

12. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
COBLE OF NORTH CAROLINA, OR HIS
DESIGNEE, DEBATABLE FOR 10 MINUTES:

AMENDMENT TO H.R. 3199, AS REPORTED

OFFERED BY M. Coble

Add at the end the following (and make such technical and conforming changes as may be appropriate):

**1 SECTION 17. PENAL PROVISIONS REGARDING TRAF-
2 FICKING IN CONTRABAND CIGARETTES OR
3 SMOKELESS TOBACCO.**

4 (a) THRESHOLD QUANTITY FOR TREATMENT AS
5 CONTRABAND CIGARETTES.—(1) Section 2341(2) of title
6 18, United States Code, is amended by striking “60,000
7 cigarettes” and inserting “10,000 cigarettes”.

8 (2) Section 2342(b) of that title is amended by strik-
9 ing “60,000” and inserting “10,000”.

10 (3) Section 2343 of that title is amended—

11 (A) in subsection (a), by striking “60,000” and
12 inserting “10,000”; and

13 (B) in subsection (b), by striking “60,000” and
14 inserting “10,000”.

15 (b) CONTRABAND SMOKELESS TOBACCO.—(1) Sec-
16 tion 2341 of that title is amended—

17 (A) in paragraph (4), by striking “and” at the
18 end;



1 (B) in paragraph (5), by striking the period at
2 the end and inserting a semicolon; and

3 (C) by adding at the end the following new
4 paragraphs:

5 “(6) the term ‘smokeless tobacco’ means any
6 finely cut, ground, powdered, or leaf tobacco that is
7 intended to be placed in the oral or nasal cavity or
8 otherwise consumed without being combusted;

9 “(7) the term ‘contraband smokeless tobacco’
10 means a quantity in excess of 500 single-unit con-
11 sumer-sized cans or packages of smokeless tobacco,
12 or their equivalent, that are in the possession of any
13 person other than—

14 “(A) a person holding a permit issued pur-
15 suant to chapter 52 of the Internal Revenue
16 Code of 1986 as manufacturer of tobacco prod-
17 ucts or as an export warehouse proprietor, a
18 person operating a customs bonded warehouse
19 pursuant to section 311 or 555 of the Tariff
20 Act of 1930 (19 U.S.C. 1311, 1555), or an
21 agent of such person;

22 “(B) a common carrier transporting such
23 smokeless tobacco under a proper bill of lading
24 or freight bill which states the quantity, source,
25 and designation of such smokeless tobacco;



1 “(C) a person who—

2 “(i) is licensed or otherwise author-
3 ized by the State where such smokeless to-
4 bacco is found to engage in the business of
5 selling or distributing tobacco products;
6 and

7 “(ii) has complied with the account-
8 ing, tax, and payment requirements relat-
9 ing to such license or authorization with
10 respect to such smokeless tobacco; or

11 “(D) an officer, employee, or agent of the
12 United States or a State, or any department,
13 agency, or instrumentality of the United States
14 or a State (including any political subdivision of
15 a State), having possession of such smokeless
16 tobacco in connection with the performance of
17 official duties;”.

18 (2) Section 2342(a) of that title is amended by insert-
19 ing “or contraband smokeless tobacco” after “contraband
20 cigarettes”.

21 (3) Section 2343(a) of that title is amended by insert-
22 ing “, or any quantity of smokeless tobacco in excess of
23 500 single-unit consumer-sized cans or packages,” before
24 “in a single transaction”.



1 (4) Section 2344(c) of that title is amended by insert-
2 ing “or contraband smokeless tobacco” after “contraband
3 cigarettes”.

4 (5) Section 2345 of that title is amended by inserting
5 “or smokeless tobacco” after “cigarettes” each place it ap-
6 pears.

7 (6) Section 2341 of that title is further amended in
8 paragraph (2), as amended by subsection (a)(1) of this
9 section, in the matter preceding subparagraph (A), by
10 striking “State cigarette taxes in the State where such
11 cigarettes are found, if the State” and inserting “State
12 or local cigarette taxes in the State or locality where such
13 cigarettes are found, if the State or local government”;

14 (c) RECORDKEEPING, REPORTING, AND INSPEC-
15 TION.—Section 2343 of that title, as amended by this sec-
16 tion, is further amended—

17 (1) in subsection (a)—

18 (A) in the matter preceding paragraph (1),
19 by striking “only—” and inserting “such infor-
20 mation as the Attorney General considers ap-
21 propriate for purposes of enforcement of this
22 chapter, including—”; and

23 (B) in the flush matter following para-
24 graph (3), by striking the second sentence;



1 (2) by redesignating subsection (b) as sub-
2 section (c);

3 (3) by inserting after subsection (a) the fol-
4 lowing new subsection (b):

5 “(b) Any person, except for a tribal government, who
6 engages in a delivery sale, and who ships, sells, or distrib-
7 utes any quantity in excess of 10,000 cigarettes, or any
8 quantity in excess of 500 single-unit consumer-sized cans
9 or packages of smokeless tobacco, or their equivalent,
10 within a single month, shall submit to the Attorney Gen-
11 eral, pursuant to rules or regulations prescribed by the
12 Attorney General, a report that sets forth the following:

13 “(1) The person’s beginning and ending inven-
14 tory of cigarettes and cans or packages of smokeless
15 tobacco (in total) for such month.

16 “(2) The total quantity of cigarettes and cans
17 or packages of smokeless tobacco that the person re-
18 ceived within such month from each other person
19 (itemized by name and address).

