

AMENDED IN ASSEMBLY APRIL 9, 2015
AMENDED IN ASSEMBLY MARCH 19, 2015
AMENDED IN ASSEMBLY MARCH 16, 2015
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 160

Introduced by Assembly Member Dababneh

January 21, 2015

An act to amend Section 186.2 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: *provisions as including, among other things, specified crimes that are of a conspiratorial nature and are organized, and that seek to supply illegal goods and services or to conduct illegal activities.*

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 or organized nature, or that involves the planning and coordination of individual efforts, and seeks to supply illegal goods and services, or conduct illegal activities that involve fraud or deceit for monetary gain in any way: pimping and pandering, counterfeiting of a registered mark, piracy of a recording or audiovisual work, embezzlement, securities fraud, tax fraud, grand theft, money laundering, and forgery. By increasing the burdens on local prosecuting agencies, this bill would impose a state-mandated local program.~~

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.~~

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

- 1 (8) Gambling, as defined in Sections 337a to 337f, inclusive,
2 and Section 337i, except the activities of a person who participates
3 solely as an individual bettor.
- 4 (9) Kidnapping, as defined in Section 207.
- 5 (10) Mayhem, as defined in Section 203.
- 6 (11) Murder, as defined in Section 187.
- 7 (12) Pimping and pandering, as defined in Section 266.
- 8 (13) Receiving stolen property, as defined in Section 496.
- 9 (14) Robbery, as defined in Section 211.
- 10 (15) Solicitation of crimes, as defined in Section 653f.
- 11 (16) Grand theft, as defined in Section 487 or subdivision (a)
12 of Section 487a.
- 13 (17) Trafficking in controlled substances, as defined in Sections
14 11351, 11352, and 11353 of the Health and Safety Code.
- 15 (18) Violation of the laws governing corporate securities, as
16 defined in Section 25541 of the Corporations Code.
- 17 (19) Offenses contained in Chapter 7.5 (commencing with
18 Section 311) of Title 9, relating to obscene matter, or in Chapter
19 7.6 (commencing with Section 313) of Title 9, relating to harmful
20 matter that may be prosecuted as a felony.
- 21 (20) Presentation of a false or fraudulent claim, as defined in
22 Section 550.
- 23 (21) False or fraudulent activities, schemes, or artifices, as
24 described in Section 14107 of the Welfare and Institutions Code.
- 25 (22) Money laundering, as defined in Section 186.10.
- 26 (23) Offenses relating to the counterfeit of a registered mark,
27 as specified in Section 350, or offenses relating to piracy, as
28 specified in Section 653w.
- 29 (24) Offenses relating to the unauthorized access to computers,
30 computer systems, and computer data, as specified in Section 502.
- 31 (25) Conspiracy to commit any of the crimes listed above, as
32 defined in Section 182.
- 33 (26) Subdivision (a) of Section 186.22, or a felony subject to
34 enhancement as specified in subdivision (b) of Section 186.22.
- 35 (27) Offenses related to fraud or theft against the state's
36 beverage container recycling program, including, but not limited
37 to, those offenses specified in this subdivision and those criminal
38 offenses specified in the California Beverage Container Recycling
39 and Litter Reduction Act, commencing at Section 14500 of the
40 Public Resources Code.

1 (28) Human trafficking, as defined in Section 236.1.

2 (29) Any crime in which the perpetrator induces, encourages,
3 or persuades a person under 18 years of age to engage in a
4 commercial sex act. For purposes of this paragraph, a commercial
5 sex act means any sexual conduct on account of which anything
6 of value is given or received by any person.

7 (30) Any crime in which the perpetrator, through force, fear,
8 coercion, deceit, violence, duress, menace, or threat of unlawful
9 injury to the victim or to another person, causes a person under 18
10 years of age to engage in a commercial sex act. For purposes of
11 this paragraph, a commercial sex act means any sexual conduct
12 on account of which anything of value is given or received by any
13 person.

14 (31) Theft of personal identifying information, as defined in
15 Section 530.5.

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

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

20 (34) Offenses relating to insurance fraud, as specified in Sections
21 2106, 2108, 2109, 2110, 2110.3, 2110.5, 2110.7, and 2117 of the
22 Unemployment Insurance Code, or offenses relating to tax fraud,
23 as specified in Sections 6452, 6455, 7152, 7153.5, 19705, 19706,
24 19708, 19721, 30471, 30472, 30480, and 60707 of the Revenue
25 and Taxation Code and Sections 2117.5, 2118, and 2118.5 of the
26 Unemployment Insurance Code.

