

AMENDED IN SENATE JUNE 19, 2007

AMENDED IN ASSEMBLY APRIL 12, 2007

AMENDED IN ASSEMBLY MARCH 28, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 1199

Introduced by Assembly Member Richardson

February 23, 2007

An act to amend Section 186.11 of the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

AB 1199, as amended, Richardson. White collar crime: enhancement.

Existing law provides that any person who commits 2 or more related felonies, a material element of which is fraud or embezzlement, which involve a pattern of related felony conduct, and the pattern of related felony conduct involves the taking of more than \$100,000, shall be punished, upon conviction of 2 or more felonies in a single proceeding, by an additional term of imprisonment, as specified.

This bill would revise the above provision to specify that a person would also be subject to the additional prison term if the pattern of related felony conduct results in the loss by another person or entity of more than \$100,000. By revising the definition of an enhancement, the bill would impose a state-mandated local program.

This bill would provide that the changes contained in this act are intended to be declaratory of existing law.

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 186.11 of the Penal Code is amended to
2 read:

3 186.11. (a) (1) Any person who commits two or more related
4 felonies, a material element of which is fraud or embezzlement,
5 which involve a pattern of related felony conduct, and the pattern
6 of related felony conduct involves the taking of, or results in the
7 loss by another person or entity of, more than one hundred thousand
8 dollars (\$100,000), shall be punished, upon conviction of two or
9 more felonies in a single criminal proceeding, in addition and
10 consecutive to the punishment prescribed for the felony offenses
11 of which he or she has been convicted, by an additional term of
12 imprisonment in the state prison as specified in paragraph (2) or
13 (3). This enhancement shall be known as the aggravated white
14 collar crime enhancement. The aggravated white collar crime
15 enhancement shall only be imposed once in a single criminal
16 proceeding. For purposes of this section, “pattern of related felony
17 conduct” means engaging in at least two felonies that have the
18 same or similar purpose, result, principals, victims, or methods of
19 commission, or are otherwise interrelated by distinguishing
20 characteristics, and that are not isolated events. For purposes of
21 this section, “two or more related felonies” means felonies
22 committed against two or more separate victims, or against the
23 same victim on two or more separate occasions.

24 (2) If the pattern of related felony conduct involves the taking
25 of, or results in the loss by another person or entity of, more than
26 five hundred thousand dollars (\$500,000), the additional term of
27 punishment shall be two, three, or five years in the state prison.

28 (3) If the pattern of related felony conduct involves the taking
29 of, or results in the loss by another person or entity of, more than
30 one hundred thousand dollars (\$100,000), but not more than five
31 hundred thousand dollars (\$500,000), the additional term of
32 punishment shall be the term specified in paragraph (1) or (2) of
33 subdivision (a) of Section 12022.6.

1 (b) (1) The additional prison term and penalties provided for
2 in subdivisions (a), (c), and (d) shall not be imposed unless the
3 facts set forth in subdivision (a) are charged in the accusatory
4 pleading and admitted or found to be true by the trier of fact.

5 (2) The additional prison term provided in paragraph (2) of
6 subdivision (a) shall be in addition to any other punishment
7 provided by law, including Section 12022.6, and shall not be
8 limited by any other provision of law.

9 (c) Any person convicted of two or more felonies, as specified
10 in subdivision (a), shall also be liable for a fine not to exceed five
11 hundred thousand dollars (\$500,000) or double the value of the
12 taking, whichever is greater, if the existence of facts that would
13 make the person subject to the aggravated white collar crime
14 enhancement have been admitted or found to be true by the trier
15 of fact. However, if the pattern of related felony conduct involves
16 the taking of more than one hundred thousand dollars (\$100,000),
17 but not more than five hundred thousand dollars (\$500,000), the
18 fine shall not exceed one hundred thousand dollars (\$100,000) or
19 double the value of the taking, whichever is greater.

20 (d) Any person convicted of two or more felonies, as specified
21 in subdivision (a), shall be liable for the costs of restitution to
22 victims of the pattern of fraudulent or unlawful conduct, if the
23 existence of facts that would make the person subject to the
24 aggravated white collar crime enhancement have been admitted
25 or found to be true by the trier of fact.

