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Smoking and Tobacco Products. Local Preemption. Statewide Regulation.

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**Smoking and Tobacco Products. Local Preemption.
Statewide Regulation. Initiative Statute.**

Official Title and Summary Prepared by the Attorney General

**SMOKING AND TOBACCO PRODUCTS. LOCAL PREEMPTION.
STATEWIDE REGULATION. INITIATIVE STATUTE.**

- Repeals and preempts local smoking and tobacco regulations. Repeals and replaces existing statewide smoking and tobacco regulations. Permits amendment of tobacco regulations by two-thirds vote of Legislature.
- Bans public smoking with significant exceptions. Permits smoking sections in restaurants and employee cafeterias with conditions. Bars not regulated. Permits smoking in private offices, and business conference rooms with occupants' consent. Exempts from smoking regulations gaming clubs, bingo establishments, racetracks, sports facility private boxes and smoking lounges.
- Regulates location of tobacco vending machines and billboards. Increases penalties for tobacco purchases by minors.

**Summary of Legislative Analyst's
Estimate of Net State and Local Government Fiscal Impact:**

- Likely, but unknown, annual increase in state and local government health care costs and state tobacco tax revenues.
 - State enforcement costs of less than \$1 million annually.
-

Analysis by the Legislative Analyst

Background

Both the state and local governments have the ability to regulate smoking in California. A new state law regulating smoking in workplaces was enacted in July 1994 and becomes effective January 1, 1995 (hereafter referred to as "current state law").

The following is a brief discussion of current state and local laws addressing the use and/or sale of tobacco products.

- **Workplaces.** Current state law bans smoking in enclosed workplaces. There are two general exceptions to this ban: (1) smoking is allowed in office break rooms (if ventilation standards are met and the air is exhausted directly to the outside) and (2) smoking is allowed at workplaces with less than six employees (if ventilation standards are met and the air is exhausted directly to the outside, all employees in the smoking area consent, and the area is not accessible to minors). Current state law exempts certain places from the workplace smoking ban. For instance, smoking is allowed in tobacco shops, portions of hotel lobbies, and bars. Figure 1 provides a complete list of exceptions.
- **Restaurants.** Current state law defines restaurants as workplaces. As such, smoking is banned (subject to the same general exceptions noted above).
- **Bars.** As shown in Figure 1, smoking would be allowed in bars for about two years.
- **Public Places.** Most public places are also workplaces and, therefore, are covered under the state workplace restrictions described above. Public places not covered under the state workplace provision include: (1) unenclosed workplaces and (2) those places listed in Figure 1. In addition, there are public places which are not workplaces (such as public plazas and sidewalks). There are a variety of local laws that restrict smoking in these public places. For example, the City and County of San Francisco prohibits smoking in Candlestick Park sports stadium and Stanislaus County prohibits smoking in hotels and motels (without exception).
- **Vending Machines.** Some local laws restrict or prohibit the sale of tobacco products from vending machines. Prior to 1991, 49 cities had passed laws that either ban or place restrictions on the sale of tobacco products from vending machines. Since then, 43 cities have passed laws banning such vending machines, and 53 cities have passed laws placing some restriction on the use and accessibility of such vending machines.
- **Signs and Billboards.** Current state law requires the posting of signs indicating smoking and nonsmoking areas for all workplaces. We are not aware of any restrictions on billboard advertising for tobacco products.

- **Enforcement.** Local governments enforce smoking restrictions in the workplace and other areas, using city inspectors, county health departments, and/or law enforcement officers. The State Department of Industrial Relations is required to investigate a complaint only if the employer is found guilty of violating the state workplace restrictions three times within the previous year.

Figure 1

Current State Law Exceptions to Workplace Smoking Ban^a

- 65 percent of hotel and motel guest rooms, hotel and motel meeting rooms—unless employees are working, and up to 25 percent of the area of hotel and motel lobbies (50 percent if lobby is under 2000 square feet).
- Tobacco shops and private smokers' lounges.
- Cabs of trucks, if no nonsmoking employees are present.
- Warehouses with more than 100,000 square feet of floor space and 20 or fewer full-time employees.
- Gaming clubs, bars and taverns, only until January 1, 1997, contingent on the adoption of indoor air standards.
- Theatrical production sites, if smoking is an integral part of the production.
- Medical research or treatment sites, if smoking is part of the research and treatment.
- Patient smoking areas in long-term health care facilities.
- Private residences, except when used as a licensed family day care home.

^a Local governments may, if they choose, impose smoking restrictions in these areas. Many local governments already have done so.

Proposal

This measure—which would take effect July 1, 1995—establishes statewide regulations governing the sale, use, and possession of tobacco products. These regulations would take the place of existing local and state smoking and tobacco-related laws, and local governments would be prevented from passing any laws—either more or less restrictive—in these areas.

