

AMENDED IN ASSEMBLY JUNE 15, 2016

AMENDED IN SENATE APRIL 19, 2016

AMENDED IN SENATE APRIL 4, 2016

**SENATE BILL**

**No. 977**

---

---

**Introduced by Senator Pan**  
(Coauthor: Assembly Member Cooper)

February 10, 2016

---

---

An act to amend Section 104495 of the Health and Safety Code, relating to tobacco.

LEGISLATIVE COUNSEL'S DIGEST

SB 977, as amended, Pan. Tobacco: youth sports events.

Existing law prohibits the smoking of a cigarette, cigar, or other ~~tobacco-related~~ *tobacco* product, and the disposal of tobacco-related waste, within 25 feet of any playground or tot lot sandbox area, as defined. Existing law prohibits a person from intimidating or retaliating against another person seeking compliance with these prohibitions. *These prohibitions do not apply to the use of tobacco on private property.* A violation of these prohibitions is an infraction, punishable by a fine of \$250 for each violation. Existing law expressly does not preempt the authority of any county, city, or city and county to regulate smoking around playgrounds or tot lot sandbox areas.

This bill would prohibit ~~the use of~~ *a person located in the same park or facility where a youth sports event is taking place from using* a tobacco product, as defined, within 250 feet of ~~a~~ *the* youth sports event, as defined, and make a violation an infraction punishable by a fine of \$250 for each violation. *The bill would make the use of tobacco on private property subject to those prohibitions.* The bill would state that

its provisions do not preempt the authority of any county, city, or city and county to regulate the use of tobacco products around a youth sports event. By establishing 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 104495 of the Health and Safety Code,  
 2 as amended by Section 15 of Chapter 7 of the Second  
 3 Extraordinary Session of the Statutes of 2016, is amended to read:  
 4     104495. (a) For the purposes of this section, the following  
 5 definitions shall govern:  
 6     (1) “Playground” means any park or recreational area  
 7 specifically designed to be used by children that has play equipment  
 8 installed, or any similar facility located on public or private school  
 9 grounds, or on city, county, or state park grounds.  
 10     (2) “Tot lot sandbox area” means a designated play area within  
 11 a public park for the use by children under five years of age. Where  
 12 the area is not contained by a fence, the boundary of a tot lot  
 13 sandbox area shall be defined by the edge of the resilient surface  
 14 of safety material, such as concrete or wood, or any other material  
 15 surrounding the tot lot sandbox area.  
 16     (3) “Public park” includes a park operated by a public agency.  
 17     ~~(4) “Smoke” and “smoking” have the same meaning as in~~  
 18 ~~subdivision (c) of Section 22950.5 of the Business and Professions~~  
 19 ~~Code.~~  
 20     (4) “Youth sports event” means any practice, game, or related  
 21 activity organized by any entity at which athletes up to 18 years  
 22 of age are present.  
 23     (5) “Smoke or smoking” means inhaling, exhaling, burning, or  
 24 carrying any lighted or heated cigar, cigarette, or pipe, or any  
 25 other lighted or heated tobacco or plant product intended for  
 26 inhalation, whether natural or synthetic, in any manner or in any

1 form. “Smoking” includes the use of an electronic smoking device  
2 that creates an aerosol or vapor, in any manner or in any form,  
3 or the use of any oral smoking device for the purpose of  
4 circumventing the prohibition of smoking.

5 ~~(5)~~

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

7 ~~(6)~~

8 (7) “Cigar” means the same as defined in Section 104550.

9 ~~(7) “Tobacco product” means a product or device as defined in~~  
10 ~~subdivision (d) of Section 22950.5 of the Business and Professions~~  
11 ~~Code.~~

12 (8) (A) “Tobacco product” means any of the following:

13 (i) A product containing, made, or derived from tobacco or  
14 nicotine that is intended for human consumption, whether smoked,  
15 heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or  
16 ingested by any other means, including, but not limited to,  
17 cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or  
18 snuff.

19 (ii) An electronic device that delivers nicotine or other vaporized  
20 liquids to the person inhaling from the device, including, but not  
21 limited to, an electronic cigarette, cigar, pipe, or hookah.

22 (iii) Any component, part, or accessory of a tobacco product,  
23 whether or not sold separately.

24 (B) Notwithstanding subparagraph (A), “tobacco product” does  
25 not include a nicotine replacement product approved by the United  
26 States Food and Drug Administration.

27 (b) ~~No~~A person shall *not* smoke a cigarette, cigar, or other  
28 tobacco product within 25 feet of any playground or tot lot sandbox  
29 area.

30 (c) ~~No~~A person shall *not* dispose of cigarette butts, cigar butts,  
31 or any other tobacco-related waste within 25 feet of a playground  
32 or a tot lot sandbox area.

33 (d) A person located in the same park or facility where a youth  
34 sports event is taking place shall *not* use a tobacco product within  
35 250 feet of the youth sports event.

36 ~~(d)~~ ~~No~~

37 (e) A person shall *not* intimidate, threaten any reprisal, or effect  
38 any reprisal, for the purpose of retaliating against another person  
39 who seeks to attain compliance with this section.

40 ~~(e)~~

1 (f) Any person who violates this section is guilty of an infraction  
 2 and shall be punished by a fine of two hundred fifty dollars (\$250)  
 3 for each violation of this section. Punishment under this section  
 4 shall not preclude punishment pursuant to Section 13002, Section  
 5 374.4 of the Penal Code, or any other provision of law proscribing  
 6 the act of littering.

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

9 (g) The prohibitions contained in subdivisions (b) and (c) shall  
 10 not apply to a public sidewalk located within 25 feet of a  
 11 playground or a tot lot sandbox area.

