

AMENDED IN ASSEMBLY MAY 1, 2001  
AMENDED IN ASSEMBLY APRIL 4, 2001  
AMENDED IN ASSEMBLY MARCH 27, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 188**

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**Introduced by Assembly Member Vargas  
(Principal coauthor: Assembly Member Koretz)  
(Coauthors: Assembly Members Chan and Washington)**

February 7, 2001

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An act to add Section 104495 to the Health and Safety Code, relating to tobacco products.

LEGISLATIVE COUNSEL'S DIGEST

AB 188, as amended, Vargas. Playgrounds: smoking.

Existing law provides for the establishment of programs relating to tobacco use prevention.

This bill would prohibit the smoking of any cigarette, cigar, or other tobacco-related product within ~~50 feet of any~~ *a* playground or tot lot sandbox area.

This bill would prohibit any person from disposing of any cigarette, cigarette butts, cigar butts, ~~and~~ *or* any other tobacco-related waste within ~~50 feet of the~~ *a* playground or tot lot sandbox area.

This bill would define playground and tot lot sandbox area.

This bill would also prohibit any person from intimidating, threatening any reprisal, or effecting any reprisal, for the purpose of retaliating against another person who seeks to attain compliance with the provisions of this section.

This bill would specify that it does not apply to private property.

This bill would make a violation of these provisions an infraction. This bill, by creating a new infraction, would result in 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. The Legislature finds and declares all of the  
2 following:

3 (a) Secondhand smoke also known as environmental tobacco  
4 smoke is responsible for approximately 3,000 lung cancer deaths  
5 each year in nonsmoking adults and impairs the respiratory health  
6 of hundreds of thousands of children.

7 (b) Secondhand smoke exposure increases the risk of lower  
8 respiratory tract infections, including bronchitis and pneumonia,  
9 which occur in infants and young children up to 18 months of age.

10 (c) Secondhand smoke increases the prevalence of fluid in the  
11 middle ear, a sign of middle ear disease.

12 (d) Secondhand smoke increases the frequency of episodes and  
13 severity of symptoms of asthmatic children.

14 SEC. 2. Section 104495 is added to the Health and Safety  
15 Code, to read:

16 104495. (a) For the purposes of this section the following  
17 definitions shall govern:

18 (1) "Playground" means any park or recreational area  
19 specifically designed to be used by children that has play  
20 equipment installed, or any similar facility located on public or  
21 private school grounds, or on city, county, or state park grounds.

22 (2) "Tot lot sandbox area" means a designated play area within  
23 a public park for the use by children under five years of age. ~~Where~~  
24 ~~such areas are not contained by a fence, the boundary of a tot lot~~  
25 ~~sandbox area shall be considered 50 feet from the perimeter of the~~



1 ~~tot lot sandbox area, as defined by the edge of the resilient surface~~  
2 ~~of safety material such as concrete or wood, or any other material~~  
3 ~~surrounding the tot lot sandbox area.~~

4 (3) “Public park” includes a park operated by a public agency.

5 (4) “Smoke or ~~Smoking~~” *smoking*” means the carrying of a  
6 lighted pipe, lighted cigar, or lighted cigarette of any kind, or the  
7 lighting of a pipe, cigar, or cigarette of any kind, including, but not  
8 limited to, tobacco, or any other weed or plant.

9 (5) “Cigarette” means the same as defined in Section 104556.

10 (6) “Cigar” means the same as defined in Section 104550.

11 (b) No person shall smoke a cigarette, cigar, or other  
12 tobacco-related product within ~~50 feet of~~ the boundaries of any  
13 playground, or tot lot sandbox area.

14 (c) No person shall dispose of cigarette butts, cigar butts, ~~and~~  
15 ~~or any other tobacco-related waste within 50 feet of the a~~  
16 playground, or ~~the a~~ tot lot sandbox area.

17 (d) No person shall intimidate, threaten any reprisal, or effect  
18 any reprisal, for the purpose of retaliating against another person  
19 who seeks to attain compliance with this section.

20 (e) Any person who violates this section is guilty of an  
21 infraction and shall be punished by a fine of one hundred dollars  
22 (\$100) for each violation of this section.

23 (f) The prohibitions contained in subdivisions (b), (c), and (d)  
24 shall not apply to private property.

25 (g) This section shall not preempt the authority of any county,  
26 city, or city and county to regulate smoking around playgrounds  
27 or tot lot sandbox areas. Any county, city, or city and county may  
28 enforce any ordinance adopted prior to January 1, 2002, or may  
29 adopt and enforce new regulations that are more restrictive than  
30 this section, on and after ~~the~~ January 1, 2002.

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



- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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