

AMENDED IN SENATE AUGUST 24, 2009

AMENDED IN SENATE JULY 23, 2009

AMENDED IN ASSEMBLY MAY 5, 2009

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 568

Introduced by Assembly Member Lieu

February 25, 2009

An act to add and repeal Chapter 4 (commencing with Section 17800) of Part 3 of Division 7 of the Business and Professions Code, relating to counterfeit goods.

LEGISLATIVE COUNSEL'S DIGEST

AB 568, as amended, Lieu. Counterfeit goods: abatement.

Existing law provides that every building or place used for the purpose of unlawfully selling, serving, storing, keeping, giving away, or manufacturing controlled substances, and every building or place wherein or upon which these acts take place, is a nuisance that shall be enjoined, abated, and prevented, whether it is a public or private nuisance. Existing law authorizes a district attorney, county counsel, city attorney, or citizen, as specified, to maintain an action to abate and prevent the nuisance and perpetually to enjoin the person conducting or maintaining it, and the owner, lessee, or agent of the building or place in or upon which the nuisance exists from directly or indirectly maintaining or permitting the nuisance.

This bill would provide that if a person is convicted of a specified crime, then a nonresidential building or place used by that person for

the purpose of willfully manufacturing, intentionally selling, or knowingly possessing for sale any counterfeit goods, defined to include counterfeit of a registered mark or any recording or audiovisual work, the cover, box, jacket, or label of which does not disclose specified information, shall be deemed a nuisance that shall be enjoined, abated, and prevented against the person convicted, whether it is a public or private nuisance. The bill would authorize a district attorney, city prosecutor, city attorney, or citizen, as specified, to maintain an action to abate and prevent the nuisance and perpetually to enjoin the person conducting or maintaining it, and the owner, lessee, or agent of the nonresidential building or place in or upon which the nuisance exists from directly or indirectly maintaining or permitting the nuisance. The bill would provide that a violation or disobedience of the injunction or order for abatement is punishable as a contempt of court by a specified fine and imprisonment. The bill would require ~~the~~ a district attorney, city attorney, or city prosecutor *that maintains an action or actions to enjoin, abate, or prevent a nuisance pursuant to these provisions* to report, by October 1, 2013, to the Senate and Assembly Committees on Judiciary on their use of these abatement provisions and their effectiveness. The bill's provisions would become inoperative on January 1, 2015.

Because this bill would provide for criminal penalties ~~and require a report to the Legislature~~, it 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.~~

~~With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

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.

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

1 SECTION 1. Chapter 4 (commencing with Section 17800) is
2 added to Part 3 of Division 7 of the Business and Professions Code,
3 to read:

4
5 CHAPTER 4. COUNTERFEITING ABATEMENT
6

7 17800. (a) If there is a conviction for a violation of Section
8 653w or paragraph (2) of subdivision (a) of Section 350 of the
9 Penal Code by any person, then a nonresidential building or place
10 used by that person for the purpose of willfully manufacturing,
11 intentionally selling, or knowingly possessing for sale any
12 counterfeit goods shall be deemed a nuisance which shall be
13 enjoined, abated, and prevented against the person convicted, and
14 for which damages may be recovered, whether it is a public or
15 private nuisance.

16 (b) As used in this chapter, “counterfeit goods” means (1) any
17 counterfeit of a mark registered with the Secretary of State or
18 registered on the Principal Register of the United States Patent and
19 Trademark Office or (2) any recording or audiovisual work, the
20 cover, box, jacket, or label of which does not disclose the
21 information as specified in subdivision (a) of Section 653w of the
22 Penal Code.

23 17801. If a nuisance as described in Section 17800 is kept,
24 maintained, or exists in any county, the district attorney may, or
25 any citizen of the state resident in the county, in his or her own
26 name, may, maintain an action to abate and prevent the nuisance
27 and perpetually to enjoin the person conducting or maintaining it,
28 and the owner, lessee, or agent of the nonresidential building or
29 place in or upon which the nuisance exists from directly or
30 indirectly maintaining or permitting the nuisance.

31 17803. For purposes of this chapter, an action to abate a
32 nuisance, as described in Section 17800, may be taken by the city
33 attorney or the city prosecutor of the city or city and county within
34 which the nuisance exists, is kept, or is maintained. An owner shall
35 be provided with 30 days’ notice prior to the filing of an action to

1 abate a nuisance. An action by a city attorney or city prosecutor
2 shall be accorded the same precedence as an action maintained by
3 the district attorney.

4 17804. Unless filed by the district attorney, city prosecutor, or
5 city attorney, the complaint in the action shall be verified.

6 17805. (a) If the existence of the nuisance is shown in the
7 action to the satisfaction of the court or judge, either by verified
8 complaint or affidavit, the court or judge shall allow a temporary
9 restraining order or injunction to abate and prevent the continuance
10 or recurrence of the nuisance.

