

AMENDED IN ASSEMBLY JANUARY 4, 2016

AMENDED IN ASSEMBLY APRIL 15, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 595

Introduced by Assembly Member Alejo
(Principal coauthor: Assembly Member Dodd)
(Coauthors: Assembly Members Dababneh and Cristina Garcia)
(Coauthor: Senator Bates)

February 24, 2015

~~An act to amend Section 3077 of, to add Sections 3090.1 and 3109.1 to, to repeal Section 2556 of, and to repeal and add Sections 655 and 2555 of, the Business and Professions Code, relating to healing arts. An act to amend, repeal, and add Sections 186.2 and 186.4 of the Penal Code, relating to forfeiture.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 595, as amended, Alejo. ~~Registered dispensing opticians: optometrists: practices: 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 would be required to order the seized property returned. The bill would require the Attorney General, on or before January 1, 2019, 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, 2020.

~~(1) The Optometry Practice Act provides for the licensure and regulation of the practice of optometry by the State Board of Optometry, and makes a violation of the act a crime. Existing law requires individuals, corporations, and firms engaged in the business of filling prescriptions of physicians and surgeons and optometrists for prescription lenses and kindred products to register with the Division of Licensing of the Medical Board of California as a registered dispensing optician, and makes a violation of the provisions governing registered dispensing opticians a crime.~~

~~(2) Existing law prohibits a licensed optometrist from having any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit-sharing arrangement, in any form, whether directly or indirectly, with any person licensed as a registered dispensing optician, and prohibits a registered dispensing optician from having any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit-sharing arrangement in any form directly or indirectly with a licensed optometrist. Existing law also prohibits a licensed optometrist from having any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit-sharing arrangement in any form, directly or indirectly, either by stock ownership, interlocking directors, trusteeship, mortgage, trust deed, or otherwise with any person who is engaged in the manufacture, sale, or~~

~~distribution to physicians and surgeons, optometrists, or dispensing opticians of lenses, frames, optical supplies, optometric appliances or devices or kindred products. Under existing law, a violation of the above provisions by a licensed optometrist and any person, whether or not licensed, who participates with a licensed optometrist in violating those provisions constitutes a misdemeanor.~~

~~This bill would delete those provisions. The bill instead would prohibit a licensed registered dispensing optician or a manufacturer or distributor of optical goods that is renting or leasing office space to or from, sharing office space with, or receiving space from an optometrist from engaging in conduct that would influence or interfere with the clinical decisions, as defined, of that optometrist, as specified. The bill would prohibit an optometrist that is using or sharing office space with a registered dispensing optician from giving or receiving, among other things, a fee or thing of material value, to or from any person in return for referral of patients or to secure patients. The bill would make a violation of these provisions punishable as a misdemeanor.~~

~~(3) Existing law permits a certificate of a registered dispensing optician to be suspended, revoked, or subjected to probation for violation of regulations or laws, as specified, or for incompetence, gross negligence, or repeated similar negligent acts by the registrant or an employee, as provided.~~

~~This bill would delete those provisions. The bill similarly would permit a certificate of a registered dispensing optician to be suspended, revoked, or subjected to probation for violation of regulations or laws, as specified, or for incompetence, gross negligence, or repeated negligent acts by the registrant or an employee, as provided, and additionally would permit the certificate to be suspended, revoked, or subjected to probation for unprofessional conduct, which includes repeated interference with the optometrist's clinical judgment or compliance with prevailing clinical standards. The bill authorizes assessment of administrative fines for violation of specified provisions of law and requires registered dispensing opticians to cooperate with investigations into a complaint or alleged violation of law.~~

~~(4) Under existing law, it is unlawful for a registered dispensing optician to advertise the furnishing of, or to furnish, the services of a refractionist, an optometrist, or a physician and surgeon; to directly or indirectly employ or maintain on or near the premises used for optical dispensing a refractionist, an optometrist, a physician and surgeon, or a practitioner of any other profession for the purpose of any examination~~

or treatment of the eyes; or to duplicate or change lenses without a prescription or order from a person duly licensed to issue the same.

This bill would delete those prohibitions:

(5) The Optometry Practice Act prohibits a person from having an office for the practice of optometry unless he or she is licensed to practice optometry, and requires an optometrist that has more than one office to comply with certain provisions of the act, including, among others, that an optometrist obtain a branch office license for any additional office. The act prohibits more than one branch office license from being issued to an optometrist or any 2 or more optometrists, jointly. The act requires an optometrist that had a branch office prior to January 1, 1957, and who wants to continue that branch office on or after that date to notify the board, as specified.

