

ASSEMBLY BILL

No. 160

Introduced by Assembly Member Dababneh

January 21, 2015

An act to amend Sections 186.2 and 186.8 of the Penal Code, relating to criminal profiteering.

LEGISLATIVE COUNSEL'S DIGEST

AB 160, as introduced, Dababneh. Criminal profiteering: piracy, insurance fraud, and tax fraud.

Existing law, the California Control of Profits of Organized Crime Act, provides the procedure for the forfeiture of property and proceeds acquired through a pattern of criminal profiteering activity, as specified, and requires the prosecution to file a petition for forfeiture in conjunction with certain criminal charges. Under existing law, criminal profiteering activity is defined to include specified crimes, including forgery and offenses relating to counterfeit of a registered mark. Existing law also defines organized crime for the purposes of these provisions.

This bill would include within the definition of criminal profiteering activity offenses relating to piracy, insurance fraud, and tax fraud, as specified. By expanding the list of offenses that may subject a person to prosecution for criminal profiteering activity, this bill would impose a state-mandated local program. The bill would also broaden the definition of organized crime to include any crime that is of a conspiratorial nature and that is achieved through planning and coordination of individual efforts.

Existing law provides for the distribution of the money forfeited and the proceeds from the sale of property forfeited for conviction in connection with a pattern of criminal profiteering activity.

This bill would, in any case involving a felony violation of a specified offense relating to piracy, insurance fraud, or tax fraud, require the proceeds to be distributed, at the discretion of the court, in a specified priority.

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 186.2 of the Penal Code is amended to
 2 read:
 3 186.2. For purposes of this chapter, the following definitions
 4 apply:
 5 (a) “Criminal profiteering activity” means any act committed
 6 or attempted or any threat made for financial gain or advantage,
 7 which act or threat may be charged as a crime under any of the
 8 following sections:
 9 (1) Arson, as defined in Section 451.
 10 (2) Bribery, as defined in Sections 67, 67.5, and 68.
 11 (3) Child pornography or exploitation, as defined in subdivision
 12 (b) of Section 311.2, or Section 311.3 or 311.4, which may be
 13 prosecuted as a felony.
 14 (4) Felonious assault, as defined in Section 245.
 15 (5) Embezzlement, as defined in Sections 424 and 503.
 16 (6) Extortion, as defined in Section 518.
 17 (7) Forgery, as defined in Section 470.
 18 (8) Gambling, as defined in Sections 337a to 337f, inclusive,
 19 and Section 337i, except the activities of a person who participates
 20 solely as an individual bettor.
 21 (9) Kidnapping, as defined in Section 207.
 22 (10) Mayhem, as defined in Section 203.
 23 (11) Murder, as defined in Section 187.
 24 (12) Pimping and pandering, as defined in Section 266.
 25 (13) Receiving stolen property, as defined in Section 496.
 26 (14) Robbery, as defined in Section 211.

- 1 (15) Solicitation of crimes, as defined in Section 653f.
- 2 (16) Grand theft, as defined in Section 487 or subdivision (a)
- 3 of Section 487a.
- 4 (17) Trafficking in controlled substances, as defined in Sections
- 5 11351, 11352, and 11353 of the Health and Safety Code.
- 6 (18) Violation of the laws governing corporate securities, as
- 7 defined in Section 25541 of the Corporations Code.
- 8 (19) ~~Any of the offenses~~ *Offenses* contained in Chapter 7.5
- 9 (commencing with Section 311) of Title 9, relating to obscene
- 10 matter, or in Chapter 7.6 (commencing with Section 313) of Title
- 11 9, relating to harmful matter that may be prosecuted as a felony.
- 12 (20) Presentation of a false or fraudulent claim, as defined in
- 13 Section 550.
- 14 (21) False or fraudulent activities, schemes, or artifices, as
- 15 described in Section 14107 of the Welfare and Institutions Code.
- 16 (22) Money laundering, as defined in Section 186.10.
- 17 (23) Offenses relating to the counterfeit of a registered mark,
- 18 as specified in Section ~~350~~. 350, *or offenses relating to piracy, as*
- 19 *specified in Section 653w.*
- 20 (24) Offenses relating to the unauthorized access to computers,
- 21 computer systems, and computer data, as specified in Section 502.
- 22 (25) Conspiracy to commit any of the crimes listed above, as
- 23 defined in Section 182.
- 24 (26) Subdivision (a) of Section 186.22, or a felony subject to
- 25 enhancement as specified in subdivision (b) of Section 186.22.
- 26 (27) ~~Any offenses~~ *Offenses* related to fraud or theft against the
- 27 state's beverage container recycling program, including, but not
- 28 limited to, those offenses specified in this subdivision and those
- 29 criminal offenses specified in the California Beverage Container
- 30 Recycling and Litter Reduction Act, commencing at Section 14500
- 31 of the Public Resources Code.
- 32 (28) Human trafficking, as defined in Section 236.1.
- 33 (29) Any crime in which the perpetrator induces, encourages,
- 34 or persuades a person under 18 years of age to engage in a
- 35 commercial sex act. For purposes of this paragraph, a commercial
- 36 sex act means any sexual conduct on account of which anything
- 37 of value is given or received by any person.
- 38 (30) Any crime in which the perpetrator, through force, fear,
- 39 coercion, deceit, violence, duress, menace, or threat of unlawful
- 40 injury to the victim or to another person, causes a person under 18

1 years of age to engage in a commercial sex act. For purposes of
 2 this paragraph, a commercial sex act means any sexual conduct
 3 on account of which anything of value is given or received by any
 4 person.

5 (31) Theft of personal identifying information, as defined in
 6 Section 530.5.

7 (32) Offenses involving the theft of a motor vehicle, as specified
 8 in Section 10851 of the Vehicle Code.

