

CAMPAIGN For TOBACCO-FREE Kids®

AVAILABLE RESOURCES ON INTERNET TOBACCO PRODUCT SALES

[Also available at <http://tobaccofreekids.org/reports/internet/resources.php>]

Campaign for Tobacco-Free Kids Materials

Factsheet: *Internet Sales of Tobacco Products: Reaching Kids & Evading Taxes.*

<http://www.tobaccofreekids.org/research/factsheets/pdf/0213.pdf>.

Factsheet: *Tobacco Product Marketing on the Internet.*

<http://www.tobaccofreekids.org/research/factsheets/pdf/0081.pdf>.

Factsheet: *Checklist for State Legislation on Internet Tobacco Product Sales -- To Ensure that Tax Avoidance and Youth Sales Are Adequately Constrained.* <http://tobaccofreekids.org/research/factsheets/pdf/0223.pdf>

Factsheet: *Model State Legislation to Prohibit All Internet or Mail-Order Sales of Tobacco Products* (model legislative language based on New York State's law).

<http://tobaccofreekids.org/research/factsheets/pdf/0229.pdf>

Factsheet: *Model State Legislation to Restrict Internet and Mail-Order Tobacco Product Sales [To Block Sales to Youth and to Collect State Tobacco Taxes]* (model legislative language).

<http://tobaccofreekids.org/research/factsheets/pdf/0230.pdf>

Factsheet: *The Critical Importance of a Delivery-List Enforcement Provision in State Internet Tobacco Sales Legislation.* <http://tobaccofreekids.org/research/factsheets/pdf/0259.pdf>.

Factsheet: *Problems with Philip Morris Model State Internet Legislation.*

<http://tobaccofreekids.org/research/factsheets/pdf/0225.pdf>

Factsheet: *Update on Federal Legislation on Internet Tobacco Product Sales.*

<http://tobaccofreekids.org/research/factsheets/pdf/0252.pdf>.

Press Statement (July 31, 2003): *Hatch-Kohl Bill Would Reduce Tobacco Tax Evasion Through Internet Sales.*

<http://tobaccofreekids.org/Script/DisplayPressRelease.php3?Display=676>.

Press Statement (July 24, 2003): *Public Health Groups Support Bipartisan Green-Meehan Bill To Reduce Tobacco Tax Evasion Through Internet Sales* (joint statement with ACS, AHA, and ALA).

<http://www.tobaccofreekids.org/Script/DisplayPressRelease.php3?Display=667>

Factsheet: *Key Provisions of the Green-Meehan Internet Tax Collection Bill.*

<http://www.tobaccofreekids.org/research/factsheets/pdf/0240.pdf>

Press Statement (September 9, 2003) *JAMA Study Shows Kids Can Easily Buy Cigarettes Over the Internet, Underscoring Need for Meehan Legislation to Address the Problem,*

<http://www.tobaccofreekids.org/Script/DisplayPressRelease.php3?Display=686>

Press Statement (May 1, 2003): *Campaign for Tobacco-Free Kids with American Lung Association, Legislation Needed to Stop Internet Tobacco Sales to Kids.*

<http://www.tobaccofreekids.org/Script/DisplayPressRelease.php3?Display=634>.

Press Release (Oct 29 2002): *Campaign Praises Visa For Taking Strong Action to Stop Illegal Internet Tobacco Sales to Kids, Urges Other Credit Card Companies to Follow Suit.*

<http://www.tobaccofreekids.org/Script/DisplayPressRelease.php3?Display=563>.

Factsheet: *Raising State Tobacco Taxes Always Increases State Revenues & Always Reduces Tobacco Use.*

<http://tobaccofreekids.org/research/factsheets/pdf/0146.pdf>.

Special TFK website section on internet tobacco sales. <http://tobaccofreekids.org/reports/internet>.

Reports on Internet Tobacco Product Sales & Marketing

Tobacco Law Project (now the Tobacco Law Center), Minnesota Department Of Health, Smoke on the Web: Can Children Buy Cigarettes Online? Enforcement Options, Challenges and Recommendations, March 2002. http://www.wmitchell.edu/tobaccolaw/ttp_internet_report.pdf.

