



THE PACT ACT

Preventing Illegal Internet Sales of Cigarettes & Smokeless Tobacco

The Prevent All Cigarette Trafficking Act (the PACT Act) – effective June 29, 2010 – will fight crime and increase government revenues by ensuring the collection of federal, state and local tobacco taxes on cigarettes and smokeless tobacco sold via the Internet or other mail-order sales. By reducing the availability of tax-evading, low-cost cigarettes over the Internet – and stopping Internet sales of cigarettes to kids – the PACT Act will also prevent and reduce smoking and its many harms and costs.

In May 2009, the full House of Representatives overwhelmingly approved the PACT Act (H.R. 1676), sponsored by Representative Weiner (D-NY), by a vote of 397 to 11. In early 2010, the Senate passed a similar version of the PACT Act (S. 1147), sponsored by Senator Kohl (D-WI), through unanimous consent. The House then approved the Senate version, and it was signed into law by President Obama on March 31, 2010.

What the PACT Act Does

Individuals and businesses that sell cigarettes and smokeless tobacco products via the Internet or other mail-order sales frequently do not pay applicable tobacco taxes and do not have sufficient safeguards to prevent sales to children. Stopping these illegal sales of cigarettes and smokeless tobacco is difficult because of the nature of the Internet, which enables illegal operators threatened with enforcement actions to easily close down existing websites and reappear with new ones. In addition, Internet sellers are typically located in distant states, on Tribal lands, or even overseas, making state or local enforcement even more costly and complicated.

Among other things, the PACT Act requires Internet and other mail-order sellers to:

- Pay all applicable federal, state, local or Tribal tobacco taxes and affix any related tax stamps, before delivering any cigarettes or smokeless tobacco products to any customer in a state;
- Comply with various state and local laws as if the Internet sellers were tobacco product retailers located in the same state as their customers;
- Register with the state and make periodic reports to state tax collection officials; and
- Check the age and ID of customers both at purchase and at delivery to stop Internet cigarette and smokeless tobacco sales to kids.

The bill also subjects illegal Internet sellers to strong new penalties, allows for the enforcement of the new federal law by the attorneys generals of the states, localities and Indian Tribes where the tobacco products are delivered, and provides other enforcement tools to enable federal and state enforcement officials to stop the deliveries to consumers of illegally sold cigarettes and smokeless tobacco by non-complying Internet sellers.

Other Key Components of the PACT Act

- To stop illegal Internet sellers from using the U.S. mails to evade compliance, the PACT Act makes tobacco products nonmailable matter (with some minor exceptions that cannot be exploited by illegal actors). Unlike private common carriers and other delivery services the U.S. Postal Service does not have adequate capability to readily perform the age and ID identification at

delivery that is required by the PACT Act. Nor does the Postal Service readily have the ability to ensure that persons submitting cigarettes and smokeless tobacco for delivery are not illegally operating Internet sellers or to stop packages during delivery that have been submitted by illegal Internet sellers.

- The PACT Act establishes clear, easy-to-follow procedures to enable law-abiding Internet sellers to deliver their products via common carriers or other delivery services – but also has strong provisions to block law-breaking Internet sellers from delivering their illegally sold cigarettes and smokeless tobacco to consumers through means other than the U.S. mails.
- The PACT Act explicitly states that it is not meant to create any precedent relating to the collection of state or local sales or use taxes on out-of-state entities, such as Internet sellers selling into a state or locality from outside state borders.
- The PACT Act fully respects Tribal sovereignty, clearly stating that the Act does not either expand or reduce the existing scope of State, local or Tribal government sovereignty or immunity rights; and the Act fully honors any existing state-Tribal tobacco tax compacts.

The PACT Act Will Promote Public Health

The PACT Act will enhance public health by helping to prevent and reduce the use of tobacco. Tobacco use, which is the leading preventable cause of the death in the United States, is responsible for more than 400,000 deaths and nearly \$100 billion in health care costs each and every year. Ninety percent of all adult smokers began smoking when they were teenagers or younger. About one in three youth smokers eventually die prematurely from smoking-caused disease.

Stopping illegal Internet sales will help to prevent and reduce tobacco use by: (a) blocking access to under-priced, untaxed cigarettes and smokeless tobacco; and (b) closing off a pathway that underage youth use to purchase these products, often subsequently providing the cigarettes to other kids.

Cigarettes and smokeless tobacco sold via the Internet at prices that do not include payment of all applicable tobacco taxes not only deprive federal, state and local governments of needed revenue but also undercut one of the most effective means of reducing tobacco use. By raising the price of cigarettes, tobacco taxes directly reduce smoking, especially among young people. Every 10 percent increase in the real price of cigarettes reduces total cigarette consumption by about 3 to 4 percent and reduces the number of youth smokers by about 6 or 7 percent. The reverse is also true. Reducing the price of cigarettes – such as by selling cigarettes that do not include all taxes owed – directly increases smoking and all the harm that causes. The PACT Act will help ensure that the price of cigarettes and smokeless tobacco products sold through the Internet or other mail order sales includes all applicable taxes, thereby increasing government revenues and preserving the effectiveness of tobacco taxes as a tool to reduce tobacco use, especially among kids.

Besides selling tobacco products at tax-evading low prices, Internet sellers typically fail to use adequate safeguards to prevent children from purchasing cigarettes and smokeless tobacco. Accordingly, Internet and mail-order sales provide yet another way for youth to obtain tobacco products – and Internet buyers (who typically buy at least one or two cartons at a time) can become suppliers for other kids. The PACT Act will stop such Internet sales of cigarettes and smokeless tobacco to kids by requiring the sellers to verify the age of their customers prior to sale by checking against available government and commercial ID databases, and by requiring sellers to use a method of delivery that will verify the age and ID of the person accepting the final delivery of the cigarettes or smokeless tobacco prior to handing them over.

Campaign for Tobacco-Free Kids, March 31, 2010 / Brian Hickey

For more information on the problem of internet tobacco product sales, see the Campaign for Tobacco-Free Kids Factsheet, *Internet Sales of Tobacco Products: Reaching Kids and Evading Taxes*, <http://tobaccofreekids.org/research/factsheets/pdf/0213.pdf>.