

## Senate Bill No. 1766

### CHAPTER 686

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.

[Approved by Governor September 18, 2002. Filed with Secretary of State September 18, 2002.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1766, 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 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.

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

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

(a) The people of California have established special tobacco surtaxes intended to diminish the demand for tobacco products, particularly among children and minors. Tobacco surtaxes are intended to increase the price of tobacco to discourage its use, diminish the public costs associated with tobacco use, finance motivational and tobacco cessation programs to help tobacco users quit, and provide medical services to communities with elevated levels of tobacco-related injuries. Internet and mail-order sales of tobacco that evade California's taxes subvert important public health policies and are contrary to the interest and public health of the people of California.

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

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

1021.10. Notwithstanding any other provision of law, in an action brought in the name of the people of the State of California against any person for failure to comply with Chapter 10A (commencing with Section 375) of Title 15 of the United States Code, otherwise known as the "Jenkins Act," the court, to the extent 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. Any attorney's fees awarded under this section shall be in addition to any other remedies or penalties available under all other laws of this state.

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

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



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

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

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

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

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

“IF THESE CIGARETTES HAVE BEEN SHIPPED TO YOU FROM A SELLER LOCATED OUTSIDE OF THE STATE IN WHICH YOU RESIDE, THE SELLER HAS REPORTED PURSUANT TO FEDERAL LAW THE SALE OF THESE CIGARETTES TO YOUR STATE TAX COLLECTION AGENCY, INCLUDING YOUR NAME AND ADDRESS. YOU ARE LEGALLY RESPONSIBLE FOR ALL APPLICABLE UNPAID STATE TAXES ON THESE CIGARETTES.”

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

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

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

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



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

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

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

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

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

