

AMENDED IN ASSEMBLY APRIL 21, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 443

Introduced by Assembly Member Alejo

February 23, 2015

An act to amend ~~Sections 186.2 and~~ *Section* 186.4 of the Penal Code, relating to forfeiture.

LEGISLATIVE COUNSEL'S DIGEST

AB 443, as amended, Alejo. Forfeiture.

Existing law subjects property acquired through or as proceeds of criminal profiteering activity to forfeiture. Existing law defines criminal profiteering activity as any specified acts or threats made for financial gain or ~~advantage~~.

~~This bill would add trafficking in firearms or other deadly weapons and trafficking in endangered species to the list of acts which can constitute criminal profiteering activity.~~

~~Existing~~ *advantage*. Existing law requires a prosecuting agency to file a petition of forfeiture in conjunction with the criminal proceeding for the underlying offense.

This bill would allow the prosecuting agency to file a petition of forfeiture prior to the commencement of the underlying criminal proceeding if the value of the assets seized exceeds ~~\$10,000~~, *\$100,000*, there is a substantial probability that the prosecuting agency will file a criminal complaint, there is a substantial probability the prosecuting agency will prevail on the issue of forfeiture and failure to enter the order will result in the property being destroyed or otherwise removed from the jurisdiction of the court, and the need to preserve the property outweighs the hardship on any party against whom the order is entered.

The bill would allow a person claiming an interest in the property or proceeds to move for return of the property on the grounds there is not probable cause to believe that the property is subject to forfeiture, and if the prosecuting agency does not establish probable cause that the property is subject to forfeiture the court shall order the seized property returned.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

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.~~
 28 ~~(16) Grand theft, as defined in Section 487 or subdivision (a)~~
 29 ~~of Section 487a.~~

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

- 1 ~~(31) Theft of personal identifying information, as defined in~~
2 ~~Section 530.5.~~
- 3 ~~(32) Offenses involving the theft of a motor vehicle, as specified~~
4 ~~in Section 10851 of the Vehicle Code.~~
- 5 ~~(33) Abduction or procurement by fraudulent inducement for~~
6 ~~prostitution, as defined in Section 266a.~~
- 7 ~~(34) Trafficking in firearms or other deadly weapons.~~
- 8 ~~(35) Trafficking in endangered species, as defined by Section~~
9 ~~2062 of the Fish and Game Code or the federal Endangered Species~~
10 ~~Act of 1973.~~
- 11 ~~(b) (1) “Pattern of criminal profiteering activity” means~~
12 ~~engaging in at least two incidents of criminal profiteering, as~~
13 ~~defined by this chapter, that meet the following requirements:~~
- 14 ~~(A) Have the same or a similar purpose, result, principals,~~
15 ~~victims, or methods of commission, or are otherwise interrelated~~
16 ~~by distinguishing characteristics.~~
- 17 ~~(B) Are not isolated events.~~
- 18 ~~(C) Were committed as a criminal activity of organized crime.~~
- 19 ~~(2) Acts that would constitute a “pattern of criminal profiteering~~
20 ~~activity” may not be used by a prosecuting agency to seek the~~
21 ~~remedies provided by this chapter unless the underlying offense~~
22 ~~occurred after the effective date of this chapter and the prior act~~
23 ~~occurred within 10 years, excluding any period of imprisonment,~~
24 ~~of the commission of the underlying offense. A prior act may not~~
25 ~~be used by a prosecuting agency to seek remedies provided by this~~
26 ~~chapter if a prosecution for that act resulted in an acquittal.~~
- 27 ~~(c) “Prosecuting agency” means the Attorney General or the~~
28 ~~district attorney of any county.~~
- 29 ~~(d) “Organized crime” means crime that is of a conspiratorial~~
30 ~~nature and that is either of an organized nature and seeks to supply~~
31 ~~illegal goods and services such as narcotics, weapons, prostitution,~~
32 ~~loan-sharking, gambling, and pornography, or that, through~~
33 ~~planning and coordination of individual efforts, seeks to conduct~~
34 ~~the illegal activities of arson for profit, hijacking, insurance fraud,~~
35 ~~smuggling, operating vehicle theft rings, fraud against the beverage~~
36 ~~container recycling program, or systematically encumbering the~~
37 ~~assets of a business for the purpose of defrauding creditors.~~
38 ~~“Organized crime” also means crime committed by a criminal~~
39 ~~street gang, as defined in subdivision (f) of Section 186.22.~~
40 ~~“Organized crime” also means false or fraudulent activities,~~

1 schemes, or artifices, as described in Section 14107 of the Welfare
2 and Institutions Code, and the theft of personal identifying
3 information, as defined in Section 530.5.