26 (e) (1) If a person is alleged to have committed two or more
27 felonies, as specified in subdivision (a), and the aggravated white
28 collar crime enhancement is also charged, any asset or property
29 that is in the control of that person, and any asset or property that
30 has been transferred by that person to a third party, subsequent to
31 the commission of any criminal act alleged pursuant to subdivision
32 (a), other than in a bona fide purchase, whether found within or
33 outside the state, may be preserved by the superior court in order
34 to pay restitution and fines imposed pursuant to this section. Upon
35 conviction of two or more felonies, as specified in subdivision (a),
36 this property may be levied upon by the superior court to pay
37 restitution and fines imposed pursuant to this section if the
38 existence of facts that would make the person subject to the
39 aggravated white collar crime enhancement have been admitted
40 or found to be true by the trier of fact.

1 (2) To prevent dissipation or secreting of assets or property, the
2 prosecuting agency may, at the same time as or subsequent to the
3 filing of a complaint or indictment charging two or more felonies,
4 as specified in subdivision (a), and the enhancement specified in
5 subdivision (a), file a petition with the criminal division of the
6 superior court of the county in which the accusatory pleading was
7 filed, seeking a temporary restraining order, preliminary injunction,
8 the appointment of a receiver, or any other protective relief
9 necessary to preserve the property or assets. This petition shall
10 commence a proceeding that shall be pendent to the criminal
11 proceeding and maintained solely to ~~effect~~ *affect* the criminal
12 remedies provided for in this section. The proceeding shall not be
13 subject to or governed by the provisions of the Civil Discovery
14 Act as set forth in Title 4 (commencing with Section 2016.010)
15 of Part 4 of the Code of Civil Procedure. The petition shall allege
16 that the defendant has been charged with two or more felonies, as
17 specified in subdivision (a), and is subject to the aggravated white
18 collar crime enhancement specified in subdivision (a). The petition
19 shall identify that criminal proceeding and the assets and property
20 to be affected by an order issued pursuant to this section.

21 (3) A notice regarding the petition shall be provided, by personal
22 service or registered mail, to every person who may have an interest
23 in the property specified in the petition. Additionally, the notice
24 shall be published for at least three successive weeks in a
25 newspaper of general circulation in the county where the property
26 affected by an order issued pursuant to this section is located. The
27 notice shall state that any interested person may file a verified
28 claim with the superior court stating the nature and amount of their
29 claimed interest. The notice shall set forth the time within which
30 a claim of interest in the protected property is required to be filed.

31 (4) If the property to be preserved is real property, the
32 prosecuting agency shall record, at the time of filing the petition,
33 a lis pendens in each county in which the real property is situated
34 which specifically identifies the property by legal description, the
35 name of the owner of record as shown on the latest equalized
36 assessment roll, and the assessor's parcel number.

37 (5) If the property to be preserved are assets under the control
38 of a banking or financial institution, the prosecuting agency, at the
39 time of the filing of the petition, may obtain an order from the
40 court directing the banking or financial institution to immediately

1 disclose the account numbers and value of the assets of the accused
2 held by the banking or financial institution. The prosecuting agency
3 shall file a supplemental petition, specifically identifying which
4 banking or financial institution accounts shall be subject to a
5 temporary restraining order, preliminary injunction, or other
6 protective remedy.

7 (6) Any person claiming an interest in the protected property
8 may, at any time within 30 days from the date of the first
9 publication of the notice of the petition, or within 30 days after
10 receipt of actual notice, file with the superior court of the county
11 in which the action is pending a verified claim stating the nature
12 and amount of his or her interest in the property or assets. A
13 verified copy of the claim shall be served by the claimant on the
14 Attorney General or district attorney, as appropriate.

15 (7) The imposition of fines and restitution pursuant to this
16 section shall be determined by the superior court in which the
17 underlying criminal offense is sentenced. Any judge who is
18 assigned to the criminal division of the superior court in the county
19 where the petition is filed may issue a temporary restraining order
20 in conjunction with, or subsequent to, the filing of an allegation
21 pursuant to this section. Any subsequent hearing on the petition
22 shall also be heard by a judge assigned to the criminal division of
23 the superior court in the county in which the petition is filed. At
24 the time of the filing of an information or indictment in the
25 underlying criminal case, any subsequent hearing on the petition
26 shall be heard by the superior court judge assigned to the
27 underlying criminal case.

28 (f) Concurrent with or subsequent to the filing of the petition,
29 the prosecuting agency may move the superior court for, and the
30 superior court may issue, the following pendente lite orders to
31 preserve the status quo of the property alleged in the petition:

32 (1) An injunction to restrain any person from transferring,
33 encumbering, hypothecating, or otherwise disposing of that
34 property.

