

AMENDED IN SENATE SEPTEMBER 1, 1999

AMENDED IN SENATE AUGUST 17, 1999

AMENDED IN SENATE JUNE 28, 1999

AMENDED IN ASSEMBLY MAY 24, 1999

AMENDED IN ASSEMBLY APRIL 28, 1999

AMENDED IN ASSEMBLY APRIL 15, 1999

AMENDED IN ASSEMBLY APRIL 7, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 662

**Introduced by Assembly Member Wesson
(Coauthors: Assembly Members Havice and Robert
Pacheco)**

February 23, 1999

An act to add Section ~~675~~ 675.5 to the Code of Civil Procedure, and to amend Sections 186.1, 186.3, 186.4, and 186.8 of, to add Section ~~186.85~~ 186.8a to, to repeal Sections 186.6 and 186.7 of, and to repeal and add Section ~~186.5~~ 186.5a of, the Penal Code, relating to asset forfeiture.

LEGISLATIVE COUNSEL'S DIGEST

AB 662, as amended, Wesson. Asset forfeiture.

(1) Existing law declares the finding of the Legislature that an effective means of punishing and deterring criminal activities of organized crime is through the forfeiture of

profits acquired and accumulated as a result of criminal activities, and the intent of the Legislature that the California Control of Profits of Organized Crime Act be used by prosecutors to punish and deter only those activities.

This bill would declare instead that the Legislature finds that justice is not fully served if those convicted and punished for the activities of organized crime are permitted to utilize and enjoy the unlawful proceeds of their organized criminal profiteering activities, and the intent of the Legislature that prosecutors control the profit of organized crime activities through the forfeiture of profits acquired and accumulated as a result of such criminal activities. The bill would declare the Legislature's intent that the California Control of Profits of Organized Crime Act be used by prosecutors to forfeit the proceeds of those activities.

This bill would also declare the Legislature's intent relating to the extension of civil asset forfeiture procedures to criminal profiteering crimes, and the finding that this provision is a clarification and declaration of existing law.

(2) Existing law establishes procedures for claiming an interest in property forfeited pursuant to (1) above, wherein a person is authorized to file with the superior court a verified claim within a specified time period and have a hearing set in the superior court in which the underlying criminal offense will be tried. At the forfeiture hearing, the prosecutor has the burden of establishing beyond a reasonable doubt that the defendant was engaged in a pattern of criminal profiteering activity.

This bill would repeal these provisions and provide that, with respect to property described in (1) above, for which forfeiture is sought and contested, the state or local entity has the burden of proving beyond a reasonable doubt that the property is forfeitable and a judgment of forfeiture will not be entered unless a defendant is first convicted of a specified offense.

(3) Existing law establishes procedures for the forfeiture of property and proceeds acquired or received from criminal profiteering activity upon conviction of the underlying criminal offense. Existing law requires the prosecuting agency to provide notice, as specified, regarding the petition



of forfeiture upon every individual who may have property interest in the proceeds.

This bill would revise these procedures by deleting certain notice provisions and certain provisions governing the forfeiture of real property while making the civil enforcement provisions governing forfeiture of assets in controlled substance cases equally applicable to the forfeiture proceedings under the California Control of Profits of Organized Crime Act. In addition, the bill would authorize the court to stay the forfeiture proceedings until the completion of the underlying criminal case, in the furtherance of justice. In a proceeding involving real property, the bill would require the prosecuting agency, at the time of filing the petition of forfeiture, to record a lis pendens in each county in which the real property is situated and require the moving party to endeavor to discover all bona fide purchasers or encumbrancers for value of record and the court to protect their interests. By increasing the duties of local officials, this bill would impose a state-mandated local program. The bill would make conforming and clarifying changes to related provisions.

(4) Existing law, pursuant to the provisions of (2) above, authorizes the prosecutor to move the superior court for pendente lite orders that include an injunction to restrain the transferring, encumbering, or otherwise disposing of property and the appointment of a receiver. Existing law also provides guidelines for the trier of fact regarding findings that he or she makes with respect to property or proceeds that are the subject of the forfeiture hearing.

This bill would repeal these provisions.

(5) *This bill would also declare the Legislature's intent that forfeiture law preempt and be exclusive of all local ordinances and regulations relating to the seizure and forfeiture of property.*

(6) 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other



procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1 SECTION 1. Section ~~675~~ 675.5 is added to the Code of
2 Civil Procedure, to read:

3 ~~675. In a proceeding involving the forfeiture of real~~
4 ~~property pursuant to any provision of California law, the~~
5 ~~moving party shall endeavor to discover all bona fide~~
6 ~~purchasers or encumbrancers for value of record and the~~
7 ~~court shall protect their interests, and may, at its~~
8 ~~discretion, order the proceeds placed in escrow for up to~~
9 ~~an additional 60 days to ensure that all valid claims are~~
10 ~~received and processed.~~

