

1           **139.45 Prosecutions by attorney general.** Upon request by the secretary  
2 of revenue, the attorney general may represent this state or assist a district attorney  
3 in prosecuting any case arising under this subchapter or under ss. 134.65 and 134.66.

4           **SECTION 319c.** 139.75 (2) of the statutes is amended to read:

5           139.75 (2) "Consumer" means any individual who receives tobacco products for  
6 his or her personal use or consumption or any person individual who has title to or  
7 possession of tobacco products ~~in storage for use or other consumption in this state~~  
8 any purpose other than for sale or resale.

9           **SECTION 319d.** 139.75 (3g) of the statutes is created to read:

10           139.75 (3g) "Direct marketer" means any person who solicits or sells tobacco  
11 products to consumers in this state by direct marketing.

12           **SECTION 319e.** 139.75 (3r) of the statutes is created to read:

13           139.75 (3r) "Direct marketing" means publishing or making accessible an offer  
14 for the sale of tobacco products to consumers in this state, or selling tobacco products  
15 to consumers in this state, using any means by which the consumer is not physically  
16 present at the time of sale on a premise that sells tobacco products.

17           **SECTION 319f.** 139.75 (4) (a) of the statutes is amended to read:

18           139.75 (4) (a) Any person in this state engaged in the business of selling tobacco  
19 products ~~in this state~~ who brings, or causes to be brought, into this state from outside  
20 the state any tobacco products for sale;

21           **SECTION 319g.** 139.75 (4) (c) of the statutes is amended to read:

22           139.75 (4) (c) Any person outside this state engaged in the business of selling  
23 tobacco products ~~outside this state~~ who ships or transports tobacco products to  
24 retailers in this state to be sold by those retailers.

25           **SECTION 319h.** 139.75 (4) (cm) of the statutes is created to read:

1           139.75 (4) (cm) Any person outside this state engaged in the business of selling  
2 tobacco products who ships or transports tobacco products to consumers in this state.

3           **SECTION 319i.** 139.75 (5s) of the statutes is created to read:

4           139.75 (5s) “Person” means any individual, sole proprietorship, partnership,  
5 limited liability company, corporation, or association, or any owner of a single-owner  
6 entity that is disregarded as a separate entity under ch. 71.

7           **SECTION 319j.** 139.75 (7) of the statutes is amended to read:

8           139.75 (7) “Retail outlet” means each place of business from which tobacco  
9 products are sold to consumers by a retailer.

10          **SECTION 319k.** 139.75 (8) of the statutes is amended to read:

11          139.75 (8) “Retailer” means any person ~~engaged in the business of selling~~  
12 ~~tobacco products~~ who sells, exposes for sale, or possesses with intent to sell, to  
13 ultimate consumers any tobacco products by any means in which the consumer is  
14 physically present at the time of sale on a premises that sells tobacco products.

15          **SECTION 319L.** 139.76 (3) of the statutes is created to read:

16          139.76 (3) Except as provided in sub. (2), no person may possess tobacco  
17 products in this state unless the tax imposed under sub. (1) is paid on such tobacco  
18 products.

19          **SECTION 319m.** 139.78 (1m) of the statutes is created to read:

20          139.78 (1m) Except as provided in s. 139.76 (2), no person other than a  
21 distributor with a valid permit under s. 139.79 may import into this state tobacco  
22 products for which the tax imposed under s. 139.76 (1) has not been paid.

23          **SECTION 319n.** 139.79 (title) of the statutes is amended to read:

24          **139.79 (title) Permits; distributor; direct marketer; subjobber.**

25          **SECTION 319p.** 139.79 (1) of the statutes is amended to read:

1           139.79 (1) No person may engage in the business of a distributor, direct  
2           marketer, or subjobber of tobacco products at any place of business unless that  
3           person has filed an application for and obtained a permit from the department to  
4           engage in that business at such place.

5           **SECTION 319q.** 139.79 (2) of the statutes is amended to read:

6           139.79 (2) Section 139.34 (1) ~~(b)~~ (c) to (f), (4) and (9) applies to the permits under  
7           this section.

8           **SECTION 319r.** 139.795 of the statutes is created to read:

9           **139.795 Direct marketing.** (1) (a) No person may sell tobacco products by  
10          direct marketing to consumers in this state as a direct marketer or solicit sales of  
11          tobacco products to consumers in this state by direct marketing unless the person has  
12          obtained a permit from the department to make such sales or solicitations. The  
13          person shall file an application for a permit under this subsection with the  
14          department, in the manner prescribed by the department, and shall submit a \$500  
15          fee with the application.