The statewide smoking regulations under this measure generally are less restrictive than current laws. Specifically, the measure establishes the following regulations:

- **Workplaces.** Under the measure, smoking would be allowed in workplaces only in the following areas: (1) in a private office or, with the consent of all persons present, in a conference room, (2) in an employee cafeteria where smoking is confined to a single area not exceeding 25 percent of the available seating capacity, (3) in designated smoking lounges, (4) in company cars only with the consent of all those present. In the first three cases above, smoking would be allowed only if certain ventilation requirements (less restrictive than current state law) were met and maintained. Employers, however, could still choose to operate smokefree workplaces.
- **Restaurants.** The measure would allow smoking in designated areas of up to 25 percent of the seating capacity in a restaurant, if certain ventilation requirements (less restrictive than current state law) were met and maintained. If smoking is allowed, signs must be posted at public entrances stating that smoking and nonsmoking sections are available. In addition, smoking would be allowed in restaurant rooms used for private functions. Restaurant owners, however, could still choose to operate smokefree restaurants.
- **Bars.** The measure would allow smoking in bars. Owners, however, could still choose to operate smokefree bars.
- **Public Places.** The measure prohibits smoking in public places, except in (1) hotel and motel rooms (unless rooms are designated nonsmoking by management), (2) hotel and motel conference or meeting rooms when used for private functions, (3) up to 25 percent of the concourse area of a bowling alley or in the lobby area of any hotel or motel, (4) businesses that specialize in the manufacture or sale of tobacco products, and (5) gaming clubs, bingo parlors, racetracks, and private boxes and separate smoking lounges in indoor and outdoor sports arenas. Owners or operators of these public places, however, could still choose to operate smokefree establishments.
- **Signs and Billboards.** The measure requires the posting of signs to indicate areas designated as smoking or nonsmoking in restaurants, the workplace, or public places. In addition, anyone selling tobacco products would be required to post signs stating that minors are prohibited from buying such products. The measure also would prohibit billboard advertisements of tobacco products within 500 feet of a public or private elementary, junior high, or high school.
- **Vending Machines.** Under the measure, sale of tobacco products from vending machines would be regulated. Such vending machines would not be allowed unless equipped with an electronic switch that would be activated by a retailer prior to each purchase. The electronic switch, however, would not be required on vending machines located in areas

not open to the general public (such as in a factory, business, or office) or in public premises where minors are prohibited from entering.

- **Enforcement.** Under the measure, enforcement of smoking violations in the workplace would be the responsibility of the state's job safety and health enforcement agency—the Department of Industrial Relations. Local agencies would enforce all other portions of the measure. The measure requires local law enforcement to conduct annual unannounced inspections at randomly selected locations where tobacco products are sold or distributed. The measure establishes new state fines and increases existing state fines for sale of tobacco products to minors. In addition, the measure requires the state Department of Justice to prepare a report for submittal to the federal government regarding the state's efforts at reducing minors' access to tobacco products.

The measure could be amended with a two-thirds vote by the Legislature and approval by the Governor. By comparison, current state law can be amended with a majority vote by the Legislature and approval by the Governor.

Fiscal Effect

This measure would have various fiscal impacts on state and local governments. In general, these effects would result from impacts on (1) the level of smoking in the state and (2) enforcement costs.

Impacts from Changes in Smoking

This measure would result in a less restrictive smoking environment than would be the case under current state law. These changes likely would lead to a higher level of smoking in the state. This, in turn, would affect governmental health care costs and tobacco tax revenues.

Health Care Costs. Smoking, secondhand smoke, and the use of other tobacco products have been linked to various ill health effects by the United States Surgeon General and numerous scientific studies. The state and local governments incur costs for a portion of the health care of many low-income and elderly persons, and provide health insurance coverage for their employees. Consequently, any changes in state law that affect the health of the general populace—and low-income, elderly, and public employees in particular—would affect publicly funded health care costs. The measure would affect those health care costs due to likely increases in the consumption of tobacco products and/or secondhand smoke exposure. We cannot estimate the magnitude of these costs.

Tobacco Tax. The state currently taxes cigarettes and other tobacco products. The tax raised about \$665 million in 1993–94. Tobacco tax revenues are currently dedicated to (1) the Cigarette and Tobacco Products Surtax Fund (68 percent), (2) the state General Fund (27 percent), and (3) the Breast Cancer Fund (5 percent). Under this measure, the use of tobacco products would likely be higher than under current law. As a result, tobacco tax revenues would also increase by an unknown amount.

Enforcement Costs

State Costs. The Department of Industrial Relations, the state agency responsible for enforcing workplace safety violations, would incur additional costs to respond to complaints about smoking violations. We estimate that the added workload would increase state costs by less than \$1 million annually.

Local Costs. Local agencies would be responsible for

enforcing all portions of the measure except workplace smoking regulations. The measure requires local law enforcement to conduct annual, unannounced, random inspections of places where tobacco products are sold or distributed. These costs probably would not be significant. Costs would be offset in part by fine revenue collected by local governments from people or businesses found guilty of violating the provisions of the measure.

For text of Proposition 188 see page 92

Smoking and Tobacco Products. Local Preemption. Statewide Regulation. Initiative Statute.

Argument in Favor of Proposition 188

VOTE YES ON PROPOSITION 188

IT HELPS PROTECT NONSMOKERS BY REGULATING SMOKING IN PUBLIC AND IT HELPS KEEP TOBACCO AWAY FROM MINORS

One of the most effective ways to reduce smoking in the future is to stop minors from starting to smoke today. Proposition 188 will impose strict laws that will discourage minors from smoking by:

- Outlawing tobacco advertising within 500 feet of any elementary, junior high or high school.
- Doubling the current fines for selling tobacco to minors, up to \$2,000 for a third offense.
- Banning cigarette vending machines in unsupervised public places where minors are allowed.
- Making illegal purchase of tobacco by a minor punishable by a \$500 fine or 100 hours of community service.

PROPOSITION 188 IS TOUGH AND RESTRICTIVE

Proposition 188 completely bans smoking in restaurants, workplaces and other public places except in designated separate areas that meet tough, new ventilation standards.

Proposition 188 will impose tougher restrictions on the sale and use of tobacco products than currently faced by a majority of Californians.

TOUGH RESTAURANT SMOKING LAW

Proposition 188 will require restaurants to keep a minimum of 75% of their seats in separate, well-ventilated, nonsmoking sections.

