu) of the
12 Master Settlement Agreement.

13 (3) MODEL STATUTE; QUALIFYING STATUTE.—
14 The terms “Model Statute” and “Qualifying Stat-
15 ute” means a statute as defined in section
16 IX(d)(2)(e) of the Master Settlement Agreement.

17 **SEC. 6. UNDERCOVER CRIMINAL INVESTIGATIONS OF THE**
18 **BUREAU OF ALCOHOL, TOBACCO, FIREARMS,**
19 **AND EXPLOSIVES.**

20 (a) IN GENERAL.—(1) Commencing as of the date
21 of the enactment of this Act and without fiscal year limita-
22 tion, the authorities in section 102(b) of the Department
23 of Justice and Related Agencies Appropriations Act, 1993
24 (title I of Public Law 102–395; 106 Stat. 1838) shall be
25 available to the Bureau of Alcohol, Tobacco, Firearms,

1 and Explosives for undercover investigative operations of
2 the Bureau which are necessary for the detection and
3 prosecution of crimes against the United States.

4 (2) For purposes of the exercise of the authorities
5 referred to in paragraph (1) by the Bureau, a reference
6 in such section 102(b) to the Federal Bureau of Investiga-
7 tion shall be deemed to be a reference to the Bureau of
8 Alcohol, Tobacco, Firearms, and Explosives, and a ref-
9 erence to the Director of the Federal Bureau of Investiga-
10 tion shall be deemed to be a reference to the Director of
11 the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

12 (b) LIMITATIONS IN APPROPRIATIONS ACTS.—The
13 exercise of the authorities referred to in subsection (a)(1)
14 by the Bureau of Alcohol, Tobacco, Firearms, and Explo-
15 sives shall be subject to the provisions of appropriations
16 Acts.

17 **SEC. 7. INSPECTION BY BUREAU OF ALCOHOL, TOBACCO,**
18 **FIREARMS, AND EXPLOSIVES OF RECORDS**
19 **OF CERTAIN CIGARETTE SELLERS.**

20 (a) IN GENERAL.—Any officer of the Bureau of Alco-
21 hol, Tobacco, Firearms and Explosives may, during nor-
22 mal business hours, enter the premises of any person de-
23 scribed in subsection (b) for the purposes of inspecting—

1 (1) any records or information required to be
2 maintained by such person under the provisions of
3 law referred to in subsection (c); or

4 (2) any cigarettes kept or stored by such person
5 at such premises.

6 (b) COVERED PERSONS.—A person described in this
7 subsection is any person who engages in a delivery sale,
8 and who ships, sells, distributes, or receives any quantity
9 in excess of 10,000 cigarettes within a single month.

10 (c) COVERED PROVISIONS OF LAW.—The provisions
11 of law referred to in this subsection are as follows:

12 (1) The Act of October 19, 1949 (15 U.S.C.
13 375; commonly referred to as the “Jenkins Act”).

14 (2) Chapter 114 of title 18, United States
15 Code.

16 (3) This Act.

17 (d) DELIVERY SALE DEFINED.—In this section, the
18 term “delivery sale” has the meaning given that term in
19 2343(e)(1) of title 18, United States Code, as amended
20 by section 4(b)(3) of this Act.

21 **SEC. 8. EFFECTIVE DATE.**

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

25 (b) ATFE AUTHORITY.—

1 (1) IN GENERAL.—Sections 6 and 7 shall take
2 effect on the date of the enactment of this Act.

3 (2) DEFINITION.—For purposes of section 7,
4 the definition of delivery sale in section 2343(e)(1)
5 of title 18, United States Code, as amended by sec-
6 tion 4(b)(3) of this Act, shall take effect on the date
7 of the enactment of this Act.

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