11 (b) A temporary restraining order or injunction may enjoin
12 subsequent owners, commercial lessees, or agents who acquire the
13 nonresidential building or place where the nuisance exists with
14 notice of the temporary restraining order or injunction, specifying
15 that the owner of the property subject to the temporary restraining
16 order or injunction shall notify any prospective purchaser,
17 commercial lessee, or other successor in interest of the existence
18 of the order or injunction, and of its application to successors in
19 interest, prior to entering into any agreement to sell or lease the
20 property. The temporary restraining order or injunction shall not
21 constitute a title defect, lien, or encumbrance on the real property.

22 17806. (a) At the time of application for issuance of a
23 temporary restraining order or injunction pursuant to Section
24 17805, if proof of the existence of the nuisance depends, in whole
25 or part, upon the affidavits of witnesses who are not peace officers,
26 upon a showing of prior threats of violence or acts of violence by
27 any defendant or other person, the court may issue orders to protect
28 those witnesses, including, but not limited to, nondisclosure of the
29 name, address, or any other information which may identify those
30 witnesses.

31 (b) A temporary restraining order or injunction issued pursuant
32 to Section 17805 may include closure of the premises pending trial
33 when a prior order or injunction does not result in the abatement
34 of the nuisance. The duration of the order or injunction shall be
35 within the court's discretion. In no event shall the total period of
36 closure pending trial exceed one year. Prior to ruling on a request
37 for closure, the court may order that some or all of the rent
38 payments owing to the defendant be placed in an escrow account
39 for a period of up to 90 days or until the nuisance is abated. If the
40 court subsequently orders a closure of the premises, the money in

1 the escrow account shall be used to pay for relocation assistance
2 pursuant to subdivision (d). In ruling upon a request for closure,
3 whether for a defined or undefined duration, the court shall consider
4 all of the following factors:

5 (1) The extent and duration of the nuisance at the time of the
6 request.

7 (2) Prior efforts by the defendant to comply with previous court
8 orders to abate the nuisance.

9 (3) The nature and extent of any effect that the nuisance has
10 upon other persons, such as tenants or businesses.

11 (4) Any effect of prior orders placing displaced occupants' rent
12 payments into an escrow account upon the defendant's efforts to
13 abate the nuisance.

14 (5) The effect of granting the request upon any occupant of the
15 premises who is not named in the action, including the availability
16 of an alternative building or relocation assistance, the pendency
17 of any action to evict an occupant, and any evidence of
18 participation by an occupant in the nuisance activity.

19 (c) In making an order of closure pursuant to this section, the
20 court may order the premises vacated and may issue any other
21 orders necessary to effectuate the closure. However, all tenants
22 who may be affected by the order shall be provided reasonable
23 notice and an opportunity to be heard at all hearings regarding the
24 closure request prior to the issuance of any order.

25 (d) In making an order of closure pursuant to this section, the
26 court shall order the defendant to provide relocation assistance to
27 any tenant ordered to vacate the premises, provided the court
28 determines that the tenant was not actively involved in the nuisance
29 activity. The relocation assistance ordered to be paid by the
30 defendant shall be in the amount necessary to cover moving costs,
31 security deposits for utilities and for a comparable building,
32 adjustment in any lost rent, and any other reasonable expenses the
33 court may deem fair and reasonable as a result of the court's order.

34 (e) At the hearing to order closure pursuant to this section, the
35 court may make the following orders with respect to any displaced
36 tenant not actively involved in the nuisance:

37 (1) Priority for senior citizens, physically handicapped persons,
38 or persons otherwise suffering from a permanent or temporary
39 disability for claims against money for relocation assistance.

(2) Order the local agency seeking closure pursuant to this section to make reasonable attempts to seek additional sources of funds for relocation assistance to displaced tenants, if deemed necessary.

(3) Appoint a receiver to oversee the disbursement of relocation assistance funds, whose services shall be paid from the escrow fund.

(4) Where a defendant has paid relocation assistance pursuant to subdivision (d), the escrow account under subdivision (b) may be released to the defendant and no appointment under paragraph (3) shall be made.

(f) (1) The remedies set forth in this section shall be in addition to any other existing remedies for nuisance abatement actions, including, but not limited to, the following:

(A) Capital improvements to the property, such as security gates.

(B) Improved interior or exterior lighting.

(C) Security guards.

(D) Posting of signs.

(E) Owner membership in neighborhood or local merchants' associations.

(F) Attending property management training programs.

(G) Making cosmetic improvements to the property.

(H) Requiring the owner or person in control of the property to occupy the property until the nuisance is abated. The order shall specify the number of hours per day or per week the owner or person in control of the property must be physically present in the property. In determining this amount, the court shall consider the nature and severity of the nuisance.

