

AMENDED IN ASSEMBLY AUGUST 26, 1996

AMENDED IN SENATE APRIL 17, 1996

SENATE BILL

No. 1849

Introduced by Senator Kelley

(Principal coauthor: Assembly Member Alpert)

(Coauthors: Assembly Members Boland and Rainey)

February 22, 1996

An act to amend Section 308 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 1849, as amended, Kelley. Crimes: tobacco products: minors: penalty.

Under existing law, every person under the age of 18 years who purchases or receives any tobacco product or any paraphernalia that is designed for use with tobacco products or any controlled substance shall be punished upon conviction by a fine of \$50 or 25 hours of community service work.

This bill instead would provide that every person under the age of 18 years who purchases, ~~attempts to purchase,~~ receives, or possesses any tobacco product or any such paraphernalia shall be punished upon conviction by a fine of \$75 or 30 hours of community service work. By expanding the scope of, and increasing the penalty for, a crime, the bill would impose a state-mandated local program.

This bill would incorporate some of the changes in Section 308 of the Penal Code proposed by AB 2188, to be operative only if AB 2188 and this bill are both enacted and become

effective on or before January 1, 1997, and this bill is enacted last.

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 308 of the Penal Code is
2 amended to read:
3 308. (a) Every person, firm or corporation which
4 knowingly sells, gives, or in any way furnishes to another
5 person who is under the age of 18 years any tobacco,
6 cigarette, or cigarette papers, or any other preparation of
7 tobacco, or any other instrument or paraphernalia that is
8 designed for the smoking or ingestion of tobacco,
9 products prepared from tobacco, or any controlled
10 substance, is subject to either a criminal action for a
11 misdemeanor or to a civil action brought by a city
12 attorney, a county counsel, or a district attorney,
13 punishable by a fine of two hundred dollars (\$200) for the
14 first offense, five hundred dollars (\$500) for the second
15 offense, and one thousand dollars (\$1,000) for the third
16 offense.
17 Notwithstanding Section 1464 or any other provision of
18 law, 25 percent of each civil and criminal penalty
19 collected pursuant to this subdivision shall be paid to the
20 office of the city attorney, county counsel, or district
21 attorney, whoever is responsible for bringing the
22 successful action, and 25 percent of each civil and
23 criminal penalty collected pursuant to this subdivision
24 shall be paid to the city or county for the administration
25 and cost of the community service work component
26 provided in subdivision (b).



1 Proof that a defendant, or his or her employee or agent,
2 demanded, was shown, and reasonably relied upon
3 evidence of majority shall be defense to any action
4 brought pursuant to this subdivision. Evidence of
5 majority of a person is a facsimile of or a reasonable
6 likeness of a document issued by a federal, state, county,
7 or municipal government, or subdivision or agency
8 thereof, including, but not limited to, a motor vehicle
9 operator's license, a registration certificate issued under
10 the Federal Selective Service Act, or an identification
11 card issued to a member of the armed forces.

12 For purposes of this section, the person liable for selling
13 or furnishing tobacco products to minors by a tobacco
14 vending machine shall be the person authorizing the
15 installation or placement of the tobacco vending machine
16 upon premises he or she manages or otherwise controls
17 and under circumstances in which he or she has
18 knowledge, or should otherwise have grounds for
19 knowledge, that the tobacco vending machine will be
20 utilized by minors.

21 (b) Every person under the age of 18 years who
22 purchases, ~~attempts to purchase,~~ receives, or possesses
23 any tobacco, cigarette, or cigarette papers, or any other
24 preparation of tobacco, or any other instrument or
25 paraphernalia that is designed for the smoking of tobacco,
26 products prepared from tobacco, or any controlled
27 substance shall, upon conviction, be punished by a fine of
28 seventy-five dollars (\$75) or 30 hours of community
29 service work.

30 (c) Every person, firm or corporation which sells, or
31 deals in tobacco or any preparation thereof, shall post
32 conspicuously and keep so posted in his, her, or their place
33 of business a copy of this act, and any such person failing
34 to do so shall upon conviction be punished by a fine of ten
35 dollars (\$10) for the first offense and fifty dollars (\$50) for
36 each succeeding violation of this provision, or by
37 imprisonment for not more than 30 days.