20 “(3) The total quantity of cigarettes and cans
21 or packages of smokeless tobacco that the person
22 distributed within such month to each person
23 (itemized by name and address) other than a retail
24 purchaser.”; and



1 (4) by adding at the end the following new sub-
2 sections:

3 “(d) Any report required to be submitted under this
4 chapter to the Attorney General shall also be submitted
5 to the Secretary of the Treasury and to the attorneys gen-
6 eral and the tax administrators of the States from where
7 the shipments, deliveries, or distributions both originated
8 and concluded.

9 “(e) In this section, the term ‘delivery sale’ means
10 any sale of cigarettes or smokeless tobacco in interstate
11 commerce to a consumer if—

12 “(1) the consumer submits the order for such
13 sale by means of a telephone or other method of
14 voice transmission, the mails, or the Internet or
15 other online service, or by any other means where
16 the consumer is not in the same physical location as
17 the seller when the purchase or offer of sale is made;
18 or

19 “(2) the cigarettes or smokeless tobacco are de-
20 livered by use of the mails, common carrier, private
21 delivery service, or any other means where the con-
22 sumer is not in the same physical location as the
23 seller when the consumer obtains physical possession
24 of the cigarettes or smokeless tobacco.



1 “(f) In this section, the term ‘interstate commerce’
2 means commerce between a State and any place outside
3 the State, or commerce between points in the same State
4 but through any place outside the State.”.

5 (d) DISPOSAL OR USE OF FORFEITED CIGARETTES
6 AND SMOKELESS TOBACCO.—Section 2344(c) of that
7 title, as amended by this section, is further amended by
8 striking “seizure and forfeiture,” and all that follows and
9 inserting “seizure and forfeiture, and any cigarettes or
10 smokeless tobacco so seized and forfeited shall be either—

11 “(1) destroyed and not resold; or

12 “(2) used for undercover investigative oper-
13 ations for the detection and prosecution of crimes,
14 and then destroyed and not resold.”.

15 (e) EFFECT ON STATE AND LOCAL LAW.—Section
16 2345 of that title is amended—

17 (1) in subsection (a), by striking “a State to
18 enact and enforce” and inserting “a State or local
19 government to enact and enforce its own”; and

20 (2) in subsection (b), by striking “of States,
21 through interstate compact or otherwise, to provide
22 for the administration of State” and inserting “of
23 State or local governments, through interstate com-
24 pact or otherwise, to provide for the administration
25 of State or local”.



1 (f) ENFORCEMENT.—Section 2346 of that title is
2 amended—

3 (1) by inserting “(a)” before “The Attorney
4 General”; and

5 (2) by adding at the end the following new sub-
6 section:

7 “(b)(1) A State, through its attorney general, a local
8 government, through its chief law enforcement officer (or
9 a designee thereof), or any person who holds a permit
10 under chapter 52 of the Internal Revenue Code of 1986,
11 may bring an action in the United States district courts
12 to prevent and restrain violations of this chapter by any
13 person (or by any person controlling such person), except
14 that any person who holds a permit under chapter 52 of
15 the Internal Revenue Code of 1986 may not bring such
16 an action against a State or local government.

17 “(2) A State, through its attorney general, or a local
18 government, through its chief law enforcement officer (or
19 a designee thereof), may in a civil action under paragraph
20 (1) also obtain any other appropriate relief for violations
21 of this chapter from any person (or by any person control-
22 ling such person), including civil penalties, money dam-
23 ages, and injunctive or other equitable relief. Nothing in
24 this chapter shall be deemed to abrogate or constitute a
25 waiver of any sovereign immunity of a State or local gov-



1 ernment against any unconsented lawsuit under this chap-
2 ter, or otherwise to restrict, expand, or modify any sov-
3 ereign immunity of a State or local government.

4 “(3) The remedies under paragraphs (1) and (2) are
5 in addition to any other remedies under Federal, State,
6 local, or other law.

7 “(4) Nothing in this chapter shall be construed to
8 expand, restrict, or otherwise modify any right of an au-
9 thorized State official to proceed in State court, or take
10 other enforcement actions, on the basis of an alleged viola-
11 tion of State or other law.

12 “(5) Nothing in this chapter shall be construed to
13 expand, restrict, or otherwise modify any right of an au-
14 thorized local government official to proceed in State
15 court, or take other enforcement actions, on the basis of
16 an alleged violation of local or other law.”.

17 (g) CONFORMING AND CLERICAL AMENDMENTS.—

18 (1) The section heading for section 2343 of that title is
19 amended to read as follows:

20 “§ 2343. Recordkeeping, reporting, and inspection”.

21 (2) The section heading for section 2345 of such title
22 is amended to read as follows:

23 “§ 2345. Effect on State and local law”.

24 (3) The table of sections at the beginning of chapter
25 114 of that title is amended—



1 (A) by striking the item relating to section
2 2343 and inserting the following new item:

“2343. Recordkeeping, reporting, and inspection.”

3 ; and

4 (B) by striking the item relating to section
5 2345 and insert the following new item:

“2345. Effect on State and local law.”

6 (4)(A) The heading for chapter 114 of that title is
7 amended to read as follows:

8 **“CHAPTER 114—TRAFFICKING IN CONTRA-**
9 **BAND CIGARETTES AND SMOKELESS**
10 **TOBACCO”.**

11 (B) The table of chapters at the beginning of part
12 I of that title is amended by striking the item relating
13 to section 114 and inserting the following new item:

**“114. Trafficking in contraband cigarettes and smokeless
tobacco 2341”.**