9 (33) Abduction or procurement by fraudulent inducement for
 10 prostitution, as defined in Section 266a.

11 (34) *Offenses relating to insurance fraud, as specified in*
 12 *Sections 2106, 2108, 2109, 2110, 2110.3, 2110.5, 2110.7, and*
 13 *2117 of the Unemployment Insurance Code, or offenses relating*
 14 *to tax fraud, as specified in Sections 6452, 6455, 7152, 7153.5,*
 15 *19705, 19706, 19708, 19721, 30471, 30472, 30480, and 60707 of*
 16 *the Revenue and Taxation Code and Sections 2117.5, 2118, and*
 17 *2118.5 of the Unemployment Insurance Code.*

18 (b) (1) “Pattern of criminal profiteering activity” means
 19 engaging in at least two incidents of criminal profiteering, as
 20 defined by this chapter, that meet the following requirements:

21 (A) Have the same or a similar purpose, result, principals,
 22 victims, or methods of commission, or are otherwise interrelated
 23 by distinguishing characteristics.

24 (B) Are not isolated events.

25 (C) Were committed as a criminal activity of organized crime.

26 (2) Acts that would constitute a “pattern of criminal profiteering
 27 activity” may not be used by a prosecuting agency to seek the
 28 remedies provided by this chapter unless the underlying offense
 29 occurred after the effective date of this chapter and the prior act
 30 occurred within 10 years, excluding any period of imprisonment,
 31 of the commission of the underlying offense. A prior act may not
 32 be used by a prosecuting agency to seek remedies provided by this
 33 chapter if a prosecution for that act resulted in an acquittal.

34 (c) “Prosecuting agency” means the Attorney General or the
 35 district attorney of any county.

36 (d) “Organized crime” means crime that is of a conspiratorial
 37 nature and that is ~~either of an organized nature and seeks to supply~~
 38 ~~illegal goods and services such as narcotics, prostitution,~~
 39 ~~loan-sharking, gambling, and pornography, or that, achieved~~
 40 ~~through planning and coordination of individual efforts, seeks to~~

1 conduct the illegal activities of arson for profit, hijacking, insurance
2 fraud, smuggling, operating vehicle theft rings, fraud against the
3 beverage container recycling program, or systematically
4 encumbering the assets of a business for the purpose of defrauding
5 creditors: *efforts*. “Organized crime” also means crime committed
6 by a criminal street gang, as defined in subdivision (f) of Section
7 186.22. “Organized crime” also means false or fraudulent activities,
8 schemes, or artifices, as described in Section 14107 of the Welfare
9 and Institutions Code, and the theft of personal identifying
10 information, as defined in Section 530.5.

11 (e) “Underlying offense” means an offense enumerated in
12 subdivision (a) for which the defendant is being prosecuted.

13 SEC. 2. Section 186.8 of the Penal Code is amended to read:

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

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

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

34 (c) To the General Fund of the state or a general fund of a local
35 governmental entity, whichever prosecutes.

36 (d) In any case involving a violation of subdivision (b) of
37 Section 311.2, or Section 311.3 or 311.4, in lieu of the distribution
38 of the proceeds provided for by subdivisions (b) and (c), the
39 proceeds shall be deposited in the county children’s trust fund,
40 established pursuant to Section 18966 of the Welfare and

1 Institutions Code, of the county that filed the petition of forfeiture.
 2 If the county does not have a children’s trust fund, the funds shall
 3 be deposited in the State Children’s Trust Fund, established
 4 pursuant to Section 18969 of the Welfare and Institutions Code.

5 (e) In any case involving crimes against the state beverage
 6 container recycling program, in lieu of the distribution of proceeds
 7 provided in subdivision (c), the proceeds shall be deposited in the
 8 penalty account established pursuant to subdivision (d) of Section
 9 14580 of the Public Resources Code, except that a portion of the
 10 proceeds equivalent to the cost of prosecution in the case shall be
 11 distributed to the local prosecuting entity that filed the petition of
 12 forfeiture.

13 (f) (1) In any case described in paragraph (29) or (30) of
 14 subdivision (a) of Section 186.2, or paragraph (33) of subdivision
 15 (a) of Section 186.2 ~~where in which~~ the victim is a minor, in lieu
 16 of the distribution provided for in subdivision (c), the proceeds
 17 shall be deposited in the Victim-Witness Assistance Fund to be
 18 available for appropriation to fund child sexual exploitation and
 19 child sexual abuse victim counseling centers and prevention
 20 programs under Section 13837. Fifty percent of the funds deposited
 21 in the Victim-Witness Assistance Fund pursuant to this subdivision
 22 shall be granted to community-based organizations that serve minor
 23 victims of human trafficking.

24 (2) Notwithstanding paragraph (1), any proceeds specified in
 25 paragraph (1) that would otherwise be distributed to the General
 26 Fund of the state under subdivision (c) pursuant to a paragraph in
 27 subdivision (a) of Section 186.2 other than paragraph (29) or (30)
 28 of subdivision (a) of Section 186.2, or paragraph (33) of
 29 subdivision (a) of Section 186.2 ~~where in which~~ the victim is a
 30 minor, shall, except as otherwise required by law, continue to be
 31 distributed to the General Fund of the state as specified in
 32 subdivision (c).

33 (g) *In any case involving a felony violation of a crime specified*
 34 *in paragraph (23) or (34) of subdivision (a) of Section 186.2, the*
 35 *proceeds shall be distributed, at the discretion of the court, in the*
 36 *following priority:*

- 37 (1) *To the victims of the crime.*
- 38 (2) *To cover the costs of investigation.*
- 39 (3) *To the General Fund of the state.*

1 SEC. 3. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

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