U.S. General Accounting Office, *Internet Cigarette Sales: Giving ATF Investigative Authority May Improve Reporting and Enforcement*, GAO-02-743, August 9, 2002. Looks at internet sellers' compliance with the federal Jenkins Act, which requires internet sellers of tobacco products to report all sales into a state to that state's tax collection officials. <http://www.gao.gov/new.items/d02743.pdf>.

Rubin, R. et al., *Online Tobacco Sales Grow, States Lose*, Forrester Research, Inc. (private consulting firm), April 27, 2001. <http://www.forrester.com/ER/Research/Brief/Excerpt/0,1317,12253,00.html>.

Prudential Financial, *Buying Cigarettes Over the Internet*, Research Report, Consumer Staples/Tobacco, September 24, 2002. <http://multex.multexinvestor.com/download.asp?docid=28604484&ticker=MO&target=%2Fstocks%2Fcompanyinformation%2Fanalystresearch>

Center for Media Education, *Youth Access to Alcohol and Tobacco Web Marketing: The Filtering and Rating Debate*, October 1999. http://www.cme.org/publications/scrnfltr/report_1104.pdf. [See, also, Kaiser Family Foundation, *See No Evil: How Internet Filters Affect the Search for Online Health Information*, December 2002, <http://www.kff.org/content/2002/20021210a> (only the most restrictive settings of screening software try to block out tobacco websites, but those settings also block out many useful health websites).]

Center for Media Education, *Tobacco Targeted at Youth on the Internet: An Update*, December 1998. http://www.cme.org/publications/alcohol_tobacco/tobrep.html.

Center for Media Education, *Alcohol & Tobacco on the Web: New Threats to Youth*, March 1997, <http://www.cme.org/children/marketing/execsum.html>.

Economics and Statistics Administration & National Telecommunications and Information Administration, U.S. Department of Commerce, *A Nation Online: How Americans Are Expanding Their Use Of The Internet*, February 2002. <http://www.ntia.doc.gov/ntiahome/dn/index.html>.

Published Studies on Internet Tobacco Sales

Hrywna, C, et al., "Prevalence and Correlates of Internet Cigarette Purchasing Among Adult Smokers in New Jersey," *Tobacco Control* 13: 296-300, Sept. 2004. <http://tc.bmjournals.com/cgi/content/abstract/13/3/296>.

Hodge, FS, et al., "American Indian Internet Cigarette Sales: Another Avenue for Selling Tobacco Products," *American Journal of Public Health* 94(2): 260-61, February 2004. <http://www.ajph.org/cgi/reprint/94/2/260.pdf>.

Ribisl, K., et al., "Internet Sales of Cigarettes to Minors," *JAMA* 290(10): 1356-59, September 10, 2003. <http://jama.ama-assn.org>.

Bryant, JR, et al., "Online Sales: Profit Without Question," *Tobacco Control* 11: 226-27, September, 2002. <http://tc.bmjournals.com/cgi/content/abstract/11/3/226>.

Ribisl, K, et al., "Are the Sales Practices of Internet Cigarette Vendors Good Enough to Prevent Sales to Minors?," *American Journal of Public Health* 92(6): 940-41, June 2002. <http://www.ajph.org/content/vol92/issue6/index.shtml>.

Hong T & Cody MJ, "Presence of Pro-Tobacco Messages on the Web," *Journal of Health Communication* 7(4):273-307, July-September, 2002. <http://www.ncbi.nlm.nih.gov/htbin-post/Entrez/query?db=m&form=6&dopt=r&uid=12356288>

Reagan, KA, et al., "Blocking access to online tobacco sales sites," *Tobacco Control* 11(2): 164-165 June, 2002. <http://tc.bmjournals.com/cgi/content/full/11/2/164>

Published Studies on Internet Tobacco Sales (continued)

Ribisl, KM, et al., "Web sites selling cigarettes: how many are there in the USA and what are their sales practices?," *Tobacco Control* 10: 352-359 (Winter), December, 2001. <http://tc.bmjournals.com/cgi/content/abstract/10/4/352>.

Unger, JB, et al., "Are adolescents attempting to buy cigarettes on the internet?," *Tobacco Control* 10: 360-63 (Winter), December, 2001. <http://tc.bmjournals.com/cgi/content/abstract/10/4/360>.

Connolly, G, "Smokes and cyberspace: a public health disaster in the making," *Tobacco Control* 10:299 (Winter), December, 2001. <http://tc.bmjournals.com/cgi/content/full/10/4/299>.