16          (b) No person may be issued a permit under this subsection unless the person  
17          holds a valid distributor's permit under s. 139.79. Section 139.34 (1) (c) to (f), (7), and  
18          (9), as it applies to permits issued under s. 139.34, applies to permits issued under  
19          this subsection.

20          (c) A permit issued under this subsection expires on December 31 of each year.

21          (d) No person may be issued a permit under this subsection unless the person  
22          certifies to the department, in the manner prescribed by the department, that all  
23          tobacco product sales to consumers in this state shall be credit card or personal check  
24          transactions; that the invoice for all shipments of tobacco product sales from the  
25          person shall bear the person's name and address and the permit number of the

1 permit ultimately issued under this subsection; and that the person shall provide the  
2 department any information the department considers necessary to administer this  
3 section.

4 (2) No person may sell tobacco products to consumers in this state by direct  
5 marketing unless the tax imposed under s. 139.76, and under s. 77.52 or 77.53, has  
6 been paid with regard to such products.

7 (3) No person may sell tobacco products to a consumer in this state by direct  
8 marketing unless the person verifies the consumer's identity and that the consumer  
9 is at least 18 years of age by any of the following methods:

10 (a) The person uses a database, approved by the department, that includes  
11 information based on public records to verify the consumer's age and identity.

12 (b) The person receives from the consumer, at the time of purchase, a notarized  
13 copy of a government issued identification, the name specified on the identification  
14 matches the name of the consumer, and the birth date on the identification verifies  
15 that the purchaser is at least 18 years of age. In this paragraph, "government issued  
16 identification" includes a valid driver's license, state identification card, passport, or  
17 military identification.

18 (c) The person uses a mechanism, other than a mechanism under par. (a) or (b),  
19 for verifying the age and identity of a consumer that is approved by the department.

20 (4) Any person who, without having a valid permit under sub. (1), sells or  
21 solicits sales of tobacco products to consumers in this state by direct marketing shall  
22 pay a penalty to the department of \$5,000 or an amount that is equal to 50% of the  
23 tax due on the tobacco products the person sold, without having a valid permit under  
24 sub. (1), to consumers in this state by direct marketing, whichever is greater.

1           (5) No tobacco products may be shipped or delivered to a person who is under  
2           18 years of age and no tobacco products may be shipped to a post-office box.

3           (6) All revenue collected from permits and penalties under this section shall  
4           be credited to the appropriation account under s. 20.566 (1) (gc) to enforce and  
5           administer this section.

6           **SECTION 319s.** 139.81 (1) of the statutes is amended to read:

7           139.81 (1) No person may sell ~~or take orders for~~ tobacco products ~~for resale or~~  
8           solicit sales of tobacco products in this state ~~for any manufacturer or permittee~~  
9           unless the person has filed an application for and obtained a valid certificate under  
10          s. 73.03 (50) and a salesperson's permit from the department. No ~~manufacturer or~~  
11          ~~permittee~~ shall authorize any person to sell ~~or take orders for~~ tobacco products ~~or~~  
12          solicit sales of tobacco products in this state unless the person has filed an application  
13          for and obtained a valid certificate under s. 73.03 (50) and a salesperson's permit.

14          No person shall authorize another person to sell tobacco products or solicit sales of  
15          tobacco products in this state unless the person has filed an application for and  
16          obtained a valid certificate under s. 73.03 (50) and a valid permit under s. 139.79.

17          Each application for a permit shall disclose the name and address of the employer  
18          and shall remain effective only while the salesperson represents the named  
19          employer. If the salesperson is thereafter employed by another ~~manufacturer or~~  
20          ~~permittee~~ person the salesperson shall obtain a new salesperson's permit. Each  
21          ~~manufacturer and permittee~~ shall notify the department within 10 days after the  
22          resignation or dismissal of any salesperson holding a permit.

23          **SECTION 319t.** 139.81 (2) of the statutes is amended to read:

24          139.81 (2) Section 139.34 (1) ~~(b)~~ (c) to (e) applies to the permits under this  
25          section.”.

1           **7.** Page 362, line 18: after that line insert:

2           “(1q) DIRECT MARKETING OF CIGARETTES AND TOBACCO PRODUCTS. The authorized  
3 FTE positions for the department of revenue are increased by 1.5 PR positions on  
4 July 1, 2002, to be funded from the appropriation under section 20.566 (1) (gc) of the  
5 statutes, as created by this act, for the purpose of enforcing and administering  
6 cigarette and tobacco product direct marketing permits and penalties.”.

7           **8.** Page 439, line 14: delete “139.44 (8) (c)” and substitute “139.44 (6m), 139.44  
8 (8) (a) to (c)”.

9           **9.** Page 450, line 13: delete “139.44 (8) (c)” and substitute “139.44 (6m), 139.44  
10 (8) (a) to (c)”.

