

AMENDED IN SENATE AUGUST 18, 2015

AMENDED IN ASSEMBLY MAY 4, 2015

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~~ *amend, repeal, and add* Sections 186.2 and 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. 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 \$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, the need to preserve the property outweighs the hardship on any party against whom the order is entered, and there is a substantial probability that the assets subject to forfeiture represent

direct or indirect proceeds of criminal activity committed for the benefit of, at the direction of, or in association with, a transnational criminal organization, as defined. 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 substantial probability that the property is subject to forfeiture the court ~~shall~~ *would be required* to order the seized property returned. *The bill would require the Attorney General, on or before January 1, 2018, to report to the Governor and specified committees on the use of these proceedings. The bill would provide for the repeal of these changes on January 1, 2019.*

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.

- 1 (12) Pimping and pandering, as defined in Section 266.
- 2 (13) Receiving stolen property, as defined in Section 496.
- 3 (14) Robbery, as defined in Section 211.
- 4 (15) Solicitation of crimes, as defined in Section 653f.
- 5 (16) Grand theft, as defined in Section 487 or subdivision (a)
- 6 of Section 487a.
- 7 (17) Trafficking in controlled substances, as defined in Sections
- 8 11351, 11352, and 11353 of the Health and Safety Code.
- 9 (18) Violation of the laws governing corporate securities, as
- 10 defined in Section 25541 of the Corporations Code.
- 11 (19) Any of the offenses contained in Chapter 7.5 (commencing
- 12 with Section 311) of Title 9, relating to obscene matter, or in
- 13 Chapter 7.6 (commencing with Section 313) of Title 9, relating to
- 14 harmful matter that may be prosecuted as a felony.
- 15 (20) Presentation of a false or fraudulent claim, as defined in
- 16 Section 550.
- 17 (21) False or fraudulent activities, schemes, or artifices, as
- 18 described in Section 14107 of the Welfare and Institutions Code.
- 19 (22) Money laundering, as defined in Section 186.10.
- 20 (23) Offenses relating to the counterfeit of a registered mark,
- 21 as specified in Section 350.
- 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) Any 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 (b) “Organized crime” means crime that is of a conspiratorial
 15 nature and that is either of an organized nature and seeks to supply
 16 illegal goods and services such as narcotics, prostitution,
 17 loan-sharking, gambling, and pornography, or that, through
 18 planning and coordination of individual efforts, seeks to conduct
 19 the illegal activities of arson for profit, hijacking, insurance fraud,
 20 smuggling, operating vehicle theft rings, fraud against the beverage
 21 container recycling program, or systematically encumbering the
 22 assets of a business for the purpose of defrauding creditors.
 23 “Organized crime” also means crime committed by a criminal
 24 street gang, as defined in subdivision (f) of Section 186.22.
 25 “Organized crime” also means false or fraudulent activities,
 26 schemes, or artifices, as described in Section 14107 of the Welfare
 27 and Institutions Code, and the theft of personal identifying
 28 information, as defined in Section 530.5.

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

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

35 (B) Are not isolated events.

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

37 (2) Acts that would constitute a “pattern of criminal profiteering
 38 activity” may not be used by a prosecuting agency to seek the
 39 remedies provided by this chapter unless the underlying offense
 40 occurred after the effective date of this chapter and the prior act

1 occurred within 10 years, excluding any period of imprisonment,
2 of the commission of the underlying offense. A prior act may not
3 be used by a prosecuting agency to seek remedies provided by this
4 chapter if a prosecution for that act resulted in an acquittal.

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

7 (e) “Transnational criminal organization” means an ongoing
8 organization, group, or association having leaders, associates,
9 operations, or activities in more than one country, with one of its
10 primary activities being the commission of one or more of the
11 criminal acts enumerated in paragraphs (1) to (25), inclusive, or
12 (31) to (33), inclusive, of subdivision (e) of Section 186.22.

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

15 (g) *This section shall remain in effect only until January 1, 2019,*
16 *and as of that date is repealed, unless a later enacted statute, that*
17 *is enacted before January 1, 2019, deletes or extends that date.*

18 SEC. 2. Section 186.2 is added to the Penal Code, to read:

19 186.2. For purposes of this chapter, the following definitions
20 apply:

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

25 (1) Arson, as defined in Section 451.

