

## **Assembly Bill No. 160**

### CHAPTER 427

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.

[Approved by Governor October 2, 2015. Filed with  
Secretary of State October 2, 2015.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 160, 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.

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

SECTION 1. Section 186.2 of the Penal Code is amended to read:

186.2. For purposes of this chapter, the following definitions apply:

(a) “Criminal profiteering activity” means any act committed or attempted or any threat made for financial gain or advantage, which act or threat may be charged as a crime under any of the following sections:

- (1) Arson, as defined in Section 451.
- (2) Bribery, as defined in Sections 67, 67.5, and 68.
- (3) Child pornography or exploitation, as defined in subdivision (b) of Section 311.2, or Section 311.3 or 311.4, which may be prosecuted as a felony.
- (4) Felonious assault, as defined in Section 245.
- (5) Embezzlement, as defined in Sections 424 and 503.
- (6) Extortion, as defined in Section 518.
- (7) Forgery, as defined in Section 470.
- (8) Gambling, as defined in Sections 337a to 337f, inclusive, and Section 337i, except the activities of a person who participates solely as an individual bettor.
- (9) Kidnapping, as defined in Section 207.

- (10) Mayhem, as defined in Section 203.
- (11) Murder, as defined in Section 187.
- (12) Pimping and pandering, as defined in Section 266.
- (13) Receiving stolen property, as defined in Section 496.
- (14) Robbery, as defined in Section 211.
- (15) Solicitation of crimes, as defined in Section 653f.
- (16) Grand theft, as defined in Section 487 or subdivision (a) of Section 487a.
- (17) Trafficking in controlled substances, as defined in Sections 11351, 11352, and 11353 of the Health and Safety Code.
- (18) Violation of the laws governing corporate securities, as defined in Section 25541 of the Corporations Code.
- (19) Offenses contained in Chapter 7.5 (commencing with Section 311) of Title 9, relating to obscene matter, or in Chapter 7.6 (commencing with Section 313) of Title 9, relating to harmful matter that may be prosecuted as a felony.
- (20) Presentation of a false or fraudulent claim, as defined in Section 550.
- (21) False or fraudulent activities, schemes, or artifices, as described in Section 14107 of the Welfare and Institutions Code.
- (22) Money laundering, as defined in Section 186.10.
- (23) Offenses relating to the counterfeit of a registered mark, as specified in Section 350, or offenses relating to piracy, as specified in Section 653w.
- (24) Offenses relating to the unauthorized access to computers, computer systems, and computer data, as specified in Section 502.
- (25) Conspiracy to commit any of the crimes listed above, as defined in Section 182.
- (26) Subdivision (a) of Section 186.22, or a felony subject to enhancement as specified in subdivision (b) of Section 186.22.
- (27) Offenses related to fraud or theft against the state's beverage container recycling program, including, but not limited to, those offenses specified in this subdivision and those criminal offenses specified in the California Beverage Container Recycling and Litter Reduction Act, commencing at Section 14500 of the Public Resources Code.
- (28) Human trafficking, as defined in Section 236.1.
- (29) Any crime in which the perpetrator induces, encourages, or persuades a person under 18 years of age to engage in a commercial sex act. For purposes of this paragraph, a commercial sex act means any sexual conduct on account of which anything of value is given or received by any person.
- (30) Any crime in which the perpetrator, through force, fear, coercion, deceit, violence, duress, menace, or threat of unlawful injury to the victim or to another person, causes a person under 18 years of age to engage in a commercial sex act. For purposes of this paragraph, a commercial sex act means any sexual conduct on account of which anything of value is given or received by any person.
- (31) Theft of personal identifying information, as defined in Section 530.5.

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

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

(34) Offenses relating to insurance fraud, as specified in Sections 2106, 2108, 2109, 2110, 2110.3, 2110.5, 2110.7, and 2117 of the Unemployment Insurance Code.

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

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

(B) Are not isolated events.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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