

107TH CONGRESS
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S. 3035

To prohibit the sale of tobacco products through the Internet or other indirect means to underage individuals, to ensure the collection of all cigarette taxes, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 2, 2002

Mr. HUTCHINSON introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To prohibit the sale of tobacco products through the Internet or other indirect means to underage individuals, 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 “Eliminating Profit-
5 eering through Illegal Cigarette Sales Act” or “EPICS
6 Act”.

1 **SEC. 2. UNLAWFUL ACTS REGARDING SALE OF TOBACCO**
2 **PRODUCTS TO UNDERAGE INDIVIDUALS.**

3 (a) IN GENERAL.—It shall be unlawful for any per-
4 son who is in the business of selling tobacco products, and
5 who advertises such products through the Internet or any
6 other means, to sell a tobacco product to an individual
7 under the legal age (according to State law) to purchase
8 tobacco products if pursuant to the sale the person mails
9 the product or ships the product by carrier in or affecting
10 interstate commerce.

11 (b) PROCEDURES TO PROTECT AGAINST SALES TO
12 UNDERAGE INDIVIDUALS.—It shall be unlawful for any
13 person in the business of selling tobacco products to take
14 an order for a tobacco product, other than from a person
15 who is in the business of selling tobacco products, through
16 the mail, or through any telecommunications means (in-
17 cluding by telephone, facsimile, or the Internet), if in pro-
18 viding for the sale or delivery of the product pursuant to
19 the order the person mails the product, or ships the prod-
20 uct by carrier in or affecting interstate commerce, and the
21 person fails to comply with each of the following proce-
22 dures:

23 (1) Before mailing or shipping the product, the
24 person receives from the individual who places the
25 order the following:

1 (A) A copy of a valid government-issued
2 document (whether an operator's permit or oth-
3 erwise) that provides the name, address, and
4 date of birth of the individual.

5 (B) A signed statement in writing from the
6 individual providing a certification of the indi-
7 vidual that—

8 (i) such document and information
9 correctly identifies the individual and cor-
10 rectly states the address and date of birth
11 of the individual;

12 (ii) the individual understands that
13 forging another person's signature to the
14 statement is illegal; and

15 (iii) the individual understands that
16 tobacco sales to minors are illegal and that
17 tobacco purchases by minors may be illegal
18 under applicable State law.

19 (2) Before mailing or shipping the product, the
20 person—

21 (A) verifies the information received from
22 the individual under paragraph (1) against a
23 commercially available database; and

24 (B) sends a letter to the individual re-
25 questing—

- 1 (i) confirmation of the order; and
2 (ii) that the individual reply imme-
3 diately (to a specified toll-free phone num-
4 ber or e-mail address) if the individual did
5 not submit the order.

6 (3) In the case of an order for a product pursu-
7 ant to an advertisement on the Internet, the person
8 receives payment by credit card or check for the
9 order before mailing or shipping the product.

10 (4) Unless the person is identified as a member
11 of the Armed Forces by the document issued by the
12 Department of Defense identifying individuals as
13 members of the Armed Forces, the person provides
14 for the mailing or shipping of the product to the
15 name and address provided on the government-
16 issued document received under paragraph (1).

17 (5)(A) The person employs a method of mailing
18 or shipping the product requiring that the individual
19 purchasing the product—

- 20 (i) be the addressee;
21 (ii) personally sign for delivery of the pack-
22 age; and
23 (iii) if the individual appears to the carrier
24 making the delivery to be under 27 years of
25 age, take delivery of the package only after pro-

1 ducing valid, government-issued identification
2 that—

3 (I) bears a photograph of the indi-
4 vidual;

5 (II) indicates that the individual is
6 not under the legal age to purchase ciga-
7 rettes; and

8 (III) indicates that the individual is
9 not younger than the age indicated on the
10 government-issued document received
11 under paragraph (1).