The bill would delete the prohibition of an optometrist or 2 or more optometrists, jointly, from having more than one branch office, and would delete the requirement that an optometrist that had a branch office prior to January 1, 1957, and who wants to continue that branch office to notify the board. The bill would prohibit a person from having any proprietary interest in an office for the practice of optometry unless he or she is licensed to practice optometry. The bill would specify that a branch office is any additional office that is not the principal place of business of an optometrist, as specified.

(6) The Optometry Practice Act prohibits an optometrist from directly or indirectly accepting employment from any person not having a valid, unrevoked license as an optometrist, except that the act authorizes an optometrist to be employed by a physician and surgeon who practices in the specialty of ophthalmology or by a health care service plan.

This bill would require an optometrist to report to the State Board of Optometry any action or circumstance that the optometrist reasonably and in good faith believes is an attempt by a registered dispensing optician, or an employee or agent thereof, to interfere with the optometrist's independent clinical judgment or compliance with prevailing clinical standards. The bill would require the State Board of Optometry to report these complaints to the Division of Licensing of the Medical Board of California.

(7) The bill also would require the State Board of Optometry to receive any complaint made to a state board or department related to care provided to a patient by a licensed optometrist.

(8) A violation of the optometry laws and the law governing registered dispensing opticians is a crime. Therefore, by expanding the

~~scope of an existing crime, this bill would impose a state-mandated local program.~~

~~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.~~

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

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

1 this paragraph, a commercial sex act means any sexual conduct
2 on account of which anything of value is given or received by any
3 person.

4 (31) Theft of personal identifying information, as defined in
5 Section 530.5.

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

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

10 (34) *Offenses relating to insurance fraud, as specified in*
11 *Sections 2106, 2108, 2109, 2110, 2110.3, 2110.5, 2110.7, and*
12 *2117 of the Unemployment Insurance Code.*

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

33 ~~(b)~~

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

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

40 (B) Are not isolated events.

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

10 (e)

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

13 (d)

14 (e) ~~“Organized crime”~~ *“Transnational criminal organization”*
 15 ~~means crime that is of a conspiratorial nature and that is either of~~
 16 ~~an organized nature and seeks to supply illegal goods and services~~
 17 ~~such as narcotics, prostitution, loan-sharking, gambling, and~~
 18 ~~pornography, ongoing organization, group, or that, through~~
 19 ~~planning and coordination of individual efforts, seeks to conduct~~
 20 ~~the illegal activities association having leaders, associates,~~
 21 ~~operations, or activities in more than one country, with one of~~
 22 ~~arson for profit, hijacking, insurance fraud, smuggling, operating~~
 23 ~~vehicle theft rings, fraud against its primary activities being the~~
 24 ~~beverage container recycling program, or systematically~~
 25 ~~encumbering the assets commission of a business for the purpose~~
 26 ~~one or more of defrauding creditors. “Organized crime” also means~~
 27 ~~crime committed by a criminal street gang, as defined in the~~
 28 ~~criminal acts enumerated in paragraphs (1) to (25), inclusive, or~~
 29 ~~(31) to (33), inclusive, of subdivision (f)(e) of Section 186.22.~~
 30 ~~“Organized crime” also means false or fraudulent activities,~~
 31 ~~schemes, or artifices, as described in Section 14107 of the Welfare~~
 32 ~~and Institutions Code, and the theft of personal identifying~~
 33 ~~information, as defined in Section 530.5.~~

34 (e)

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

37 (g) *This section shall remain in effect only until January 1, 2020,*
 38 *and as of that date is repealed, unless a later enacted statute, that*
 39 *is enacted before January 1, 2020, deletes or extends that date.*

