

Senate Bill No. 1016

CHAPTER 603

An act to amend Section 30101.7 of the Revenue and Taxation Code, relating to tobacco.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1016, Bowen. Tobacco products: sale.

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.

The Cigarette and Tobacco Products Tax Law requires distributors and wholesalers of cigarette and tobacco products to be licensed by the State Board of Equalization. That law requires every distributor of cigarettes to pay taxes, as prescribed, on the distribution of cigarettes.

Existing law requires, except under specified circumstances, each retail sale of cigarettes in the state to be a vendor-assisted, face-to-face sale, as defined. Existing law exempts a person from this restriction on face-to-face sales when all applicable state taxes have been paid or when the outside of a shipping container of cigarettes has been labeled, as specified. Existing law authorizes the Attorney General, or a city attorney, county counsel, or district attorney to bring a civil action, as specified, to enforce these provisions.

This bill would, in addition to the other requirements for an exception from the restriction on face-to-face sales of cigarettes in this state, also require a person to fully comply with the requirements of the federal Jenkins Act. This bill would require the State Board of Equalization to provide information relative to a seller's failure or attempt to comply with the Jenkins Act to the Attorney General. This bill would require the Attorney General to provide an annual report to the Legislature on all actions taken to comply with, and enforce, the Jenkins Act.

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

SECTION 1. Section 30101.7 of the Revenue and Taxation Code is amended 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 both of the following conditions are met:

(1) The seller has fully complied with all of the requirements of Chapter 10A (commencing with Section 375) of Title 15 of the United States Code, otherwise known as the Jenkins Act.

(2) The seller has fully complied with either of the following requirements:

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

(B) 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 State Board of Equalization shall provide information relative to a seller’s failure or attempt to comply with the Jenkins Act to the Attorney General.

(f) 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.

(g) The Attorney General shall provide an annual report to the Legislature regarding all actions taken to comply with, and enforce, the Jenkins Act.

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

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

(j) 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.