Cohen, J, et al., "Tobacco commerce on the internet: a threat to comprehensive tobacco control," *Tobacco Control* 10: 364-367 (Winter), December, 2001. <http://tc.bmjournals.com/cgi/content/abstract/10/4/364>.

Malone, R. & L. Bero, "Cigars, Youth, and the Internet Link," *American Journal of Public Health* 90(5): 790-92, May, 2000, <http://www.ajph.org/cgi/content/abstract/90/5/790>.

State Laws Prohibiting Internet Tobacco Product Sales

New York law (Public Health Article 13F, Section 1399-II) prohibiting all delivery sales of cigarettes (other than small amounts delivered by in-state retailers to nearby customers). <http://assembly.state.ny.us/leg/?cl=91&a=71> Related advisory bulletin from the NY State Department of Taxation & Finance. http://www.tax.state.ny.us/pdf/memos/Cigarette/M00_4m.pdf. After legal challenges by some of the cigarette companies, this law was initially suspended as an unconstitutional violation of the commerce clause by a lower court. On appeal, however, the U.S. Court of Appeals for the Second Circuit reversed the lower court and ruled that the law is constitutional and entirely valid. <http://www.tobacco.neu.edu/litigation/resources/internet/CCA2ruling.pdf>. Accordingly, the law is currently in full force and effect.

Connecticut law (Connecticut General Statutes, Chapter 24, Cigarette Taxes, Section 12-285c) prohibiting all shipments of cigarettes into the state except if delivered to cigarette dealers or distributors or other licensed entities in the cigarette business. Specifically prohibits common contract carriers from knowingly transporting cigarettes to anyone in state other than cigarette dealers and distributors and licensed entities. <http://search.cga.state.ct.us/dlpubs/pub/htm/chap214.htm#Sec12-285c.htm>.

Alaska tax stamp legislation, passed into law, which, among other things, prohibits deliveries of cigarettes into the state except to licensed entities (thereby forbidding any internet or mail-order deliveries to end-user customers), establishes new licensing rules for all entities selling cigarettes into the state, forbids common carriers from delivering cigarettes for non-licensed entities, and requires that all cigarettes sold to consumers in the state have state tax stamps on them. http://www.legis.state.ak.us/basis/get_bill_text.asp?hsid=SB0168E&session=23.

State Laws Restricting Internet Tobacco Product Sales

Maine legislation (LD 1236), passed and signed into law, with a comprehensive system for restricting internet tobacco product sales in order to block sales to kids and to collect state tobacco excise taxes, including provisions making it illegal for delivery services to knowingly deliver tobacco products to persons in the state for internet or mail-order sellers not licensed by the state or that are on state non-compliance lists. http://www.mainelegislature.org/legis/bills_121st/billtexts/LD123601-1.asp. The new law is at 22 MRSA Sec. 1555-C & 1555-D. <http://janus.state.me.us/legis/ros/lom/lom121st/9pub401-450/pub401-450-58.htm>. The new law has been challenged by some delivery services, but the U.S. District Court has rejected their motion for a summary judgment finding that the state law is preempted by federal law. http://www.med.uscourts.gov/Opinions/Hornby/2004/DBH_02062004_1-03cv178_NEW_HAMPSHIRE_MOTOR_V_ROW_E.pdf. Going further, the Court has also granted the state's summary judgment motion, finding that the state law, as written, is not preempted by federal law. http://www.med.uscourts.gov/Opinions/Hornby/2004/DBH_06302004_1-03cv178_NEW_HAMPSHIRE_MOTOR_V_ROW_E.pdf.

Illinois law (Public Act 093-0960) requiring all Internet or mail-order sellers of cigarettes to Illinois smokers to register with the state as cigarette distributors (thereby authorized to buy state cigarette tax stamps and apply them to cigarettes destined for sale in the state) and forbidding common carriers from delivering any cigarettes to individuals for anyone who is not a licensed distributor and forbidding common carriers from delivering any cigarettes to individuals unless the carrier first checks government photo ID to confirm that the recipient is the purchaser and is 18 years of age or older, and also gets a signed statement from the purchaser/recipient confirming that the purchaser/recipient is 18 or over, understands that signing another person's name is illegal, understands that sales of cigarettes to persons under 18 is illegal, and that purchases by persons under the age of 18 are illegal under state law. <http://www.ilga.gov/legislation/publicacts/93/PDF/093-0960.pdf> or <http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=093-0960>.

