

AMENDED IN ASSEMBLY MARCH 19, 2015

AMENDED IN ASSEMBLY MARCH 16, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 160**

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**Introduced by Assembly Member Dababneh**

January 21, 2015

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An act to amend ~~Sections~~ *Section* 186.2 and 186.8 of the Penal Code, and to amend Sections 6007 and 6009.2 of the Revenue and Taxation Code, relating to criminal profiteering.

LEGISLATIVE COUNSEL'S DIGEST

AB 160, as amended, Dababneh. Criminal profiteering: counterfeit labels: sales and use taxes.

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 *or organized nature*,

~~or that involves the planning and coordination of individual efforts, efforts, and seeks to supply illegal goods and services, or conduct illegal activities that involve fraud or deceit for monetary gain in any way.~~

~~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.~~

Existing law, the Sales and Use Tax Law, imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer for storage, use, or other consumption in this state. Existing law provides that a “retail sale” or “sale at retail” includes any sale by a convicted seller, as defined, of tangible personal property with a counterfeit mark on, or in connection with, that sale, regardless of whether the sale is for resale in the regular course of business. Existing law provides that “storage” or “use” includes a purchase by a convicted purchaser, as defined, of tangible personal property with a counterfeit mark on, or in connection with, that purchase, regardless of whether the purchase is for resale in the regular course of business.

Under this bill, a “retail sale” or “sale at retail” additionally would include any sale by a convicted seller of tangible personal property with a counterfeit label or an illicit label, as specified. The bill similarly would provide that “storage” and “use” additionally would include a purchase by a convicted purchaser of tangible personal property with a counterfeit label or an illicit label, as specified.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and existing law authorizes districts, as specified, to impose transactions and use taxes in accordance with the Transactions and Use Tax Law, which generally conforms to the Sales and Use Tax Law. Amendments to state sales and use taxes are incorporated into these laws.

The amendments made by this bill would be incorporated into these laws.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article

XIII A of the California Constitution, and thus would require for passage the approval of  $\frac{2}{3}$  of the membership of each house of the Legislature.

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:  $\frac{2}{3}$ . 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.

27 (15) Solicitation of crimes, as defined in Section 653f.

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

1 this paragraph, a commercial sex act means any sexual conduct  
2 on account of which anything of value is given or received by any  
3 person.

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

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

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

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

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

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

23 (B) Are not isolated events.

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

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

33 (c) "Prosecuting agency" means the Attorney General or the  
34 district attorney of any county.

35 (d) (1) "Organized crime" means crime that ~~is~~ *has both of the*  
36 *following characteristics:*

37 (A) ~~The crime is of a conspiratorial nature and that is achieved~~  
38 ~~through~~ *or organized nature, or involves the planning and*  
39 *coordination of individual efforts.* "Organized

1 (B) *The crime seeks to supply illegal goods and services, or*  
2 *conduct illegal activities that involve fraud or deceit for monetary*  
3 *gain in any way.*

4 (2) “Organized crime” also means crime committed by a  
5 criminal street gang, as defined in subdivision (f) of Section 186.22.  
6 “Organized crime” also means false or fraudulent activities,  
7 schemes, or artifices, as described in Section 14107 of the Welfare  
8 and Institutions Code, and the theft of personal identifying  
9 information, as defined in Section 530.5.

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

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

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

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

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

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

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

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

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

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

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

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

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

1     ~~SEC. 3.~~

2     ~~SEC. 2.~~ Section 6007 of the Revenue and Taxation Code is  
3 amended to read:

4     6007. (a) (1) A “retail sale” or “sale at retail” means a sale  
5 for any purpose other than resale in the regular course of business  
6 in the form of tangible personal property.

7     (2) When tangible personal property is delivered by an owner  
8 or former owner thereof, or by a factor or agent of that owner,  
9 former owner, or factor to a consumer or to a person for redelivery  
10 to a consumer, pursuant to a retail sale made by a retailer not  
11 engaged in business in this state, the person making the delivery  
12 shall be deemed the retailer of that property. He or she shall include  
13 the retail selling price of the property in his or her gross receipts  
14 or sales price.

