



## **Background on Senate Bill 1147: THE PREVENT ALL CIGARETTE TRAFFICKING ACT OF 2009**

The Coalition to Stop Contraband Tobacco supports S. 1147, the Prevent All Cigarette Trafficking Act of 2009 (the “PACT Act”). Numerous stakeholders have worked with Senator Herb Kohl (D-WI) for many years on seeking to pass the PACT Act, an important piece of legislation to help combat the illegal sales of cigarettes. On May 21, 2009, the House of Representatives passed H.R. 1676, the PACT Act, by a 397-11 margin.

The PACT Act closes a number of gaps in current federal law regulating “remote” or “delivery” sales of cigarettes and smokeless tobacco products. The PACT Act represents an important opportunity to further protect the legitimate channels of distribution for cigarettes and smokeless tobacco, is the product of a long process of discussion and negotiation among stakeholders, has broad support, and strikes the appropriate balance between the needs of law enforcement and the legitimate interests of affected parties.

### **Internet and Other Remote Sales of Cigarettes and Smokeless Tobacco Products Create Many Adverse Consequences.**

Remote sellers typically sell untaxed or low-taxed cigarettes over the Internet or by mail or telephone order to consumers in higher-tax jurisdictions, without paying the taxes owed to the states and localities in which the consumers are located. Consumers are often unaware that they are personally liable for any applicable unpaid taxes. Remote sales cause a number of harms:

- *The States Lose Substantial Tax Revenues.*
- *Remote Sales Can Undercut State Laws Intended to Prevent Youth Access to Tobacco Products.*
- *Legitimate Businesses are Unfairly Disadvantaged.*

The PACT Act Contains a Number of Provisions to Decrease Illegal Internet Sales

- Requires Payment of State and Local Excise Taxes on Remote Sales.
- Regulates Delivery Methods, Including Age-Verification and Shipping Requirements.
- Makes Cigarettes and Smokeless Tobacco Nonmailable To Consumers Through the U.S. Postal Service
- Gives the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATFE) Authority to Inspect Records and Inventories of Remote Sellers.

### **Existing Federal Law Contains Gaps that Make it Inadequate to Effectively Deal with the Problems Created by Remote Sales.**

The Jenkins Act, which was enacted almost sixty years ago, imposes limited regulatory requirements originally designed to prevent bootlegging of cigarettes. These regulatory requirements have been overtaken by the development of modern infrastructures -- most

notably the Internet -- that enable consumers to purchase goods from businesses in other states and countries without leaving their homes. For example:

- The Jenkins Act Does Not Require the Internet or Other Remote Sellers to Pay Applicable Taxes on Cigarettes Shipped into a State.
- The Jenkins Act Does Not Require Internet or Other Remote Sellers to Comply with Age-Verification and Other Measures Enacted by the States into Which the Cigarettes are Shipped.
- Violations of the Jenkins Act are Punishable Only as Misdemeanors.

**The PACT Act Addresses and Enhances Existing Jenkins Act Provisions**

The PACT Act includes the following improvements to the Jenkins Act:

- Expands the amount of information that must be reported by remote sellers of cigarettes and smokeless tobacco products and includes additional reporting requirements.
- Gives state, local and tribal authorities a federal cause of action to enforce the Jenkins Act.
- Expressly provides cigarette manufacturers or importers holding federal permits with a cause of action to enjoin certain violations of the Jenkins Act.
- Makes violations of the Jenkins Act a felony.