TOUGH WORKPLACE SMOKING LAW

Proposition 188 protects nonsmokers from being subjected to secondhand smoke by prohibiting smoking in all workplaces except individual private offices, conference rooms with the consent of all occupants, or completely separate smoking areas if tough ventilation standards are met.

TOUGH ANNUAL REVIEW

Proposition 188 mandates annual certification of ventilation systems to insure that nonsmokers are protected from being subjected to secondhand smoke.

PROPOSITION 188 IMPOSES TOUGH, UNIFORM STATEWIDE RESTRICTIONS

Currently, California has a mismatched patchwork of local smoking ordinances that is confusing to the public and unfair to businesses. Proposition 188 will solve that problem by:

- Replacing the confusing patchwork quilt of numerous, differing local smoking ordinances with a single, tough uniform statewide law, just as alcohol is regulated at the statewide level.
- Guaranteeing nonsmokers the same protection and ability to avoid secondhand smoke everywhere in the state.
- Providing clear-cut rules so smokers and nonsmokers know where smoking is allowed.

PROPOSITION 188 PROVIDES FOR FREEDOM OF CHOICE

Proposition 188 allows any restaurant, any bar, any workplace, or any public place to become 100% nonsmoking if the individual business owner wishes to do so.

Proposition 188 allows individual business and restaurant owners who are willing to meet tough new ventilation standards the option of permitting smoking in small separate sections.

Government needs to be very careful about going too far when regulating issues that involve an individual's choice of personal or private activities.

Proposition 188 balances the interests of employers and employees and their nonsmoking and smoking patrons. It is a real alternative, a fair balance, and the reasonable solution to a tough problem.

VOTE YES ON PROPOSITION 188 THE REASONABLE AND FAIR SOLUTION

JEANETTE ROACHE

Member, San Diego Tavern and Restaurant Association

ROBERT M. JACOBS

Executive Director, San Francisco Hotel Association

JESSE NAVARRO

President, International Hispanic Chamber of Commerce

Rebuttal to the Argument in Favor of Proposition 188

DON'T BE FOOLED BY THE TOBACCO INDUSTRY! VOTE NO! on 188

PROPOSITION 188 IS A TRICK. IT ACTUALLY PROMOTES SMOKING. The Philip Morris tobacco company put 188 on the ballot to overturn our strong new state law that eliminates smoking in most workplaces.

If 188 passes, an estimated half million more Californians will begin to smoke.

MORE CHILDREN WILL SMOKE

The tobacco industry claim that 188 protects children is outrageous. 188 will not prevent children from smoking. More adult smokers means more kids breathing deadly secondhand smoke and smoking themselves.

Vote NO on 188 to protect our children!

PROPOSITION 188 WILL HURT TAXPAYERS AND CONSUMERS

More smoking means higher health care costs and consumer prices WHICH WE HAVE TO PAY—a billion dollars annually, according to a University of California study.

SMOKE FREE ENVIRONMENTS WILL DISAPPEAR

188 does not ban smoking in restaurants or workplaces. It doesn't even require separately ventilated smoking areas and permits smoking in offices, cafeterias and conference rooms.

The toxic chemicals in second hand smoke will increase cancer, heart and lung disease in nonsmokers. 188's ventilation requirements won't protect us.

PROTECT OUR RIGHTS

We should *not give up* our right to adopt smoking rules in our own communities. 188 would permanently repeal all local and state laws and impose the Philip Morris tobacco company scheme across the state.

HEALTH ORGANIZATIONS URGE "NO on 188!"

- American Cancer Society
- American Heart Association
- American Lung Association
- California Medical Association
- California Nurses Association

CARY A. PRESANT, M.D.

President, American Cancer Society, California Division

PAT DINGS DALE

President, California State Parent Teachers Association (PTA)

KURT LAUMANN, R.N.

President, California Nurses Association

Smoking and Tobacco Products. Local Preemption. Statewide Regulation. Initiative Statute.

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Argument Against Proposition 188

WARNING: PROPOSITION 188 IS HAZARDOUS TO YOUR HEALTH. Philip Morris, the world's largest tobacco company, is spending millions of dollars to pass Proposition 188 to protect tobacco industry profits. It should be called the "Tobacco Industry Protection Act!"

They claim Proposition 188 will limit smoking in public places. **DON'T BE FOOLED! PROPOSITION 188 IS A SMOKE SCREEN.**

CALIFORNIA ALREADY HAS A TOUGH STATEWIDE STANDARD LIMITING WORKPLACE SMOKING. Proposition 188 would repeal this statewide standard and eliminate the California Indoor Clean Air Act of 1976 and *all the current, local smoking restrictions passed by cities and counties in recent years.*

IF THE TOBACCO INDUSTRY SUCCEEDS, CALIFORNIA'S OFFICIAL POLICY WILL ENCOURAGE SMOKING IN PUBLIC PLACES. Smokers will find it harder to quit and tobacco companies will have an easier time addicting young people.

Less than one in five adult Californians smokes, so Philip Morris executives are hoping they can fool voters at the polls in November by misrepresenting it as a strong anti-smoking measure. **THIS IS THE SAME WAY THE TOBACCO INDUSTRY TRICKED PEOPLE INTO SIGNING PETITIONS TO PUT PROPOSITION 188 ON THE BALLOT.**

Secondhand smoke causes health problems in nonsmokers, including asthma, respiratory disease and cancer. According to one estimate an additional one to four million nonsmoking workers will be exposed to second hand smoke if Proposition 188 passes.

