

AMENDED IN SENATE JUNE 16, 2015  
AMENDED IN ASSEMBLY MAY 5, 2015  
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**

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**Introduced by Assembly Member Dababneh**  
*(Coauthor: Assembly Member Cooper)*

January 21, 2015

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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 as including, among other things, specified crimes that are of a

conspiratorial nature and are either of an organized nature and seek to supply illegal goods and services or crimes that, through planning and coordination of individual efforts, seek to conduct specified illegal activities.

This bill would include within the definition of criminal profiteering activity offenses relating to piracy, and insurance fraud, as specified. The bill would also broaden the definition of organized crime to include pimping and pandering, counterfeiting of a registered mark, piracy of a recording or audiovisual work, embezzlement, securities 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, 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.  
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.

- 1 (13) Receiving stolen property, as defined in Section 496.
- 2 (14) Robbery, as defined in Section 211.
- 3 (15) Solicitation of crimes, as defined in Section 653f.
- 4 (16) Grand theft, as defined in Section 487 or subdivision (a)
- 5 of Section 487a.
- 6 (17) Trafficking in controlled substances, as defined in Sections
- 7 11351, 11352, and 11353 of the Health and Safety Code.
- 8 (18) Violation of the laws governing corporate securities, as
- 9 defined in Section 25541 of the Corporations Code.
- 10 (19) Offenses contained in Chapter 7.5 (commencing with
- 11 Section 311) of Title 9, relating to obscene matter, or in Chapter
- 12 7.6 (commencing with Section 313) of Title 9, relating to harmful
- 13 matter that may be prosecuted as a felony.
- 14 (20) Presentation of a false or fraudulent claim, as defined in
- 15 Section 550.
- 16 (21) False or fraudulent activities, schemes, or artifices, as
- 17 described in Section 14107 of the Welfare and Institutions Code.
- 18 (22) Money laundering, as defined in Section 186.10.
- 19 (23) Offenses relating to the counterfeit of a registered mark,
- 20 as specified in Section 350, or offenses relating to piracy, as
- 21 specified in Section 653w.
- 22 (24) Offenses relating to the unauthorized access to computers,
- 23 computer systems, and computer data, as specified in Section 502.
- 24 (25) Conspiracy to commit any of the crimes listed above, as
- 25 defined in Section 182.
- 26 (26) Subdivision (a) of Section 186.22, or a felony subject to
- 27 enhancement as specified in subdivision (b) of Section 186.22.
- 28 (27) Offenses related to fraud or theft against the state's
- 29 beverage container recycling program, including, but not limited
- 30 to, those offenses specified in this subdivision and those criminal
- 31 offenses specified in the California Beverage Container Recycling
- 32 and Litter Reduction Act, commencing at Section 14500 of the
- 33 Public Resources Code.
- 34 (28) Human trafficking, as defined in Section 236.1.
- 35 (29) Any crime in which the perpetrator induces, encourages,
- 36 or persuades a person under 18 years of age to engage in a
- 37 commercial sex act. For purposes of this paragraph, a commercial
- 38 sex act means any sexual conduct on account of which anything
- 39 of value is given or received by any person.

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

8 (31) Theft of personal identifying information, as defined in  
9 Section 530.5.

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

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

14 (34) Offenses relating to insurance fraud, as specified in Sections  
15 2106, 2108, 2109, 2110, 2110.3, 2110.5, 2110.7, and 2117 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) “Organized crime” means crime that is of a conspiratorial  
36 nature and that is either of an organized nature and seeks to supply  
37 illegal goods or services such as narcotics, prostitution, pimping  
38 and pandering, loan-sharking, counterfeiting of a registered mark  
39 in violation of Section 350, the piracy of a recording or audiovisual  
40 work in violation of Section 653w, gambling, and pornography,

1 or that, through planning and coordination of individual efforts,  
2 seeks to conduct the illegal activities of arson for profit, hijacking,  
3 insurance fraud, smuggling, operating vehicle theft rings, fraud  
4 against the beverage container recycling program, embezzlement,  
5 securities fraud, insurance fraud in violation of the provisions listed  
6 in paragraph 34 of subdivision (a), grand theft, money laundering,  
7 forgery, or systematically encumbering the assets of a business  
8 for the purpose of defrauding creditors. “Organized crime” also  
9 means crime committed by a criminal street gang, as defined in  
10 subdivision (f) of Section 186.22. “Organized crime” also means  
11 false or fraudulent activities, schemes, or artifices, as described in  
12 Section 14107 of the Welfare and Institutions Code, and the theft  
13 of personal identifying information, as defined in Section 530.5.

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

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

18 6007. (a) (1) A “retail sale” or “sale at retail” means a sale  
19 for ~~any~~ a purpose other than resale in the regular course of business  
20 in the form of tangible personal property.

21 (2) When tangible personal property is delivered by an owner  
22 or former owner thereof, or by a factor or agent of that owner,  
23 former owner, or factor to a consumer or to a person for redelivery  
24 to a consumer, pursuant to a retail sale made by a retailer not  
25 engaged in business in this state, the person making the delivery  
26 shall be deemed the retailer of that property. He or she shall include  
27 the retail selling price of the property in his or her gross receipts  
28 or sales price.

29 (b) (1) Notwithstanding subdivision (a), a “retail sale” or “sale  
30 at retail” shall include ~~any~~ a sale by a convicted seller of tangible  
31 personal property with a counterfeit mark, a counterfeit label, or  
32 an illicit label on that property, or in connection with that sale,  
33 regardless of whether the sale is for resale in the regular course of  
34 business.

35 (2) For purposes of this subdivision, all of the following shall  
36 apply:

37 (A) A “convicted seller” means a person convicted of a  
38 counterfeiting offense, including, but not limited to, a violation  
39 under Section 350 or 653w of the Penal Code or Section 2318,

1 2319, or 2320 of Title 18 of the United States Code on or after the  
2 date of sale.

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

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

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

9 (E) Chapter 5 (commencing with Section 17200) of Part 2 of  
10 Division 7 of, and Article 1 (commencing with Section 17500) of  
11 Chapter 1 of Part 3 of Division 7 of, the Business and Professions  
12 Code, and Title 1.5 (commencing with Section 1750) of Part 4 of  
13 Division 3 of the Civil Code shall not apply to any person other  
14 than a convicted seller.

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

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

21 6009.2. (a) Notwithstanding Sections 6008, 6009, and 6009.1,  
22 “storage” and “use” each shall include a purchase by a convicted  
23 purchaser of tangible personal property with a counterfeit mark,  
24 a counterfeit label, or an illicit label on that property, or in  
25 connection with that purchase, regardless of whether the purchase  
26 is for resale in the regular course of business.

27 (b) “Convicted purchaser” means a person convicted of a  
28 counterfeiting offense, including, but not limited to, a violation  
29 under Section 350 or 653w of the Penal Code or Section 2318,  
30 2319, or 2320 of Title 18 of the United States Code on or after the  
31 date of purchase.

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

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

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

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

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

9 SEC. 4. If the Commission on State Mandates determines that  
10 this act contains costs mandated by the state, reimbursement to  
11 local agencies and school districts for those costs shall be made  
12 pursuant to Part 7 (commencing with Section 17500) of Division  
13 4 of Title 2 of the Government Code.