11 *675.5. In a proceeding involving the forfeiture of real*
12 *property pursuant to any provision of California law, the*
13 *moving party shall endeavor to discover all bona fide*
14 *purchasers or encumbrancers for value of record and the*
15 *court shall protect their interests, and may, at its*
16 *discretion, order the proceeds placed in escrow for up to*
17 *an additional 60 days to ensure that all valid claims are*
18 *received and processed.*

19 SEC. 2. Section 186.1 of the Penal Code is amended to
20 read:

21 186.1. The Legislature hereby finds and declares that
22 justice is not fully served if those convicted and punished
23 for the activities of organized crime are permitted to
24 utilize and enjoy the unlawful proceeds of their organized
25 criminal profiteering activities. It is the intent of the
26 Legislature that prosecutors control the profit of
27 organized crime activities through the forfeiture of
28 profits acquired and accumulated as a result of these
29 criminal activities. It is the intent of the Legislature that



1 the “California Control of Profits of Organized Crime
2 Act” be used by prosecutors only to forfeit the proceeds
3 of those activities.

4 SEC. 3. Section 186.3 of the Penal Code is amended to
5 read:

6 186.3. (a) The assets listed in subdivisions (b) and
7 (c) shall be subject to forfeiture, subject to the provisions
8 of Section 186.5.

9 (b) Any property interest whether tangible or
10 intangible, acquired through a pattern of criminal
11 profiteering activity.

12 (c) All proceeds of a pattern of criminal profiteering
13 activity, which property shall include all things of value
14 that may have been received in exchange for the
15 proceeds immediately derived from the pattern of
16 criminal profiteering activity.

17 SEC. 4. Section 186.4 of the Penal Code is amended to
18 read:

19 186.4. (a) To secure a judgment of forfeiture, the
20 prosecuting agency shall, in conjunction with the
21 criminal proceeding, file a civil in rem petition of
22 forfeiture with the superior court of the county in which
23 the defendant has been charged with the underlying
24 criminal offense, which shall allege that the defendant has
25 engaged in a pattern of criminal profiteering activity,
26 including the acts or threats chargeable as crimes and the
27 property forfeitable pursuant to Section 186.3.

28 (b) The procedures governing forfeiture of proceeds
29 of drug trafficking offenses in Chapter 8 (commencing
30 with Section 11469) of Division 10 of the Health and
31 Safety Code shall be applicable to proceedings pursuant
32 to this chapter.

33 (c) At the request of any party, and in the furtherance
34 of justice, the court may stay the proceedings under this
35 chapter until the completion of the underlying criminal
36 case.

37 (d) If the property alleged to be subject to forfeiture
38 is real property, the prosecuting agency shall, at the time
39 of filing the petition of forfeiture, record a lis pendens in
40 each county in which the real property is situated. The lis



1 pendens shall specifically identify the real property
2 alleged to be subject to forfeiture. The judgment of
3 forfeiture shall not affect the interest in real property of
4 any third-party bona fide purchaser or encumbrancer for
5 value that was acquired prior to the recording of the lis
6 pendens.

7 SEC. 5. Section 186.5 of the Penal Code is repealed.

8 ~~SEC. 6. Section 186.5 is added to the Penal Code, to~~
9 ~~read:~~

10 ~~186.5. With respect to property for which forfeiture is~~
11 ~~sought and is contested pursuant to Section 186.3, the~~
12 ~~following conditions shall apply:~~

13 ~~(a) Notwithstanding any other provision of law, the~~
14 ~~state or local entity shall have the burden of proving~~
15 ~~beyond a reasonable doubt that the property is forfeitable~~
16 ~~pursuant to this chapter. Only the proceeds of criminal~~
17 ~~profiteering are subject to forfeiture under this chapter.~~

18 ~~(b) A judgment of forfeiture requires as a condition~~
19 ~~precedent thereto, that a defendant be convicted of an~~
20 ~~offense specified in Section 186.2 that occurred within~~
21 ~~five years of the seizure of the property subject to~~
22 ~~forfeiture or within five years of the date of notification~~
23 ~~of intention to seek forfeiture.~~

24 ~~SEC. 6. Section 186.5a is added to the Penal Code, to~~
25 ~~read:~~

26 ~~186.5a. With respect to property for which forfeiture~~
27 ~~is sought and is contested pursuant to Section 186.3, the~~
28 ~~following conditions shall apply:~~

29 ~~(a) Notwithstanding any other provision of law, the~~
30 ~~state or local entity shall have the burden of proving~~
31 ~~beyond a reasonable doubt that the property is forfeitable~~
32 ~~pursuant to this chapter. Only the proceeds of criminal~~
33 ~~profiteering are subject to forfeiture under this chapter.~~

34 ~~(b) A judgment of forfeiture requires as a condition~~
35 ~~precedent thereto, that a defendant be convicted of an~~
36 ~~offense specified in Section 186.2 that occurred within~~
37 ~~five years of the seizure of the property subject to~~
38 ~~forfeiture or within five years of the date of notification~~
39 ~~of intention to seek forfeiture.~~