California legislation, which has passed and been signed into law, restricting internet and mail order to kids, with age verification online and signature requirements (AB 1830 Assemblyman Frommer). http://www.leginfo.ca.gov/pub/01-02/bill/asm/ab_1801-1850/ab_1830_bill_20020918_chaptered.pdf. For the actual new law, see CA Business & Professions Code Section 22963. <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=bpc&group=22001-23000&file=22950-22963>.

California legislation, passed and signed into law, requires internet sellers to pay CA taxes on cigarettes delivered into state or mark packages notifying recipients that taxes are owed (SB 1766 Sen. Ortiz). http://www.leginfo.ca.gov/pub/01-02/bill/sen/sb_1751-1800/sb_1766_bill_20020918_chaptered.pdf. The actual new law is CA Revenue and Taxation Code Section 30101.7 and CA Code of Civil Procedure Section 1021.10. <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=rtc&group=30001-31000&file=30101-30111>; and <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=ccp&group=01001-02000&file=1021-1038>.

California legislation, passed into law, changing the tax stamp requirements in the state to require laser stamping with encrypted information (SB1701 Sen. Peace): http://www.leginfo.ca.gov/pub/01-02/bill/sen/sb_1701-1750/sb_1701_bill_20020926_chaptered.pdf. For the actual new law, see CA Revenue and Taxation Code Section 30162. <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=rtc&group=30001-31000&file=30161-30165>.

Idaho legislation (HB 357), passed into law, that forbids internet or mail-order sales of tobacco products to youth, has various youth access provisions, and creates state parallel to federal Jenkins Act re internet sellers reports of tobacco product sales into the state that identify state buyers for tax collection purposes. <http://www3.state.id.us/oasis/H0357.html#daily>.

Nevada law forbidding internet sales to youths under age 18 in the state and requiring adult signature at delivery of all tobacco products to customers in state (NRS 202 Sec. 24935). <http://www.leg.state.nv.us/NRS/NRS-202.html#NRS202Sec24935>.

Rhode Island law calling for unannounced state compliance checks re illegal internet and mail-order tobacco product sales to kids in the state (General Laws 11-9-13.6). <http://www.rilin.state.ri.us/Statutes/TITLE11/11-9/11-9-13.6.HTM>.

Rhode Island law restricting internet and mail order sales to kids, with signature at delivery requirements, <http://www.rilin.state.ri.us/Statutes/TITLE11/11-9/11-9-13.11.HTM>.

Virginia law to restrict internet and other delivery sales of cigarettes and to address problem of counterfeit cigarettes and counterfeit tax stamps (appears based on Philip Morris model state internet legislation). <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-246.7>.

Indiana law from Senate Bill 504 (appears based on Philip Morris model state internet legislation). <http://www.in.gov/legislative/bills/2003/SE/SE0504.1.html>.

Texas law (161 Health & Safety Code, section 161.451 et seq.) from House Bill 3139 (based on Philip Morris model legislation but revised somewhat). <http://www.capitol.state.tx.us/statutes/statutes.html>.

State Legislation to Restrict Internet Tobacco Product Sales

Factsheet: *Model State Legislation to Prohibit All Internet or Mail-Order Sales of Tobacco Products* (model based on New York State's law). <http://tobaccofreekids.org/research/factsheets/pdf/0229.pdf>

Factsheet: *Model State Legislation to Restrict Internet and Mail-Order Tobacco Product Sales [To Block Sales to Youth and to Collect State Tobacco Taxes]* (model legislative language).
<http://tobaccofreekids.org/research/factsheets/pdf/0230.pdf>

Factsheet: *The Critical Importance of a Delivery-List Enforcement Provision in State Internet Tobacco Sales Legislation*. <http://tobaccofreekids.org/research/factsheets/pdf/0259.pdf>.

Philip Morris "Proposed Cigarette Delivery Sales Bill" model state legislation re internet and mail order sales, <http://tobaccofreekids.org/research/factsheets/pdf/0224.pdf>, and TFK Critique of the Philip Morris model internet legislation. <http://tobaccofreekids.org/research/factsheets/pdf/0225.pdf>

New Jersey Legislation that would prohibit common carriers and other delivery services from knowingly delivering tobacco products to minors and require them to report any tobacco product deliveries to state tax collection officials. http://www.njleg.state.nj.us/2002/Bills/S2000/1872_11.PDF.