26 (2) Bribery, as defined in Sections 67, 67.5, and 68.

27 (3) Child pornography or exploitation, as defined in subdivision
28 (b) of Section 311.2, or Section 311.3 or 311.4, which may be
29 prosecuted as a felony.

30 (4) Felonious assault, as defined in Section 245.

31 (5) Embezzlement, as defined in Sections 424 and 503.

32 (6) Extortion, as defined in Section 518.

33 (7) Forgery, as defined in Section 470.

34 (8) Gambling, as defined in Sections 337a to 337f, inclusive,
35 and Section 337i, except the activities of a person who participates
36 solely as an individual bettor.

37 (9) Kidnapping, as defined in Section 207.

38 (10) Mayhem, as defined in Section 203.

39 (11) Murder, as defined in Section 187.

40 (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) *Any of the offenses contained in Chapter 7.5 (commencing*
11 *with Section 311) of Title 9, relating to obscene matter, or in*
12 *Chapter 7.6 (commencing with Section 313) of Title 9, relating to*
13 *harmful 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.*
- 21 (24) *Offenses relating to the unauthorized access to computers,*
22 *computer systems, and computer data, as specified in Section 502.*
- 23 (25) *Conspiracy to commit any of the crimes listed above, as*
24 *defined in Section 182.*
- 25 (26) *Subdivision (a) of Section 186.22, or a felony subject to*
26 *enhancement as specified in subdivision (b) of Section 186.22.*
- 27 (27) *Any offenses related to fraud or theft against the state's*
28 *beverage container recycling program, including, but not limited*
29 *to, those offenses specified in this subdivision and those criminal*
30 *offenses specified in the California Beverage Container Recycling*
31 *and Litter Reduction Act, commencing at Section 14500 of the*
32 *Public Resources Code.*
- 33 (28) *Human trafficking, as defined in Section 236.1.*
- 34 (29) *Any crime in which the perpetrator induces, encourages,*
35 *or persuades a person under 18 years of age to engage in a*
36 *commercial sex act. For purposes of this paragraph, a commercial*
37 *sex act means any sexual conduct on account of which anything*
38 *of value is given or received by any person.*
- 39 (30) *Any crime in which the perpetrator, through force, fear,*
40 *coercion, deceit, violence, duress, menace, or threat of unlawful*

1 *injury to the victim or to another person, causes a person under*
2 *18 years of age to engage in a commercial sex act. For purposes*
3 *of this paragraph, a commercial sex act means any sexual conduct*
4 *on account of which anything of value is given or received by any*
5 *person.*

6 *(31) Theft of personal identifying information, as defined in*
7 *Section 530.5.*

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

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

12 *(b) "Organized crime" means crime that is of a conspiratorial*
13 *nature and that is either of an organized nature and seeks to supply*
14 *illegal goods and services such as narcotics, prostitution,*
15 *loan-sharking, gambling, and pornography, or that, through*
16 *planning and coordination of individual efforts, seeks to conduct*
17 *the illegal activities of arson for profit, hijacking, insurance fraud,*
18 *smuggling, operating vehicle theft rings, fraud against the beverage*
19 *container recycling program, or systematically encumbering the*
20 *assets of a business for the purpose of defrauding creditors.*

21 *"Organized crime" also means crime committed by a criminal*
22 *street gang, as defined in subdivision (f) of Section 186.22.*

23 *"Organized crime" also means false or fraudulent activities,*
24 *schemes, or artifices, as described in Section 14107 of the Welfare*
25 *and Institutions Code, and the theft of personal identifying*
26 *information, as defined in Section 530.5.*

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

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

7 (f) *This section shall become operative on January 1, 2019.*

8 **SEC. 2.**

9 **SEC. 3.** Section 186.4 of the Penal Code is amended to read:

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

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

24 (A) The value of the assets to be seized exceeds one hundred
 25 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 (E) There is a substantial probability that the assets subject to
 38 forfeiture represent direct or indirect proceeds of criminal activity
 39 committed for the benefit of, at the direction of, or in association

1 with, a transnational criminal organization, as defined in Section
2 186.2.