11

(END)

108th CONGRESS  
1st Session

139.31  
139.76

H. R. 2824

To revise and reform the Act commonly called the Jenkins Act, and for other purposes.

**IN THE HOUSE OF REPRESENTATIVES**

**July 23, 2003**

Mr. GREEN of Wisconsin (for himself, Mr. MEEHAN, Ms. PRYCE of Ohio, Mr. FEENEY, Mr. PENCE, Ms. LOFGREN, Ms. BALDWIN, Mr. WEINER, Mr. ISAKSON, Mr. CONYERS, Mr. SHUSTER, Mr. CARTER, and Mrs. BLACKBURN) introduced the following bill; which was referred to the Committee on the Judiciary

**A BILL**

To revise and reform the Act commonly called the Jenkins Act, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Internet Tobacco Sales Enforcement Act'.

**SEC. 2. REVISION OF ACT OF OCTOBER 19, 1949.**

The Act of October 19, 1949, entitled 'An Act to assist States in collecting sales and use taxes on cigarettes' (15 U.S.C. 375 et seq.) is amended by striking 'That for the purposes of this Act' and all that follows through the end of the Act and inserting the following:

**'SECTION 1. SHORT TITLE.**

'This Act may be cited as the Jenkins Act'.

**'SEC. 2. INTERSTATE SALES OF CIGARETTES AND SMOKELESS TOBACCO.**

**'(a) COMPLIANCE WITH LAWS-**

'(1) Each person who engages in an interstate sale of cigarettes or smokeless tobacco or in an interstate distribution of cigarettes or smokeless tobacco shall comply with all the excise, sales, and use tax laws applicable to the sale or other transfer of cigarettes or smokeless tobacco in the State and place in which the cigarettes or smokeless tobacco are delivered as though the person were physically located in that State or place.

`(2) Unless the law of the State and place in which cigarettes or smokeless tobacco are delivered pursuant to an interstate sale requires otherwise for the payment of an excise tax imposed on that sale, the cigarettes or smokeless tobacco may not be delivered to the buyer unless in advance of the delivery--

`(A) the excise tax has been paid; and

`(B) any required stamps or other indicia that the excise tax has been paid are properly affixed or applied to the cigarettes or smokeless tobacco.

`(3)(A) Each State may compile a list of interstate sellers of cigarettes or smokeless tobacco who are in compliance with this Act with respect to that State. If a State posts a list pursuant to this subsection, no person may knowingly make an interstate distribution of cigarettes or smokeless tobacco into that State other than to a person engaged in the business of manufacturing, distributing or selling cigarettes or smokeless tobacco unless the person initiating or ordering the delivery is on the list at the time of delivery.

`(B) Each State may also compile a list of interstate sellers of cigarettes or smokeless tobacco who are not in compliance with this Act with respect to that State. If a State posts a list pursuant to this subsection, no person make an interstate distribution of any item into that State for a person on the list unless--

`(i) the person in good faith determines that the item does not include cigarettes or smokeless tobacco; or

`(ii) the delivery is made to a person engaged in the business of manufacturing, distributing or selling cigarettes or smokeless tobacco.

`(b) RECORDKEEPING AND REPORTING- Each person who engages in an interstate sale of cigarettes or smokeless tobacco, or who advertises, or offers to engage in, such a sale, shall--

`(1) first file with the tobacco tax administrator of the State and place in which the cigarettes or smokeless tobacco are to be offered, advertised, or delivered, a statement setting forth the person's name and trade name (if any), and the address of that person's principal place of business and any other place of business, as well as telephone numbers for each place of business, a principal electronic mail address, any website addresses, and the name, address and telephone number of an agent authorized to accept service on behalf of that person;

`(2) not later than the 10th day of each calendar month, file with that tobacco tax administrator a memorandum or copy of the invoice covering each and every interstate sale of cigarettes or smokeless tobacco by the filer into that State or place, and each interstate distribution of cigarettes or smokeless tobacco pursuant to that sale, during the previous calendar month, and such memorandum or invoice shall include the name and address of the person to whom the cigarettes or smokeless tobacco are delivered, the brand, and the type, the quantity delivered, and the name, address, and phone number of the person delivering; and

`(3) maintain records, including the information specified in paragraph (2), for not less than 5 years after the date of an interstate sale of cigarettes or smokeless tobacco and of each interstate distribution of cigarettes or smokeless tobacco pursuant to that sale, and make those



records available for inspection upon the lawful demand of the Attorney General of the United States, an Attorney General of a State, the Commissioner of Internal Revenue, or the chief tax collection official of a State.