If Proposition 188 passes, nonsmokers will be forced to breathe secondhand smoke nearly everywhere. Smoking will be allowed in restaurants and employee cafeterias, private offices, conference rooms and many other indoor workplaces.

The biggest lie is the promise of clean air in enclosed smoking areas. The ventilation required by Proposition 188 will not

protect our health. The proposed standards require only the smell of tobacco smoke be removed from the air, not the cancer-causing chemicals.

Proposition 188 will not discourage children from buying tobacco. Children will still be targeted by the tobacco industry's slick advertisements and victimized by exposure to secondhand smoke.

Strong local laws discouraging tobacco sales to children and creating smoke-free environments would be eliminated by Proposition 188. These local controls have helped reduce smoking in California by 28%—three times the national average.

Effective local controls are causing huge financial losses for the cigarette companies. That's why the tobacco industry put Proposition 188 on the ballot, to prohibit any local government from regulating tobacco in the future.

Who do you trust? The tobacco industry . . . OR . . . the American Cancer Society, American Lung Association, American Heart Association, Americans for Nonsmokers' Rights, California Association of Hospitals and Health Systems, California Dental Association, California Medical Association, California Nurses Association, League of California Cities, California Common Cause and many other consumer, health care, senior citizen, minority and law enforcement organizations which urge you to vote NO on PROPOSITION 188.

C. EVERETT KOOP, M.D.
*Surgeon General, U.S. Public Health
Service 1981-1989*

NANCY HOUSTON MILLER, R.N., B.S.N.
*Chairman, American Heart Association,
California Affiliate*

SPENCER KOERNER, M.D.
Chairman, American Lung Association of California

Rebuttal to Argument Against Proposition 188

Opponents of Proposition 188 want to prohibit all smoking. And if they ran a business, they could make that choice under this initiative.

While the opponents are entitled to their opinion, that doesn't excuse their distorting the truth about 188's tough provisions.

UNDER 188, CALIFORNIA'S OFFICIAL POLICY WILL BE TO DISCOURAGE SMOKING IN PUBLIC PLACES.

PROPOSITION 188 IS TOUGHER THAN THE OLD CALIFORNIA CLEAN INDOOR AIR ACT OF 1976 AND HELPS PROTECT NONSMOKERS FROM BEING SUBJECTED TO SECONDHAND SMOKE.

- Smoking in restaurants and workplaces will be prohibited except in designated separate areas meeting tough new ventilation standards.
- Smoking in public places will be prohibited except in designated separate areas and such places as bars, bingo parlors, and gaming clubs where smokers congregate.

PROPOSITION 188 WILL CLEARLY DISCOURAGE MINORS FROM BUYING TOBACCO BY:

- Doubling fines for selling tobacco to minors up to \$2,000 for third offenses.

- Outlawing tobacco product billboard advertising within 500 feet of elementary, junior high, or high schools.
- Punishing the purchase of tobacco by a minor by a \$500 fine or 100 hours of community service.
- Banning cigarette vending machines from unsupervised public places where minors are allowed.

IT'S A MATTER OF CHOICE.

Opponents of 188 want more laws to prevent individual business owners from choosing to accommodate nonsmoking and smoking customers within strict guidelines.

Proposition 188 balances the interests of nonsmokers and smokers. It's a tough but reasonable alternative to prohibition.

VOTE YES ON PROPOSITION 188—THE RIGHT SOLUTION TO A TOUGH PROBLEM.

JEANETTE ROACHE
Member, San Diego Tavern and Restaurant Association

ROBERT M. JACOBS
Executive Director, San Francisco Hotel Association

JESSE NAVARRO
*President, International Hispanic Chamber
of Commerce*

immigration status, and that the person must either obtain legal status or leave the United States.

(3) The entity shall also notify the State Director of Social Services, the Attorney General of California, and the United States Immigration and Naturalization Service of the apparent illegal status, and shall provide any additional information that may be requested by any other public entity.

SECTION 6. Exclusion of Illegal Aliens from Publicly Funded Health Care. Chapter 1.3 (commencing with Section 130) is added to Part 1 of Division 1 of the Health and Safety Code, to read:

CHAPTER 1.3. PUBLICLY-FUNDED HEALTH CARE SERVICES

130. (a) In order to carry out the intention of the People of California that, excepting emergency medical care as required by federal law, only citizens of the United States and aliens lawfully admitted to the United States may receive the benefits of publicly-funded health care, and to ensure that all persons employed in the providing of those services shall diligently protect public funds from misuse, the provisions of this section are adopted.

(b) A person shall not receive any health care services from a publicly-funded health care facility, to which he or she is otherwise entitled until the legal status of that person has been verified as one of the following:

- (1) A citizen of the United States.
- (2) An alien lawfully admitted as a permanent resident.
- (3) An alien lawfully admitted for a temporary period of time.

(c) If any publicly-funded health care facility in this state from whom a person seeks health care services, other than emergency medical care as required by federal law, determines or reasonably suspects, based upon the information provided to it, that the person is an alien in the United States in violation of federal law, the following procedures shall be followed by the facility:

- (1) The facility shall not provide the person with services.
- (2) The facility shall, in writing, notify the person of his or her apparent illegal immigration status, and that the person must either obtain legal status or leave the United States.
- (3) The facility shall also notify the State Director of Health Services, the Attorney General of California, and the United States Immigration and Naturalization Service of the apparent illegal status, and shall provide any additional information that may be requested by any other public entity.

(d) For purposes of this section "publicly-funded health care facility" shall be defined as specified in Sections 1200 and 1250 of this code as of January 1, 1993.

SECTION 7. Exclusion of Illegal Aliens from Public Elementary and Secondary Schools.