Federal Laws Relating to Internet Tobacco Product Sales

Federal Jenkins Act re internet cigarette sales (15 USC 375 et seq.).
<http://www4.law.cornell.edu/uscode/15/ch10A.html>.

Federal Laws prohibiting trafficking in contraband cigarettes (18 USC 2342 et seq.).
<http://www4.law.cornell.edu/uscode/18/plch114.html>.

IRS Code re tobacco products. <http://www4.law.cornell.edu/uscode/26/stEch52.html>.

Federal Legislation to Restrict Internet Tobacco Product Sales

From 2003-2004 Legislative Session: The Prevent All Cigarette Trafficking Act (PACT Act), S. 1177, introduced by Senators Orrin Hatch (R-UT) and Herbert Kohl (D-WI), passed the full Senate by unanimous consent on December 9, 2003. The PACT Act would minimize tobacco tax evasion through the internet by making tobacco products non-mailable matter, forbidding any internet sales of cigarettes or smokeless tobacco into a state without prior payment of all related tobacco taxes to the state and by giving the states and other tobacco tax jurisdictions the tools they need to enforce that requirement and all state laws relating to the taxation of cigarettes or smokeless tobacco. Carefully crafted to be completely neutral on tribal sovereignty matters. Also provided for a federal list of non-complying or otherwise illegal Internet sellers, with common carriers and other delivery services required not to make any deliveries for any of those illegal sellers. Also contains provisions directed at reducing both internet and other forms of contraband cigarette and smokeless tobacco deliveries and sales. http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:s1177es.txt.pdf.

Press Statement (July 31, 2003): *Hatch-Kohl Bill Would Reduce Tobacco Tax Evasion Through Internet Sales*.
<http://tobaccofreekids.org/Script/DisplayPressRelease.php3?Display=676>.

From 2003-2004 Legislative Session: H.R. 2824, sponsored by U.S. Reps. Mark Green (R-WI) and Martin Meehan (D-MA), passed the House Judiciary Committee by a unanimous voice vote on January 28, 2004. The bill would minimize tobacco tax evasion via the internet by forbidding any internet sales of cigarettes or smokeless tobacco into a state without prior payment of all related tobacco taxes to the state and by giving the states the tools they need to enforce that requirement and all state laws relating to the taxation of cigarettes or smokeless tobacco. Among other things, provided for a federal list of non-complying or otherwise illegal Internet sellers, with common carriers and other delivery services required not to make any deliveries for any of those illegal sellers. An electronic version of the amended bill is not yet available. The bill has been revised considerably since originally introduced, and is also different from the version that unanimously passed the House Judiciary Subcommittee on Courts, the Internet and Intellectual Property on October 2, 2003.
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:h2824ih.txt.pdf.

Press Statement (July 24, 2003): *Public Health Groups Support Bipartisan Green-Meehan Bill To Reduce Tobacco Tax Evasion Through Internet Sales* (joint statement with ACS, AHA, and ALA).
<http://www.tobaccofreekids.org/Script/DisplayPressRelease.php3?Display=667>

Congressional Testimony: Matthew Myers, testimony before U.S. House Judiciary Committee Subcommittee on Courts, the Internet and Intellectual Property, May 1, 2003, re H.R. 1839, Internet tobacco legislation, <http://www.tobaccofreekids.org/reports/internet/MyersTestimony.pdf>.

Separate legislation to directly address the problem of youth access to tobacco products via the internet, H.R. 3047, has been introduced by U.S. Rep. Martin Meehan (D-MA) (neither the PACT Act or the Green-Meehan bills, described above, directly address the youth access issue). http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:h3047ih.txt.pdf

From 2001-2002 Legislative Session: H.R. 5724, *The Tobacco Free Internet for Kids Act of 2002*, introduced by Representatives Marty Meehan (D-MA) and James Hansen (R-UT) in November 2002 to block youth access to internet tobacco products and minimize tax evasion through internet sales of tobacco products. <http://www.house.gov/meehan/legislation.htm> or http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_bills&docid=f:h5724ih.txt.pdf.

