

AMENDED IN SENATE MAY 6, 2002

AMENDED IN SENATE MAY 1, 2002

**SENATE BILL**

**No. 1766**

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**Introduced by Senator Ortiz**

February 21, 2002

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An act to add Division 8.6 (commencing with Section 22965) to the Business and Professions Code, relating to tobacco products.

LEGISLATIVE COUNSEL'S DIGEST

SB 1766, as amended, Ortiz. Tobacco products: sales.

Existing law, known as the Stop Tobacco Access to Kids Enforcement (STAKE) Act, requires the State Department of Health Services to establish and administer a program to reduce the availability of tobacco products to minors. The STAKE Act prescribes certain civil penalties for violations of its provisions, which the department is required to enforce.

Existing law imposes taxes at specified rates upon the distribution of cigarettes and tobacco products within the state. Existing law provides that any person who knowingly violates these provisions is guilty of a misdemeanor and may be subject to a fine.

This bill would require each retail sale of a tobacco product in the state to be a vendor-assisted, face-to-face sale. The bill would define a "face-to-face sale" as a sale in which the buyer and seller or the seller's employee or agent are within each other's physical presence at the time of the sale, and would exclude from this definition any transaction that is conducted by mail order, the Internet, telephone, or any other anonymous transaction method, except for lawful sales that occur by means of a cigarette vending machine. This bill would also provide that

a person may engage in a non-face-to-face sale of a tobacco product if the seller complies with specified requirements concerning, among other things, verification of the age of the purchaser.

This bill would provide that any person who violates its provisions is subject to specified civil penalties, and that ~~the Attorney General~~ or a city attorney, county counsel, or district attorney may bring a civil action to enforce the provisions of the bill.

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~ no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) Despite the expenditure of very substantial resources on  
4 limiting youth access to tobacco and on educational efforts to  
5 diminish youth demand, the purchase of tobacco products by  
6 children remains a serious public health problem in this state.  
7 Although existing laws deter children from gaining access to  
8 cigarettes through vending machines, market sampling, and sales  
9 by retailers, a significant number of children are able to  
10 circumvent existing state statutes by purchasing cigarettes from  
11 direct sellers over the Internet or through the mail.

12 (b) The people of California have established special tobacco  
13 surtaxes intended to diminish the demand for tobacco products,  
14 particularly among children and minors. Tobacco surtaxes are  
15 intended to increase the price of tobacco to discourage its use,  
16 diminish the public costs associated with tobacco use, finance  
17 motivational and tobacco cessation programs to help tobacco users  
18 quit, and provide medical services to communities with elevated  
19 levels of tobacco-related injuries. Internet and mail-order sales of  
20 tobacco by interstate sellers that evade California’s taxes subvert  
21 important public health policies and are contrary to the interest and  
22 public health of the people of California.

23 (c) It is the intent of the Legislature in enacting this act to:  
24 (1) Prevent children from gaining access to tobacco products.  
25 (2) Deter adults and children from buying tobacco products by  
26 raising the cost of cigarettes through the enforcement of excise  
27 taxes.



1 SEC. 2. Division 8.6 (commencing with Section 22965) is  
2 added to the Business and Professions Code, to read:

3  
4 DIVISION 8.6. RETAIL SALES OF TOBACCO  
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6 22965. (a) Except as provided in subdivision (c), no person  
7 may engage in a retail sale of a tobacco product in California unless  
8 the sale is a vendor-assisted, face-to-face sale.

9 (b) For the purposes of this section, “face-to-face sale” means  
10 a sale in which the purchaser is in the physical presence of the seller  
11 or the seller’s employee or agent at the time of the sale. A  
12 face-to-face sale does not include any transaction conducted by  
13 mail order, the Internet, telephone, or any other anonymous  
14 transaction method in which the buyer is not in the seller’s physical  
15 presence *or the physical presence of the seller’s employee or agent*  
16 *at the time of the sale.*

17 (c) A person may engage in a non-face-to-face sale of a tobacco  
18 product to a person in California provided that the seller complies  
19 with all of the following:

20 (1) Before completing any non-face-to-face sale of a tobacco  
21 product, the seller shall require the purchaser to submit a copy of  
22 a valid form of government identification and an attestation signed  
23 by the purchaser that he or she is 18 years of age or older and that  
24 the government identification truly and correctly identifies the  
25 purchaser and the purchaser’s current address. For the purposes of  
26 this subdivision, a valid form of government identification  
27 includes a driver’s license, state identification card, passport, or  
28 military identification. In addition, the seller shall attempt to  
29 match the name, address, and date of birth provided by the  
30 purchaser to information contained in records in a data base of  
31 individuals whose age has been verified to be 18 years or older. An  
32 appropriate data base includes information based on public  
33 records.

34 (2) If the seller is unable to verify that the purchaser is 18 years  
35 of age or older pursuant to paragraph (1), the seller shall not sell  
36 any tobacco products to the consumer.

37 (3) The seller shall impose a two-carton minimum on each  
38 order of tobacco products, and shall require payment for the  
39 purchase of any tobacco product to be made by personal check of

1 the purchaser or the purchaser's credit card. No money order or  
2 cash payment shall be received or permitted.

3 (4) The seller shall deliver the tobacco product, or cause the  
4 tobacco product to be delivered, to the address displayed on the  
5 valid form of government identification provided by the  
6 purchaser. The seller shall deliver the tobacco product, or cause the  
7 tobacco product to be delivered, by a postal or package delivery  
8 service method that either limits delivery to the purchaser and  
9 requires the purchaser to sign personally to receive the delivery or  
10 requires the signature of an adult at the purchaser's address in order  
11 to deliver the package. No delivery described under this section  
12 may be made to any post office box.

13 (5) The seller shall either (A) remit to the Board of Equalization  
14 all applicable taxes on the sale or (B) include on the outside of the  
15 shipping container for any tobacco product shipped to a resident  
16 in California from any source in the United States a prominent,  
17 externally visible, and easily legible label that includes all of the  
18 following information:

19 (A) A notice that the package contains tobacco products and a  
20 description of the contents, including the size and number of  
21 containers.

22 (B) A notice that the package is not to be delivered to a minor  
23 and that a signature by the addressee or an adult is required for  
24 delivery.

25 (C) A notice that the purchaser is responsible for any applicable  
26 California taxes on the tobacco products.

27 (d) For the purposes of enforcement of this section, the acts of  
28 the United States Postal Service or other common carrier when  
29 engaged in the business of transporting and delivering packages  
30 for others, and the acts of a person, whether compensated or not,  
31 who transports or delivers a package for another person without  
32 any reason to know of the package's contents, are not unlawful and  
33 are not subject to civil penalties.

34 (e) Any person who violates this section is subject to the civil  
35 penalties set forth in subdivision (a) of Section 22958. ~~The~~  
36 ~~Attorney General or a~~ A city attorney, county counsel, or district  
37 attorney may bring a civil action to enforce this section.

38 (f) This section does not prohibit any lawful sale of a tobacco  
39 product that occurs by means of a vending machine.



1 (g) The provisions of this section are severable. If any  
2 provision of this section or its application is held invalid, that  
3 invalidity shall not affect other provisions or applications that can  
4 be given effect without the invalid provision or application.

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