(2) At all stages of an action brought pursuant to this chapter, the court has equitable powers to order steps necessary to remedy the problem and enhance the abatement process.

17807. On granting the temporary writ, the court or judge shall require an undertaking on the part of the applicant to the effect that the applicant will pay to the defendant enjoined any damages, not exceeding an amount to be specified, as the defendant sustains by reason of the injunction if the court finally decides that the applicant was not entitled to the injunction.

17808. The action shall have precedence over all other actions, except criminal proceedings, election contests, hearings on

1 injunctions, and actions to forfeit vehicles under Division 10
2 (commencing with Section 11000) of the Health and Safety Code.

3 17809. In any action for abatement instituted pursuant to this
4 chapter, all evidence otherwise authorized by law, including
5 evidence of reputation in a community, as provided in the Evidence
6 Code, shall be admissible to prove the existence of a nuisance.

7 17810. If the complaint is filed by a citizen, it shall not be
8 dismissed by him or her for want of prosecution except upon a
9 sworn statement made by him or her and his or her attorney, setting
10 forth the reasons why the action should be dismissed, and by
11 dismissal ordered by the court.

12 17811. In case of failure to prosecute the action with reasonable
13 diligence, or at the request of the plaintiff, the court, in its
14 discretion, may substitute any other citizen consenting thereto for
15 the plaintiff.

16 17812. If the action is brought by a citizen and the court finds
17 there was no reasonable ground or cause for the action, the costs
18 shall be taxed against him or her.

19 17813. If the existence of the nuisance is established in the
20 action, an order of abatement shall be entered as part of the
21 judgment in the case, and plaintiff's costs in the action are a lien
22 upon the nonresidential building or place. The lien is enforceable
23 and collectible by execution issued by order of the court.

24 17814. A violation or disobedience of the injunction or order
25 for abatement is punishable as a contempt of court by a fine of not
26 less than five hundred dollars (\$500) nor more than ten thousand
27 dollars (\$10,000), or by imprisonment in the county jail for not
28 less than one nor more than six months, or by both.

29 A contempt may be based on a violation of any court order,
30 including failure to pay relocation assistance. Notwithstanding any
31 other provision of law, any fines assessed for contempt shall first
32 be held by the court and applied to satisfaction of the court's order
33 for relocation assistance pursuant to subdivision (d) of Section
34 17806.

35 Evidence concerning the duration and repetitive nature of the
36 violations shall be considered by the court in determining the
37 contempt penalties.

38 17815. (a) If the existence of the nuisance is established in the
39 action, an order of abatement shall be entered as a part of the
40 judgment, which order shall direct the removal from the

1 nonresidential building or place of all fixtures, musical instruments,
2 and other movable property used in conducting, maintaining,
3 aiding, or abetting the nuisance and shall direct their sale in the
4 manner provided for the sale of chattels under execution.

5 (b) (1) The order shall provide for the effectual closing of the
6 nonresidential building or place against its use for any purpose,
7 and for keeping it enclosed for a period of up to one year. This
8 subdivision is intended to give priority to closure. Any alternative
9 to closure may be considered only as provided in this section.

10 (2) In addition, the court may assess a civil penalty not to exceed
11 twenty-five thousand dollars (\$25,000) against any or all of the
12 defendants, based upon the severity of the nuisance and its duration.

13 (3) One-half of the civil penalties collected pursuant to this
14 section shall be deposited in the Restitution Fund in the State
15 Treasury, the proceeds of which shall be available only upon
16 appropriation by the Legislature to indemnify persons filing claims
17 pursuant to Article 1 (commencing with Section 13959) of Chapter
18 5 of Part 4 of Division 3 of Title 2 of the Government Code, and
19 one-half of the civil penalties collected shall be paid to the city in
20 which the judgment was entered, if the action was brought by the
21 city attorney or city prosecutor. If the action was brought by a
22 district attorney, one-half of the civil penalties collected shall be
23 paid to the treasurer of the county in which the judgment was
24 entered.

25 (c) (1) If the court finds that any vacancy resulting from closure
26 of the nonresidential building or place may create a nuisance or
27 that closure is otherwise harmful to the community, in lieu of
28 ordering the nonresidential building or place closed, the court may
29 order the person who is responsible for the existence of the
30 nuisance, or the person who knowingly permits the manufacture
31 or sale of counterfeit goods, to pay damages in an amount equal
32 to the fair market rental value of the nonresidential building or
33 place for *up to* one year to the city or county in whose jurisdiction
34 the nuisance is located for the purpose of carrying out counterfeit
35 goods abatement programs. If awarded to a city, eligible programs
36 may include those developed as a result of cooperative programs
37 among schools, community agencies, and the local law enforcement
38 agency. These funds shall not be used to supplant existing city,
39 county, state, or federal resources used for counterfeit goods
40 enforcement or education programs.

