



## THE PACT ACT

### Preventing Illegal Internet Sales of Cigarettes, Smokeless Tobacco & E-Cigarettes

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The Prevent All Cigarette Trafficking Act (the PACT Act), enacted in 2010, applied originally to cigarettes and smokeless tobacco. In 2020, the PACT Act was extended to cover e-cigarettes. The PACT Act had a number of purposes, including reducing crime; increasing government revenues by ensuring the collection of federal, state, and local tobacco taxes; and requiring that online and remote sellers comply with all state, local, Tribal, and other applicable laws regarding tobacco sales, distribution, and delivery. By discouraging Internet sales of cigarettes, smokeless tobacco, and e-cigarettes, especially to kids, and explicitly acknowledging opportunities for Tribal, state, and local enforcement, the PACT Act also sought to reduce youth access to tobacco.

#### **What the PACT Act Does**

Individuals and businesses that sell cigarettes, smokeless tobacco products, and e-cigarettes via the Internet or other mail-order sales frequently do not pay applicable tobacco taxes, do not comply with state or local tobacco control laws, and do not have sufficient safeguards to prevent sales to children. Stopping the illegal sales of these products 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 costly and complicated.

Among other things, the PACT Act requires Internet and other remote sellers to:

- Pay all applicable federal, state, local, or Tribal tobacco taxes and affix any related tax stamps before delivering any cigarettes, smokeless tobacco products, or e-cigarettes to any customer in a state;
- Comply with various Tribal, state, and local sales laws as if the sale occurred 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, smokeless tobacco, or e-cigarette sales to kids.

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

#### **Other Key Components of the PACT Act**

- The PACT Act makes cigarettes, smokeless tobacco, and e-cigarettes nonmailable matter through the U.S. mail (with limited exceptions).
- The PACT Act establishes clear shipping requirements 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, smokeless tobacco, and e-cigarettes 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 enables states, localities, and Tribes to enforce against Internet sellers that violate the PACT Act's requirements, including ensuring that sales into a jurisdiction comply with the jurisdiction's laws regarding the sale, distribution, and delivery of cigarettes, smokeless tobacco, and e-cigarettes.

- The PACT Act fully respects Tribal, state, and local sovereign immunity, clearly stating that the Act neither expands nor reduces the existing scope of State, local or Tribal government sovereign immunity rights. The Act also fully honors existing state-Tribal tobacco tax compacts.

### **The PACT Act Promotes Public Health**

The PACT Act enhances public health by helping to prevent and reduce the use of tobacco. Tobacco use is the leading preventable cause of death and disease in the United States and is responsible for more than 480,000 deaths and about \$170 billion in health care costs each year.<sup>1</sup> Ninety percent of all adult smokers began smoking when they were teenagers or younger.<sup>2</sup> About one in three youth smokers eventually die prematurely from smoking-caused disease.<sup>3</sup>

Preventing illegal Internet sales and deliveries helps to reduce tobacco use by blocking access to untaxed cigarettes, smokeless tobacco, and e-cigarettes and to tobacco products that do not comply with state, local, or Tribal laws. The PACT Act also seeks to close off a pathway that underage youth may use to purchase these products and then provide them to other kids.

Cigarettes, smokeless tobacco, and e-cigarettes sold via the Internet at prices that do not include payment of all applicable tobacco taxes not only deprive federal, Tribal, 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.<sup>4</sup> 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 harms it causes. The PACT Act ensures that the price of cigarettes, smokeless tobacco products, and e-cigarettes 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 tobacco products.<sup>5</sup> Accordingly, Internet and mail-order sales provide yet another way for youth to obtain tobacco products – and Internet buyers can become suppliers for other kids. The PACT Act addresses such illegal Internet sales of cigarettes, smokeless tobacco, and e-cigarettes to kids by requiring 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 products prior to handing them over.

Internet purchases can also evade sales policies that Tribes, states, and localities have enacted to reduce tobacco-related disease and mortality. Provisions in the PACT Act require Internet sellers to abide by all applicable state, local and Tribal laws regarding cigarettes, smokeless tobacco, and e-cigarette sales. For instance, online sellers of flavored e-cigarettes, flavored smokeless tobacco, or menthol cigarettes should not be able to sell or ship those products into states and localities that prohibit the sale of those products.

***Campaign for Tobacco-Free Kids, March 2, 2021 / Ann Boonn***

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<sup>1</sup> HHS, *The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General*, 2014, [https://www.ncbi.nlm.nih.gov/books/NBK179276/pdf/Bookshelf\\_NBK179276.pdf](https://www.ncbi.nlm.nih.gov/books/NBK179276/pdf/Bookshelf_NBK179276.pdf). Xu, X et al., “Annual Healthcare Spending Attributable to Cigarette Smoking: An Update,” *American Journal of Preventive Medicine* 48(3):326-33, 2014.

<sup>2</sup> SAMHSA. Center for Behavioral Health Statistics and Quality. National Survey on Drug Use and Health (NSDUH), 2014. ICPSR36361-v1. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 2016-03-22. <http://doi.org/10.3886/ICPSR36361.v1>

<sup>3</sup> CDC, “Projected Smoking-Related Deaths Among Youth-United States,” *MMWR* 45(44):971-974, November 8, 1996, <http://www.cdc.gov/mmwr/PDF/wk/mm4544.pdf>.

<sup>4</sup> See Campaign for Tobacco-Free Kids factsheet, *Raising Cigarette Taxes Reduces Smoking, Especially Among Kids (and the Cigarette Companies Know It)*, <https://www.tobaccofreekids.org/assets/factsheets/0146.pdf>.

<sup>5</sup> Williams, RT, Derrick, J, & Phillips, KJ, “Cigarette sales to minors via the internet: how the story has changed in the wake of federal regulation,” *Tobacco Control* 26(4):415-420, 2017. Williams, RT, Derrick J, & Ribisl, KM, “Electronic cigarette sales to minors via the internet.” *JAMA Pediatrics* 169(3):e1563, doi: 10.1001/jamapediatrics.2015.63, Epub March 2, 2015. Nikitin, D, Timberlake, DS, & Williams, RS, “Is the E-Liquid Industry Regulating Itself? A Look at E-Liquid Internet Vendors in the United States,” *Nicotine & Tobacco Research* 18(10):1967-72, 2016.