12 (B) The bill of lading clearly states the require-
13 ments in subparagraph (A) and specifies that Fed-
14 eral law requires compliance with the requirements.

15 (6) The person notifies the carrier for the mail-
16 ing or shipping, in writing, of the age of the ad-
17 dressee as indicated by the government-issued docu-
18 ment received under paragraph (1).

19 (c) ADVERTISING THROUGH INTERNET; PROMINENT
20 WARNING LABELS.—It shall be unlawful for any person
21 in the business of selling tobacco products to advertise to-
22 bacco products for sale through an Internet website to a
23 person other than a person who is in the business of sell-
24 ing tobacco products unless such website contains, on the
25 part of each website page relating to sale of such products

1 that is immediately visible when accessed, prominent and
2 clearly legible warning labels as follows:

3 (1) A warning label stating that sales of to-
4 bacco products to persons under 18 years of age are
5 illegal in all States except Alabama, Alaska, and
6 Utah, where sales of tobacco products to person
7 under 19 years of age are illegal.

8 (2) A warning label described—

9 (A) in the case of cigarettes, in subsections
10 (a)(1) and (b)(2) of section 4 of the Federal
11 Cigarette Labeling and Advertising Act (15
12 U.S.C. 1333); and

13 (B) in the case of smokeless tobacco prod-
14 ucts, in subsections (a)(1) and (b)(1) of section
15 3 of the Federal Comprehensive Smokeless To-
16 bacco Health Education Act of 1986 (15 U.S.C.
17 4402).

18 (d) ADVERTISING THROUGH INTERNET; ACCESS.—
19 It shall be unlawful for any person in the business of sell-
20 ing tobacco products to advertise such products for sale
21 through an Internet website unless access to the website
22 (other than a nonselling website home page) is provided
23 only to individuals who provide to the person the informa-
24 tion described in subparagraphs (A) and (B) of subsection

1 (b)(1) and whose information is verified according to the
2 procedures described in subsection (b)(2).

3 (e) **RULE OF CONSTRUCTION REGARDING COMMON**
4 **CARRIERS.**—This Act may not be construed as imposing
5 liability upon any common carrier, or officers or employees
6 thereof, when acting within the scope of business of the
7 common carrier.

8 **SEC. 3. FEDERAL TRADE COMMISSION.**

9 (a) **CIVIL ENFORCEMENT.**—For purposes of the en-
10 forcement of section 2 by the Federal Trade Commission,
11 a violation of a provision of subsection (a) or (b) of such
12 section shall be deemed to be an unfair or deceptive act
13 or practice in or affecting commerce within the meaning
14 of the Federal Trade Commission Act, and the procedures
15 under section 5(b) of such Act shall apply with respect
16 to such a violation.

17 (b) **REGULATIONS.**—Not later than 90 days after the
18 date of the enactment of this Act, the Commission shall
19 promulgate a final rule for carrying out this Act.

20 (c) **INFORMATION REGARDING STATE LAWS ON MIN-**
21 **IMUM PURCHASE-AGE.**—The Commission shall post on
22 the Internet site of the Commission information that, by
23 State, provides the minimum age at which it is legal under
24 State law to purchase tobacco products in the State.

1 **SEC. 4. CRIMINAL PENALTIES.**

2 (a) IN GENERAL.—

3 (1) FIRST VIOLATION.—Except as provided in
4 paragraph (2), any person who violates a provision
5 of subsection (a) or (b) of section 2 shall be fined
6 not more than \$1,000.

7 (2) SUBSEQUENT VIOLATIONS.—In the case of
8 a second or subsequent violation by a person of a
9 provision of subsection (a) or (b) of section 2, the
10 person shall be fined not less than \$1,000 and not
11 more than \$5,000.

12 (3) RULE OF CONSTRUCTION.—This subsection
13 does not apply to a violation of a provision of sub-
14 section (a) or (b) of section 2 if any provision of
15 subsection (b) of this section applies to such viola-
16 tion.