(c) DEEMING RULE- For the purposes of this section--

(1) an interstate sale or delivery of cigarettes or smokeless tobacco shall be deemed to have occurred in the State and place where the buyer obtains personal possession of the cigarettes or smokeless tobacco; and

(2) a delivery pursuant to an interstate sale is deemed to have been initiated or ordered by the seller.

### SEC. 3. CIVIL ACTION.

(a) IN GENERAL- In addition to any other remedies available under other Federal or State or local law, the Attorney General of a State may in a civil action obtain any appropriate relief, including money damages where appropriate, against--

(1) any person who violates, or is about to engage in a violation of, section 2; or

(2) any person who knowingly assists or participates, or knowingly is about to engage, in such a violation.

(b) NOTICE- It is the sense of Congress that, if the Attorney General of a State commences a civil action under subsection (a), that Attorney General should inform the Attorney General of the United States, and that the Attorney General of the United States should make information about the case publicly available, through posting the information on the Internet and through other means.

### SEC. 4. CIVIL PENALTY.

Whoever violates section 2 is subject to a civil penalty not to exceed \$5,000 in the case of a first violation, and not to exceed \$10,000 in any other case.

### SEC. 5. CRIMINAL PENALTY.

Whoever violates section 2 shall be fined under title 18, United States Code, or imprisoned not more than 6 months, or both.

### SEC. 6. NONPREEMPTION.

This Act does not limit the remedies provided by State or Federal law with respect to alleged violations of State or Federal law relating to a sale or distribution of cigarettes or smokeless tobacco, in connection with an interstate sale or distribution of cigarettes or smokeless tobacco.

### SEC. 7. DEFINITIONS.

As used in this Act--

`(1) the term `Attorney General', with respect to a State, means the chief law enforcement officer of that State, or the designee of that officer;

`(2) the term `cigarette' means--

`(A) any roll of tobacco wrapped in paper or in any substance not containing tobacco which is to be burned;

`(B) any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging or labeling is likely to be offered to, or purchased by consumers as a cigarette described in subparagraph (A);

`(C) any roll of tobacco wrapped in any substance that because of its appearance, the type of tobacco used in the filler, or its packaging or labeling is likely to be offered to, or purchased by consumers as a cigarette; or

`(D) loose rolling tobacco that, because of its appearance, type, packaging, or labeling, is likely to be offered to, or purchased by, consumers as tobacco for making cigarettes;

`(3) the term `smokeless tobacco' has the meaning given that term in section 9 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4408);

`(4) the term `interstate sale of cigarettes or smokeless tobacco' means any sale of cigarettes or smokeless tobacco in interstate or foreign commerce to a person, other than a person licensed as a distributor in the State where the cigarettes or smokeless tobacco is delivered, in which the buyer is either not in the seller's physical presence at the time the request for purchase is made or not in the seller's physical presence at the time the buyer obtains personal possession of the cigarettes or smokeless tobacco;

`(5) the term `interstate or foreign commerce' means commerce between a State and any place outside that State, commerce between a State and any Indian lands in that State, or commerce between points in the same State but through any place outside that State;

`(6) the term `interstate distribution of cigarettes or smokeless tobacco' means a delivery or other distribution of cigarettes or smokeless tobacco pursuant to an interstate sale of cigarettes or smokeless tobacco;

`(7) the term `State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States;

`(8) the term `person' means an individual, a corporation, company, association, firm, partnership, society, joint stock company, an Indian tribal organization, or an Indian tribal government;

`(9) the term `tribal organization' has the meaning given that term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b); and

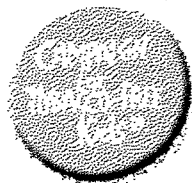
`(10) the term `Indian lands' has the meaning given that term in section 3 of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470bb).'

**SEC. 3. EFFECTIVE DATE.**

The amendment made by this Act shall take effect on the first day of the first month beginning on or after 60 days after the date of the enactment of this Act.

*END*

Did you know? Tobacco use is a risk factor for hypertension, ischemic heart disease, atherosclerosis, aortic aneurysm.



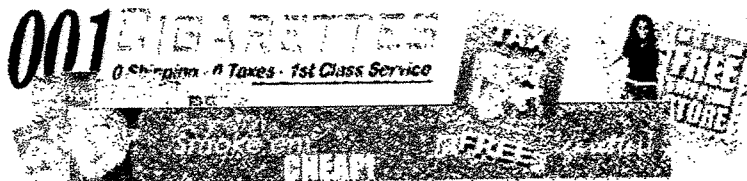
# Internet Tobacco Sales

Home Site Help Contact  
Monday, Jan 19

Take Action  
Donate  
Federal Initiatives  
State Initiatives  
Global Initiatives  
Youth Action  
Tobacco News  
Research and Facts  
Press Office  
Tobacco Ad Gallery  
Special Reports

## The Tobacco Toll

Select a State...