38 The Secretary of State is hereby authorized to have
39 printed sufficient copies of this act to enable him or her



1 to furnish dealers in tobacco with copies thereof upon
2 their request for the same.

3 (d) For purposes of determining the liability of
4 persons, firms, or corporations controlling franchises or
5 business operations in multiple locations for the second
6 and subsequent violations of this section, each individual
7 franchise or business location shall be deemed a separate
8 entity.

9 (e) It is the Legislature's intent to regulate the subject
10 matter of this section. As a result, no city, county, or city
11 and county shall adopt any ordinance or regulation
12 inconsistent with this section.

13 (f) Notwithstanding any other provision of this
14 section, the Director of Corrections may sell or supply
15 tobacco and tobacco products, including cigarettes and
16 cigarette papers, to any person confined in any institution
17 or facility under his, her, or its jurisdiction who has
18 attained the age of 16 years, if the parent or guardian of
19 the person consents thereto, and may permit smoking by
20 any such person in any such institution or facility. No
21 officer or employee of the Department of Corrections
22 shall be considered to have violated this section by any act
23 authorized by this subdivision.

24 *SEC. 1.5. Section 308 of the Penal Code is amended to*
25 *read:*

26 308. (a) ~~Every~~ (1) *Prior to January 1, 2000, any*
27 *person, firm, or corporation which that knowingly sells,*
28 *gives, or in any way furnishes to another person who is*
29 *under the age of 18 years any tobacco, cigarette, or*
30 *cigarette papers, or any other preparation of tobacco, or*
31 *any other instrument or paraphernalia that is designed*
32 *for the smoking or ingestion of tobacco, products*
33 *prepared from tobacco, or any controlled substance, is*
34 *guilty of an infraction, punishable by a fine of two*
35 *hundred fifty dollars (\$250), or shall be subject to either*
36 *a criminal action for a ~~misdemeanor~~ misdemeanor or to*
37 *a civil action brought by a city attorney, a county counsel,*
38 *or a district attorney, punishable by a fine of two hundred*
39 *dollars (\$200) for the first offense, five hundred dollars*
40 *(\$500) for the second offense, and one thousand dollars*



1 (\$1,000) for the third offense. *The infraction set forth in*
2 *this paragraph shall not apply to any employer of 30 or*
3 *more employees, or to the employees of that employer.*

4 (2) *On or after January 1, 2000, any person, firm, or*
5 *corporation that does an act prohibited by paragraph (1)*
6 *shall be subject to either a criminal action for a*
7 *misdemeanor or to a civil action brought by a city*
8 *attorney, county counsel, or district attorney, punishable*
9 *as prescribed in paragraph (1).*

10 (3) Notwithstanding Section 1464 or any other
11 provision of law, 25 percent of each civil and criminal
12 penalty collected pursuant to this subdivision shall be
13 paid to the office of the city attorney, county counsel, or
14 district attorney, whoever is responsible for bringing the
15 successful action, and 25 percent of each civil and
16 criminal penalty collected pursuant to this subdivision
17 shall be paid to the city or county for the administration
18 and cost of the community service work component
19 provided in subdivision (b). *The remaining 50 percent*
20 *of each civil and criminal penalty collected pursuant to*
21 *this subdivision shall be used to fund local tobacco*
22 *education programs.*

23 ~~Proof that a defendant, or his or her employee or agent,~~
24 ~~demanding, was shown, and reasonably relied upon~~
25 ~~evidence of majority shall be defense to any action~~
26 ~~brought pursuant to this subdivision. Evidence of~~
27 ~~majority of a person is a facsimile of or a reasonable~~
28 ~~likeness of a document issued by a federal, state, county,~~
29 ~~or municipal government, or subdivision or agency~~
30 ~~thereof, including, but not limited to, a motor vehicle~~
31 ~~operator's license, a registration certificate issued under~~
32 ~~the Federal Selective Service Act, or an identification~~
33 ~~card issued to a member of the armed forces.~~

34 For purposes of this section, the person liable for selling
35 or furnishing tobacco products to minors by a tobacco
36 vending machine ~~shall be~~ *is* the person authorizing the
37 installation or placement of the tobacco vending machine
38 upon premises he or she manages or otherwise controls
39 and under circumstances in which he or she has
40 knowledge, or should otherwise have grounds for



1 knowledge, that the tobacco vending machine will be
2 utilized by minors.