40 SEC. 7. Section 186.6 of the Penal Code is repealed.



1 SEC. 8. Section 186.7 of the Penal Code is repealed.

2 SEC. 9. Section 186.8 of the Penal Code is amended to
3 read:

4 186.8. Notwithstanding that no response or claim has
5 been filed pursuant to Section 186.5, in all cases where
6 property is forfeited pursuant to this chapter and, where
7 necessary, sold by the Department of General Services or
8 local governmental entity, the money forfeited or the
9 proceeds of sale shall be distributed by the state or local
10 governmental entity as follows:

11 (a) To the bona fide or innocent purchaser,
12 conditional sales vendor, or holder of a valid lien,
13 mortgage or security interest, if any, up to the amount of
14 his or her interest in the property or proceeds, when the
15 court declaring the forfeiture orders a distribution to that
16 person. The moving party shall endeavor to discover bona
17 fide purchasers and encumbrancers for value of record,
18 and the court shall protect their interests and may, at its
19 discretion, order the proceeds placed in escrow for up to
20 an additional 60 days to ensure that all valid claims are
21 received and processed.

22 (b) To the Department of General Services or local
23 governmental entity for all expenditures made or
24 incurred by it in connection with the sale of the property,
25 including expenditures for any necessary repairs, storage,
26 or transportation of any property seized under this
27 chapter.

28 (c) To the general fund of the state or local
29 governmental entity, whichever prosecutes.

30 (d) In any case involving a violation of subdivision (b)
31 of Section 311.2, or Section 311.3 or 311.4, in lieu of the
32 distribution of the proceeds provided for by subdivisions
33 (b) and (c), the proceeds shall be deposited in the county
34 children's trust fund, established pursuant to Section
35 18966 of the Welfare and Institutions Code, of the county
36 which filed the petition of forfeiture. If the county does
37 not have a children's trust fund, the funds shall be
38 deposited in the State Children's Trust Fund, established
39 pursuant to Section 18969 of the Welfare and Institutions
40 Code.



1 ~~SEC. 10. Section 186.85 is added to the Penal Code, to~~
2 ~~read:~~

3 ~~186.85. The Legislature hereby finds and declares:~~

4 ~~(a) The extension of civil asset forfeiture procedures to~~
5 ~~criminal profiteering crimes is in keeping with the intent~~
6 ~~of the Legislature that forfeiture law be consistent,~~
7 ~~comprehensive and fair to all parties. This subject is a~~
8 ~~matter of statewide concern. The Legislature's intention~~
9 ~~to provide statewide law and procedures for asset~~
10 ~~forfeiture, including requiring convictions for underlying~~
11 ~~criminal offenses and allowing full discovery, ensures that~~
12 ~~prosecuting agencies may determine and find all~~
13 ~~ill-gotten gains of criminal profiteering and that the~~
14 ~~property rights of innocent persons will be respected.~~

15 ~~(b) The provisions of this section are a clarification and~~
16 ~~declaration of existing law.~~

17 *SEC. 10. Section 186.8a is added to the Penal Code, to*
18 *read:*

19 *186.8a. (a) The Legislature hereby finds and*
20 *declares:*

21 *The extension of civil asset forfeiture procedures to*
22 *criminal profiteering crimes is in keeping with the intent*
23 *of the Legislature that forfeiture law be consistent,*
24 *comprehensive, fair to all parties, and exclusive of any*
25 *local ordinance or regulation. This subject is a matter of*
26 *statewide concern. The Legislature's intention to provide*
27 *exclusive statewide law and procedures for asset*
28 *forfeiture, including requiring convictions for underlying*
29 *criminal offenses and allowing full discovery, ensures that*
30 *prosecuting agencies may determine and find all*
31 *ill-gotten gains of criminal profiteering and that the*
32 *property rights of innocent persons will be respected and*
33 *upheld. The procedures and provisions of state law*
34 *relating to seizure and forfeiture of proceeds from, and*
35 *property used in the commission of, criminal offenses,*
36 *including controlled substance and prostitution offenses,*
37 *shall preempt and be exclusive of all local ordinances and*
38 *regulations relating to these seizures and forfeitures.*

39 *(b) The provisions of this section are a clarification and*
40 *declaration of existing law.*



1 SEC. 11. Notwithstanding Section 17610 of the
2 Government Code, if the Commission on State Mandates
3 determines that this act contains costs mandated by the
4 state, reimbursement to local agencies and school
5 districts for those costs shall be made pursuant to Part 7
6 (commencing with Section 17500) of Division 4 of Title
7 2 of the Government Code. If the statewide cost of the
8 claim for reimbursement does not exceed one million
9 dollars (\$1,000,000), reimbursement shall be made from
10 the State Mandates Claims Fund.

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