Section 48215 is added to the Education Code, to read:

48215. (a) No public elementary or secondary school shall admit, or permit the attendance of, any child who is not a citizen of the United States, an alien lawfully admitted as a permanent resident, or a person who is otherwise authorized under federal law to be present in the United States.

(b) Commencing January 1, 1995, each school district shall verify the legal status of each child enrolling in the school district for the first time in order to ensure the enrollment or attendance only of citizens, aliens lawfully admitted as permanent residents, or persons who are otherwise authorized to be present in the United States.

(c) By January 1, 1996, each school district shall have verified the legal status of each child already enrolled and in attendance in the school district in order to ensure the enrollment or attendance only of citizens, aliens lawfully admitted as permanent residents, or persons who are otherwise authorized under federal law to be present in the United States.

(d) By January 1, 1996, each school district shall also have verified the legal status of each parent or guardian of each child referred to in subdivisions (b) and (c), to determine whether such parent or guardian is one of the following:

- (1) A citizen of the United States.
- (2) An alien lawfully admitted as a permanent resident.

(3) An alien admitted lawfully for a temporary period of time.

(e) Each school district shall provide information to the State Superintendent of Public Instruction, the Attorney General of California, and the United States Immigration and Naturalization Service regarding any enrollee or pupil, or parent or guardian, attending a public elementary or secondary school in the school district determined or reasonably suspected to be in violation of federal immigration laws within forty-five days after becoming aware of an apparent violation. The notice shall also be provided to the parent or legal guardian of the enrollee or pupil, and shall state that an existing pupil may not continue to attend the school after ninety calendar days from the date of the notice, unless legal status is established.

(f) For each child who cannot establish legal status in the United States, each school district shall continue to provide education for a period of ninety days from the date of the notice. Such ninety day period shall be utilized to accomplish an orderly transition to a school in the child's country of origin. Each school district shall fully cooperate in this transition effort to ensure that the educational needs of the child are best served for that period of time.

SECTION 8. Exclusion of Illegal Aliens from Public Postsecondary Educational Institutions.

Section 66010.8 is added to the Education Code, to read:

66010.8. (a) No public institution of postsecondary education shall admit, enroll, or permit the attendance of any person who is not a citizen of the United States, an alien lawfully admitted as a permanent resident in the United States, or a person who is otherwise authorized under federal law to be present in the United States.

(b) Commencing with the first term or semester that begins after January 1, 1995, and at the commencement of each term or semester thereafter, each public postsecondary educational institution shall verify the status of each person enrolled or in attendance at that institution in order to ensure the enrollment or attendance only of United States citizens, aliens lawfully admitted as permanent residents in the United States, and persons who are otherwise authorized under federal law to be present in the United States.

(c) No later than 45 days after the admissions officer of a public postsecondary educational institution becomes aware of the application, enrollment, or attendance of a person determined to be, or who is under reasonable suspicion of being, in the United States in violation of federal immigration laws, that officer shall provide that information to the State Superintendent of Public Instruction, the Attorney General of California, and the United States Immigration and Naturalization Service. The information shall also be provided to the applicant, enrollee, or person admitted.

SECTION 9. Attorney General Cooperation with the INS.

Section 53069.65 is added to the Government Code, to read:

53069.65. Whenever the state or a city, or a county, or any other legally authorized local governmental entity with jurisdictional boundaries reports the presence of a person who is suspected of being present in the United States in violation of federal immigration laws to the Attorney General of California, that report shall be transmitted to the United States Immigration and Naturalization Service. The Attorney General shall be responsible for maintaining on-going and accurate records of such reports, and shall provide any additional information that may be requested by any other government entity.

SECTION 10. Amendment and Severability.

The statutory provisions contained in this measure may not be amended by the Legislature except to further its purposes by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the voters.

In the event that any portion of this act or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect any other provision or application of the act, which can be given effect without the invalid provision or application, and to that end the provisions of this act are severable.

Proposition 188: Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure amends, repeals, and adds sections to various codes; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. The People of the State of California find and declare that:

(a) The current regulation of smoking in public in California is inadequate in that there are insufficient statewide standards for regulating smoking in restaurants, office buildings, and other public places.

(b) There is a wide variance in the local regulation of smoking. Some localities provide little or no protection to those who wish to avoid secondhand smoke in such places, while others overregulate to the extent that in at least one city a person may be fined for smoking on the sidewalk or in the street.

(c) There is a clear need for uniform statewide regulation of smoking in public to assure those interested in avoiding secondhand tobacco smoke have the same protections wherever they go in the state and that those who do smoke have fair notice of where smoking is prohibited.

(d) There must be stricter statewide controls to curb the illegal sale of tobacco products to minors, including the regulation of tobacco products vending machines. Further, the advertisement of tobacco products near schools must be restricted.

SEC. 2. To accomplish the goals set forth in Section 1, the People enact this measure to provide for the statewide regulation of smoking in restaurants, other

public places and the workplace, and for statewide restrictions on the marketing and distribution of tobacco products through the regulation of sales to minors, tobacco products vending machines, and billboard advertising near school grounds.

SEC. 3. This act shall be known and may be cited as the California Uniform Tobacco Control Act.

SEC. 4. Division 10 (commencing with Section 25800) is added to the Business and Professions Code, to read:

DIVISION 10. REGULATION OF SMOKING

CHAPTER 1. GENERAL PROVISIONS

25800. For purposes of this division, the following definitions shall apply:

(a) "ASHRAE Standard 62-1989" means the standard approved by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. in 1989 as ASHRAE Standard 62-1989, "Ventilation for Acceptable Indoor Air Quality" and approved by the American National Standards Institute in 1991. The standard is also designated "ANSI/ASHRAE 62-1989."