35 (2) Appointment of a receiver to take possession of, care for,
36 manage, and operate the assets and properties so that the property
37 may be maintained and preserved. The court may order that a
38 receiver appointed pursuant to this section shall be compensated
39 for all reasonable expenditures made or incurred by him or her in
40 connection with the possession, care, management, and operation

1 of any property or assets that are subject to the provisions of this
2 section.

3 (3) A bond or other undertaking, in lieu of other orders, of a
4 value sufficient to ensure the satisfaction of restitution and fines
5 imposed pursuant to this section.

6 (g) (1) No preliminary injunction may be granted or receiver
7 appointed by the court without notice that meets the requirements
8 of paragraph (3) of subdivision (e) to all known and reasonably
9 ascertainable interested parties and upon a hearing to determine
10 that an order is necessary to preserve the property pending the
11 outcome of the criminal proceedings. A temporary restraining
12 order may be issued by the court, ex parte, pending that hearing
13 in conjunction with or subsequent to the filing of the petition upon
14 the application of the prosecuting attorney. The temporary
15 restraining order may be based upon the sworn declaration of a
16 peace officer with personal knowledge of the criminal investigation
17 that establishes probable cause to believe that aggravated white
18 collar crime has taken place and that the amount of restitution and
19 fines established by this section exceeds or equals the worth of the
20 assets subject to the temporary restraining order. The declaration
21 may include the hearsay statements of witnesses to establish the
22 necessary facts. The temporary restraining order may be issued
23 without notice upon a showing of good cause to the court.

24 (2) The defendant, or a person who has filed a verified claim
25 as provided in paragraph (6) of subdivision (e), shall have the right
26 to have the court conduct an order to show cause hearing within
27 10 days of the service of the request for hearing upon the
28 prosecuting agency, in order to determine whether the temporary
29 restraining order should remain in effect, whether relief should be
30 granted from any lis pendens recorded pursuant to paragraph (4)
31 of subdivision (e), or whether any existing order should be
32 modified in the interests of justice. Upon a showing of good cause,
33 the hearing shall be held within two days of the service of the
34 request for hearing upon the prosecuting agency.

35 (3) In determining whether to issue a preliminary injunction or
36 temporary restraining order in a proceeding brought by a
37 prosecuting agency in conjunction with or subsequent to the filing
38 of an allegation pursuant to this section, the court has the discretion
39 to consider any matter that it deems reliable and appropriate,
40 including hearsay statements, in order to reach a just and equitable

1 decision. The court shall weigh the relative degree of certainty of
2 the outcome on the merits and the consequences to each of the
3 parties of granting the interim relief. If the prosecution is likely to
4 prevail on the merits and the risk of the dissipation of assets
5 outweighs the potential harm to the defendants and the interested
6 parties, the court shall grant injunctive relief. The court shall give
7 significant weight to the following factors:

8 (A) The public interest in preserving the property or assets
9 pendente lite.

10 (B) The difficulty of preserving the property or assets pendente
11 lite where the underlying alleged crimes involve issues of fraud
12 and moral turpitude.

13 (C) The fact that the requested relief is being sought by a public
14 prosecutor on behalf of alleged victims of white collar crimes.

15 (D) The likelihood that substantial public harm has occurred
16 where aggravated white collar crime is alleged to have been
17 committed.

18 (E) The significant public interest involved in compensating
19 the victims of white collar crime and paying ~~court-imposed~~
20 *court-imposed* restitution and fines.

21 (4) The court, in making its orders, may consider a defendant's
22 request for the release of a portion of the property affected by this
23 section in order to pay reasonable legal fees in connection with
24 the criminal proceeding, any necessary and appropriate living
25 expenses pending trial and sentencing, and for the purpose of
26 posting bail. The court shall weigh the needs of the public to retain
27 the property against the needs of the defendant to a portion of the
28 property. The court shall consider the factors listed in paragraph
29 (3) prior to making any order releasing property for these purposes.

30 (5) The court, in making its orders, shall seek to protect the
31 interests of any innocent third persons, including an innocent
32 spouse, who were not involved in the commission of any criminal
33 activity.

34 (6) Any petition filed pursuant to this section is part of the
35 criminal proceedings for purposes of appointment of counsel and
36 shall be assigned to the criminal division of the superior court of
37 the county in which the accusatory pleading was filed.

38 (7) Based upon a noticed motion brought by the receiver
39 appointed pursuant to paragraph (2) of subdivision (f), the court
40 may order an interlocutory sale of property named in the petition

1 when the property is liable to perish, to waste, or to be significantly
2 reduced in value, or when the expenses of maintaining the property
3 are disproportionate to the value thereof. The proceeds of the
4 interlocutory sale shall be deposited with the court or as directed
5 by the court pending determination of the proceeding pursuant to
6 this section.