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

- 1 186.2. For purposes of this chapter, the following definitions
2 apply:
- 3 (a) “Criminal profiteering activity” means any act committed
4 or attempted or any threat made for financial gain or advantage,
5 which act or threat may be charged as a crime under any of the
6 following sections:
- 7 (1) Arson, as defined in Section 451.
 - 8 (2) Bribery, as defined in Sections 67, 67.5, and 68.
 - 9 (3) Child pornography or exploitation, as defined in subdivision
10 (b) of Section 311.2, or Section 311.3 or 311.4, which may be
11 prosecuted as a felony.
 - 12 (4) Felonious assault, as defined in Section 245.
 - 13 (5) Embezzlement, as defined in Sections 424 and 503.
 - 14 (6) Extortion, as defined in Section 518.
 - 15 (7) Forgery, as defined in Section 470.
 - 16 (8) Gambling, as defined in Sections 337a to 337f, inclusive,
17 and Section 337i, except the activities of a person who participates
18 solely as an individual bettor.
 - 19 (9) Kidnapping, as defined in Section 207.
 - 20 (10) Mayhem, as defined in Section 203.
 - 21 (11) Murder, as defined in Section 187.
 - 22 (12) Pimping and pandering, as defined in Section 266.
 - 23 (13) Receiving stolen property, as defined in Section 496.
 - 24 (14) Robbery, as defined in Section 211.
 - 25 (15) Solicitation of crimes, as defined in Section 653f.
 - 26 (16) Grand theft, as defined in Section 487 or subdivision (a)
27 of Section 487a.
 - 28 (17) Trafficking in controlled substances, as defined in Sections
29 11351, 11352, and 11353 of the Health and Safety Code.
 - 30 (18) Violation of the laws governing corporate securities, as
31 defined in Section 25541 of the Corporations Code.
 - 32 (19) Offenses contained in Chapter 7.5 (commencing with
33 Section 311) of Title 9, relating to obscene matter, or in Chapter
34 7.6 (commencing with Section 313) of Title 9, relating to harmful
35 matter that may be prosecuted as a felony.
 - 36 (20) Presentation of a false or fraudulent claim, as defined in
37 Section 550.
 - 38 (21) False or fraudulent activities, schemes, or artifices, as
39 described in Section 14107 of the Welfare and Institutions Code.
 - 40 (22) Money laundering, as defined in Section 186.10.

1 (23) Offenses relating to the counterfeit of a registered mark,
2 as specified in Section 350, or offenses relating to piracy, as
3 specified in Section 653w.

4 (24) Offenses relating to the unauthorized access to computers,
5 computer systems, and computer data, as specified in Section 502.

6 (25) Conspiracy to commit any of the crimes listed above, as
7 defined in Section 182.

8 (26) Subdivision (a) of Section 186.22, or a felony subject to
9 enhancement as specified in subdivision (b) of Section 186.22.

10 (27) Offenses related to fraud or theft against the state's
11 beverage container recycling program, including, but not limited
12 to, those offenses specified in this subdivision and those criminal
13 offenses specified in the California Beverage Container Recycling
14 and Litter Reduction Act, commencing at Section 14500 of the
15 Public Resources Code.

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

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

22 (30) Any crime in which the perpetrator, through force, fear,
23 coercion, deceit, violence, duress, menace, or threat of unlawful
24 injury to the victim or to another person, causes a person under
25 18 years of age to engage in a commercial sex act. For purposes
26 of this paragraph, a commercial sex act means any sexual conduct
27 on account of which anything of value is given or received by any
28 person.

29 (31) Theft of personal identifying information, as defined in
30 Section 530.5.

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

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

35 (34) Offenses relating to insurance fraud, as specified in
36 Sections 2106, 2108, 2109, 2110, 2110.3, 2110.5, 2110.7, and
37 2117 of the Unemployment Insurance Code.

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

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

4 (B) *Are not isolated events.*

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

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

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

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

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

38 (f) *This section shall become operative on January 1, 2020.*

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

1 186.4. (a) (1) *The prosecuting agency shall, in conjunction*
2 *with the criminal proceeding, file a petition of forfeiture with the*
3 *superior court of the county in which the defendant has been*
4 *charged with the underlying criminal offense, which shall allege*
5 *that the defendant has engaged in a pattern of criminal profiteering*
6 *activity, including the acts or threats chargeable as crimes and*
7 *the property forfeitable pursuant to Section 186.3.*

8 (2) *The prosecuting agency may, prior to the commencement*
9 *of a criminal proceeding, file a petition of forfeiture with the*
10 *superior court of the county in which the defendant is being*
11 *investigated, which shall allege that the defendant has engaged in*
12 *a pattern of criminal profiteering activity, including the acts or*
13 *threats chargeable as crimes and the property forfeitable pursuant*
14 *to Section 186.3, provided the court determines that:*