(b) "Bar" means an area that is devoted to the service of alcoholic beverages for consumption on the premises and in which the serving of food, if any, is incidental to the consumption of alcoholic beverages. When a bar is located within a building in conjunction with another use, including, but not limited to, a restaurant, only the area used primarily for the consumption of alcoholic beverages shall constitute a bar. The dining area shall not constitute a bar, even though alcoholic beverages may be served therein.

(c) "Private office" means a room within a building in which no more than one person works that is enclosed by floor to ceiling walls and an operable door.

(d) "Public place" means any enclosed indoor area open to the general public, including, but not limited to, a theater, educational facility, health facility, retail services establishment, retail food production and market establishment, gymnasium, health spa, library, museum, and gallery. "Public place" does not include a workplace, restaurant, or bar.

(e) "Restaurant" means any coffeeshop, cafeteria, short-order cafe, luncheonette, diner, sandwich shop, soda fountain, and any other eating establishment which gives, sells, or offers for sale food to the general public for consumption on the premises. "Restaurant" does not include a "bar" as defined in this section.

(f) "Workplace" means any enclosed indoor area in which one or more individuals are employed on a full-time basis and to which the general public does not have access, except by specific invitation. Notwithstanding the preceding sentence, "workplace" does not include a prison, jail or other correctional facility and does not include a work area in a private residence other than a licensed family day care home during its hours of operation and in those areas where children are present.

CHAPTER 2. RESTAURANTS

25806. Smoking is prohibited in any restaurant, except as otherwise provided in this chapter.

25808. (a) The prohibition of Section 25806 shall not apply to any restaurant to which both of the following apply:

(1) Smoking is confined to designated areas not exceeding 25 percent of the seating capacity.

(2) Ventilation is provided in accordance with the recommended ventilation rates specified for dining rooms and cafeterias in Table 2 of ASHRAE Standard 62-1989 or in accordance with the requirements of the indoor air quality procedure described in ASHRAE Standard 62-1989. If a restaurant elects to provide ventilation in accordance with this paragraph, the restaurant shall keep on the premises a written certification, provided at least once a year by the contractor who maintains the ventilation system, that the system meets the applicable provisions of ASHRAE Standard 62-1989.

(b) Any restaurant permitting smoking shall post a sign on the exterior of the building at each point of public entrance stating that smoking and non-smoking sections are available.

25810. The prohibition of Section 25806 shall not apply to rooms in restaurants being used for private functions.

25812. Nothing in this chapter shall be construed to prevent the owner of any restaurant from prohibiting smoking entirely on any premises under his or her control.

CHAPTER 3. WORKPLACES

25814. Smoking is prohibited in any workplace, except as otherwise provided in this chapter.

25816. (a) The prohibition of Section 25814 shall not apply to any workplace that is any of the following:

(1) Any private office or, with the consent of all occupants, any conference room if ventilation is provided to that office or room in accordance with the recommended ventilation rates specified for offices in Table 2 of ASHRAE Standard 62-1989 or in accordance with the requirements of the indoor air quality procedure described in ASHRAE Standard 62-1989.

(2) Any employee cafeteria where smoking is confined to a single area not exceeding 25 percent of the seating capacity of the cafeteria, and ventilation is provided in accordance with the recommended ventilation rates specified for dining rooms and cafeterias in Table 2 of ASHRAE Standard 62-1989 or in accordance with the requirements of the indoor air quality procedure described in ASHRAE Standard 62-1989.

(3) Designated smoking lounges if ventilation is provided in accordance with the recommended ventilation rates specified for smoking lounges in Table 2 of ASHRAE Standard 62-1989 or in accordance with the requirements of the indoor air quality procedure described in ASHRAE Standard 62-1989.

(b) If an employer elects to provide ventilation in accordance with subdivision (a), the employer shall keep on the premises a written certification, provided at least once a year by the contractor who maintains the ventilation system, that the system meets the applicable provisions of ASHRAE Standard 62-1989.

25818. Smoking is prohibited in any company vehicle unless all those present in the vehicle consent.

25820. Nothing in this chapter shall be construed to prevent an employer from prohibiting smoking entirely on any premises under his or her control.

CHAPTER 4. PUBLIC PLACES

25822. Smoking is prohibited in any public place, except as otherwise provided in this chapter.

25824. Smoking may be permitted in no more than 25 percent of the concourse area of any bowling alley and the lobby areas of any hotel, motel or other lodging facility.

25826. The prohibition of Section 25822 shall not apply to any of the following places:

(a) Hotel and motel rooms rented to guests, unless they are designated non-smoking rooms by management.

(b) Establishments devoted primarily to the retail sale of tobacco products or to the operations of a manufacturer of tobacco products.

(c) Hotel and motel conference or meeting rooms, and public and private assembly rooms, while these places are being used for private functions.

(d) Gaming clubs registered pursuant to Chapter 5 (commencing with Section 19800) of Division 8, facilities used to conduct bingo games pursuant to Section 326.5 of the Penal Code, racetracks, and private boxes and separate smoking lounges in indoor and outdoor sports arenas.

25828. Nothing in this chapter shall be construed to prevent the owner or lessee of any public place from prohibiting smoking entirely on any premises under his or her control.

CHAPTER 5. SIGNS

25836. Smoking and non-smoking areas designated pursuant to this division shall be clearly indicated by the posting of signs.

CHAPTER 6. VENDING MACHINES

25840. It is unlawful to sell tobacco products at retail through a vending machine unless the vending machine is located in one of the following areas:

(a) In an area of a factory, business, office, or other place that is not open to the general public.