7 (8) The court may make any orders that are necessary to preserve
8 the continuing viability of any lawful business enterprise that is
9 affected by the issuance of a temporary restraining order or
10 preliminary injunction issued pursuant to this action.

11 (9) In making its orders, the court shall seek to prevent any asset
12 subject to a temporary restraining order or preliminary injunction
13 from perishing, spoiling, going to waste, or otherwise being
14 significantly reduced in value. Where the potential for diminution
15 in value exists, the court shall appoint a receiver to dispose of or
16 otherwise protect the value of the property or asset.

17 (10) A preservation order shall not be issued against any assets
18 of a business that are not likely to be dissipated and that may be
19 subject to levy or attachment to meet the purposes of this section.

20 (h) If the allegation that the defendant is subject to the
21 aggravated white collar crime enhancement is dismissed or found
22 by the trier of fact to be untrue, any preliminary injunction or
23 temporary restraining order issued pursuant to this section shall
24 be dissolved. If a jury is the trier of fact, and the jury is unable to
25 reach a unanimous verdict, the court shall have the discretion to
26 continue or dissolve all or a portion of the preliminary injunction
27 or temporary restraining order based upon the interests of justice.
28 However, if the prosecuting agency elects not to retry the case,
29 any preliminary injunction or temporary restraining order issued
30 pursuant to this section shall be dissolved.

31 (i) (1) (A) If the defendant is convicted of two or more felonies,
32 as specified in subdivision (a), and the existence of facts that would
33 make the person subject to the aggravated white collar crime
34 enhancement have been admitted or found to be true by the trier
35 of fact, the trial judge shall continue the preliminary injunction or
36 temporary restraining order until the date of the criminal sentencing
37 and shall make a finding at that time as to what portion, if any, of
38 the property or assets subject to the preliminary injunction or
39 temporary restraining order shall be levied upon to pay fines and
40 restitution to victims of the crime. The order imposing fines and

1 restitution may exceed the total worth of the property or assets
2 subjected to the preliminary injunction or temporary restraining
3 order. The court may order the immediate transfer of the property
4 or assets to satisfy any judgment and sentence made pursuant to
5 this section. Additionally, upon motion of the prosecution, the
6 court may enter an order as part of the judgment and sentence
7 making the order imposing fines and restitution pursuant to this
8 section enforceable pursuant to Title 9 (commencing with Section
9 680.010) of Part 2 of the Code of Civil Procedure.

10 (B) Additionally, the court shall order the defendant to make
11 full restitution to the victim or to make restitution to the victim
12 based on his or her ability to pay, as defined in subdivision (b) of
13 Section 1203.1b. The payment of the restitution ordered by the
14 court pursuant to this section shall be made a condition of any
15 probation granted by the court if the existence of facts that would
16 make the defendant subject to the aggravated white collar crime
17 enhancement have been admitted or found to be true by the trier
18 of fact. Notwithstanding any other provision of law, the court may
19 order that the period of probation continue for up to 10 years or
20 until full restitution is made to the victim, whichever is earlier.

21 (C) The sentencing court shall retain jurisdiction to enforce the
22 order to pay additional fines and restitution and, in appropriate
23 cases, may initiate probation violation proceedings or contempt
24 of court proceedings against a defendant who is found to have
25 willfully failed to comply with any lawful order of the court.

26 (D) If the execution of judgment is stayed pending an appeal
27 of an order of the superior court pursuant to this section, the
28 preliminary injunction or temporary restraining order shall be
29 maintained in full force and effect during the pendency of the
30 appellate period.

31 (2) The order imposing fines and restitution shall not affect the
32 interest in real property of any third party that was acquired prior
33 to the recording of the lis pendens, unless the property was obtained
34 from the defendant other than as a bona fide purchaser for value.
35 If any assets or property affected by this section are subject to a
36 valid lien, mortgage, security interest, or interest under a
37 conditional sales contract and the amount due to the holder of the
38 lien, mortgage, interest, or contract is less than the appraised value
39 of the property, that person may pay to the state or the local
40 government that initiated the proceeding the amount of the