15 (A) *The value of the assets to be seized exceeds one hundred*
16 *thousand dollars (\$100,000).*

17 (B) *There is a substantial probability that the prosecuting*
18 *agency will file a criminal complaint or seek a grand jury*
19 *indictment against the defendant.*

20 (C) *There is a substantial probability that the prosecuting*
21 *agency will prevail on the issue of forfeiture and that failure to*
22 *enter the order will result in the property being destroyed, removed*
23 *from the jurisdiction of the court, or otherwise made unavailable*
24 *for forfeiture.*

25 (D) *The need to preserve the availability of the property through*
26 *the entry of the requested order outweighs the hardship on any*
27 *party against whom the order is to be entered.*

28 (E) *There is a substantial probability that the assets subject to*
29 *forfeiture represent direct or indirect proceeds of criminal activity*
30 *committed for the benefit of, at the direction of, or in association*
31 *with, a transnational criminal organization, as defined in Section*
32 *186.2.*

33 (a)

34 ~~(b) The prosecuting agency shall, in conjunction with the~~
35 ~~criminal proceeding, file a petition of forfeiture with the superior~~
36 ~~court of the county in which the defendant has been charged with~~
37 ~~the underlying criminal offense, which shall allege that the~~
38 ~~defendant has engaged in a pattern of criminal profiteering activity,~~
39 ~~including the acts or threats chargeable as crimes and the property~~
40 ~~forfeitable pursuant to Section 186.3. The prosecuting agency shall~~

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

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

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

33 *(d) If a forfeiture petition is filed pursuant to paragraph (2) of*
34 *subdivision (a), prior to the filing of the complaint in a criminal*
35 *action, the motion and any injunctive order shall be dismissed if*
36 *a criminal complaint or grand jury indictment is not filed within*
37 *30 days of the grant of the motion. If a forfeiture petition is*
38 *dismissed pursuant to this subdivision, the motion shall not be*
39 *refiled, except upon the filing of a criminal complaint.*

40 (b)

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, 2019, 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, 2017, and January 1, 2019:*

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, 2020,*
24 *and as of that date is repealed, unless a later enacted statute, that*
25 *is enacted before January 1, 2020, 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, 2020.*

15 ~~SECTION 1. Section 655 of the Business and Professions Code~~
16 ~~is repealed.~~

17 ~~SEC. 2. Section 655 is added to the Business and Professions~~
18 ~~Code, to read:~~

19 ~~655. (a) A person registered under Chapter 5.5 (commencing~~
20 ~~with Section 2550), (registered dispensing optician), a person who~~
21 ~~is engaged in the manufacture, sale or distribution to physicians~~
22 ~~and surgeons, optometrists, or dispensing opticians of lenses,~~
23 ~~frames, optical supplies, optometric appliances or devices or~~
24 ~~kindred products that is renting or leasing office space, directly or~~
25 ~~through an intermediary, to or from or otherwise using or sharing~~
26 ~~office space with, or receiving space from, any person licensed~~
27 ~~under Chapter 7 (commencing with Section 3000), (optometrist),~~
28 ~~shall not engage in conduct that would influence or interfere with~~
29 ~~the clinical decisions of that optometrist including, but not limited~~
30 ~~to, the following:~~

31 ~~(1) Setting quotas for the number of exams or limiting the~~
32 ~~amount of time that an optometrist can spend with an individual~~
33 ~~patient.~~

34 ~~(2) Holding an optometrist responsible for the sale of, or~~
35 ~~requiring that person to sell, the eyewear of a registered dispensing~~
36 ~~optician.~~

37 ~~(3) Providing compensation to an optometrist for the sale of the~~
38 ~~eyewear of a registered dispensing optician.~~

1 ~~(b) The optometrist's clinical decisions means the judgment~~
2 ~~necessary to perform or control any acts as set forth in Section~~
3 ~~3041.~~

4 ~~(c) An optometrist that is renting or leasing space to or from or~~
5 ~~otherwise using or sharing office space with any registered~~
6 ~~dispensing optician shall not give or receive a fee, salary,~~
7 ~~commission, or thing of material value, in any manner or under~~
8 ~~any pretext, to or from any person, firm, or corporation for either~~
9 ~~of the following:~~

10 ~~(1) In return for the referral of optometric patients.~~

11 ~~(2) In order to secure optometric patients.~~

12 ~~(d) In connection with the transactions described in (a), all of~~
13 ~~the following shall be met:~~

