

**Senate Bill No. 1849**

## CHAPTER 1166

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

[Approved by Governor September 30, 1996. Filed

with Secretary of State September 30, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1849, 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, 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.

*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)

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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 a copy of this act, and any such 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.

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

(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,

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

308. (a) (1) Prior to January 1, 2000, any person, firm, or corporation that 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 guilty of an infraction, punishable by a fine of two hundred fifty dollars (\$250), or shall be 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. The infraction set forth in this paragraph shall not apply to any employer of 30 or more employees, or to the employees of that employer.

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

(3) 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). The remaining 50 percent of each civil and criminal penalty collected pursuant to this subdivision shall be used to fund local tobacco education programs. Proof that a defendant demanded, was shown, and reasonably relied upon evidence of majority shall be defense to any action

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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 is 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 one hundred fifty dollars (\$150), and by either 30 hours of community service work, or a 90-day suspension of his or her driver's license, or a 90-day delay in his or her eligibility for a driver's license, or both. The 30 hours of community service may include attendance or participation in local tobacco education programs.

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

(c) 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.

(d) 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.

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

SEC. 3. 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

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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.

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