17 (b) KNOWING VIOLATIONS.—

18 (1) FIRST VIOLATION.—Except as provided in
19 paragraph (2), any person who knowingly violates a
20 provision of subsection (a) or (b) of section 2 shall
21 be fined in accordance with title 18, United States
22 Code, imprisoned not more than two years, or both.

23 (2) SUBSEQUENT VIOLATIONS.—In the case of
24 a second or subsequent knowing violation by a per-
25 son of a provision of subsection (a) or (b) of section
26 2, the person shall be fined in accordance with title

1 18, United States Code, imprisoned not more than
2 five years, or both.

3 **SEC. 5. FEDERAL CIVIL ACTIONS BY STATE ATTORNEYS**

4 **GENERAL AND CERTAIN OTHER INDIVID-**
5 **UALS.**

6 (a) **INJUNCTIVE RELIEF.**—A State, through its State
7 attorney general, on behalf of residents of the State, or
8 any person who holds a permit under section 5712 of the
9 Internal Revenue Code of 1986, may bring in an appro-
10 priate district court of the United States a civil action to
11 restrain violations by a person of any provision of sub-
12 section (a) or (b) of section 2, including obtaining a pre-
13 liminary or permanent injunction or other order against
14 the person.

15 (b) **COORDINATION WITH COMMISSION.**—Before
16 bringing a civil action under subsection (a), a State attor-
17 ney general or any such person shall provide to the Fed-
18 eral Trade Commission written notice of the intent of the
19 State attorney general or such person to bring the action.

20 (c) **FEDERAL JURISDICTION.**—

21 (1) **IN GENERAL.**—The district courts of the
22 United States shall have jurisdiction over any civil
23 action under subsection (a).

24 (2) **VENUE.**—A civil action under subsection (a)
25 may be brought only in accordance with section

1 1391 of title 28, United States Code, or in the dis-
2 trict in which the recipient of the tobacco products
3 resides or is found.

4 (d) REQUIREMENTS FOR INJUNCTIONS AND OR-
5 DERS.—

6 (1) IN GENERAL.—In any civil action under
7 subsection (a), upon a proper showing by the State
8 attorney general or person bringing the action in-
9 volved, the court may issue a preliminary or perma-
10 nent injunction or other order to restrain a violation
11 of a provision of subsection (a) or (b) of section 2.

12 (2) NOTICE.—No preliminary injunction or per-
13 manent injunction or other order may be issued
14 under paragraph (1) without notice to the adverse
15 party and an opportunity for a hearing.

16 (3) FORM AND SCOPE OF ORDER.—Any prelimi-
17 nary or permanent injunction or other order entered
18 in a civil action under subsection (a) shall—

19 (A) set forth the reasons for the issuance
20 of the order;

21 (B) be specific in its terms;

22 (C) describe in reasonable detail, and not
23 by reference to the complaint or other docu-
24 ment, the act or acts sought to be restrained;
25 and

1 (D) be binding upon—

2 (i) the parties to the action and the
3 officers, agents, employees, and attorneys
4 of those parties; and

5 (ii) persons in active concert or par-
6 ticipation with the parties to the action
7 who receive actual notice of the order by
8 personal service or otherwise.

9 (e) ADDITIONAL REMEDIES.—

10 (1) IN GENERAL.—A remedy under subsection
11 (a) is in addition to any other remedies provided by
12 law.

13 (2) STATE COURT PROCEEDINGS.—Nothing in
14 this section may be construed to prohibit an author-
15 ized State official from proceeding in State court on
16 the basis of an alleged violation of any State law.

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

18 (a) DEFINITIONS.—Section 1 of the Act of October
19 19, 1949 (15 U.S.C. 375), is amended—

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

22 (2) by striking paragraph (3);

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

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

3 “(7) The term ‘delivery sale’ means any sale of
4 cigarettes to a consumer (other than a sale to a con-
5 sumer for purposes of resale) if—

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

10 “(B) the cigarettes are delivered by use of
11 the mails or other delivery service.