Updated: 12.23.03

Increased sales of tobacco products over the Internet pose a major challenge to public health efforts to reduce smoking and other tobacco use. By failing to do adequate age verification, the sharply growing number of websites selling tobacco products make it easier and cheaper for kids to buy cigarettes. They also offer smokers a way to avoid paying state tobacco and sales taxes, thereby keeping cigarette prices down and smoking levels up.

### Related Materials

[Campaign Releases and Statements](#)

[Campaign Factsheets](#)

[Legislation](#)

[Studies and Resources](#)

### The Problem

- Up from only a handful in the late 1990's, more than 400 web sites currently sell tobacco products.
- Internet tobacco sales are growing rapidly and will account for 14 percent of the total U.S. market by 2005, according to a recent Prudential Securities report.
- Kids as young as 11 were successful more than 90 percent of the time in purchasing cigarettes over the Internet and there was little effort to verify the age of Internet cigarette purchasers at the time of purchase or at the time of delivery, according to a study in the September 10, 2003, issue of The Journal of the American Medical Association (JAMA) ([see the Campaign's statement](#)).
- Three-quarters of all Internet tobacco sellers explicitly say that they will not report cigarette sales to tax collection officials, thus violating Federal law, according to the U.S. General Accounting Office. States lose as much as \$200 million annually in uncollected tobacco taxes through Internet sales, according to a study by Forrester Research Inc., a private research firm.

### Responses to the Problem

The Senate Judiciary Committee recently approved legislation, the Prevent All Contraband Tobacco Act, known as the PACT Act (S. 1177), introduced by Sens. Orrin Hatch (R-UT) and Herb Kohl (D-WI) (see [health groups' statement](#)). After the PACT Act passed the Senate Judiciary Committee, representatives of Native American Tribes raised concerns regarding the bill's impact on tribal sovereignty rights. These concerns prompted substantial additional changes to the PACT Act, which were developed through negotiations between the bill's sponsors, the Senate Indian Affairs Committee, and the states' attorneys general. After these changes, and some others, were made, the PACT Act passed the full Senate by unanimous consent on December 9, 2003. This bill addresses the growing problem of tobacco excise tax evasion caused by Internet sales of tobacco products by:

- requiring that Internet sellers ensure that all state excise taxes have been paid on any cigarettes or smokeless tobacco they send into a state, with all required tax stamps affixed;
- requiring all Internet sellers to register with those states to which they are making sales and to comply with all state tobacco tax laws as if the Internet seller were based in the state;
- allowing states to block the delivery of cigarettes and smokeless tobacco sold by Internet sellers that fail to register with the state or otherwise fail to comply with federal or state law; and
- giving state officials the right to bring elusive Internet sellers into federal court and to collect comprehensive injunctive and equitable relief, including monetary damages.

TFK and other Public health groups also support the similar federal legislation in the U.S. House of Representatives (H.R. 2824), introduced by U.S. Reps. Mark Green (R-WI) and Martin Meehan (D-MA), which the House Judiciary Subcommittee on Courts, the Internet and Intellectual Property unanimously passed on October 2, 2003.

The public health community also supports legislation introduced by Rep. Meehan (H.R. 3047) that would protect kids by requiring effective age verification both at the point of purchase and the point of delivery internet tobacco sales.

[tobaccofreekids.org](http://tobaccofreekids.org)

(revised 9/4/03)

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Posted Aug. 05, 2003

## Internet tobacco bill gains support

**BY PAT PANKRATZ**  
*Herald Times Reporter*

MANITOWOC — A bill to crack down on the illegal sale of cigarettes on the Internet is drawing support in some quarters locally.

U.S. Reps. Mark Green, R-Wis., and Marty Meehan, D-Mass., unveiled a measure recently to give states the power to take tobacco vendors to federal court to recover civil damages.

Current federal law requires tobacco sellers to abide by all state regulations governing the sale of tobacco, including payment of state taxes.

Some tobacco companies and retailers have found the Internet a way around that regulation, however, by offering cigarettes over the Web at a greatly reduced rate, often tax-free.

Green said a 2002 General Accounting Office study found that of 147 cigarette-selling Web sites, none complied with requirements that it provide customer information that would permit the collection of state taxes on tobacco sales.

Meehan cited a report in a tobacco industry trade paper, which indicated that Internet tobacco sales are expected to constitute about 20 percent of the U.S. market by 2006.

Gail Terry, coordinator of the Manitowoc County Tobacco Control Coalition, said Wisconsin receives fewer tobacco tax dollars when more people buy cigarettes over the Internet. That, in turn, brings a ripple effect.