14 ~~(1) Registered dispensing opticians shall ensure signs and~~
15 ~~displays concerning the optometrist's office shall have the name~~
16 ~~of the doctor or doctors of optometry and the nature of the~~
17 ~~relationship between the registered dispensing optician and the~~
18 ~~optometrist.~~

19 ~~(2) The optometrist's office shall have a separate telephone~~
20 ~~listing and number from that of the registered dispensing optician,~~
21 ~~but may be accessible from a general number that the public~~
22 ~~associates with the premises.~~

23 ~~(3) Registered dispensing opticians shall not:~~

24 ~~(A) Constrain the optometrist in scheduling patients, the fees~~
25 ~~charged for optometric services, the amount of time spent with a~~
26 ~~patient, or the number of patients to be seen in a particular time~~
27 ~~period. The optometrist may contract to provide or arrange for the~~
28 ~~provision of optometric services during agreed-upon hours and~~
29 ~~days.~~

30 ~~(B) Limit the optometrist's participation in managed care or~~
31 ~~insurance plans.~~

32 ~~(C) Have an interest in the optometrist's patient records, to~~
33 ~~which the optometrist shall have 24-hour access, including physical~~
34 ~~access or electronic access.~~

35 ~~(D) Advertise that it performs eye examinations or other~~
36 ~~optometric services that it is not permitted to lawfully perform~~
37 ~~under state law.~~

38 ~~(4) The parties shall execute a written agreement, with~~
39 ~~commercially reasonable terms, providing that rent payments are~~
40 ~~not affected by either party's referral of any person or sales of~~

1 product by either party, and a term of at least one year, terminable
2 only for cause as defined under the agreement or at the expiration
3 of the agreement on at least 60 days' written notice.

4 (5) ~~Optometric office space inside an optical dispensary shall~~
5 ~~be definite and distinct from space occupied by other occupants~~
6 ~~of the premises and shall include at least one private room for the~~
7 ~~exclusive use of providing optometric services to patients by the~~
8 ~~optometrist.~~

9 (6) ~~Forms used by the optometric office shall be separate from~~
10 ~~those of the registered dispensing optician.~~

11 (7) ~~The optometrist shall be free to practice to the full scope of~~
12 ~~his or her license under law, and shall control the hiring, staffing,~~
13 ~~training, and office and employment policies of the individuals~~
14 ~~employed or engaged to assist the optometrist in the management~~
15 ~~and administrative aspects of his or her practice and in patient care.~~
16 ~~The optometrist may contract for the provision of technician and~~
17 ~~administrative services. Nothing herein shall limit the right of the~~
18 ~~optometrist and the registered dispensing optician to agree to~~
19 ~~restrict the optometrist from offering or selling spectacles, lenses,~~
20 ~~frames, contact lenses or other optical goods to the optometrist's~~
21 ~~patients or to the public in the occupied space during the term of~~
22 ~~the written agreement.~~

23 (8) ~~The optometrist shall be responsible for and shall maintain~~
24 ~~full and independent control of information disseminated to the~~
25 ~~public through any advertising or other commercial medium when~~
26 ~~that information relates to optometric services being provided by~~
27 ~~the optometrist, whether or not that advertising is paid for or~~
28 ~~sponsored by the optometrist. It is not a violation of this section~~
29 ~~to include in an advertisement that is not disseminated by the~~
30 ~~optometrist a statement advertising the availability of optometric~~
31 ~~services, including eye examinations, by an independent doctor~~
32 ~~of optometry located adjacent to or in proximity to a registered~~
33 ~~dispensing optician or a statement containing substantially similar~~
34 ~~language.~~

35 (e) ~~A violation of this section is punishable as a misdemeanor.~~

36 ~~SEC. 3.— Section 2555 of the Business and Professions Code is~~
37 ~~repealed.~~

38 ~~SEC. 4.— Section 2555 is added to the Business and Professions~~
39 ~~Code, to read:~~