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

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

33 (B) Are not isolated events.

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

35 (2) Acts that would constitute a “pattern of criminal profiteering
36 activity” may not be used by a prosecuting agency to seek the
37 remedies provided by this chapter unless the underlying offense
38 occurred after the effective date of this chapter and the prior act
39 occurred within 10 years, excluding any period of imprisonment,
40 of the commission of the underlying offense. A prior act may not

1 be used by a prosecuting agency to seek remedies provided by this
2 chapter if a prosecution for that act resulted in an acquittal.

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

5 ~~(d) (1) “Organized crime” means crime that has both of the~~
6 ~~following characteristics:~~

7 ~~(A) The crime is of a conspiratorial or organized nature, or~~
8 ~~involves the planning and coordination of individual efforts.~~

9 ~~(B) The crime seeks to supply illegal goods and services, or~~
10 ~~conduct illegal activities that involve fraud or deceit for monetary~~
11 ~~gain in any way.~~

12 ~~(2) “Organized crime” also means crime committed by a~~
13 ~~criminal street gang, as defined in subdivision (f) of Section 186.22.~~
14 ~~“Organized crime” also means false or fraudulent activities,~~
15 ~~schemes, or artifices, as described in Section 14107 of the Welfare~~
16 ~~and Institutions Code, and the theft of personal identifying~~
17 ~~information, as defined in Section 530.5.~~

18 *(d) “Organized crime” means crime that is of a conspiratorial*
19 *nature and that is either of an organized nature and seeks to supply*
20 *illegal goods or services such as narcotics, prostitution, pimping*
21 *and pandering, loan-sharking, counterfeiting of a registered mark*
22 *in violation of Section 350, the piracy of a recording or audiovisual*
23 *work in violation of Section 653w, gambling, and pornography,*
24 *or that, through planning and coordination of individual efforts,*
25 *seeks to conduct the illegal activities of arson for profit, hijacking,*
26 *insurance fraud, smuggling, operating vehicle theft rings, fraud*
27 *against the beverage container recycling program, embezzlement,*
28 *securities fraud, tax fraud and insurance fraud in violation of the*
29 *provisions listed in paragraph 34 of subdivision (a), grand theft,*
30 *money laundering, forgery, or systematically encumbering the*
31 *assets of a business for the purpose of defrauding creditors.*
32 *“Organized crime” also means crime committed by a criminal*
33 *street gang, as defined in subdivision (f) of Section 186.22.*
34 *“Organized crime” also means false or fraudulent activities,*
35 *schemes, or artifices, as described in Section 14107 of the Welfare*
36 *and Institutions Code, and the theft of personal identifying*
37 *information, as defined in Section 530.5.*

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

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

3 6007. (a) (1) A “retail sale” or “sale at retail” means a sale
4 for any purpose other than resale in the regular course of business
5 in the form of tangible personal property.

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

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

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

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

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

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

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

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

39 (F) Notwithstanding Article 2 (commencing with Section 6481)
40 of Chapter 5, any notice of deficiency determination to a convicted

1 seller shall be mailed within one year after the last day of the
2 calendar month following the date of conviction.

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

5 6009.2. (a) Notwithstanding Sections 6008, 6009, and 6009.1,
6 “storage” and “use” each shall include a purchase by a convicted
7 purchaser of tangible personal property with a counterfeit mark,
8 a counterfeit label, or an illicit label on that property, or in
9 connection with that purchase, regardless of whether the purchase
10 is for resale in the regular course of business.

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

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

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

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

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

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

33 ~~SEC. 4. No reimbursement is required by this act pursuant to~~
34 ~~Section 6 of Article XIII B of the California Constitution because~~
35 ~~the only costs that may be incurred by a local agency or school~~
36 ~~district will be incurred because this act creates a new crime or~~
37 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
38 ~~for a crime or infraction, within the meaning of Section 17556 of~~
39 ~~the Government Code, or changes the definition of a crime within~~

1 ~~the meaning of Section 6 of Article XIII B of the California~~
2 ~~Constitution.~~

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

O