"The state compiles its cigarette sales data based on tax information, and anti-smoking programs are put in place based on the data," Terry said.

The result, she added, is that fewer dollars will be earmarked toward smoking prevention and cessation programs. That's why she supports the legislation introduced by Green and Meehan.

Bubba McDonald, co-owner of Larry's Shell convenience outlet in Manitowoc, backs the bill for a different reason. Internet cigarette sales directly affect his bottom line.

"It's significant revenue," he said. "It's not small change when

they're selling a carton (of cigarettes) for \$14, versus \$38."

McDonald said he knows of some local retailers that are down 5 to 10 percent in cigarette revenues, in part because of sales over the Internet.

"It's not only revenue lost for us retailers, but for the state as well," McDonald said.

There has been previous legislation introduced in Wisconsin to tax general merchandise sold over the Internet.

"That seemed to fizzle out, so I hope this (bill) doesn't go the same way," McDonald said.

Green and Meehan said they have been assured that the House Judiciary Committee would take up the bill when Congress returns from its August recess.

<http://www.unc.edu/courses/2003spring/law/357c/001/projects/akhil/Alcohol&Tobacco/Tobacco%20-%20Taxes.htm>

good website  
on  
internet  
tobacco

- go to also  
slati.lungusa.org



## STATE EXCISE TAX RATES ON CIGARETTES

(January 1, 2004)

STATE	TAX RATE (¢ per pack)	RANK	STATE	TAX RATE (¢ per pack)	RANK
Alabama (1)	16.5	47	Nebraska	64	25
Alaska	100	12	Nevada	80	20
Arizona	118	11	New Hampshire	52	34
Arkansas (2)	59	27	New Jersey	205	1
California	87	19	New Mexico	91	18
Colorado	20	43	New York (1)	150	5
Connecticut	151	3	North Carolina	5	49
Delaware (3)	55	30	North Dakota	44	36
Florida	33.9	41	Ohio	55	30
Georgia	37	38	Oklahoma	23	42
Hawaii (3)	130	7	Oregon	128	8
Idaho	57	28	Pennsylvania (3)	100	12
Illinois (1)	98	17	Rhode Island	171	2
Indiana	55.5	29	South Carolina	7	48
Iowa	36	39	South Dakota	53	33
Kansas	79	21	Tennessee (1) (2)	20	43
Kentucky (2)	3	50	Texas	41	37
Louisiana	36	39	Utah	69.5	24
Maine	100	12	Vermont	119	10
Maryland	100	12	Virginia (1)	2.5	51
Massachusetts	151	3	Washington	142.5	6
Michigan	125	9	West Virginia	55	30
Minnesota	48	35	Wisconsin	77	22
Mississippi	18	45	Wyoming	60	26
Missouri (1)	17	46	Dist. of Columbia	100	12
Montana	70	23			
			U. S. Median	60.0	

Source: Compiled by FTA from various sources

(1) Counties and cities may impose an additional tax on a pack of cigarettes in AL, 1¢ to 6¢; IL, 10¢ to 15¢; MO, 4¢ to 7¢; NYC \$1.50; TN, 1¢; and VA, 2¢ to 15¢.

(2) Dealers pay an additional enforcement and administrative fee of 0.1¢ per pack in KY and 0.05¢ in TN. In AR, a \$1.25/1,000 cigarette fee is imposed.

(3) Tax rate in PA is scheduled to increase to \$1.35 per pack on January 7, and the HI rate is scheduled to increase to \$1.40 per pack on July 1, 2004.

