

Assembly Bill No. 2053

CHAPTER 809

An act to add Section 25533.5 to the Corporations Code, to amend Section 7471 of the Government Code, and to amend Sections 186.10 and 14167 of the Penal Code, relating to crimes.

[Approved by Governor September 22, 1996. Filed
with Secretary of State September 24, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2053, K. Murray. Crimes: money laundering: financial institutions.

Existing law, the Corporate Securities Law of 1968, provides for the issuance of desist and refrain orders under specified circumstances.

This bill would require the Commissioner of Corporations to send a copy of those orders to the district attorney of the county of residence or principal place of business of the subject of the order.

(2) Existing law provides that specified provisions prohibiting disclosure of financial records by financial institutions, prohibiting money laundering, and requiring the maintenance of records and the filing of reports on monetary instrument transactions shall be repealed on January 1, 1997.

This bill would repeal this repeal date, thereby extending the operation of these provisions indefinitely. Because this bill would extend the duration of provisions that establish crimes, it would create 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.

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

SECTION 1. Section 25533.5 is added to the Corporations Code, to read:

25533.5. The commissioner shall send a copy of a desist and refrain order issued under this law to the district attorney of the county in which the person who is the subject of the order resides or maintains a principal place of business. There shall be no liability on the part of, and no cause of action of any nature shall arise against, the State of California, the department and its employees, the commissioner, the members of the commissioner's staff, or the



commissioner's authorized representatives for the failure to provide to the district attorney a copy of the order as required by this section.

SEC. 2. Section 7471 of the Government Code is amended to read:

7471. (a) Except in accordance with requirements of Title 11 (commencing with Section 14160) of Part 4 of the Penal Code or Section 7473, 7474, 7475, or 7476 of this code, no financial institution, or any director, officer, employee, or agent of a financial institution, may provide or authorize another to provide to an officer, employee, or agent of a state or local agency or department thereof, any financial records, copies thereof, or the information contained therein, if the director, officer, employee, or agent of the financial institution knows or has reasonable cause to believe that the financial records or information are being requested in connection with a civil or criminal investigation of the customer, whether or not an investigation is being conducted pursuant to formal judicial or administrative proceedings.

(b) This section is not intended to prohibit disclosure of the financial records of a customer or the information contained therein incidental to a transaction in the normal course of business of a financial institution if the director, officer, employee, or agent thereof making or authorizing the disclosure has no reasonable cause to believe that the financial records or the information contained in the financial records so disclosed will be used by a state or local agency or department thereof in connection with an investigation of the customer, whether or not an investigation is being conducted pursuant to formal judicial or administrative proceedings.

(c) This section shall not preclude a financial institution, in its discretion, from initiating contact with, and thereafter communicating with and disclosing customer financial records to, appropriate state or local agencies concerning suspected violation of any law.

(d) A financial institution which refuses to disclose the financial records of a customer, copies thereof or the information contained therein, in reliance in good faith upon the prohibitions of subdivision (a) shall not be liable to its customer, to a state or local agency, or to any other person for any loss or damage caused in whole or in part by the refusal.

SEC. 3. Section 186.10 of the Penal Code is amended to read:

186.10. (a) Any person who conducts or attempts to conduct a transaction or more than one transaction within a 24-hour period involving a monetary instrument or instruments of a total value exceeding five thousand dollars (\$5,000) through one or more financial institutions (1) with the intent to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any criminal activity, or (2) knowing that the monetary instrument represents the proceeds of, or is



derived directly or indirectly from the proceeds of, criminal activity, is guilty of the crime of money laundering. In consideration of the constitutional right to counsel afforded by the Sixth Amendment to the United States Constitution and Section 15 of Article I of the California Constitution, when a case involves an attorney who accepts a fee for representing a client in a criminal investigation or proceeding, the prosecution shall additionally be required to prove that the monetary instrument was accepted by the attorney with the intent to disguise or aid in disguising the source of the funds or the nature of the criminal activity.

A violation of this section shall be punished by imprisonment in a county jail for not more than one year or in the state prison, by a fine of not more than two hundred fifty thousand dollars (\$250,000) or twice the value of the property transacted, whichever is greater, or by both that imprisonment and fine. However, for a second or subsequent conviction for a violation of this section, the maximum fine that may be imposed is five hundred thousand dollars (\$500,000) or five times the value of the property transacted, whichever is greater.

(b) Notwithstanding any other law, for purposes of this section, each individual transaction conducted in excess of five thousand dollars (\$5,000), or each series of transactions conducted within a 24-hour period that total in excess of five thousand dollars (\$5,000), shall constitute a separate, punishable offense.

(c) (1) Any person who is punished under subdivision (a) by imprisonment in the state prison shall also be subject to an additional term of imprisonment in the state prison as follows:

(A) If the value of the transaction or transactions exceeds fifty thousand dollars (\$50,000) but is less than one hundred fifty thousand dollars (\$150,000), the court, in addition to and consecutive to the felony punishment otherwise imposed pursuant to this section, shall impose an additional term of imprisonment of one year.

(B) If the value of the transaction or transactions exceeds one hundred fifty thousand dollars (\$150,000) but is less than one million dollars (\$1,000,000), the court, in addition to and consecutive to the felony punishment otherwise imposed pursuant to this section, shall impose an additional term of imprisonment of two years.

(C) If the value of the transaction or transactions exceeds one million dollars (\$1,000,000), but is less than two million five hundred thousand dollars (\$2,500,000), the court, in addition to and consecutive to the felony punishment otherwise imposed pursuant to this section, shall impose an additional term of imprisonment of three years.

(D) If the value of the transaction or transactions exceeds two million five hundred thousand dollars (\$2,500,000), the court, in addition to and consecutive to the felony punishment otherwise



prescribed by this section, shall impose an additional term of imprisonment of four years.

(2) (A) An additional term of imprisonment as provided for in this subdivision shall not be imposed unless the facts of a transaction or transactions, or attempted transaction or transactions, of a value described in paragraph (1), are charged in the accusatory pleading, and are either admitted to by the defendant or are found to be true by the trier of fact.

(B) An additional term of imprisonment as provided for in this subdivision may be imposed with respect to an accusatory pleading charging multiple violations of this section, regardless of whether any single violation charged in that pleading involves a transaction or attempted transaction of a value covered by paragraph (1), if the violations charged in that pleading arise from a common scheme or plan and the aggregate value of the alleged transactions or attempted transactions is of a value covered by paragraph (1).

(d) All pleadings under this section shall remain subject to the rules of joinder and severance stated in Section 954.

SEC. 4. Section 14167 of the Penal Code is amended to read:

14167. Any report, record, information, analysis, or request obtained by the department or any agency pursuant to this title is not a public record as defined in Section 6252 of the Government Code and is not subject to disclosure under Section 6253 of the Government Code.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