From 2001-2002 Legislative Session: S. 3035, introduced by Senator Hutchinson (R-AR) to block Internet tobacco product sales to youth, ensure collection of all cigarette taxes, and for other purposes. http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_bills&docid=f:s3035is.txt.pdf

Court Rulings Related to State Efforts to Restrict Internet Tobacco Sales

Appellate Court ruling upholding New York State's ban on internet and mail order sales, *Brown & Williamson v. George Pataki*, U.S. Court of Appeals for the Second Circuit, Docket Nos. 01-7806, 01-7813 8, February 13, 2003. <http://www.tobacco.neu.edu/litigation/resources/internet/CCA2ruling.pdf>. The Appellate Court overruled a lower court ruling, which had blocked the implementation of the New York ban and described alternative restrictions on internet and mail order sales of tobacco products that states could constitutionally implement instead of a total ban. <http://tobaccofreekids.org/reports/internet/NYRuling.pdf>.

In *Quill Corp. v. Heitkamp*, 504 U.S. 298 (1992), the Supreme Court found that a state could not require an out-of-state mail order firm with no physical presence in the state to collect and pay a use tax on goods purchased by customers within the state. It ruled that a mail-order house may have the "minimum contacts" with a taxing State to give the state jurisdiction, as required by the Due Process Clause, and yet lack the "substantial nexus" with the State required for State jurisdiction by the Commerce Clause. <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=504&invol=298>.

District Court ruling in Washington State finding that states may assert a claim for violation of the federal Jenkins Act in U.S. District Court (citing similar NY State Court ruling) – i.e., states, as well as the federal government, can enforce the Jenkins Act against internet sellers that violate it. Also held that businesses with interactive websites that sell cigarettes into a state have adequate minimum contacts with that state so that courts in that state can exercise personal jurisdiction over the business and bring them into the state as lawsuit defendants. Order Denying Motion to Dismiss, *State of Washington v. www.dirtcheapcig.com, Inc.*, Case No. CO2-2438L, U.S. District Court, Western District of Washington at Seattle, May 2, 2003. [Court Order not available via internet; but copies available from the Court: 206-553-5598.]

Internet Tobacco Product Sales, Indian Tribes, and Tribal Sovereignty Rights

The U.S. Supreme Court, in *Oklahoma Tax Comm. v. Potawatomi Tribe*, 498 U.S. 505 (1991), ruled that "under the doctrine of tribal sovereign immunity" a state is "free to collect taxes on sales to nontribal members" that occur on tribal lands within state borders (but may not tax tribal-land sales to tribal members). But the Court also ruled that because of Indian tribes' sovereign immunity, a state cannot enforce any such tax collection laws against a tribe through a lawsuit in court unless specifically authorized by Congress to do so. In its consideration of this issue, the Court also affirmed that "Congress has always been at liberty to dispense with such tribal immunity or to limit it." The Court also noted that it had never held that individual officers or members of a tribe could not be held liable for damages in court actions brought by a state; and stated that if the states cannot adequately protect state tax revenues on sales made on Indian lands without being able to bring court actions against Indian tribes the states could seek appropriate legislation from Congress. In a concurring opinion, Justice Stevens also stated that "the Court today recognizes that a tribe's sovereign immunity from actions seeking money damages does not

necessarily extend to actions seeking equitable relief.”

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=498&page=505>.

American Indian Policy Center, “Sovereign Immunity.” <http://www.airpi.org/projects/sovimmun.html>.

See, also, <http://www.airpi.org/projects/marge1.html>.

Internet Tobacco Product Sales, Indian Tribes, and Tribal Sovereignty Rights (continued)

National Congress of American Indians (NCAI), “An Introduction to Sovereign Immunity for Federal, State and Tribal Governments.” <http://www.ncai.org/main/pages/issues/governance/documents/sovintro.htm>. See, also, http://www.ncai.org/main/pages/issues/governance/sovereign_immunity.asp.

Reynolds, J., “Cigarette tax legislation threatens tribes,” *Indian Country Today*, December 29, 2003. <http://www.indiancountry.com/?1072711307>.

Editorial, “Tobacco Reservations,” *Washington Times*, February 11, 2004. <http://www.washtimes.com/op-ed/20040210-082913-7273r.htm>.

Internal Revenue Service, “Glossary of Terms” (relating to Indian Tribes and Tribal sovereignty). <http://www.irs.gov/govt/tribes/article/0,,id=108386,00.html>.

