

**Senate Bill No. 198**

CHAPTER 110

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

[Approved by Governor July 27, 1997. Filed with  
Secretary of State July 28, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

SB 198, Kelley. Tobacco: minors.

(1) Existing law provides that every person, firm, or corporation which sells or deals in tobacco or any preparation thereof shall post conspicuously and keep posted in his, her, or their place of business a copy of the provisions in the Penal Code prohibiting the selling of tobacco products to, and the purchasing of tobacco products by, minors. The failure to post the provisions subjects the violator to fines ranging from \$10 to \$50, and to imprisonment in a county jail for not more than 30 days.

This bill would instead require the posting of the notice required by the Stop Tobacco Access to Kids Enforcement Act set forth in the Business and Professions Code, which must state, among other things, that selling tobacco products to anyone under 18 years of age is illegal and subject to penalties. By revising an existing crime, this bill would impose a state-mandated local program.

(2) 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.

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

SECTION 1. Section 308 of the Penal Code is amended to read:

308. (a) Every person, firm, or corporation which knowingly sells, gives, or in any way furnishes to another person who is under the age of 18 years any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or any controlled substance, is subject to either a criminal action for a misdemeanor or to a civil action brought by a city attorney, a county counsel, or a district attorney, punishable by a fine of two hundred dollars (\$200) for the first offense, five hundred dollars (\$500) for the second offense, and one thousand dollars (\$1,000) for the third offense.



Notwithstanding Section 1464 or any other provision of law, 25 percent of each civil and criminal penalty collected pursuant to this subdivision shall be paid to the office of the city attorney, county counsel, or district attorney, whoever is responsible for bringing the successful action, and 25 percent of each civil and criminal penalty collected pursuant to this subdivision shall be paid to the city or county for the administration and cost of the community service work component provided in subdivision (b).

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

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

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

(c) Every person, firm, or corporation which sells, or deals in tobacco or any preparation thereof, shall post conspicuously and keep so posted in his, her, or their place of business at each point of purchase the notice required pursuant to subdivision (b) of Section 22952 of the Business and Professions Code, and any person failing to do so shall upon conviction be punished by a fine of ten dollars (\$10) for the first offense and fifty dollars (\$50) for each succeeding violation of this provision, or by imprisonment for not more than 30 days.

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



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

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

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