# State Tax Rates on Other Tobacco Products

January 1, 2003

State	Tax Rate/Base (1)	State	Tax Rate/Base (1)
Alabama		Michigan	20% Wholesale Price
Cigars (2)	1.5¢-20.25¢/ 10 cigars	Minnesota	35% Wholesale Price
Tobacco/Snuff	0.6¢-4.4¢/ ounce	Mississippi	15% Manufactures Price
Alaska	75% Wholesale Price	Missouri	10% Manufactures Price
Arizona		Montana	12.5% Wholesale Price
Cigars (2)	26.3¢-\$2.60/ 20 cigars	Nebraska (6)	20% Wholesale Price
Tobacco/Snuff	13.3¢/ounce	Nevada	30% Wholesale Price
Arkansas	25% Manufactures Price	New Hampshire	21.9% Wholesale Price
California (3)	48.89% Wholesale Price	New Jersey	30% Wholesale Price
Colorado	20% Manufactures Price	New Mexico	25% Product value
Connecticut (5)	20% Wholesale Price	New York	37% Wholesale Price
Delaware	15% Wholesale Price	North Carolina	2% Wholesale Price
Florida		North Dakota	
Tobacco/Snuff	25% Wholesale Price	Cigars & Tobacco	28% Wholesale Price
Georgia		Chew Tobacco/Snuff	16¢-60¢/ounce
Little Cigars	2.0¢/10 cigars	Ohio	17% Wholesale Price
Other Cigars	13% Wholesale Price	Oklahoma	
Hawaii	40% Wholesale Price	Cigars (2)	9.0¢-30.0¢/ 10 cigars
Idaho	40% Wholesale Price	Tobacco/Snuff	30%-40% factory list price
Indiana	15% Wholesale Price	Oregon	65% Wholesale Price
Illinois	18% Wholesale Price	Rhode Island	30% Wholesale Price
Iowa	22% Wholesale Price	South Carolina	5% Manufactures Price
Kansas	10% Manufactures Price	South Dakota	10% Wholesale Price
Louisiana		Tennessee	6.5% Wholesale Price
Cigars	8%-20% Manufacture Price	Texas	
Tobacco/Snuff	33% Manufactures Price	Cigars (2)	1.0¢-15.0¢/10 cigars
Maine		Tobacco/Snuff	35.213% Manufactures Price
Chewing Tob./Snuff	62% Wholesale Price	Utah	35% Manufactures Price
Smoking Tob./Cigars	16% Wholesale Price	Vermont	41% Manufactures Price
Maryland	15% Wholesale Price	Washington	129.42% Wholesale Price
Massachusetts		West Virginia	7% Wholesale Price
Smokless Tob.	90% Wholesale Price	Wisconsin	25% Manufactures Price
Smoking Tob./Cigars	30% Wholesale Price	Wyoming (4)	20% Wholesale Price

*Source: Compiled by FTA from various sources.*

- (1) The volume based tax rates were converted to cents per 10 cigars or per ounce for consistency.*
- (2) Tax rate on cigars varies based on the selling price.*
- (3) Tax rate is adjusted annually by the state, effective July 1st of each year.*
- (4) or 10% of the retail price.*
- (5) Snuff tobacco taxed at 40 cents per ounce.*
- (6) Tax rate scheduled to decrease to 15% on 10/1/04.*

Alas, as currently drafted, the law does not give states any enforcement tools - for instance, they cannot themselves sue Internet sellers for non-compliance.

In addition, a very high proportion of Internet tobacco sellers are Indian tribes, many of which claim to be exempt from Jenkins. Legally this claim is baseless: Tribes are bound by federal law and, under strong Supreme Court authority, they are also bound to comply with state tax laws for transactions with non-members of the tribe. But states cannot sue Indian tribes to enforce these rights unless a federal statute authorizes them to do so.

States, therefore, are powerless to protect the integrity of fiscal and penal statutes concerning tobacco. Notably, states lack the means to prevent Internet sellers from shipping cigarettes to minors. Many Internet sellers claim to require "assurance" that purchasers are at least 18 years old but, of course, minors are among the most proficient users of the Internet, and many can use their parents' credit card numbers.

Rep. Mark Green (R-Wis.) has just introduced legislation that will at long last give teeth to the Jenkins Act, protecting states' sovereignty and thereby reducing states' temptation to torture tort law to achieve their ends.

The Youth Smoking Prevention and State Revenue Enforcement Act, or Jenkins Enforcement Act, gives state attorneys general the ability to file suit in federal court to stop remote sellers from violating state and local laws concerning cigarette sales. This approach is similar to the one endorsed by Congress to deal with alcohol sales under 1999's 21st Amendment Enforcement Act.

Green's bill explicitly requires all Internet sellers, including Indian tribes, to comply with Jenkins, and holds tribes directly liable to states for any infraction.

This bill respects federalism. It does not create unfunded federal mandates - states are able to determine their own level of interest in enforcing their laws. Nor does the bill create any federal bureaucracy, or interfere with legitimate interstate commerce - efficient sellers of tobacco products are still allowed to compete with in-state, brick-and-mortar competitors.

This Jenkins Enforcement Act is an excellent way to encourage states to channel their youth protection and tax collection efforts through legislation, not tort law.

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From the June 1, 2003 editions of the Milwaukee Journal Sentinel

**OPENING STATEMENT OF CONGRESSMAN MARK GREEN****Judiciary Subcommittee on Courts, the Internet and Intellectual Property****May 1, 2003**

Thank you Mr. Chairman for the opportunity to have the Subcommittee consider the issues involved with H.R. 1839, the Youth Smoking Prevention and State Revenue Enforcement Act. This legislation addresses a growing problem in this country – the largely unregulated sale of cigarettes ordered by mail, telephone, and the Internet. These "remote sales" usually cross state lines and result in cigarettes being delivered direct to someone's door while evading the laws our states have put in place to make sure that the sales are not being made to children and the right taxes are being paid.