1 (2) For purposes of this subdivision, the actual amount of rent
2 being received for the rental of the nonresidential building or place,
3 or the existence of any vacancy therein, may be considered, but
4 shall not be the sole determinant of the fair market rental value.
5 Expert testimony may be used to determine the fair market rental
6 value.

7 17816. While the order of abatement remains in effect, the
8 nonresidential building or place is in the custody of the court.

9 17817. For removing and selling the movable property, the
10 officer is entitled to charge and receive the same fees as he or she
11 would for levying upon and selling like property on execution;
12 and for closing the premises and keeping them closed, a reasonable
13 sum shall be allowed by the court.

14 17818. The proceeds of the sale of the movable property shall
15 be applied as follows:

16 (a) To the fees and costs of the removal and sale.

17 (b) To the allowances and costs of closing and keeping closed
18 the nonresidential building or place.

19 (c) To the payment of the plaintiff's costs in the action.

20 (d) The balance, if any, to the owner of the property.

21 17819. If the proceeds of the sale of the movable property do
22 not fully discharge all of the costs, fees, and allowances, the
23 building and place shall then also be sold under execution issued
24 upon the order of the court or judge and the proceeds of the sale
25 shall be applied in like manner.

26 17820. (a) If the owner of the nonresidential building or place
27 has not been guilty of any contempt of court in the proceedings,
28 and appears and pays all costs, fees, and allowances that are a lien
29 on the nonresidential building or place and files a bond in the full
30 value of the property conditioned that the owner will immediately
31 abate any nuisance that may exist at the nonresidential building
32 or place and prevent it from being established or kept thereat within
33 a period of one year thereafter, the court or judge may, if satisfied
34 of the owner's good faith, order the nonresidential building or
35 place to be delivered to the owner, and the order of abatement
36 should be canceled so far as it may relate to the property.

37 (b) The release of property under this chapter does not release
38 it from any judgment, lien, penalty, or liability to which it may be
39 subject.

1 17821. If the owner of a nonresidential building or place upon
2 which the act or acts constituting the contempt have been
3 committed, or the owner of any interest therein, has been guilty
4 of a contempt of court, and fined in any proceedings under this
5 chapter, the fine is a lien upon the nonresidential building or place
6 to the extent of his or her interest in it. The lien is enforceable and
7 collectible by execution issued by order of the court.

8 17822. ~~The~~A district attorney, city attorney, or city prosecutor
9 *that maintains an action or actions to enjoin, abate, or prevent a*
10 *nuisance pursuant to the provisions of this chapter* shall report to
11 the Senate and Assembly Committees on Judiciary, by October 1,
12 2013, on their use of the provisions of this chapter and ~~its~~ *their*
13 effectiveness. The report shall include, but not be limited to, all
14 of the following:

15 (a) The frequency of use of the nuisance abatement provisions
16 as well as statistics on whether the use of the abatement *provisions*
17 correlates with a decrease in the use of criminal penalties.

18 (b) Any statistics or information concerning the impact of the
19 use of these provisions on counterfeiting overall, both in the
20 relevant county or city and overall.

21 17823. This chapter shall remain in effect only until January
22 1, 2015, and as of that date is repealed, unless a later enacted
23 statute, that is enacted before January 1, 2015, deletes or extends
24 that date.

25 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
26 ~~Section 6 of Article XIII B of the California Constitution for certain~~
27 ~~costs that may be incurred by a local agency or school district~~
28 ~~because, in that regard, this act creates a new crime or infraction,~~
29 ~~eliminates a crime or infraction, or changes the penalty for a crime~~
30 ~~or infraction, within the meaning of Section 17556 of the~~
31 ~~Government Code, or changes the definition of a crime within the~~
32 ~~meaning of Section 6 of Article XIII B of the California~~
33 ~~Constitution.~~

34 ~~However, if the Commission on State Mandates determines that~~
35 ~~this act contains other costs mandated by the state, reimbursement~~
36 ~~to local agencies and school districts for those costs shall be made~~
37 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
38 ~~4 of Title 2 of the Government Code.~~

39 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
40 ~~Section 6 of Article XIII B of the California Constitution because~~

1 *the only costs that may be incurred by a local agency or school*
2 *district will be incurred because this act creates a new crime or*
3 *infraction, eliminates a crime or infraction, or changes the penalty*
4 *for a crime or infraction, within the meaning of Section 17556 of*
5 *the Government Code, or changes the definition of a crime within*
6 *the meaning of Section 6 of Article XIII B of the California*
7 *Constitution.*

O