3 (b) Every person under the age of 18 years who
4 purchases ~~or~~ receives, *or possesses* any tobacco,
5 cigarette, or cigarette papers, or any other preparation of
6 tobacco, or any other instrument or paraphernalia that is
7 designed for the smoking of tobacco, products prepared
8 from tobacco, or any controlled substance shall, upon
9 conviction, be punished by a fine of *one hundred fifty*
10 ~~dollars (\$50) or 25 (\$150), and by either 30~~ hours of
11 *community service work, or a 90-day suspension of his or*
12 *her driver's license, or a 90-day delay in his or her*
13 *eligibility for a driver's license, or both. The 30 hours of*
14 *community service may include attendance or*
15 *participation in local tobacco education programs.*

16 ~~(e) Every person, firm or corporation which sells, or~~
17 ~~deals in tobacco or any preparation thereof, shall post~~
18 ~~conspicuously and keep so posted in his, her, or their place~~
19 ~~of business a copy of this act, and any such person failing~~
20 ~~to do so shall upon conviction be punished by a fine of ten~~
21 ~~dollars (\$10) for the first offense and fifty dollars (\$50) for~~
22 ~~each succeeding violation of this provision, or by~~
23 ~~imprisonment for not more than 30 days.~~

24 ~~The Secretary of State is hereby authorized to have~~
25 ~~printed sufficient copies of this act to enable him or her~~
26 ~~to furnish dealers in tobacco with copies thereof upon~~
27 ~~their request for the same.~~

28 ~~(d)~~

29 ~~*This subdivision shall not apply to subdivisions (c) and*~~
30 ~~*(d) of Section 22952 of the Business and Professions Code*~~
31 ~~*or to any other provision of law authorizing the use of*~~
32 ~~*persons under 18 years of age in sting inspections*~~
33 ~~*designed to pursue violations of subdivision (a).*~~

34 (c) For purposes of determining the liability of
35 persons, firms, or corporations controlling franchises or
36 business operations in multiple locations for the second
37 and subsequent violations of this section, each individual
38 franchise or business location shall be deemed a separate
39 entity.

40 ~~(e)~~



1 (d) It is the Legislature's intent to regulate the subject
2 matter of this section. As a result, no city, county, or city
3 and county shall adopt any ordinance or regulation
4 inconsistent with this section.

5 ~~(f) Notwithstanding any other provision of this~~
6 ~~section, the Director of Corrections may sell or supply~~
7 ~~tobacco and tobacco products, including cigarettes and~~
8 ~~cigarette papers, to any person confined in any institution~~
9 ~~or facility under his, her, or its jurisdiction who has~~
10 ~~attained the age of 16 years, if the parent or guardian of~~
11 ~~the person consents thereto, and may permit smoking by~~
12 ~~any such person in any such institution or facility. No~~
13 ~~officer or employee of the Department of Corrections~~
14 ~~shall be considered to have violated this section by any act~~
15 ~~authorized by this subdivision.~~

16 SEC. 2. *Section 1.5 of this bill incorporates some of the*
17 *amendments to Section 308 of the Penal Code proposed*
18 *by both this bill and AB 2188. It shall only become*
19 *operative if (1) both bills are enacted and become*
20 *effective on or before January 1, 1997, (2) each bill*
21 *amends Section 308 of the Penal Code, and (3) this bill is*
22 *enacted after AB 2188, in which case Section 1 of this bill*
23 *shall not become operative.*

24 SEC. 3. No reimbursement is required by this act
25 pursuant to Section 6 of Article XIII B of the California
26 Constitution because the only costs that may be incurred
27 by a local agency or school district will be incurred
28 because this act creates a new crime or infraction,
29 eliminates a crime or infraction, or changes the penalty
30 for a crime or infraction, within the meaning of Section
31 17556 of the Government Code, or changes the definition
32 of a crime within the meaning of Section 6 of Article
33 XIII B of the California Constitution.

34 Notwithstanding Section 17580 of the Government
35 Code, unless otherwise specified, the provisions of this act
36 shall become operative on the same date that the act
37 takes effect pursuant to the California Constitution.

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