This legislation will give state attorneys general the tools they need to enforce their laws against habitual evasion by remote sellers. My bill will allow attorneys general to bring suit in federal court against all remote sellers to stop them from violating the law and make them pay for past violations.

This is a problem that is getting out of hand. Anyone today can get on the Internet, run a quick search for "tax-free cigarettes" or a variation on that phrase and find hundreds of websites offering cigarettes for sale. In fact, there is a special Internet search engine set up just for Internet tobacco sites. With nothing more than a credit or debit card, our children can access these sites, buy cigarettes and have those cigarettes delivered right to their door without anyone ever checking an ID to make sure they are old enough to buy them. That is an egregious problem and one that will continue to get worse because children are among the most frequent and proficient users of the Internet.

But the problem is worse than that. The states are largely powerless to stop these rampant violations of their minimum age laws because the businesses selling to their children are outside of their borders or are otherwise out of reach of state law. The New York City Department of Consumer Affairs has managed to get traditional retailers of cigarettes to an 85% compliance rate with minimum age laws, but the Department has found its efforts gutted by the proliferation of remote sellers that it cannot regulate.

At the same time, the states are losing the taxes on these sales. According to one of our witnesses here today, Patrick Fleenor, it is estimated that state governments will lose over \$552 million in sales and excise tax revenue this fiscal year and that figure grows to almost \$1.2 billion – with a ‘B’ – in fiscal year 2005. My home state of Wisconsin is expected to lose close to \$9 million this year and over \$26 million in fiscal year 2005.

Nearly all states are increasing their tobacco excise tax for two reasons: 1) to raise revenue; and 2) to deter smoking. Both of these important policy goals are suffering because of remote sales.

The Jenkins Act – which first became law in 1949 – requires remote sellers of cigarettes to report their sales to the states so the states can collect the taxes. This sounds like a fine idea. The problem is that remote sellers don't comply with the law and no one has been able to successfully enforce it. The U.S. General Accounting Office reported on this issue just last August. GAO reviewed 147 Internet sites that sell cigarettes and not a single one of those sites complied with the Jenkins Act. In fact, many of these sites openly promote their law-breaking by offering "tax-free" cigarettes and saying that they "don't report sales." The web addresses themselves clearly reveal the sellers' intentions. These sites include "nocigarettaxes.com", "cigarette-taxes-suck.com", and "0taxcigs.com", among many others.

In light of these rampant and open violations of the law, GAO looked at state efforts to

enforce the Jenkins Act and they didn't find much. Why? Well, GAO heard from nine states on this, and every one of them said they did not have the necessary legal authority to address the problem on their own. GAO also looked at federal enforcement efforts and found that "No internet cigarette vendors had been penalized for violating the act, nor had any penalties been sought for violators." The bottom line is that this law is being routinely violated, the violators are openly promoting their violations and no one is doing anything to stop them.

These lost funds loom even larger now that states throughout the country are laboring to find ways to cut their budgets to make up for large revenue shortfalls.

The public health consequences may also be very important. Many states have increased cigarette costs through state excise taxes for the stated purpose of deterring smoking. We lose the public health benefits of these taxes when we allow large volumes of sales to evade state tax schemes. If we don't do something now, the volume of sales by remote sellers on which taxes are not collected will grow and state policies to deter smoking will suffer.

Remote sales of cigarettes are also hurting local economies. Local small businesses cannot compete with illegal tax-free sales by remote businesses. These local businesses are our neighbors and friends, and they employ the youth in our community, all of whom are negatively impacted by the evasion of state laws by remote sellers. Many of these small businesses operate on tight margins and close when they lose too many sales to businesses that evade their tax obligations.

Mr. Chairman, this is a situation that we should not allow to continue. The rampant evasion of state law is precisely the type of issue that Congress should address and the best way for us to do so is by giving states the tools they need to effectively enforce their laws against all remote sellers. This legislation will address this problem and do it the

right way. It will:

- Keep the authority to enforce state and local law in the hands of state law enforcement;
- Avoid creating an unfunded mandate;
- Avoid creating a new federal bureaucracy; and
- Avoid interfering with or outlawing legitimate commerce.

Mr. Chairman, I hope that you will agree with me that this is a problem and that these illegal cigarette sales to children and evasions of state taxes are issues that this committee must address to protect our children and our state budgets and restore the respect for the rule of law that we treasure in this country.

Again, I thank you for holding this hearing and I appreciate the willingness of these witnesses to come and testify.