(b) On any public premises, as defined in Section 23039, to which persons under the age of 21 years are denied access pursuant to Section 25665.

(c) On other premises to which persons under the age of 18 years are not permitted access.

(d) In any other place, but only if the machine is operated by the activation of an electronic switch by the licensee, or by an employee of the licensee, prior to each purchase.

25842. The person liable for a violation of Section 25840 is the person authorizing the installation or placement of the tobacco products vending machine upon premises he or she manages or otherwise controls and under circumstances in which he or she has knowledge, or otherwise should have grounds for knowledge, of the violation.

CHAPTER 7. BILLBOARDS

25844. No person shall advertise or cause to be advertised tobacco products on any outdoor billboard located within 500 feet of any public or private elementary school, junior high school, or high school. This prohibition shall not apply to advertisements erected or maintained at street level and affixed to business establishments selling tobacco products at retail.

CHAPTER 8. ENFORCEMENT

25850. The provisions of Chapter 3 shall be considered occupational safety and health standards under the California Occupational Safety and Health Act of 1973 as amended and shall be enforced as standards under that act.

25852. Except as provided in Section 25850, every person who smokes in violation of this division, every person in charge of a place where smoking is prohibited by this division who knowingly permits smoking in violation of this division, every person who fails to post a sign required by this division and every person who violates any other prohibition in this division, shall be guilty of an infraction punishable by a fine not to exceed one hundred dollars (\$100) for a first violation, by a fine not to exceed two hundred dollars (\$200) for a second violation within one year, or by a fine not to exceed five hundred dollars (\$500) for a third violation and for each subsequent violation within one year.

SEC. 5. Article 1 of Chapter 10.8 (commencing with Section 25940) of Division 20 of the Health and Safety Code is repealed.

Article 1.—California Indoor Clean Air Act of 1976

25940.—This chapter shall be known and may be cited as the California Indoor Clean Air Act of 1976:

25940.5.—The Legislature finds and declares that tobacco smoke is a hazard to the health of the general public:

25941.—Within indoor rooms, indoor chambers, or indoor places of public assembly in publicly owned buildings in which public business is conducted requiring or providing direct participation or observation by the general public there shall be a contiguous area of not less than 50 percent of the total area of such room, chamber or place designated and posted by signs of sufficient number and posted in such locations as to be readily seen by persons within such area; where the smoking of tobacco is prohibited while a public meeting is in progress. A public body, commission, agency, or other entity conducting a public meeting may waive the requirements of this section with respect to its own members, provided that the rights of nonsmoking members are not adversely affected.

25942.—Every health facility, as defined in Section 1250, and clinic, as defined in Section 1200, shall comply with the following:

(a) Shall make every reasonable effort to assign patients to rooms according to the patient's individual nonsmoking or smoking preference.

(b) Shall designate and post by signs of sufficient number and posted in such locations as to be readily seen by persons within such area, a contiguous area of not less than 20 percent of every cafeteria or other dining area whose occupied capacity is 50 or more persons as a nonsmoking section:

(c) This section shall not prevent any health facility or clinic from banning smoking in any area which it may designate and post by sign or in all areas of the facility or clinic:

25943.—Within every publicly owned building open to the general public for the primary purpose of exhibiting any motion picture, stage drama, music recital, or any other performance, with the exception of any indoor sporting event, signs shall be posted in sufficient number and in such locations as to be readily seen by persons within such area, which shall designate that the smoking of tobacco is prohibited in any area other than that commonly known as the lobby. Such prohibition shall not apply except during those times when the building is actually open to the public:

25944.—Within every restaurant in a publicly owned building serving food or alcoholic beverages in rooms whose occupied capacity is 50 or more persons there shall be designated and posted by signs of sufficient number and posted in such locations as to be readily seen by persons within such area, a contiguous area of not less than 20 percent of the serving area where the smoking of tobacco is prohibited:

(a) This section shall not apply to banquet rooms in use for private functions.

(b) This section shall not apply to premises under lease as a restaurant for such time as the lessee of record on January 1, 1977, has a lease as the operator of the restaurant.

(c) As used in this section, "restaurant" means any place designated as a restaurant by Section 28522.

25945. Any person may apply for a writ of mandate to compel compliance by any public entity which has not complied with the requirements of this chapter for the designating or posting of nonsmoking areas or areas where the smoking of tobacco is prohibited. If judgment is given for the applicant, he may recover all reasonable costs of suit, including reasonable attorney fees, reasonableness to be determined by the court.

25946. The Legislature declares its intent not to preempt the field of regulation of the smoking of tobacco. A local governing body may ban completely the smoking of tobacco, or may regulate such smoking in any manner not inconsistent with this chapter or any other provision of state law.

25947. (a) Except as provided in subdivision (b), no person shall smoke any tobacco product in any retail food production and marketing establishment, as defined in Section 28802, during such hours as the establishment is open to the public.

(b) The provisions of subdivision (a) shall not apply to that portion of an establishment subject to Section 25944 nor to an area of an establishment set aside for employee smoking and not open to the public.

SEC. 6. Section 25949.6 of the Health and Safety Code is repealed.

25949.6. This article does not preempt any local ordinance on the same subject where a local ordinance is more restrictive to the benefit of the nonsmoker.