1 ~~2555. (a) Certificates issued hereunder may in the discretion~~
2 ~~of the division be suspended or revoked or subjected to terms and~~
3 ~~conditions of probation for violating or attempting to violate this~~
4 ~~chapter, Chapter 5.4 (commencing with Section 2540), any~~
5 ~~regulation adopted under this chapter or Chapter 5.4 (commencing~~
6 ~~with Section 2540), or Section 651, 654, or 655, or for~~
7 ~~incompetence, gross negligence, unprofessional conduct or repeated~~
8 ~~negligent acts performed by the registrant or by an employee of~~
9 ~~the registrant. Unprofessional conduct includes, but is not limited~~
10 ~~to, repeated interference with the independent clinical judgment~~
11 ~~of an optometrist or the optometrist's compliance with prevailing~~
12 ~~clinical standards for the practice of optometry and when the~~
13 ~~registered dispensing optician knows or has reason to know that~~
14 ~~the repeated interference is impairing the optometrist's ability to~~
15 ~~provide appropriate health care to his or her patients. Nothing~~
16 ~~herein shall limit the ability of the optometrist to file a complaint~~
17 ~~about the registered dispensing optician's interference directly~~
18 ~~with any state regulatory agency with authority to oversee the~~
19 ~~practice of optometry or of registered dispensing opticians. The~~
20 ~~proceedings shall be conducted in accordance with Chapter 5~~
21 ~~(commencing with Section 11500) of Part 1 of Division 3 of Title~~
22 ~~2 of the Government Code, and the division shall have all the~~
23 ~~powers granted therein.~~

24 ~~(b) If the division determines during a proceeding conducted in~~
25 ~~accordance with subdivision (a) that a registered dispensing~~
26 ~~optician has violated Section 655, the division may assess an~~
27 ~~administrative fine of up to five thousand dollars (\$5,000) for the~~
28 ~~first violation and up to twenty-five thousand dollars (\$25,000)~~
29 ~~for any subsequent violation that occurs within three years after~~
30 ~~the division's finding of a first violation. If a registered dispensing~~
31 ~~optician's second violation of Section 655 occurs after three years~~
32 ~~of its first violation, then the division shall assess a fine of up to~~
33 ~~five thousand dollars (\$5,000). This section is not to be construed~~
34 ~~to limit the division's existing authority to enforce the provisions~~
35 ~~of subdivision (a) or any other law.~~

36 ~~(c) Registered dispensing opticians shall comply with all~~
37 ~~requests for information by the division within 30 days after the~~
38 ~~request. Failure to provide to the division, as directed, lawfully~~
39 ~~requested copies of documents relating to a complaint or alleged~~
40 ~~violation of the law shall constitute unprofessional conduct on the~~

1 part of the registered dispensing optician, unless the registered
2 dispensing optician is unable to provide the documents within the
3 time period for good cause, including, but not limited to, inability
4 to access the documents in the time allowed.

5 (d) Failure to cooperate and participate in any division
6 investigation pending against a registered dispensing optician
7 relating to a complaint or alleged violation of the law shall also
8 constitute unprofessional conduct by the registered dispensing
9 optician. This subdivision shall not be construed to deprive a
10 registered dispensing optician of any privilege guaranteed by the
11 Constitution of the United States or any other constitutional or
12 statutory privileges. The registered dispensing optician's assertion
13 of any applicable constitutional, statutory, or other privilege,
14 including, but not limited to, attorney-client privilege or attorney
15 work product privilege, is not a violation of this section.

16 (e) If the registered dispensing optician disputes a determination
17 by the division regarding a complaint or violation of the law, the
18 registered dispensing optician may appeal the division's decision
19 to an independent administrative law judge pursuant to Chapter 5
20 (commencing with Section 1100) of Part 1 of Division 3 of Title
21 2 of the Government Code. Penalties, if any, shall be paid when
22 all appeals have been exhausted and the division's decision has
23 been upheld. In the event that the division's position has been
24 upheld, after all appeals have been exhausted the registered
25 dispensing optician shall be responsible for payment of all costs
26 associated with the prosecution of the matter.

27 (f) A registered dispensing optician shall not discharge,
28 terminate, suspend, threaten, harass, or retaliate or discriminate
29 against an optometrist because that optometrist files a complaint
30 as set forth in Section 3109.1 or any other complaint against a
31 registered dispensing optician, or for lawful acts done by an
32 optometrist in disclosing information relating to any complaint
33 against a registered dispensing optician. When an optometrist files
34 a complaint against a registered dispensing optician, the optometrist
35 shall have all of the protections provided in Section 1102.5 of the
36 Labor Code.

