

ANALYSIS OF ORIGINAL BILL

Author: Dababneh Analyst: Janet Jennings Bill Number: AB 160
 Related Bills: None Telephone: 845-3495 Introduced Date: January 21, 2015
 Attorney: Bruce Langston Sponsor _____

SUBJECT:	Criminal Profiteering/Tax Fraud
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SUMMARY

This bill would modify provisions of the California Control of Profits of Organized Crime Act.

This analysis only addresses the provisions of the bill that impact the department’s programs and operations.

RECOMMENDATION

No position.

REASON FOR THE BILL

The reason for the bill is to expand the list of offenses that are subject to criminal profiteering activity to include piracy, insurance fraud, tax fraud, and to broaden the definition of organized crime for clarity in the criminal profiteering activity statute.

EFFECTIVE/OPERATIVE DATE

This bill would become effective and operative January 1, 2016.

FEDERAL LAW

Federal laws authorize federal prosecutors to seize property of a defendant that was acquired in violation of the federal racketeering statute and provides for the Attorney General and the Department of the Treasury to share federally forfeited property with participating state and local law enforcement agencies.

The exercise of this authority is discretionary and limited by statute.¹

¹ 21 U.S.C. § 881(e)(1)(A) and (e)(3), 18 U.S.C. § 981(e)(2), and 19 U.S.C. § 1616a and 18 U.S.C. Sec. 1616a(c), and 31 U.S.C. Sections 9703 (a)(1)(G), and 9703(h).

Board Position:	Executive Officer	Date
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STATE LAW

State laws authorize state and county prosecutors to request forfeiture of a defendant's seized property when it was acquired in violation of the criminal profiteering activity statute, and provides for the sharing and distribution of the forfeited funds.

Unlike the federal statute the criminal profiteering activity statute requires a nexus to organized crime.²

THIS BILL

This bill would do all of the following:

Add offenses that can be charged as a criminal profiteering activity:

- Piracy Section 653w of the Penal Code.
- Those relating to insurance fraud, as specified.³
- Those relating to tax fraud, as specified.⁴

Revise the definition of organized crime as a crime that is conspiratorial in nature and that is achieved through planning and coordination of individual efforts. "Organized crime" also means crime committed by a criminal street gang, as defined in subdivision (f) of Section 186.22. "Organized crime" also means false or fraudulent activities, schemes, or artifices, as described in Section 14107 of the Welfare and Institutions Code, and the theft of personal identifying information, as defined in Section 530.5."

Require distributions of forfeited funds involving a felony violation of a crime specified above or crimes relating to the counterfeit of a registered mark, as specified in Section 350, to be distributed, at the discretion of the court in the following priority:

1. To the victims of the crime.
2. To cover the costs of investigation.
3. To the General Fund of the state.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not significantly impact the department's programs and operations.

²Health and Safety Code Sec. 11469-11493, 11495, Penal Code Sec. 186.1 et seq.

³ Sections 2106, 2018, 2109, 2110, 2110.3, 2110.5, 2110.7, and 2117 of the Unemployment Insurance Code.

⁴ Sections 6452, 6455, 7152, 7153.5, 19705, 19706, 19708, 19721, 30471, 30472, 30480, and 60707 of the Revenue and Taxation Code; Sections 2117.5, 2118, and 2118.5 of the Unemployment Insurance Code.

OTHER STATES' INFORMATION

Since this bill would amend the Penal Code, a review of other states' income tax laws is not relevant.

FISCAL IMPACT

The department's costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be identified and an appropriation will be requested, if necessary.

ECONOMIC IMPACT

This bill would not impact the state's income tax revenue.

SUPPORT/OPPOSITION

Support: None on file.

Opposition: None on file.

ARGUMENTS

Proponents: Some would argue that expanding the definition of organized crime clarifies that the criminal forfeiture statute should be applied to crimes listed in the criminal profiteering activity statute.

Opponents: Some would argue that organized crime should be criminal statute specific and the underlying criminal offense should be listed in both criminal profiteering activity and organized crime in order to qualify for criminal forfeiture.

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