

ASSEMBLY BILL

No. 2621

Introduced by Assembly Member Walters

February 22, 2008

An act to amend Section 186.8 of, and to add Sections 186.15 and 186.35 to, the Penal Code, relating to criminal profiteering.

LEGISLATIVE COUNSEL'S DIGEST

AB 2621, as introduced, Walters. Criminal profiteering: asset forfeiture.

Existing law contains legislative findings and a declaration that an effective means of punishing and deterring organized crime, as defined, is through the forfeiture of the profits acquired and accumulated as a result of this activity. Existing law provides that it is the intent of the Legislature that asset forfeiture, as specified, be used by prosecutors to punish and deter only such activities.

This bill would provide specified guidelines to ensure the proper utilization of the laws permitting the seizure and forfeiture of property derived from organized crime, as specified.

Existing law provides a process to seize assets in conjunction with a pending criminal prosecution alleging criminal profiteering, and requires the prosecuting attorney to file and serve a petition of forfeiture with the superior court in these cases, as specified.

This bill would provide that assets may be seized for these cases without process under specified circumstances and would specify limitations on and duties associated with those seizures. By increasing the number of cases requiring forfeiture filings by local prosecutors, this bill would impose a state-mandated local program.

Existing law provides that the proceeds of the sale of property forfeited pursuant to these provisions be distributed according to a formula, with the general fund of the state or local entity, whichever prosecutes the action, receiving the funds after specified distributions.

This bill would provide that the funds remaining after those specified distributions shall be distributed in specified proportions to the law enforcement agencies that participated in the seizure, the prosecutorial agency which processed the forfeiture action, the general fund of the county in which the forfeiture action is prosecuted, and the California District Attorneys Association.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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 186.15 is added to the Penal Code, to
- 2 read:
- 3 186.15. In order to ensure the proper utilization of the laws
- 4 permitting the seizure and forfeiture of property under this chapter,
- 5 the Legislature hereby establishes the following guidelines:
- 6 (a) Law enforcement is the principal objective of forfeiture.
- 7 Potential revenue must not be allowed to jeopardize the effective
- 8 investigation and prosecution of criminal offenses, officer safety,
- 9 the integrity of ongoing investigations, or the due process rights
- 10 of citizens.
- 11 (b) No prosecutor’s or sworn law enforcement officer’s
- 12 employment or salary shall be made to depend upon the level of
- 13 seizures or forfeitures he or she achieves.
- 14 (c) Whenever appropriate, prosecutors should seek criminal
- 15 sanctions as to the underlying criminal acts which give rise to the
- 16 forfeiture action.
- 17 (d) Seizing agencies shall have a manual detailing the statutory
- 18 grounds for forfeiture and all applicable policies and procedures.

1 The manual shall include procedures for prompt notice to interest
2 holders, the expeditious release of seized property, where
3 appropriate, and the prompt resolution of claims of innocent
4 ownership.

5 (e) Seizing agencies shall implement ongoing training for
6 officers assigned to forfeiture programs.

7 (f) Seizing agencies shall avoid any appearance of impropriety
8 in the sale or acquisition of forfeited property.

9 (g) Seizing agencies shall not put any seized or forfeited property
10 into service.

11 (h) Unless otherwise provided by law, forfeiture proceeds shall
12 be maintained in a separate fund or account subject to appropriate
13 accounting controls and annual financial audits of all deposits and
14 expenditures.

15 (i) Seizing agencies shall ensure that seized property is protected
16 and its value preserved.

17 (j) Although forfeiture is intended to be remedial by removing
18 the tools and profits from those engaged in illicit activities, it can
19 have harsh effects on property owners in some circumstances.
20 Therefore, law enforcement shall seek to protect the interests of
21 innocent property owners, guarantee adequate notice and due
22 process to property owners, and ensure that forfeiture serves the
23 remedial purpose of the law.

24 SEC. 2. Section 186.35 is added to the Penal Code, to read:

25 186.35. Property subject to forfeiture under this chapter may
26 be seized by any peace officer upon process issued by any court
27 having jurisdiction over the property. Seizure without process may
28 be made if any of the following conditions exist:

29 (a) The seizure is incident to an arrest or a search under a search
30 warrant.

31 (b) The property subject to seizure has been the subject of a
32 prior judgment in favor of the state in a forfeiture proceeding based
33 upon this chapter.

34 (c) There is probable cause to believe that property is subject
35 to forfeiture as set forth in subdivision (b) or (c) of Section 186.3.