37 SEC. 5.—Section 2556 of the Business and Professions Code is
38 repealed.

39 SEC. 6.—Section 3077 of the Business and Professions Code is
40 amended to read:

1 ~~3077. (a) As used in this section, “office” means any office~~
2 ~~or other place for the practice of optometry.~~

3 ~~(b) A person, singly or in combination with others, may not~~
4 ~~have any proprietary interest in an office unless he or she is~~
5 ~~licensed to practice optometry under this chapter.~~

6 ~~(c) An optometrist, or two or more optometrists jointly, may~~
7 ~~have one office without obtaining a branch office license from the~~
8 ~~board.~~

9 ~~(d) An optometrist, or two or more optometrists jointly, may~~
10 ~~not have more than one office unless he or she or they comply~~
11 ~~with the provisions of this chapter as to additional offices. An~~
12 ~~additional office that is not the optometrist’s principal place of~~
13 ~~practice, as described by Section 3070, constitutes a branch office~~
14 ~~for purposes of this chapter.~~

15 ~~(e) Any optometrist who desires to open a branch office that is~~
16 ~~not his or her principal place of business shall notify the board in~~
17 ~~writing in a manner prescribed by the board.~~

18 ~~(f) A branch office may not be opened or operated without a~~
19 ~~branch office license. Branch office licenses shall be valid for the~~
20 ~~calendar year in or for which they are issued and shall be renewable~~
21 ~~on January 1 of each year thereafter. Branch office licenses shall~~
22 ~~be issued or renewed only upon the payment of the fee therefor~~
23 ~~prescribed by this chapter.~~

24 ~~(g) Any failure to comply with the provisions of this chapter~~
25 ~~relating to branch offices or branch office licenses as to any branch~~
26 ~~office shall work the suspension of the optometrist license of each~~
27 ~~optometrist who, individually or with others, has a branch office.~~
28 ~~An optometrist license so suspended shall not be restored except~~
29 ~~upon compliance with those provisions and the payment of the fee~~
30 ~~prescribed by this chapter for restoration of a license after~~
31 ~~suspension for failure to comply with the provisions of this chapter~~
32 ~~relating to branch offices.~~

33 ~~(h) The holder or holders of a branch office license shall pay~~
34 ~~the biennial renewal fee therefor in the amount required by this~~
35 ~~chapter between the first day of January and the first day of~~
36 ~~February of each renewal period. The failure to pay the fee in~~
37 ~~advance on or before February 1 of each year during the time it is~~
38 ~~in force shall ipso facto work the suspension of the branch office~~
39 ~~license. The license shall not be restored except upon written~~

1 application and the payment of the penalty prescribed by this
2 chapter, and, in addition, all delinquent branch office fees.

3 (i) The board shall have the power to adopt, amend, and repeal
4 rules and regulations to carry out the provisions of this section.

5 SEC. 7. Section 3090.1 is added to the Business and Professions
6 Code, to read:

7 3090.1. The State Board of Optometry shall receive any
8 complaint made to a state board or department related to care
9 provided to a patient by a licensed optometrist under Chapter 7
10 (commencing with Section 3000).

11 SEC. 8. Section 3109.1 is added to the Business and Professions
12 Code, to read:

13 3109.1. (a) An optometrist shall report to the board any action
14 or circumstance that the optometrist reasonably and in good faith
15 believes constitutes a continued and unresolved attempt to interfere
16 with his or her independent clinical judgment or compliance with
17 prevailing clinical standards for the practice of optometry by a
18 registered dispensing optician or any employee or agent of the
19 registered dispensing optician that violates Section 655.

20 (b) The board shall report the complaint to the Division of
21 Licensing of the Medical Board of California, and the division
22 shall investigate the complaint pursuant to Section 2555.

23 (c) A registered dispensing optician shall not discharge,
24 terminate, suspend, threaten, harass, or in any other manner retaliate
25 or discriminate against an optometrist that files a good faith
26 complaint pursuant to this section or any other law, or for lawful
27 acts done by an optometrist in disclosing information relating to
28 any complaint against a registered dispensing optician. When an
29 optometrist files a good faith complaint against a registered
30 dispensing optician, the optometrist shall have all of the protections
31 provided in Section 1102.5 of the Labor Code.

32 SEC. 9. No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 the only costs that may be incurred by a local agency or school
35 district will be incurred because this act creates a new crime or
36 infraction, eliminates a crime or infraction, or changes the penalty
37 for a crime or infraction, within the meaning of Section 17556 of
38 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.~~

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