

April 26, 2004
(Broadcast 04-031)

Internet Tobacco Sales Enforcement Act Would Undermine Tribal Sovereignty

Convenience Stores Hire Slade Gorton as Anti-Tribal Lobbyist

NCAI understands that the sponsors of H.R. 2824, the Internet Tobacco Sales Enforcement Act, have reached an agreement (to adopt amendments requested by shipping companies) clearing the way for the bill to be reported to the House of Representatives for consideration. The bill will still have provisions that waive the sovereign immunity of Indian tribes and grant state governments the right to sue Indian tribes and Indians in federal court for violations of the Jenkins Act. These provisions are a direct attack on tribal sovereignty and would set a precedent for legislation in the future.

The next step in the process is for the House leadership to decide whether to grant Chairman Richard Pombo's (R-CA) request for referral of the bill to the House Resources Committee. If granted, the Resources Committee is likely to hold a hearing and mark-up new language that would limit state enforcement authority in Indian country. Perhaps even more important, Chairman Pombo would also receive a seat on the conference committee where the House and Senate would resolve their differences on a final bill. NCAI is encouraging tribes to contact their Member of Congress and House leadership and encourage them to refer H.R. 2824 to the House Resources Committee so that tribal concerns can be addressed. We are attaching some talking points and a draft letter for your consideration.

Whatever the outcome in the House of Representatives, the process will eventually lead to a conference committee with the Senate version of this bill, S. 1177, the Prevent All Cigarette Trafficking Act. Last year, NCAI and tribes worked with the Senate Committees on Judiciary and Indian Affairs to address tribal concerns. S. 1177 now ensures tribal sovereign immunity and protects existing Federal law on state tax and regulatory authority in Indian country. NCAI understands that the National Association of Convenience Stores, our traditional opponent on this issue, has hired former Senator Slade Gorton to lobby the Senate conferees on the bill. As most tribal leaders know, Slade Gorton is a longtime opponent of tribal sovereignty and the former state Attorney General who was responsible for the 1980 Supreme Court decision that gave states the ability to tax reservation sales of cigarettes to non-Indians. For this reason, we would also encourage tribes to discuss this issue with their Senators, particularly those who are members of the Senate Judiciary Committee.

NCAI Resolution ABQ-03-087 (available at www.ncai.org) opposes H.R. 2824. At this time we strongly encourage tribal leaders to communicate with their Representatives in the House about concerns with this legislation.

For more information, please contact NCAI at 202-466-7797.

Indian Tribes Oppose H.R. 2824, the Internet Tobacco Sales Enforcement Act

H.R. 2824, the Internet Tobacco Sales Enforcement Act, would amend the Jenkins Act, a federal criminal law that requires reporting of tobacco sales. The bill is intended to beef up enforcement of the Jenkins Act and improve tax collection on tobacco sales – particularly tobacco sales over the internet. The key feature of H.R. 2824 that concerns tribes is that it would give state governments the authority to enforce the federal law – even within an Indian reservation or against a tribal government. These provisions are a direct attack on tribal sovereignty and would set a precedent for legislation in the future. Tribes strongly urge that this legislation be referred to the House Judiciary Committee, the committee of jurisdiction on tribal matters, so that these enforcement provisions can be addressed and limited to federal enforcement in Indian country.

Tribal leaders support more effective federal enforcement of the Jenkins Act, but not state enforcement. Tribes are strongly opposed to granting state governments the unprecedented right to sue tribes in federal court. Both states and tribes have immunity from suits under long-established constitutional doctrines. The federal government has the responsibility for regulating commerce on Indian reservations under Article I, Section 8 of the U.S. Constitution.

Congress can ensure federal enforcement of the Jenkins Act without compromising tribal government rights. A primary concern of the sponsors is that the federal government has not adequately enforced the Jenkins Act (either inside or outside of Indian country). The Senate recently passed similar legislation, S. 1177, which creates incentives for federal enforcement and protects the sovereignty of tribes. These provisions are supported by the National Association of Attorneys General and the Campaign for Tobacco Free Kids.

Tribes and states have developed hundreds of compacts and agreements on the issue of cigarette taxes. These tax compacts are critical sources of revenue for cash-strapped tribal governments. Giving states a new source of enforcement power over tribes will enable states to tear up the agreements and keep all the taxes for themselves. States provide few services to tribal communities, so tribes desperately need the tax revenue from sales generated on reservations.

Tribes support age verification. Tribal governments support the prevention of sales to minor and have broadly cooperated with states on age verification. H.R. 2824 does not address age verification for tobacco sales – it is solely about tax collection.

H.R. 2824 is a moving target that needs hearings and consultation with tribal governments. Since January of this year, a dozen versions of H.R. 2824 have circulated. Some versions have contained discriminatory language subjecting tribes to a host of federal requirements that no other retailer is required to meet. Some versions have introduced awkward definitions of “interstate commerce” that would make it a federal crime to deliver packages on an Indian reservation. Frankly, we don’t know what to expect next. We need referral to the House Resources Committee so that existing tribal rights are protected while ensuring federal enforcement of the Jenkins Act. We greatly appreciate your support for Indian country on this important issue.

For more information, please contact NCAI at 202-466-7767.

SAMPLE TRIBAL LETTER (4/26/2004)

Sample Letter to be addressed to House Speaker Dennis Hastert and other House members and sent by fax AS SOON AS POSSIBLE. Please copy the Resources Committee and NCAI.

The Honorable Dennis Hastert, Speaker
U.S. House of Representatives
Washington, D.C. 20515

Re: Support for Resources Committee Referral of H.R. 2824, the Internet Tobacco Sales Enforcement Act

Dear Mr. Speaker:

On behalf of (insert your tribe's name) we are writing to express our deep concern about H.R. 2824 as it is currently being considered by the House Judiciary Committee. The feature of H.R. 2824 that concerns us is that it would give state governments the authority to enforce the federal law – even within an Indian reservation or against a tribal government. These provisions are a direct attack on tribal sovereignty and would set a precedent for legislation in the future. Tribes strongly urge that this legislation be referred to the House Judiciary Committee so that these enforcement provisions can be addressed and limited to federal enforcement in Indian country.

We support more effective federal enforcement of the Jenkins Act. We strongly oppose, however, granting state governments the unprecedented right to sue an Indian nation or a reservation Indian in state or federal court. The federal government has the responsibility of regulating commerce on Indian reservations under Article I, Section 8 of the U.S. Constitution. Congress can ensure federal enforcement of the Jenkins Act without compromising tribal government rights. The Senate recently passed similar legislation, S. 1177, which creates incentives for federal enforcement and protects the sovereignty of tribes. These provisions are supported by the National Association of Attorneys General and the Campaign for Tobacco Free Kids.

Tribes and states have developed hundreds of compacts and agreements on the issue of cigarette taxes. These tax compacts are critical sources of revenue for cash-strapped tribal governments. Giving states a new source of enforcement power over tribes will enable states to tear up the agreements and keep all the taxes for themselves. States provide few services to tribal communities, so tribes desperately need the tax revenue from sales generated on reservations.

Since January of this year, there has been a dozen versions of H.R. 2824 in circulation. Some versions have contained discriminatory language subjecting tribes to a host of federal requirements that no other retailer is required to meet. Some versions have introduced awkward definitions of “interstate commerce” that would make it a federal crime to deliver packages on an Indian reservation. We need referral to the House Resources Committee so that existing tribal rights are protected while ensuring federal enforcement of the Jenkins Act. We greatly appreciate your support for Indian country on this important issue.

Sincerely,

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