36 (d) Real property subject to forfeiture may not be seized absent
37 exigent circumstances, without notice to the interested parties and
38 a hearing to determine that seizure is necessary to preserve the
39 property pending the outcome of the proceedings. At the hearing,
40 the prosecution shall bear the burden of establishing that probable

1 cause exists for the forfeiture of the property and that seizure is
2 necessary to preserve the property pending the outcome of the
3 proceedings. The court may issue seizure orders pursuant to this
4 section if it finds that seizure is warranted or pendente lite orders
5 pursuant to Section 186.6 if it finds that the status quo or value of
6 the property can be preserved without seizure.

7 (e) Where business records are seized in conjunction with the
8 seizure of the property subject to forfeiture, the seizing agency
9 shall, upon request, provide copies of the records to the person,
10 persons, or business entity from whom the records were seized.

11 SEC. 3. Section 186.8 of the Penal Code is amended to read:

12 186.8. Notwithstanding that no response or claim has been
13 filed pursuant to Section 186.5, in all cases where property is
14 forfeited pursuant to this chapter and, if necessary, sold by the
15 Department of General Services or local governmental entity, the
16 money forfeited or the proceeds of sale shall be distributed by the
17 state or local governmental entity as follows:

18 (a) To the bona fide or innocent purchaser, conditional sales
19 vendor, or holder of a valid lien, mortgage, or security interest, if
20 any, up to the amount of his or her interest in the property or
21 proceeds, when the court declaring the forfeiture orders a
22 distribution to that person. The court shall endeavor to discover
23 all those lienholders and protect their interests and may, at its
24 discretion, order the proceeds placed in escrow for up to an
25 additional 60 days to ensure that all valid claims are received and
26 processed.

27 (b) To the Department of General Services or local governmental
28 entity for all expenditures made or incurred by it in connection
29 with the sale of the property, including expenditures for any
30 necessary repairs, storage, or transportation of any property seized
31 under this chapter.

32 ~~(c) To the general fund of the state or local governmental entity,~~
33 ~~whichever prosecutes.~~

34 (c) *The remaining funds shall be distributed as follows:*

35 (1) *Fifty percent to the state, local, or state and local law*
36 *enforcement entities that participated in the seizure, distributed*
37 *so as to reflect the proportionate contribution of each agency.*

38 (2) *Twenty-four percent to the prosecutorial agency which*
39 *processed the forfeiture action.*

1 (3) *Twenty-five percent to the general fund of the county in*
2 *which the forfeiture action is prosecuted.*

3 (4) *One percent to the California District Attorneys Association*
4 *which shall use these funds for the exclusive purpose of providing*
5 *a statewide program of education and training for prosecutors*
6 *and law enforcement officers in ethics and the proper use of laws*
7 *permitting the seizure and forfeiture of assets under this chapter.*

8 (d) In any case involving a violation of subdivision (b) of
9 Section 311.2, or Section 311.3 or 311.4, in lieu of the distribution
10 of the proceeds provided for by subdivisions (b) and (c), the
11 proceeds shall be deposited in the county children’s trust fund,
12 established pursuant to Section 18966 of the Welfare and
13 Institutions Code, of the county that filed the petition of forfeiture.
14 If the county does not have a children’s trust fund, the funds shall
15 be deposited in the State Children’s Trust Fund, established
16 pursuant to Section 18969 of the Welfare and Institutions Code.

17 (e) In any case involving crimes against the state beverage
18 container recycling program, in lieu of the distribution of proceeds
19 provided in subdivision (c), the proceeds shall be deposited in the
20 penalty account established pursuant to subdivision (d) of Section
21 14580 of the Public Resources Code, except that a portion of the
22 proceeds equivalent to the cost of prosecution in the case shall be
23 distributed to the local prosecuting entity that filed the petition of
24 forfeiture.

25 (f) *All funds distributed to the state or local government entities*
26 *pursuant to subdivision (c) shall not supplant any state or local*
27 *funds that would, in the absence of this subdivision, be made*
28 *available to support the law enforcement efforts of these agencies.*
29 *The court shall order the forfeiture of proceeds distributed to the*
30 *state, local, or state and local governmental entities as provided*
31 *in this section. For the purposes of this section, “local*
32 *governmental entity” means any city, county, or city and county*
33 *in this state.*

34 SEC. 4. If the Commission on State Mandates determines that
35 this act contains costs mandated by the state, reimbursement to
36 local agencies and school districts for those costs shall be made
37 pursuant to Part 7 (commencing with Section 17500) of Division
38 4 of Title 2 of the Government Code.

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