



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

May 18, 2009

H.R. 1676 **Prevent All Cigarette Trafficking Act of 2009**

As ordered reported by the House Committee on the Judiciary on April 28, 2009

SUMMARY

H.R. 1676 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 authorize the appropriation of \$8.5 million annually over five fiscal years for ATFE to improve the enforcement of laws governing the sale of tobacco. In addition, 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. 1676 also would increase penalties, including criminal and civil fines, for violations of the laws relating to taxation of cigarettes and smokeless tobacco. Finally, the bill would prohibit the use of the United States Postal Service (USPS) to mail certain tobacco products.

CBO estimates that implementing H.R. 1676 would cost about \$160 million over the 2010-2014 period, 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. 1676 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 or private-sector mandates (\$69 million and \$139 million respectively, in 2009, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 1676 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. 1676 could affect direct spending and receipts. However, we estimate that any such effects would be insignificant.

	By Fiscal Year, in Millions of Dollars					2010-
	2010	2011	2012	2013	2014	2014
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Enforcement Activities						
Authorization Level	9	9	9	9	9	43
Estimated Outlays	7	9	9	9	9	41
Inspections						
Estimated Authorization Level	18	25	26	27	28	124
Estimated Outlays	15	24	26	27	28	120
Total						
Estimated Authorization Level	27	34	35	36	37	167
Estimated Outlays	22	33	35	36	37	161

Note: Components may not sum to totals because of rounding.

BASIS OF ESTIMATE

CBO estimates that implementing H.R. 1676 would cost about \$160 million over the 2010-2014 period. For this estimate, CBO assumes that the authorized and necessary amounts will be appropriated near the start of each fiscal year and that spending will follow historical patterns for similar activities. In addition, the bill would have an insignificant effect on direct spending and receipts.

Spending Subject to Appropriations

Enforcement Activities. H.R. 1676 would authorize the appropriation of \$8.5 million annually over five fiscal years for ATFE to improve enforcement of the laws governing the sale of tobacco. (CBO assumes that the bill would authorize this funding over the 2010-2014 period.) The agency would be required to use those funds to form regional enforcement teams, establish a tobacco intelligence center and a covert national

warehouse (for undercover operations), and create a database to track and analyze certain retail sales of tobacco products.

Inspections. H.R. 1676 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 2011, and costs would be adjusted for anticipated future inflation.

Revenues and Direct Spending

Enacting H.R. 1676 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. Criminal and civil fines are recorded in the budget as revenues.

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. (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. 1676 would not be significant.

H.R. 1676 would prohibit the use of the Postal Service to mail most tobacco products. This could affect revenue and spending by the USPS, depending on how the agency decides to enforce this provision and regulate the exceptions permitted by the bill. The Postal Service attempts to enforce current laws on nonmailable matter but inspects a very small fraction of the 200 billion pieces of mail it delivers each year. CBO expects that H.R. 1676 would not lead to a significant increase in those inspections and thus implementing the bill would not have a significant effect on net USPS spending.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 1676 contains both intergovernmental and private-sector mandates, as defined in UMRA by imposing new requirements on certain sales of tobacco products by private and tribal entities and preempting certain state, local, and tribal laws. CBO estimates that the costs of complying with the requirements in the bill would not exceed the annual thresholds established in UMRA for intergovernmental or private-sector mandates (\$69 million and \$139 million, respectively, in 2009, adjusted annually for inflation).

Requirements on Delivery Sales of Tobacco

H.R. 1676 would require delivery sellers of tobacco products to comply with certain requirements regarding reporting, shipping, record keeping, and collecting taxes. 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 sellers of tobacco from selling cigarettes produced by companies that are not in full compliance with the terms of the tobacco settlement agreement between states and tobacco manufacturers and sellers. Those requirements would be both intergovernmental and private-sector mandates because tobacco delivery sales are conducted by both private-sector and tribal entities.

H.R. 1676 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.

According to ATFE and industry sources, most of the entities affected by the requirements already perform many of the duties required by the bill, and CBO estimates that the additional requirements would impose minimal additional costs.

Preemption of State, Local, and Tribal Laws

The bill also would preempt 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. CBO expects that the preemption would impose minimal costs on state, local, or tribal governments.

Other Impacts on State, Local, and Tribal Governments

H.R. 1676 would benefit state, local, and tribal governments by expanding their authority to collect cigarette taxes through the Jenkins Act. This expanded authority would allow state attorneys general or the chief law enforcement official of a local or tribal government to file charges in U.S. district courts against sellers or deliverers who violate this law. The bill also would preserve existing agreements between states and tribal governments regarding cigarette taxes.

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