1 difference between the appraised value of the property and the
2 amount of the lien, mortgage, security interest, or interest under a
3 conditional sales contract. Upon that payment, the state or local
4 entity shall relinquish all claims to the property. If the holder of
5 the interest elects not to make that payment to the state or local
6 governmental entity, the interest in the property shall be deemed
7 transferred to the state or local governmental entity and any indicia
8 of ownership of the property shall be confirmed in the state or
9 local governmental entity. The appraised value shall be determined
10 as of the date judgment is entered either by agreement between
11 the holder of the lien, mortgage, security interest, or interest under
12 a conditional sales contract and the governmental entity involved,
13 or if they cannot agree, then by a court-appointed appraiser for the
14 county in which the action is brought. A person holding a valid
15 lien, mortgage, security interest, or interest under a conditional
16 sales contract shall be paid the appraised value of his or her interest.

17 (3) In making its final order, the court shall seek to protect the
18 legitimately acquired interests of any innocent third persons,
19 including an innocent spouse, who were not involved in the
20 commission of any criminal activity.

21 (j) In all cases where property is to be levied upon pursuant to
22 this section, a receiver appointed by the court shall be empowered
23 to liquidate all property or assets which shall be distributed in the
24 following order of priority:

25 (1) To the receiver, or court-appointed appraiser, for all
26 reasonable expenditures made or incurred by him or her in
27 connection with the sale of the property or liquidation of assets,
28 including all reasonable expenditures for any necessary repairs,
29 storage, or transportation of any property levied upon under this
30 section.

31 (2) To any holder of a valid lien, mortgage, or security interest
32 up to the amount of his or her interest in the property or proceeds.

33 (3) To any victim as restitution for any fraudulent or unlawful
34 acts alleged in the accusatory pleading that were proven by the
35 prosecuting agency as part of the pattern of fraudulent or unlawful
36 acts.

37 (4) For payment of any fine imposed pursuant to this section.
38 The proceeds obtained in payment of a fine shall be paid to the
39 treasurer of the county in which the judgment was entered, or if
40 the action was undertaken by the Attorney General, to the

1 Treasurer. If the payment of any fine imposed pursuant to this
2 section involved losses resulting from violation of Section 550 of
3 this code or Section 1871.4 of the Insurance Code, one-half of the
4 fine collected shall be paid to the treasurer of the county in which
5 the judgment was entered, and one-half of the fine collected shall
6 be paid to the Department of Insurance for deposit in the
7 appropriate account in the Insurance Fund. The proceeds from the
8 fine first shall be used by a county to reimburse local prosecutors
9 and enforcement agencies for the reasonable costs of investigation
10 and prosecution of cases brought pursuant to this section.

11 (5) To the Restitution Fund, or in cases involving convictions
12 relating to insurance fraud, to the Insurance Fund as restitution for
13 crimes not specifically pleaded and proven in the accusatory
14 pleading.

15 (k) If, after distribution pursuant to paragraphs (1) and (2) of
16 subdivision (j), the value of the property to be levied upon pursuant
17 to this section is insufficient to pay for restitution and fines, the
18 court shall order an equitable sharing of the proceeds of the
19 liquidation of the property, and any other recoveries, which shall
20 specify the percentage of recoveries to be devoted to each purpose.
21 At least 70 percent of the proceeds remaining after distribution
22 pursuant to paragraphs (1) and (2) of subdivision (j) shall be
23 devoted to restitution.

24 (l) Unless otherwise expressly provided, the remedies or
25 penalties provided by this section are cumulative to each other and
26 to the remedies or penalties available under all other laws of this
27 state, except that two separate actions against the same defendant
28 and pertaining to the same fraudulent or unlawful acts may not be
29 brought by a district attorney or the Attorney General pursuant to
30 this section and Chapter 5 (commencing with Section 17200) of
31 Part 2 of Division 7 of the Business and Professions Code. If a
32 fine is imposed under this section, it shall be in lieu of all other
33 fines that may be imposed pursuant to any other provision of law
34 for the crimes for which the defendant has been convicted in the
35 action.

36 SEC. 2. The changes to Section ~~186.22~~ 186.11 contained in
37 this act are intended to be declaratory of existing law.

38 SEC. 3. No reimbursement is required by this act pursuant to
39 Section 6 of Article XIII B of the California Constitution because
40 the only costs that may be incurred by a local agency or school

1 district will be incurred because this act creates a new crime or
2 infraction, eliminates a crime or infraction, or changes the penalty
3 for a crime or infraction, within the meaning of Section 17556 of
4 the Government Code, or changes the definition of a crime within
5 the meaning of Section 6 of Article XIII B of the California
6 Constitution.

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