12 “(8) The term ‘sale to a consumer for purposes
13 of resale’ does not include a sale of cigarettes to a
14 natural person who does not conduct business as a
15 distributor or retailer of cigarettes in the jurisdiction
16 in which such person resides.”.

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

20 (1) in subsection (a)—

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

23 (B) by striking “to other than a dis-
24 tributor licensed by or located in such State,”;
25 and

1 (2) in subsection (b)—

2 (A) by striking “(1)”; and

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

5 (c) REQUIREMENTS FOR DELIVERY SALES.—That
6 Act is further amended by inserting after section 2 the
7 following new section:

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

10 “(1) the shipping requirements set forth in sub-
11 section (b); and

12 “(2) all laws of the State generally applicable to
13 sales of cigarettes that occur entirely within the
14 State, including laws imposing—

15 “(A) excise taxes;

16 “(B) sales taxes;

17 “(C) licensing and tax-stamping require-
18 ments; and

19 “(D) escrow or other payment obligations.

20 “(b)(1) Each person who takes a delivery sale order
21 shall include on the bill of lading included with the ship-
22 ping package containing cigarettes sold pursuant to such
23 order a clear and conspicuous statement providing as fol-
24 lows: ‘CIGARETTES: FEDERAL LAW REQUIRES
25 THE PAYMENT OF ALL APPLICABLE EXCISE

1 AND SALES TAXES, AND COMPLIANCE WITH AP-
2 PLICABLE LICENSING, TAX-STAMPING, AND ES-
3 CROW PAYMENT OBLIGATIONS’.

4 “(2) Any shipping package described in paragraph
5 (1) that is not labeled in accordance with that paragraph
6 shall be treated as nonmailable matter under section 3001
7 of title 39, United States Code.

8 “(c) Each State shall have the authority to require
9 any person making a delivery sale of cigarettes into such
10 State to collect or pay the taxes referred to in subsection
11 (a)(2) and to comply with any other requirements de-
12 scribed in that subsection.”.

13 (d) PENALTIES.—Section 3 of that Act (15 U.S.C.
14 377) is amended to read as follows:

15 “SEC. 3. (a) Except as provided in subsection (b),
16 whoever violates a provision of section 2 or 2A shall be
17 fined not more than \$1,000, imprisoned not more than
18 6 months, or both, in the case of the first violation, and
19 fined not more than \$5,000, imprisoned not more than
20 6 months, or both, in the case of any subsequent violation.

21 “(b) Whoever knowingly violates a provision of sec-
22 tion 2 or 2A shall be fined in accordance with title 18,
23 United States Code, imprisoned not more than 2 years,
24 or both.”.

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

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

5 (2) by adding at the end the following new sub-
6 sections:

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

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

16 “(c) The Secretary of the Treasury shall administer
17 the provisions of this Act, and shall have concurrent au-
18 thority with the Attorney General to enforce the provisions
19 of this Act.”.

20 **SEC. 7. TREATMENT OF CIGARETTES AS NONMAILABLE**
21 **MATTER.**

22 Section 1716 of title 18, United States Code, is
23 amended—

24 (1) by redesignating subsection (j) as sub-
25 section (k); and

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

3 “(j) All cigarettes (as that term is defined in section
4 2341(1) of this title) are nonmailable and shall not be de-
5 posited in or carried through the mails.”.

6 **SEC. 8. PENAL PROVISIONS REGARDING TRAFFICKING IN**
7 **CONTRABAND CIGARETTES.**

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

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

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

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

17 (B) in subsection (b), by striking “60,000” and
18 inserting “2,000”.