State Enforcement Efforts to Stop Illegal Activity by Internet Sellers of Tobacco Products

New York City RICO lawsuit against internet vendors re nonpayment of state and city cigarette taxes.

http://tobacco.neu.edu/internet/NYC_Internet_Case.pdf

<http://www.nyc.gov/html/law/pressreleases/pr101703.pdf>

<http://www.nyc.gov/html/law/pressreleases/pr011703.pdf>.

California lawsuits against internet tobacco product sellers for violations of the federal Jenkins Act and the state’s unfair competition laws, laws forbidding cigarette sales to youth, and new laws pertaining to tobacco taxes and internet and mail order sellers of cigarettes. http://caag.state.ca.us/newsalerts/2003/03-039Dirt_Cheap.pdf Related press release from the California Attorney General’s office.

<http://caag.state.ca.us/newsalerts/2003/03-039.htm>.

Washington State lawsuit against “Dirt Cheap Cigarettes” internet vendor for failure to comply with the federal Jenkins Act. http://tobacco.neu.edu/internet/NYC_Internet_Case_amended_complaint.pdf

Additional information on Washington State AG Christine Gregoire’s enforcement efforts:

http://www.wa.gov/ago/pubs/bidis_order.htm; http://www.wa.gov/ago/releases/rel_cheapcigs_103102.html;

http://www.wa.gov/ago/releases/rel_bidis_122199.html

Massachusetts Department of Revenue Directive “Tax Obligations of Persons Purchasing Cigarettes in Interstate Commerce For Which the Massachusetts Cigarette Excise Has Not been Paid.”

http://www.dor.state.ma.us/rul_reg/dir/DD_02_14.htm Related TV news story on MA efforts to get smokers buying over internet to pay state taxes. <http://www.thebostonchannel.com/newscenter5/2019470/detail.html>

Texas mailing to Internet Cigarette Sellers re compliance with the State’s new laws, January 2004,

http://www.window.state.tx.us/taxinfo/special_mailings/internet_cigseller.pdf. See, also,

http://www.window.state.tx.us/taxinfo/taxpubs/tx98_697.html.

Tobacco Control Resource Center, Litigation Resources Relating to Sales of Tobacco Products on the Internet.

<http://www.tobacco.neu.edu/litigation/resources/internet/index.html>.

Private Sector Efforts to Block Illegal Activity by Internet Sellers of Tobacco Products

In March 2005, MasterCard International issued a bulletin to its member banks about the problem of illegal activity by online tobacco merchants. MasterCard reportedly stated that financial institutions may still provide MasterCard acceptance rights for Internet tobacco product merchants but they must first have documented evidence to substantiate that the merchant is in compliance with all applicable federal, state and local laws to the satisfaction of the U.S. Department of Justice’s Bureau of Alcohol, Tobacco, Firearms and Explosives and

any applicable state attorney general. Related MasterCard news release, <http://www.mastercardintl.com/cgi-bin/newsroom.cgi?id=996>.

In November 2002, America OnLine (AOL) blocked persons from under 18 from AOL's shopping areas in order to prevent kids from purchasing tobacco products, alcohol, or pornography from AOL partners. Related news article, <http://news.com.com/2100-1023-966276.html>.

In September 2002, Visa issued a new rule requiring that internet vendors which accept Visa cards and sell age-restricted products (such as cigarettes) have valid age-verification procedures to block sales to kids and otherwise ensure that Visa cards are not used in illegal internet transactions. A summary of this new rule is on the Visa website. http://www.usa.visa.com/business/merchants/get_account_responsibilities.html. The Campaign issued a press release applauding Visa's rule, urging Visa to enforce it vigorously, and urging other credit card companies to follow suit. <http://tobaccofreekids.org/Script/DisplayPressRelease.php3?Display=563>.

Philip Morris, the largest cigarette company in the United States, has filed lawsuits against fifty-five internet vendors of cigarettes claiming that they are selling counterfeit versions of Philip Morris brands and violating Philip Morris's trademark rights. Philip Morris issued a press release on these lawsuits, which also provides links to the legal complaints it filed in several different courts.

http://www.philipmorrisusa.com/pressroom/content/press_release/articles/pr_October_30_2002_PMUFLARSC_C.asp. See, also, Philip Morris USA's position statement on internet sales.

http://www.philipmorrisusa.com/policies_practices/legislation_regulation/internet_sales.asp. See, also, http://www.philipmorrisinternational.com/pages/eng/busenv/Internet_sales.asp.

