

AMENDED IN SENATE APRIL 15, 1997

AMENDED IN SENATE FEBRUARY 27, 1997

**SENATE BILL**

**No. 198**

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**Introduced by Senator Kelley  
(Principal coauthor: Senator Alpert)**

January 27, 1997

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

LEGISLATIVE COUNSEL'S DIGEST

SB 198, as amended, Kelley. Tobacco: minors: ~~attempt to purchase.~~

(1) ~~Existing law makes it a crime for any person under the age of 18 years to purchase, receive, or possess tobacco, cigarettes, or smoking paraphernalia.~~

~~This bill, in addition, would make it a crime for any person under the age of 18 years, except persons carrying out specified law enforcement activities, to attempt to purchase these items. By creating a new crime, this bill would impose a state-mandated local program.~~

(2) ~~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 ~~repeal these provisions and~~ instead require the posting of ~~a the notice stating that selling tobacco products to anyone under 18 years of age is illegal and subject to penalties~~ *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.

(3)

(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.

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.



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

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

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

31 ~~(b) (1) Except as provided in paragraph (2), every~~  
32 *Every* person under the age of 18 years who purchases,  
33 ~~attempts to purchase,~~ receives, or possesses any tobacco,  
34 cigarette, or cigarette papers, or any other preparation of  
35 tobacco, or any other instrument or paraphernalia that is  
36 designed for the smoking of tobacco, products prepared  
37 from tobacco, or any controlled substance shall, upon  
38 conviction, be punished by a fine of seventy-five dollars  
39 (\$75) or 30 hours of community service work.



1 ~~(2) Notwithstanding paragraph (1), any person under~~  
2 ~~18 years of age who is carrying out law enforcement~~  
3 ~~activities pursuant to Section 22952 of the Business and~~  
4 ~~Professions Code is immune from prosecution for any~~  
5 ~~violation of this subdivision.~~

6 (c) Every person, firm, or corporation which sells, or  
7 deals in tobacco or any preparation thereof, shall post  
8 conspicuously and keep so posted in his, her, or their place  
9 of business a notice stating that selling tobacco products  
10 to anyone under 18 years of age is illegal and subject to  
11 penalties. *of business at each point of purchase the notice*  
12 *required pursuant to subdivision (b) of Section 22952 of*  
13 *the Business and Professions Code, and any person failing*  
14 *to do so shall upon conviction be punished by a fine of ten*  
15 *dollars (\$10) for the first offense and fifty dollars (\$50) for*  
16 *each succeeding violation of this provision, or by*  
17 *imprisonment for not more than 30 days.*

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

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

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

39 SEC. 2. No reimbursement is required by this act  
40 pursuant to Section 6 of Article XIII B of the California



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

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

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