19 (b) **RECORDKEEPING, REPORTING, AND INSPEC-**
20 **TION.**—Section 2343 of that title, as amended by sub-
21 section (a)(3) of this section, is further amended—

22 (1) in subsection (a)—

23 (A) in the matter preceding paragraph (1),
24 by striking “only—” and inserting “such infor-
25 mation as the Secretary considers appropriate

1 for purposes of enforcement of this chapter, in-
2 cluding—”; and

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

5 (2) by redesignating subsection (b) as sub-
6 section (c);

7 (3) by inserting after subsection (a) the fol-
8 lowing new subsection (b):

9 “(b) Any person who engages in a delivery sale, and
10 who ships, sells, distributes, or receives any quantity in
11 excess of 10,000 cigarettes within a single month, shall
12 submit to the Secretary, pursuant to rules or regulations
13 prescribed by the Secretary, a report that sets forth the
14 following:

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

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

20 “(3) The total quantity of cigarettes that the
21 person distributed within such month to each person
22 (itemized by name and address) other than a retail
23 purchaser.”; and

24 (4) by adding at the end the following new sub-
25 section:

1 “(d) In this section, the term ‘delivery sale’ means
2 any sale of cigarettes to a consumer (other than a sale
3 to a consumer for purposes of resale) if—

4 “(1) the consumer submits the order for such
5 sale by means of a telephone or other method of
6 voice transmission, the mails, or the Internet or
7 other online service; or

8 “(2) the cigarettes are delivered by use of the
9 mails or other delivery service.”.

10 (c) DISPOSAL OF FORFEITED CIGARETTES.—Section
11 2344(c) of that title is amended by striking “seizure and
12 forfeiture,” and all that follows and inserting “seizure and
13 forfeiture, and any cigarettes so seized and forfeited shall
14 be destroyed and not resold.”.

15 (d) ENFORCEMENT.—Section 2346 of that title is
16 amended—

17 (1) by inserting “(a)” before “The Secretary”;
18 and

19 (2) by adding at the end the following new sub-
20 section:

21 “(b) A State, through its attorney general, or any
22 person who holds a permit under section 5712 of the In-
23 ternal Revenue Code of 1986, may bring an action in the
24 United States district courts to prevent and restrain viola-

1 tions of this chapter by any person (or by any person con-
2 trolling such person).”.

3 (e) CONFORMING AND CLERICAL AMENDMENTS.—

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

6 **“§ 2343. Recordkeeping, reporting, and inspection”.**

7 (2) The table of sections at the beginning of chapter
8 114 of that title is amended by striking the item relating
9 to section 2343 and inserting the following new item:

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

10 **SEC. 9. DEFINITIONS.**

11 In this Act:

12 (1) STATE.—The term “State” means each of
13 the several States, the District of Columbia, the
14 Commonwealth of Puerto Rico, American Samoa,
15 Guam, the Commonwealth of the Northern Mariana
16 Islands, and the Virgin Islands.

17 (2) STATE ATTORNEY GENERAL.—The term
18 “State attorney general” means the attorney general
19 or other chief law enforcement officer of a State, or
20 the designee thereof.

21 (3) TOBACCO PRODUCT.—The term “tobacco
22 product” means any product made or derived from
23 tobacco that is intended for human consumption, in-
24 cluding cigarettes, smokeless tobacco, pipe tobacco,
25 and the product known as bidi.

1 **SEC. 10. EFFECTIVE DATE.**

2 (a) **IN GENERAL.**—Except as provided in subsection
3 (b), this Act shall take effect 90 days after the date of
4 the enactment of this Act.

5 (b) **RULEMAKING.**—The authority of the Federal
6 Trade Commission to commence rulemaking under section
7 3(b) shall be effective on the date of the enactment of this
8 Act.

9 (c) **UNLAWFUL ACTS.**—Section 2 shall apply to sales
10 of tobacco products occurring on or after the effective date
11 of this Act without regard to whether a final rule has been
12 promulgated under section 3(b) as of that date.

○