15     (b) (1) Notwithstanding subdivision (a), a “retail sale” or “sale  
16 at retail” shall include any sale by a convicted seller of tangible  
17 personal property with a counterfeit, mark, a counterfeit label, or  
18 an illicit label on that property, or in connection with that sale,  
19 regardless of whether the sale is for resale in the regular course of  
20 business.

21     (2) For purposes of this subdivision, all of the following shall  
22 apply:

23     (A) A “convicted seller” means a person convicted of a  
24 *counterfeiting offense, including, but not limited to, a violation*  
25 under Section 350 or 653w of the Penal Code or Section 2318,  
26 2319, or 2320 of Title 18 of the United States Code on or after the  
27 date of sale.

28     (B) “Counterfeit mark” has the same meaning as that term is  
29 defined in Section 2320 of Title 18 of the United States Code.

30     (C) “Counterfeit label” has the same meaning as that term is  
31 defined in Section 2318 of Title 18 of the United States Code.

32     (D) “Illicit label” has the same meaning as that term is defined  
33 in Section 2318 of Title 18 of the United States Code.

34     (E) Chapter 5 (commencing with Section 17200) of Part 2 of  
35 Division 7 of, and Article 1 (commencing with Section 17500) of  
36 Chapter 1 of Part 3 of Division 7 of, the Business and Professions  
37 Code, and Title 1.5 (commencing with Section 1750) of Part 4 of  
38 Division 3 of the Civil Code shall not apply to any person other  
39 than a convicted seller.

1 (F) Notwithstanding Article 2 (commencing with Section 6481)  
2 of Chapter 5, any notice of deficiency determination to a convicted  
3 seller shall be mailed within one year after the last day of the  
4 calendar month following the date of conviction.

5 ~~SEC. 4.~~

6 SEC. 3. Section 6009.2 of the Revenue and Taxation Code is  
7 amended to read:

8 6009.2. (a) Notwithstanding Sections 6008, 6009, and 6009.1,  
9 “storage” and “use” each shall include a purchase by a convicted  
10 purchaser of tangible personal property with a counterfeit mark,  
11 a counterfeit label, or an illicit label on that property, or in  
12 connection with that purchase, regardless of whether the purchase  
13 is for resale in the regular course of business.

14 (b) “Convicted purchaser” means a person convicted of a  
15 *counterfeiting offense, including, but not limited to, a violation*  
16 under Section 350 or 653w of the Penal Code or Section 2318,  
17 2319, or 2320 of Title 18 of the United States Code on or after the  
18 date of purchase.

19 (c) For purposes of this section, Chapter 5 (commencing with  
20 Section 17200) of Part 2 of Division 7 of, and Article 1  
21 (commencing with Section 17500) of Chapter 1 of Part 3 of  
22 Division 7 of, the Business and Professions Code, and Title 1.5  
23 (commencing with Section 1750) of Part 4 of Division 3 of the  
24 Civil Code shall not apply to any person other than a convicted  
25 seller.

26 (d) “Counterfeit mark” has the same meaning as that term is  
27 defined in Section 2320 of Title 18 of the United States Code.

28 (e) “Counterfeit label” has the same meaning as that term is  
29 defined in Section 2318 of Title 18 of the United States Code.

30 (f) “Illicit label” has the same meaning as that term is defined  
31 in Section 2318 of Title 18 of the United States Code.

32 (g) Notwithstanding Article 2 (commencing with Section 6481)  
33 of Chapter 5, any notice of deficiency determination to a convicted  
34 purchaser shall be mailed within one year after the last day of the  
35 calendar month following the date of conviction.

36 ~~SEC. 5.~~

37 SEC. 4. No reimbursement is required by this act pursuant to  
38 Section 6 of Article XIII B of the California Constitution because  
39 the only costs that may be incurred by a local agency or school  
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty  
2 for a crime or infraction, within the meaning of Section 17556 of  
3 the Government Code, or changes the definition of a crime within  
4 the meaning of Section 6 of Article XIII B of the California  
5 Constitution.

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