CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

July 25, 2008

H.R. 4081
Prevent All Cigarette Trafficking Act of 2007

As ordered reported by the House Committee on the Judiciary on July 16, 2008

SUMMARY

H.R. 4081 would require individuals and businesses that make interstate sales of cigarettes or smokeless tobacco to comply with state tax laws and register with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATFE). The bill would permit ATFE to inspect the premises of anyone who distributes or sells more than 10,000 cigarettes or 500 cans or packages of smokeless tobacco in a month via telephone, the mail, or the Internet. H.R. 4081 also would increase penalties, including criminal and civil fines, for violations of the laws relating to taxation of cigarettes and smokeless tobacco.

CBO estimates that implementing H.R. 4081 would cost about $120 million over the 2009-2013 period for ATFE to enforce the bill's provisions, assuming appropriation of the necessary amounts. Enacting the bill could affect direct spending and receipts, but we estimate that any such effects would not be significant.

H.R. 4081 would impose both intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on certain tobacco sellers, common carriers, and individuals. The bill also would preempt certain state, local, and tribal laws regulating the delivery of tobacco products. CBO expects that the direct costs to comply with those mandates would not be significant and would not exceed the annual thresholds established in UMRA for intergovernmental and private-sector mandates ($68 million and $136 million respectively in 2008, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 4081 is shown in the following table. The costs of this legislation fall within budget function 750 (administration of justice). In addition to the costs shown below, enacting H.R. 4081 could affect direct spending and receipts. However, we estimate that any such effects would be insignificant.

	By Fiscal Year, in Million of Dollars						
	2008	2009	2010	2011	2012	2013	2009-2013
CHANGES IN SPENDING SUBJECT TO APPROPRIATION							
Estimated Authorization Level	0	18	25	26	27	28	124
Estimated Outlays	0	15	24	26	27	28	120

BASIS OF ESTIMATE

CBO estimates that implementing H.R. 4081 would increase ATFE's operating costs by about $120 million over the 2009-2013 period. For this estimate, CBO assumes that the necessary amounts will be appropriated near the start of each fiscal year and that spending will follow historical patterns for similar activities conducted by ATFE. In addition, the bill would have an insignificant effect on direct spending and receipts.

Spending Subject to Appropriation

H.R. 4081 would permit ATFE to inspect the premises of businesses that distribute or sell more than 10,000 cigarettes or 500 cans or packages of smokeless tobacco each month via telephone, the mail, or the Internet. Under the bill, the agency expects that it would need to conduct inspections of about 7,500 businesses each year. ATFE anticipates that it would need to hire about 130 new employees, including inspectors, agents, auditors, and support personnel, to carry out inspections and any subsequent investigations into illegal activity. Once fully phased in, CBO estimates that the costs of additional employees under the bill would reach $25 million annually, including salaries, benefits, training, equipment, upgraded computer systems, and support costs. For this estimate, we assume that the new positions would be fully staffed by fiscal year 2010.

Direct Spending and Revenues

Enacting H.R. 4081 could increase collections of civil and criminal fines for violations of the bill's provisions relating to the sale of cigarettes and smokeless tobacco. CBO expects that any additional collections would not be significant because of the relatively small number of additional cases likely to be affected. The receipt of criminal and civil fines is recorded as additional revenue.

Under the bill's provisions, some of those fines would not be available for spending, some would be deposited in the Crime Victims fund and later spent, and others would be deposited in new funds established by the bill and later spent from those funds. (Deposits into one of those new funds would be spent by the U.S. Postal Service and thus would be classified as off-budget.) CBO estimates that spending of fines collected under H.R. 4081 would not be significant.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 4081 contains both intergovernmental and private-sector mandates as defined in UMRA. It would impose new requirements related to certain sales of tobacco products by private and tribal entities and preempt certain state, local, and tribal laws. According to ATFE and industry sources, most of the entities affected by the requirements already perform many of the duties that would be imposed by this bill, and CBO estimates that the additional requirements would impose minimal costs. CBO expects that the preemption would impose minimal costs on state, local, or tribal governments. Consequently, CBO estimates that the total direct costs to comply with the requirements of the bill would fall well below the annual thresholds established in UMRA for intergovernmental and private-sector mandates ($68 million and $136 million respectively in 2008, adjusted annually for inflation).

Requirements Related to Delivery Sales of Tobacco. H.R. 4081 would require delivery sellers of tobacco products to comply with certain requirements regarding reporting, shipping, record keeping, and tax collection. Delivery sellers include those businesses that sell or deliver tobacco products purchased online, by catalog, or by phone. The bill also would prohibit importers and interstate tobacco sellers from selling certain types of cigarettes that are not in full compliance with the terms of the tobacco settlement agreement between states and tobacco manufacturers and sellers. The requirements would be both intergovernmental and private-sector mandates because tobacco delivery sales are conducted by both private-sector and tribal entities.

H.R. 4081 also would require common carriers and delivery services to keep records for five years of any business relating to a delivery that has been interrupted because the carrier or service determines or has reason to believe that the person ordering the delivery is in violation of this act. In addition, the bill would affect individuals who currently send or receive tobacco products in the mail by prohibiting the mailing of such tobacco products in the continental United States through the U.S. Postal Service. Information from industry experts indicates that most companies that ship tobacco products, including two tribal governments, rarely use the Postal Service to distribute their products.

Preemption of State, Local, and Tribal Laws. The bill also would preempt certain state, local, and tribal laws that require common carriers and delivery services to verify the age and require the signature of the individual accepting a tobacco delivery or place other restrictions on those services.

Other Impacts on State, Local, and Tribal Governments

H.R. 4081 would benefit state governments by expanding their authority to enforce cigarette tax collection through the Jenkins Act. This expanded authority would allow state attorneys general to file charges in U.S. district courts against sellers or deliverers who violate this law. This bill also would preserve existing agreements between states and tribal governments regarding cigarette taxes.

PREVIOUS CBO ESTIMATE

On July 20, 2007, CBO transmitted a cost estimate for S. 1027, the Prevent All Cigarette Trafficking Act of 2007, as ordered reported by the Senate Committee on the Judiciary on May 17, 2007. The two bills are similar, and the cost estimates are identical.

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