12 (h) This section shall not preempt the authority of any county,  
 13 city, or city and county to regulate smoking around playgrounds  
 14 or tot lot sandbox areas. Any county, city, or city and county may  
 15 enforce any ordinance adopted prior to January 1, 2002, or may  
 16 adopt and enforce new regulations that are more restrictive than  
 17 this section, on and after January 1, 2002.

18 (i) *This section shall not preempt the authority of any county,*  
 19 *city, or city and county to regulate the use of a tobacco product*  
 20 *around a youth sports event. Any county, city, or city and county*  
 21 *may enforce any ordinance adopted before January 1, 2017, or*  
 22 *may adopt and enforce a new regulation that is more restrictive*  
 23 *than this section, on and after January 1, 2017.*

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

33 ~~SECTION 1. Section 104495 of the Health and Safety Code~~  
 34 ~~is amended to read:~~

35 ~~104495. (a) For the purposes of this section, the following~~  
 36 ~~definitions shall govern:~~

37 (1) ~~“Playground” means any park or recreational area~~  
 38 ~~specifically designed to be used by children that has play equipment~~  
 39 ~~installed, or any similar facility located on public or private school~~  
 40 ~~grounds, or on city, county, or state park grounds.~~

- 1     ~~(2) “Tot lot sandbox area” means a designated play area within~~  
2 ~~a public park for the use by children under five years of age. Where~~  
3 ~~the area is not contained by a fence, the boundary of a tot lot~~  
4 ~~sandbox area shall be defined by the edge of the resilient surface~~  
5 ~~of safety material, such as concrete or wood, or any other material~~  
6 ~~surrounding the tot lot sandbox area.~~
- 7     ~~(3) “Public park” includes a park operated by a public agency.~~
- 8     ~~(4) “Youth sports event” means any practice, game, or related~~  
9 ~~activity organized by any entity at which athletes up to 18 years~~  
10 ~~of age are present.~~
- 11     ~~(5) “Smoke or smoking” means inhaling, exhaling, burning, or~~  
12 ~~carrying any lighted or heated cigar, cigarette, or pipe, or any other~~  
13 ~~lighted or heated tobacco or plant product intended for inhalation,~~  
14 ~~whether natural or synthetic, in any manner or in any form.~~  
15 ~~“Smoking” includes the use of an electronic smoking device that~~  
16 ~~creates an aerosol or vapor, in any manner or in any form, or the~~  
17 ~~use of any oral smoking device for the purpose of circumventing~~  
18 ~~the prohibition of smoking.~~
- 19     ~~(6) “Cigarette” means the same as defined in Section 104556.~~
- 20     ~~(7) “Cigar” means the same as defined in Section 104550.~~
- 21     ~~(8) “Tobacco product” means any of the following:~~  
22     ~~(A) A product containing, made, or derived from tobacco or~~  
23 ~~nicotine that is intended for human consumption, whether smoked,~~  
24 ~~heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or~~  
25 ~~ingested by any other means, including, but not limited to,~~  
26 ~~cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or~~  
27 ~~snuff.~~  
28     ~~(B) An electronic device that delivers nicotine or other vaporized~~  
29 ~~liquids to the person inhaling from the device, including, but not~~  
30 ~~limited to, an electronic cigarette, cigar, pipe, or hookah.~~  
31     ~~(C) Any component, part, or accessory of a tobacco product,~~  
32 ~~whether or not sold separately.~~  
33     ~~(b) A person shall not smoke a cigarette, cigar, or other~~  
34 ~~tobacco-related product within 25 feet of any playground or tot~~  
35 ~~lot sandbox area.~~  
36     ~~(c) A person shall not dispose of cigarette butts, cigar butts, or~~  
37 ~~any other tobacco-related waste within 25 feet of a playground or~~  
38 ~~a tot lot sandbox area.~~  
39     ~~(d) A person shall not use a tobacco product within 250 feet of~~  
40 ~~a youth sports event.~~

1 ~~(e) A person shall not intimidate, threaten any reprisal, or effect~~  
2 ~~any reprisal, for the purpose of retaliating against another person~~  
3 ~~who seeks to attain compliance with this section.~~

4 ~~(f) Any person who violates this section is guilty of an infraction~~  
5 ~~and shall be punished by a fine of two hundred fifty dollars (\$250)~~  
6 ~~for each violation of this section. Punishment under this section~~  
7 ~~shall not preclude punishment pursuant to Section 13002, Section~~  
8 ~~374.4 of the Penal Code, or any other law proscribing the act of~~  
9 ~~littering.~~

10 ~~(g) The prohibitions contained in subdivisions (b), (c), (d), and~~  
11 ~~(e) shall not apply to private property.~~

12 ~~(h) The prohibitions contained in subdivisions (b) and (c) shall~~  
13 ~~not apply to a public sidewalk located within 25 feet of a~~  
14 ~~playground or a tot lot sandbox area.~~

15 ~~(i) This section shall not preempt the authority of any county,~~  
16 ~~city, or city and county to regulate smoking around playgrounds~~  
17 ~~or tot lot sandbox areas. Any county, city, or city and county may~~  
18 ~~enforce any ordinance adopted prior to January 1, 2002, or may~~  
19 ~~adopt and enforce new regulations that are more restrictive than~~  
20 ~~this section, on and after January 1, 2002.~~

21 ~~(j) This section shall not preempt the authority of any county,~~  
22 ~~city, or city and county to regulate the use of tobacco products~~  
23 ~~around a youth sports event. Any county, city, or city and county~~  
24 ~~may enforce any ordinance adopted before January 1, 2017, or~~  
25 ~~may adopt and enforce a new regulation that is more restrictive~~  
26 ~~than this section, on and after January 1, 2017.~~

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