Companies That Market Age-Verification Services for Use By Internet Sellers

Aristotle International, Inc., "VerifyMe™ Worldwide age and identity verification using government-issued ID," <http://www.verifymyidentification.com/home.asp>.

Aristotle International, Inc., [childonlineprotectionservices.org](http://www.childonlineprotectionservices.org) [provides information on existing restrictions and requirements re selling age-restricted products online]. <http://www.childonlineprotectionservices.org>.

ChoicePoint Authentication Services: "Through ChoicePoint's identification services, companies can perform on-site, online or off-line identity validation and confirmation for use in trusted transactions."

http://www.choicepoint.com/industry/government/public_6.html.

Cybersource Corp., "a real-time age authentication system that validates the Internet user's age based on U.S. and foreign government-issued identification and public records."

http://www.cybersource.com/products_and_services/verification_and_compliance_services/age_verification.

Paymentech, OnGuard age verification system, "Merchants can now "card" visitors at their website to authenticate identity and age. Age verification uses an international database of government-issued identifications to instantaneously verify age and identity online."

http://www.paymentech.net/sol_frapro_carnotpre_agever_page.jsp. See, also:

http://www.paymentech.net/sol_frapro_carnotpre_ideaut_page.jsp.

[These listings are for informational purposes only and do not represent or imply any endorsement of the companies or their products by the Campaign for Tobacco-Free Kids. Please send information about any other companies that might be listed to elindblom@tobaccofreekids.org.]

Other Websites Regarding Internet Tobacco Product Sales

On-Line Tobacco Retailers Association (OLTRA). <http://www.oltra.org>.

National Association of Convenience Stores (NACS), Issue Updates: Remote Sales of Tobacco.

http://www.nacsonline.com/NACS/Government/Tobacco/IssueUpdate_MailOrderSales.htm.

State Efforts to Collect Sales Tax on Internet Sales (not tobacco specific)

Krebs, B, "State Coalition Approves Internet Sales Tax Plan," *Washington Post*, November 12, 2002.

<http://www.washingtonpost.com/wp-dyn/articles/A40364-2002Nov11.html>.

National Conference of State Legislators, State Internet Taxation Task Force.
<http://www.ncsl.org/programs/fiscal/tctelcom.htm>.

National Governors Association, Streamlined Sales Tax Project.
<http://www.nga.org/nga/salestax/1,1169,,00.html>.

National Retail Federation, Taxation of Internet Sales.
http://www.nrf.com/content/default.asp?folder=govt/issue_pub&file=taxation_internet_sales.htm&bhcp=1

Information on State Efforts to Restrict Internet Sales of Alcoholic Products

Wine & Spirits Wholesalers of America, Inc., Policy Views, "Direct Shipment of Alcohol to Consumers."
<http://www.wswa.org/public/policy/direct.html>. Related info on state laws re direct shipping of alcohol products:
<http://www.wswa.org/public/state>.

Staff Report, U.S. Federal Trade Commission (FTC), *Possible Anti-Competitive Barriers to E-Commerce: Wine*, July 2003. <http://www.ftc.gov/os/2003/07/winereport2.pdf>.

Remarks by Michigan Assistant Attorney General Irene M. Mead, U.S. Federal Trade Commission Workshop, Possible Anti-Competitive Efforts to Restrict Competition on the Internet, October 8, 2002 [focuses on state's special Constitutional authority to restrict alcohol sales within and into its borders (including internet sales into the state); the state's need to prohibit internet sales into the state to block access by minors, stop tax avoidance; and the difficulty of enforcement against out-of-state internet sellers].
<http://www.ftc.gov/opp/ecommerce/anticompetitive/panel/mead.htm>. For other participants who commented on internet wine sales at the FTC Workshop, Possible Anti-Competitive Efforts to Restrict Competition on the Internet, see <http://www.ftc.gov/opp/ecommerce/anticompetitive/comments/index.html>.

Campaign for Tobacco-Free Kids, March 17, 2005 / Eric Lindblom

Other Materials and Information

Campaign website's special report on Internet tobacco sales: <http://tobaccofreekids.org/reports/Internet>.

Please email elindblom@tobaccofreekids.org with information about any other materials or resources that might be included in these listings.