3 (b) The prosecuting agency shall make service of process of a
4 notice regarding that petition upon every individual who may have
5 a property interest in the alleged proceeds, which notice shall state
6 that any interested party may file a verified claim with the superior
7 court stating the amount of their claimed interest and an affirmation
8 or denial of the prosecuting agency's allegation. If the notices
9 cannot be given by registered mail or personal delivery, the notices
10 shall be published for at least three successive weeks in a
11 newspaper of general circulation in the county where the property
12 is located. If the property alleged to be subject to forfeiture is real
13 property, the prosecuting agency shall, at the time of filing the
14 petition of forfeiture, record a lis pendens in each county in which
15 the real property is situated which specifically identifies the real
16 property alleged to be subject to forfeiture. The judgment of
17 forfeiture shall not affect the interest in real property of any third
18 party which was acquired prior to the recording of the lis pendens.

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

31 (2) If a claimant's motion filed pursuant to paragraph (1) is
32 granted, the people may, within 15 days, file a petition for a writ
33 of mandate or prohibition seeking appellate review of the ruling.

34 (d) If a forfeiture petition is filed pursuant to paragraph (2) of
35 subdivision (a), prior to the filing of the complaint in a criminal
36 action, the motion and any injunctive order shall be dismissed if
37 a criminal complaint or grand jury indictment is not filed within
38 60 days of the grant of the motion. If a forfeiture petition is
39 dismissed pursuant to this subdivision, the motion shall not be
40 refiled, except upon the filing of a criminal complaint.

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.

4 (f) *On or before January 1, 2018, the Attorney General shall*
5 *report to the Senate Committee on Public Safety, the Assembly*
6 *Committee on Public Safety, and the Governor. The report shall*
7 *include, but not be limited to, the following information regarding*
8 *petitions filed pursuant to paragraph (2) of subdivision (a) between*
9 *January 1, 2016, and January 1, 2018:*

10 (1) *The number of cases in which the process authorized by*
11 *paragraph (2) of subdivision (a) has been used.*

12 (2) *The value and kinds of property seized in each case.*

13 (3) *The criminal charges filed, if any, in conjunction with each*
14 *forfeiture action.*

15 (4) *The number of cases in which related charges were not filed.*

16 (5) *The number of cases in which property was returned because*
17 *charges were not filed.*

18 (6) *The length of time between dismissal, if any, of the forfeiture*
19 *petition and the return of the property pursuant to subdivision (d)*
20 *in each case.*

21 (7) *The number of cases in which property was returned*
22 *pursuant to a motion filed under paragraph (1) of subdivision (c).*

23 (g) *This section shall remain in effect only until January 1, 2019,*
24 *and as of that date is repealed, unless a later enacted statute, that*
25 *is enacted before January 1, 2019, deletes or extends that date.*

26 SEC. 4. *Section 186.4 is added to the Penal Code, to read:*

27 186.4. (a) *The prosecuting agency shall, in conjunction with*
28 *the criminal proceeding, file a petition of forfeiture with the*
29 *superior court of the county in which the defendant has been*
30 *charged with the underlying criminal offense, which shall allege*
31 *that the defendant has engaged in a pattern of criminal profiteering*
32 *activity, including the acts or threats chargeable as crimes and*
33 *the property forfeitable pursuant to Section 186.3.*

34 (b) *The prosecuting agency shall make service of process of a*
35 *notice regarding that petition upon every individual who may have*
36 *a property interest in the alleged proceeds, which notice shall state*
37 *that any interested party may file a verified claim with the superior*
38 *court stating the amount of their claimed interest and an*
39 *affirmation or denial of the prosecuting agency's allegation. If the*
40 *notices cannot be given by registered mail or personal delivery,*

1 *the notices shall be published for at least three successive weeks*
2 *in a newspaper of general circulation in the county where the*
3 *property is located. If the property alleged to be subject to*
4 *forfeiture is real property, the prosecuting agency shall, at the*
5 *time of filing the petition of forfeiture, record a lis pendens in each*
6 *county in which the real property is situated which specifically*
7 *identifies the real property alleged to be subject to forfeiture. The*
8 *judgment of forfeiture shall not affect the interest in real property*
9 *of any third party which was acquired prior to the recording of*
10 *the lis pendens.*

11 *(c) All notices shall set forth the time within which a claim of*
12 *interest in the property seized is required to be filed pursuant to*
13 *Section 186.5.*

14 *(d) This section shall become operative on January 1, 2019.*

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