SEC. 7. Section 308 of the Penal Code is amended to read:

308. (a) (1) Every person, firm, or corporation which 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 a 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. ~~five hundred dollars (\$500) for a first violation, one thousand dollars (\$1,000) for a second violation within two years of the first violation, two thousand dollars (\$2,000) for a third violation within two years of the second violation, and two thousand dollars (\$2,000) for any violation within two years of a violation subsequent to the third violation.~~

(2) A fine imposed on a person, firm, or corporation for a violation of this subdivision that is a first violation or that occurs more than two years after any other violation of this subdivision shall be waived and any subsequent violation of this subdivision shall be deemed a first violation if the person, firm, or corporation clearly establishes that he, she, or it acted in good faith to prevent the violation and that the violation occurred despite the exercise of due diligence by the person, firm, or corporation. For purposes of this paragraph, a person, firm, or corporation shall be deemed to have exercised due diligence if the person, firm, or corporation complies with subdivisions (d) and (e).

(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) (c).

(4) Proof that a defendant, or his or her employee or agent, demanded, was shown, and reasonably relied upon evidence of majority shall be a 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.

(b) For purposes of this section, the person liable for selling or furnishing tobacco products to minors by a tobacco products 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 products vending machine will be utilized by minors.

(b) (c) Every person under the age of 18 years who purchases or receives 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 ~~five hundred dollars (\$500)~~ ~~five hundred dollars (\$500)~~ or 25 100 hours of community service work.

(c) (d) Every person, firm, or corporation which that 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, at each point of purchase within the premises, a sign, no smaller than 8½ by 11 inches, stating the following in no smaller than 28 point type:

NOTICE—SECTION 308 OF THE PENAL CODE PROHIBITS THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER 18 YEARS OF AGE AND THE PURCHASE OF TOBACCO PRODUCTS BY PERSONS UNDER 18 YEARS OF AGE.

Any such person failing to do so shall upon conviction be punished by a fine of ~~ten dollars (\$10)~~ one hundred dollars (\$100) for the first offense and ~~five hundred dollars~~

(~~\$50~~) two hundred dollars (\$200) 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.

(e) Every person, firm, or corporation that sells, or deals in tobacco or any preparation thereof, shall notify each individual employed by the person, firm, or corporation as a retail sales clerk that state law prohibits the sale of tobacco products to any person under 18 years of age and the purchase of tobacco products by any person under 18 years of age. This notice shall be provided before the individual commences work as a retail sales clerk or, in the case of an individual employed as a retail sales clerk on the date when this subdivision becomes operative, within 30 days of that date. The individual shall signify that he or she has received the notice required by this subdivision by signing a form stating as follows: "I understand that state law prohibits the sale of tobacco products to persons under the age of 18 and the purchase of tobacco products by persons under the age of 18. I promise, as a condition of my employment, to observe this law." Each form signed by an individual shall indicate the date of signature. The employer shall retain the form signed by each individual employed as a retail sales clerk until 120 days after the individual has left the employer's employ. Any employer failing to comply with the requirements of this subdivision with respect to any employee shall upon conviction be punished by a fine of one hundred dollars (\$100) for the first offense and two hundred dollars (\$200) for each succeeding violation of this subdivision, or by imprisonment for not more than 30 days.

(d) (f) 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.

(g) In addition to other efforts to ensure compliance with this section, every county sheriff, city police chief, and other head of a law enforcement agency responsible for enforcing subdivision (a) shall at least annually conduct unannounced inspections at randomly selected locations where tobacco products are sold or distributed. A person under the age of 18 may be employed to test compliance with subdivision (a) only if the testing is conducted under the direct supervision of a peace officer acting within the scope of his or her official duties and written parental consent for the person's participation has been obtained. Except as provided in this subdivision, every person who, for the purpose of testing compliance of another with subdivision (a), solicits, employs or otherwise aids a minor in the purchase or attempted purchase of 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 a controlled substance, is guilty of a misdemeanor.

(h) The Attorney General shall prepare for submission annually to the Secretary of the United States Department of Health and Human Services the report required by Section 1926 of Subpart II of Part B of Title XIX of the federal Public Health Service Act (42 U.S.C. Sec. 300x-26).

SEC. 8. Consistent with the finding in Section 1 of this act, the people find and declare that the need for uniform statewide regulation, as set forth in this act, is a matter of statewide concern and uniform statewide regulation of smoking in public places, bars, restaurants, and workplaces, as well as the sale, distribution, advertising, sampling, promotion, or display of tobacco products, is required to maximize public awareness of, and compliance with, this act and is warranted because these activities do not vary from county to county or city to city. This act shall apply, without limitation, to a city, county, and city and county, including a charter city, charter county, or charter city and county. It is the People's intent to regulate the subject matter of this act comprehensively and to occupy the field to the exclusion of local action. Notwithstanding any other provision of law, no ordinance or regulation of any city, county, city and county, including a charter city, charter county, or charter city and county, or other political subdivision of this state, or any local ordinance or regulation adopted by the use of an initiative or other ballot measure, shall in any way attempt to regulate the sale, distribution, advertising, sampling, promotion, or display of tobacco products, or smoking in public places, restaurants, bars, or workplaces.

SEC. 9. The amendment of Section 308 of the Penal Code by this act shall not be construed to in any way affect other statutory prohibitions before or hereafter enacted on the distribution of controlled substance paraphernalia to minors or possession of such paraphernalia, including, but not limited to, Sections 11364, 11364.5, and 11364.7 of the Health and Safety Code.

SEC. 10. This act may be amended by a statute passed by a two-thirds vote of the membership of each house of the Legislature.

SEC. 11. If any provision of this act or its application to any person or circumstance is held invalid, this shall not affect other provisions or applications of this act that can be given effect without the invalid application and to this end the provisions of the act are severable.

SEC. 12. This act shall become effective on the first day of July of the year following its enactment.