

ASSEMBLY BILL

No. 2348

**Introduced by Assembly Members Cardenas and
Negrete McLeod**

February 21, 2002

An act to amend Sections 594.1 and 594.2 of the Penal Code, relating to glass etching acid.

LEGISLATIVE COUNSEL'S DIGEST

AB 2348, as introduced, Cardenas. Etching acid.

Existing law provides that it is unlawful for anyone to sell, give away, or furnish a minor with an aerosol container of paint capable of defacing property, except as specified. Existing law also requires retailers selling aerosol containers of paint to post a sign, as specified, stating that defacement of real or personal property with paint is unlawful. It is also unlawful for a minor to possess an aerosol container of paint for the purpose of defacing property while in any public place.

This bill would extend these provisions to include containers of etching acid. This bill would also require retailers selling or offering for sale containers of etching acid to display and store this product in areas from which it would be particularly difficult to steal. By expanding the scope of an existing crime and creating a new crime, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 594.1 of the Penal Code is amended to
2 read:

3 594.1. (a) (1) It shall be unlawful for any person, firm, or
4 corporation, except a parent or legal guardian, to sell or give or in
5 any way furnish to another person, who is in fact under the age of
6 18 years, any aerosol container of paint *or container of etching*
7 *acid* that is capable of defacing property without first obtaining
8 bona fide evidence of majority and identity.

9 (2) For purposes of this subdivision, “bona fide evidence of
10 majority and identity” is any document evidencing the age and
11 identity of an individual which has been issued by a federal, state,
12 or local governmental entity, and includes, but is not limited to, a
13 motor vehicle operator’s license, a registration certificate issued
14 under the federal Selective Service Act, or an identification card
15 issued to a member of the armed forces.

16 (3) This subdivision shall not apply to the furnishing of six
17 ounces or less of ~~an aerosol container of paint or etching acid~~ to
18 a minor for the minor’s use or possession under the supervision of
19 the minor’s parent, guardian, instructor, or employer.

20 (4) Aerosol containers of paint, *containers of etching acid*, or
21 related substances may be furnished for use in school-related
22 activities that are part of the instructional program when used
23 under controlled and supervised situations within the classroom or
24 on the site of a supervised project. These containers may not leave
25 the supervised site and shall be inventoried by the instructor. This
26 use shall comply with Section 32060 of the Education Code
27 regarding the safe use of toxic art supplies in schools.

28 (b) It shall be unlawful for any person under the age of 18 years
29 to purchase an aerosol container of paint *or a container of etching*
30 *acid* that is capable of defacing property. *Retailers selling or*
31 *offering for sale containers of etching acid shall display and store*
32 *or cause this product to be displayed and stored in areas from*
33 *which it would be particularly difficult to steal.*

34 (c) Every retailer selling or offering for sale in this state aerosol
35 containers of paint *or containers of etching acid* capable of



1 defacing property shall post in a conspicuous place a sign in letters
2 at least three-eighths of an inch high stating: “Any person who
3 maliciously defaces real or personal property with paint *or etching*
4 *acid* is guilty of vandalism which is punishable by a fine,
5 imprisonment, or both.”

6 (d) It is unlawful for any person to carry on his or her person
7 and in plain view to the public an aerosol container of paint *or a*
8 *container of etching acid* while in any posted public facility, park,
9 playground, swimming pool, beach, or recreational area, other
10 than a highway, street, alley, or way, unless he or she has first
11 received valid authorization from the governmental entity which
12 has jurisdiction over the public area.

13 As used in this subdivision, “posted” means a sign placed in a
14 reasonable location or locations stating it is a misdemeanor to
15 possess a spray can of paint *or a container of etching acid* in that
16 public facility, park, playground, swimming pool, beach, or
17 recreational area without valid authorization.

18 (e) (1) It is unlawful for any person under the age of 18 years
19 to possess an aerosol container of paint *or container of etching acid*
20 for the purpose of defacing property while on any public highway,
21 street, alley, or way, or other public place, regardless of whether
22 that person is or is not in any automobile, vehicle, or other
23 conveyance.

24 (2) As a condition of probation for any violation of this
25 subdivision, the court may order a defendant convicted of a
26 violation of this subdivision to perform community service as
27 follows:

28 (A) For a first conviction under this subdivision, community
29 service not to exceed 100 hours over a period not to exceed 90 days
30 during a time other than his or her hours of school attendance or
31 employment.

32 (B) If the person has a prior conviction under this subdivision,
33 community service not to exceed 200 hours over a period of 180
34 days during a time other than his or her hours of school attendance
35 or employment.

36 (C) If the person has two prior convictions under this
37 subdivision, community service not to exceed 300 hours over a
38 period not to exceed 240 days during a time other than his or her
39 hours of school attendance or employment.



1 (f) Violation of any provision of this section is a misdemeanor.
2 Upon conviction of any person under this section, the court may,
3 in addition to any other punishment imposed, if the jurisdiction has
4 adopted a graffiti abatement program as defined in subdivision (f)
5 of Section 594, order the defendant, and his or her parents or
6 guardians if the defendant is a minor, to keep the damaged property
7 or another specified property in the community free of graffiti, as
8 follows:

- 9 (1) For a first conviction under this section, for 90 days.
- 10 (2) If the defendant has a prior conviction under this section, for
11 180 days.
- 12 (3) If the defendant has two or more prior convictions under
13 this section, for 240 days.

14 Participation of a parent or guardian is not required under this
15 subdivision if the court deems this participation to be detrimental
16 to the defendant, or if the parent or guardian is a single parent who
17 must care for young children.

18 (g) The court may order any person ordered to perform
19 community service or graffiti removal pursuant to subdivision (e)
20 or (f) to undergo counseling.

21 SEC. 2. Section 594.2 of the Penal Code is amended to read:

22 594.2. (a) Every person who possesses a masonry or glass
23 drill bit, a carbide drill bit, a glass cutter, a grinding stone, an awl,
24 a chisel, a carbide scribe, an aerosol paint container, *a container*
25 *of etching acid*, a felt tip marker, or any other marking substance
26 with the intent to commit vandalism or graffiti, is guilty of a
27 misdemeanor.

28 (b) As a condition of probation for any violation of this section,
29 the court may order the defendant to perform community service
30 not to exceed 90 hours during a time other than his or her hours of
31 school attendance or employment.

32 (c) For the purposes of this section:

- 33 (1) "Felt tip marker" means any broad-tipped marker pen with
34 a tip exceeding three-eighths of one inch in width, or any similar
35 implement containing an ink that is not water soluble.
- 36 (2) "Marking substance" means any substance or implement,
37 other than aerosol paint containers and felt tip markers, that could
38 be used to draw, spray, paint, etch, or mark.

39 SEC. 3. No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because



1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

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