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

6 ~~SEC. 2.~~

7 SECTION 1. Section 186.4 of the Penal Code is amended to
8 read:

9 186.4. (a) (1) The prosecuting agency shall, in conjunction
10 with the criminal proceeding, file a petition of forfeiture with the
11 superior court of the county in which the defendant has been
12 charged with the underlying criminal offense, which shall allege
13 that the defendant has engaged in a pattern of criminal profiteering
14 activity, including the acts or threats chargeable as crimes and the
15 property forfeitable pursuant to Section 186.3.

16 (2) The prosecuting agency may, prior to the commencement
17 of a criminal proceeding, file a petition of forfeiture with the
18 superior court of the county in which the defendant ~~will be charged~~
19 ~~with a criminal offense, is being investigated,~~ which shall allege
20 that the defendant has engaged in a pattern of criminal profiteering
21 activity, including the acts or threats chargeable as crimes and the
22 property forfeitable pursuant to Section 186.3, provided the court
23 determines that:

24 (A) The value of the assets to be seized exceeds ~~\$10,000.~~ *one*
25 *hundred thousand dollars (\$100,000).*

26 (B) There is a substantial probability that the prosecuting agency
27 will file a criminal complaint or seek a grand jury indictment
28 against the defendant.

29 (C) There is a substantial probability that the prosecuting agency
30 will prevail on the issue of forfeiture and that failure to enter the
31 order will result in the property being destroyed, removed from
32 the jurisdiction of the court, or otherwise made unavailable for
33 forfeiture.

34 (D) The need to preserve the availability of the property through
35 the entry of the requested order outweighs the hardship on any
36 party against whom the order is to be entered.

37 (b) The prosecuting agency shall make service of process of a
38 notice regarding that petition upon every individual who may have
39 a property interest in the alleged proceeds, which notice shall state
40 that any interested party may file a verified claim with the superior

1 court stating the amount of their claimed interest and an affirmation
 2 or denial of the prosecuting agency’s allegation. If the notices
 3 cannot be given by registered mail or personal delivery, the notices
 4 shall be published for at least three successive weeks in a
 5 newspaper of general circulation in the county where the property
 6 is located. If the property alleged to be subject to forfeiture is real
 7 property, the prosecuting agency shall, at the time of filing the
 8 petition of forfeiture, record a lis pendens in each county in which
 9 the real property is situated which specifically identifies the real
 10 property alleged to be subject to forfeiture. The judgment of
 11 forfeiture shall not affect the interest in real property of any third
 12 party which was acquired prior to the recording of the lis pendens.

13 *(c) (1) If a forfeiture petition is filed pursuant to paragraph (2)*
 14 *of subdivision (a), prior to the filing of the complaint in a criminal*
 15 *action, a person claiming an interest in the property or proceeds*
 16 *may move for the return of the property on the grounds that there*
 17 *is not probable cause to believe the property is forfeitable pursuant*
 18 *to Section 186.3 and is not automatically subject to court order*
 19 *of forfeiture or destruction by another provision of this chapter.*
 20 *The motion may be made prior to, during, or subsequent to, the*
 21 *filing of criminal charges or a grand jury indictment. If the*
 22 *prosecuting agency does not establish probable cause that the*
 23 *property is subject to forfeiture, the court shall order the seized*
 24 *property released to the person it determines is entitled to the*
 25 *property.*

26 *(2) If a claimant’s motion filed pursuant to paragraph (1) is*
 27 *granted, the people may, within 15 days, file a petition for a writ*
 28 *of mandate or prohibition seeking appellate review of the ruling.*

29 ~~(e)~~

30 ~~(d) If a forfeiture petition is filed pursuant to Paragraph~~
 31 ~~paragraph (2) of Subdivision subdivision (a), prior to the filing of~~
 32 ~~the complaint in a criminal action, the motion and any injunctive~~
 33 ~~order shall be dismissed by operation of law unless if a criminal~~
 34 ~~complaint or grand jury indictment is not filed within 60 days of~~
 35 ~~the grant of the motion. If a forfeiture petition is dismissed pursuant~~
 36 ~~to this subdivision, the motion shall not be refiled, except upon~~
 37 ~~the filing of a criminal-complain. complaint.~~

38 ~~(d)~~

1 (e) All notices shall set forth the time within which a claim of
2 interest in the property seized is required to be filed pursuant to
3 Section 186.5.

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