

Testimony of  
**The Honorable Orrin Hatch**

July 31, 2003

Statement of Chairman Orrin G. Hatch

Before the United States Senate Committee on the Judiciary

Executive Business Meeting

On

"the Prevent All Cigarette Trafficking Act (PACT Act) of 2003"

I am pleased to offer a substitute version of the Hatch-Kohl Prevent All Cigarette Trafficking Act (PACT Act) today. This bill will reduce illegal cigarette sales -- a result that will disrupt terrorist funding while at the same time help states collect the revenue to which they are legally entitled. This legislation finds widespread support throughout the country. For example, the Campaign for Tobacco-Free Kids has stated: "[t]he Hatch-Kohl bill would provide state governments with effective tools for collecting state taxes on Internet tobacco product sales to their residents." State attorneys general also support the bill. Joel Ferre, the Assistant Attorney General responsible for tobacco enforcement in Utah says that there is "no doubt that I would take advantage of the Act's provisions to protect Utah's citizens and taxpayers." Barney Brannen, the Assistant Attorney General for tobacco enforcement in Vermont, supports the PACT Act by observing publicly that the bill protects against economic and public health harms.

This substitute version of the bill we're considering today strengthens the introduced version by, among other things, adding smokeless products in addition to cigarettes, by requiring the payment of all taxes prior to the sale of these products, and by clarifying that delivery sales take place in the state in which the consumer takes possession of the product. I want to thank the Campaign for Tobacco-Free Kids and National Association of Attorneys General in particular for their valuable input in improving this bill.

In the past year, law enforcement authorities have uncovered an illegal funding scheme being exploited by organized crime syndicates throughout the country. These syndicates, which include the Lebanon-based terrorist organization Hezbollah, purchase cigarettes in states with low taxes

and then transport the product to different states with higher taxes for the purpose of illegally selling cigarettes to small retailers at below market costs. For example, Virginia has a per pack tax of 2.5 cents, while New York City has a per pack tax of \$3. These organized crime syndicates have been found to purchase and transport cigarettes in tractor-trailers up Interstate 95 from Virginia to New York for resale. Frequently, these syndicates produce counterfeit state and city tax stamps in order to make it less risky for these small retailers to sell them to consumers. As one can easily see, a state such as New York loses millions of dollars in revenue each year because of unpaid taxes on these contraband cigarettes, while terrorist organizations make millions in profits. This same pattern of crime has been uncovered by the trafficking of cigarettes from North Carolina, a high-tax state, to Michigan, a low-tax state. The Internet has only exacerbated this problem, which the Congress must now address.

The PACT Act attacks the problem of illegal cigarette trafficking by strengthening the Jenkins Act (15 U.S.C. §§ 375) - a federal statute that requires tobacco vendors to register with the tax administrator for each state in which they sell cigarettes. The Jenkins Act also requires tobacco vendors to file a monthly report that provides shipment information within each state. This legislation, which the distinguished Senator from Wisconsin and I are sponsoring strengthens the Act:

- o by enhancing the existing reporting requirements established under the Jenkins Act,
- o by expressly including cigarette orders placed through the Internet within the Act's coverage,
- o by lowering the threshold for cigarettes to be treated as contraband from 60,000 to 10,000,
- o by increasing the criminal penalty for violating the Act to a felony;
- o and by creating a substantial civil penalty.

The PACT Act will also enable state attorneys general to bring actions in federal court, which is an enforcement tool desired by many states. According to a GAO report from last year on Internet cigarette sales, online cigarette sellers simply do not comply with the Jenkins Act requirements - in fact, most of them defiantly state that they do not comply with the Jenkins Act. Many state attorneys general realize that this practice is unfair not only to their individual states, but also to the brick and mortar retailers located in their state, placing these businesses at an unfair commercial disadvantage. Providing these state attorneys general with the ability to bring actions against these out-of-state Internet vendors for lost revenue is crucial in leveling the

playing field and collecting the rightful revenue for states like Washington, California, New York, Wisconsin, Michigan and Rhode Island.

I ask my colleagues to join Senator Kohl and myself in supporting the PACT Act of 2003.

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