

**Introduced by Senator Lieu**February 21, 2014

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An act to amend Section 17800 of, and to repeal Sections 17801 and 17802 of, the Business and Professions Code, and to amend Section 3496 of the Civil Code, relating to counterfeit goods.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1356, as introduced, Lieu. Counterfeit goods: abatement: nonresidential premises.

Existing law provides that, until January 1, 2015, if a person is convicted for willfully manufacturing, intentionally selling, or knowingly possessing for sale any counterfeit mark, then a nonresidential building or place used by that person for the purpose of willfully manufacturing, intentionally selling, or knowingly possessing for sale any counterfeit of a registered mark is a nuisance that shall be enjoined, abated, and prevented, whether it is a public or private nuisance, and specified civil remedies may be applied. Existing law requires that the owner of the property be provided with 30 days notice prior to the filing of an action to abate a nuisance under these provisions. Under existing law, a district attorney, county counsel, city attorney, or city prosecutor that maintains an action or actions to enjoin, abate, or prevent a nuisance pursuant to these provisions was required to report to the Legislature by October 1, 2013, on their use of the provisions and their effectiveness.

This bill instead would provide that any nonresidential building or place used to willfully manufacture, intentionally sell, or knowingly possess for sale any counterfeit goods shall be deemed a nuisance which may be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private nuisance, and that

specified civil penalties shall apply. The bill would remove the requirement that the owner of the property be provided 30 days notice prior to the filing of an action to abate a nuisance under these provisions, and also would delete the above-described reporting requirements. It would repeal the date upon which the remaining provisions would become inoperative, thus extending them indefinitely.

This bill would allow a court to award costs, including the costs of investigation and discovery, and reasonable attorney’s fees, which are not compensated for pursuant to some other provision of law, to the prevailing party in any case in which a governmental agency seeks to enjoin the use of a nonresidential building or place, or seeks to enjoin in or upon any nonresidential building or place the unlawful manufacturing, selling, or possession for sale of any counterfeit goods.

Vote: majority. Appropriation: no. Fiscal committee: no.  
 State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 17800 of the Business and Professions  
 2 Code is amended to read:  
 3 17800. (a) ~~If there is a conviction for a violation of Section~~  
 4 ~~653w or paragraph (2) of subdivision (a) of Section 350 of the~~  
 5 ~~Penal Code by any person, then a nonresidential~~ *A nonresidential*  
 6 ~~building or place used by that person~~ for the purpose of willfully  
 7 manufacturing, intentionally selling, or knowingly possessing for  
 8 sale any counterfeit goods shall be deemed a nuisance which may  
 9 be enjoined, abated, and prevented, and for which damages may  
 10 be recovered, whether it is a public or private nuisance. The  
 11 remedies and procedures provided in Article 2 (commencing with  
 12 Section 11225) of Chapter 3 of Title 1 of Part 4 of the Penal Code  
 13 ~~may shall~~ be applied by the court. For purposes of this section, an  
 14 abatement under Section 11230 of the Penal Code is discretionary  
 15 rather than mandatory and may be for a period up to one year.  
 16 ~~(b) An owner shall be provided with 30 days’ notice prior to~~  
 17 ~~the filing of an action to abate a nuisance under the provisions of~~  
 18 ~~this section.~~  
 19 ~~(c)~~  
 20 (b) As used in this chapter, “counterfeit goods” means (1) any  
 21 counterfeit of a mark registered with the Secretary of State or  
 22 registered on the Principal Register of the United States Patent and

1 Trademark Office or (2) any recording or audiovisual work, the  
2 cover, box, jacket, or label of which does not disclose the  
3 information as specified in subdivision (a) of Section 653w of the  
4 Penal Code.

5 SEC. 2. Section 17801 of the Business and Professions Code  
6 is repealed.

7 ~~17801. A district attorney, county counsel, city attorney, or~~  
8 ~~city prosecutor that maintains an action or actions to enjoin, abate,~~  
9 ~~or prevent a nuisance pursuant to the provisions of this chapter~~  
10 ~~shall report to the Senate and Assembly Committees on Judiciary,~~  
11 ~~by October 1, 2013, on their use of the provisions of this chapter~~  
12 ~~and their effectiveness. The report shall include, but not be limited~~  
13 ~~to, all of the following:~~

14 (a) ~~The frequency of use of the nuisance abatement provisions~~  
15 ~~as well as statistics on whether the use of the abatement provisions~~  
16 ~~correlates with a decrease in the use of criminal penalties.~~

17 (b) ~~Any statistics or information concerning the impact of the~~  
18 ~~use of these provisions on counterfeiting overall, both in the~~  
19 ~~relevant county or city and overall.~~

20 SEC. 3. Section 17802 of the Business and Professions Code  
21 is repealed.

22 ~~17802. This chapter shall remain in effect only until January~~  
23 ~~1, 2015, and as of that date is repealed, unless a later enacted~~  
24 ~~statute, that is enacted before January 1, 2015, deletes or extends~~  
25 ~~that date.~~

26 SEC. 4. Section 3496 of the Civil Code is amended to read:

27 3496. In any of the following described cases, the court may  
28 award costs, including the costs of investigation and discovery,  
29 and reasonable attorney's fees, which are not compensated for  
30 pursuant to some other provision of law, to the prevailing party:

31 (a) In any case in which a governmental agency seeks to enjoin  
32 the sale, distribution, or public exhibition, for commercial  
33 consideration, of obscene matter, as defined in Section 311 of the  
34 Penal Code.

35 (b) In any case in which a governmental agency seeks to enjoin  
36 the use of a building or place for the purpose of illegal gambling,  
37 lewdness, assignation, human trafficking, or prostitution; or any  
38 case in which a governmental agency seeks to enjoin acts of illegal  
39 gambling, lewdness, assignation, human trafficking, or prostitution  
40 in or upon a building or place, as authorized in Article 2

1 (commencing with Section 11225) of Chapter 3 of Title 1 of Part  
2 4 of the Penal Code.

3 (c) In any case in which a governmental agency seeks to enjoin  
4 the use of a building or place, or seeks to enjoin in or upon any  
5 building or place the unlawful sale, manufacture, service, storage,  
6 or keeping or giving away of any controlled substance, as  
7 authorized in Article 3 (commencing with Section 11570) of  
8 Chapter 10 of Division 10 of the Health and Safety Code.

9 (d) In any case in which a governmental agency seeks to enjoin  
10 the unlawful sale, service, storage, or keeping or giving away of  
11 alcoholic liquor, as authorized in Article 1 (commencing with  
12 Section 11200) of Chapter 3 of Title 1 of Part 4 of the Penal Code.

13 (e) *In any case in which a governmental agency seeks to enjoin*  
14 *the use of a nonresidential building or place, or seeks to enjoin in*  
15 *or upon any nonresidential building or place the unlawful*  
16 *manufacturing, selling, or possession for sale of any counterfeit*  
17 *goods as authorized in Chapter 4 (commencing with Section 17800)*  
18 *of Part 3 of Division 7 of the Business and Professions Code or*  
19 *Section 11226 of the Penal Code.*