

AMENDED IN ASSEMBLY AUGUST 8, 2002

AMENDED IN ASSEMBLY JULY 2, 2002

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, and An act to add Section 1021.10 to the Code of Civil Procedure, and to add Section 30101.7 to the Revenue and Taxation 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 cigarettes 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. The bill would not prohibit any 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 cigarettes if the seller complies with specified requirements concerning payment of applicable state taxes.

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.

Existing law provides that except as expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs, including attorney fees when authorized by contract, statute, or law, in any action or proceeding.

Existing federal law, known as the Jenkins Act, requires any person that sells or transfers in interstate commerce cigarettes into a state that taxes the sale or use of cigarettes to file certain information with the tobacco tax administrator of that state.

This bill would provide that in an action in the name of the people of the state against any person for failure to comply with the Jenkins Act the court, to the extent ~~permitted under~~ *not expressly prohibited by* federal law, shall award fees and costs, including reasonable attorney's fees, to the people if the people succeed on any claim to enforce the Jenkins Act.

Vote: majority. Appropriation: no. Fiscal committee: yes. 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) The people of California have established special tobacco
- 4 surtaxes intended to diminish the demand for tobacco products,
- 5 particularly among children and minors. Tobacco surtaxes are
- 6 intended to increase the price of tobacco to discourage its use,
- 7 diminish the public costs associated with tobacco use, finance
- 8 motivational and tobacco cessation programs to help tobacco users
- 9 quit, and provide medical services to communities with elevated



1 levels of tobacco-related injuries. Internet and mail-order sales of  
2 tobacco that evade California’s taxes subvert important public  
3 health policies and are contrary to the interest and public health of  
4 the people of California.

5 (b) It is the intent of the Legislature in enacting this act to  
6 facilitate the collection of all applicable state surtaxes and sales or  
7 use taxes on cigarettes sold to residents of California over the  
8 Internet or by mail order.

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

11

12 ~~DIVISION 8.6. RETAIL SALES OF TOBACCO~~

13

14 ~~22965. (a)~~

15 *SEC. 2. Section 1021.10 is added to the Code of Civil*  
16 *Procedure, to read:*

17 *1021.10. Notwithstanding any other provision of law, in an*  
18 *action brought in the name of the people of the State of California*  
19 *against any person for failure to comply with Chapter 10A*  
20 *(commencing with Section 375) of Title 15 of the United States*  
21 *Code, otherwise known as the “Jenkins Act,” the court, to the*  
22 *extent not expressly prohibited by federal law, shall award fees and*  
23 *costs, including reasonable attorney’s fees, to the people if the*  
24 *people succeed on any claim to enforce the Jenkins Act. Any*  
25 *attorney’s fees awarded under this section shall be in addition to*  
26 *any other remedies or penalties available under all other laws of*  
27 *this state.*

28 *SEC. 3. Section 30101.7 is added to the Revenue and Taxation*  
29 *Code, to read:*

30 *30101.7. (a) It is the intent of the Legislature in enacting this*  
31 *section to facilitate the collection of all applicable state surtaxes*  
32 *and sales or use taxes on cigarettes sold to residents of the state.*

33 *(b) Except as provided in subdivision (e) (d), no person may*  
34 *engage in a retail sale of cigarettes in California unless the sale is*  
35 *a vendor-assisted, face-to-face sale.*

36 ~~(b)~~

37 *(c) For the purposes of this section, “face-to-face sale” means*  
38 *a sale in which the purchaser is in the physical presence of the seller*  
39 *or the seller’s employee or agent at the time of the sale. A*  
40 *face-to-face sale does not include any transaction conducted by*



1 mail order, the Internet, telephone, or any other anonymous  
2 transaction method in which the buyer is not in the seller's physical  
3 presence or the physical presence of the seller's employee or agent  
4 at the time of the sale.

5 ~~(e)~~

6 (d) A person may engage in a non-face-to-face sale of  
7 cigarettes to a person in California provided that either of the  
8 following conditions is met:

9 (1) All applicable California taxes on the cigarettes have been  
10 paid.

11 (2) The seller includes on the outside of the shipping container  
12 for any cigarettes shipped to a resident in California from any  
13 source in the United States an, externally visible, and easily legible  
14 notice located on the same side of the shipping container as the  
15 address to which the package is delivered stating as follows:

16

17 "IF THESE CIGARETTES HAVE BEEN SHIPPED TO  
18 YOU FROM A SELLER LOCATED OUTSIDE OF THE  
19 STATE IN WHICH YOU RESIDE, THE SELLER HAS  
20 REPORTED PURSUANT TO FEDERAL LAW THE SALE  
21 OF THESE CIGARETTES TO YOUR STATE TAX  
22 COLLECTION AGENCY, INCLUDING YOUR NAME  
23 AND ADDRESS. YOU ARE LEGALLY RESPONSIBLE  
24 FOR ALL APPLICABLE UNPAID STATE TAXES ON  
25 THESE CIGARETTES."

26

27 ~~(d)~~

28 (e) The Attorney General or a city attorney, county counsel, or  
29 district attorney may bring a civil action to enforce this section  
30 against any person, ~~firm, corporation, or other entity~~ that violates  
31 this section and, in addition to any other remedies provided by law,  
32 the court shall assess a civil penalty in accordance with the  
33 following schedule:

34 (1) A civil penalty of not less than one thousand dollars  
35 (\$1,000) and not more than two thousand dollars (\$2,000) for the  
36 first violation.

37 (2) A civil penalty of not less than two thousand five hundred  
38 dollars (\$2,500) and not more than three thousand five hundred  
39 dollars (\$3,500) for the second violation *within a five-year period*.



1 (3) A civil penalty of not less than four thousand dollars  
2 (\$4,000) and not more than five thousand dollars (\$5,000) for the  
3 third violation within a five-year period.

4 (4) A civil penalty of not less than five thousand five hundred  
5 dollars (\$5,500) and not more than six thousand five hundred  
6 dollars (\$6,500) for a fourth violation within a five-year period.

7 (5) A civil penalty of ten thousand dollars (\$10,000) for a fifth  
8 or subsequent violation within a five-year period.

9 ~~(e)~~

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

12 ~~(f)~~

13 (g) Nothing in this section shall relieve the seller of cigarettes  
14 from any other applicable requirement of state law relating to the  
15 sale ~~or distribution~~ of cigarettes.

16 ~~(g)~~

17 (h) The provisions of this section are severable. If any  
18 provision of this section or its application is held invalid, that  
19 invalidity shall not affect other provisions or applications that can  
20 be given effect without the invalid provision or application.

21 ~~SEC. 3.— Section 1021.10 is added to the Code of Civil  
22 Procedure, to read:~~

23 ~~1021.10.— Notwithstanding any other provision of law, in an  
24 action brought in the name of the people of the State of California  
25 against any person for failure to comply with Chapter 10A  
26 (commencing with Section 375) of Title 15 of the United States  
27 Code, otherwise known as the “Jenkins Act,” the court, to the  
28 extent permitted under federal law, shall award fees and costs,  
29 including reasonable attorney’s fees, to the people if the people  
30 succeed on any claim to enforce the Jenkins Act. Any attorney’s  
31 fees awarded under this section shall be in addition to any other  
32 remedies or penalties available under all other laws of this state.~~

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