

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1796

Introduced by Assembly Member Galgiani

February 21, 2012

An act to amend Section ~~6031~~ 21640 of the Business and Professions Code, and to amend Section 186.2 of the Penal Code, relating to ~~the State Bar~~: *criminal profiteering*.

LEGISLATIVE COUNSEL'S DIGEST

AB 1796, as amended, Galgiani. ~~State Bar of California: board of governors~~. *Criminal profiteering: sale of secondhand goods.*

Existing law, the California Control of Profits of Organized Crime Act, provides the procedure for the forfeiture of property and proceeds acquired through a pattern of criminal profiteering activity, as specified, and requires the prosecution to file a petition for forfeiture in conjunction with certain criminal charges. Under existing law, criminal profiteering activity is defined to include specified crimes, including forgery and receiving stolen property. Existing law requires a person engaged in business as a secondhand dealer, as defined, to be licensed by local law enforcement, and makes a violation of that requirement a misdemeanor under circumstances where a person knows or should have known that a violation was being committed.

This bill would make a violation of the requirement to be licensed when engaging in business as a secondhand dealer a misdemeanor irrespective of knowledge that a violation was being committed. By expanding the scope of an existing crime, the bill would impose a state-mandated local program.

The bill would also include within the definition of criminal profiteering activity the sale of tangible personal property or other secondhand goods, including, but not limited to, gold and other precious metals, by a secondhand dealer, without a license, as specified. By expanding the scope of an existing crime, the 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.

~~Existing law, the State Bar Act, provides for the licensure and regulation of attorneys by the State Bar of California. The State Bar is governed by a board of trustees. Existing law prohibits the board, except as specified, from conducting or participating in, or authorizing any person or entity of the State Bar to conduct or participate in, any evaluation, review, or report on the qualifications, integrity, diligence, or judicial ability of any specific justice of a court of appeal or the California Supreme Court.~~

~~This bill would make nonsubstantive, technical changes to that provision.~~

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

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

- 1 SECTION 1. Section 21640 of the Business and Professions
- 2 Code is amended to read:
- 3 21640. ~~It is unlawful for any~~Any person to engage who engages
- 4 in the business of secondhand dealer, as defined in Section 21626,
- 5 without being licensed as provided in this article, *is guilty of a*
- 6 *misdemeanor.*
- 7 SEC. 2. Section 186.2 of the Penal Code is amended to read:
- 8 186.2. For purposes of this chapter, the following definitions
- 9 apply:
- 10 (a) “Criminal profiteering activity” means ~~any~~an act committed
- 11 or attempted or ~~any~~a threat made for financial gain or advantage,
- 12 which act or threat may be charged as a crime under any of the
- 13 following sections:

- 1 (1) Arson, as defined in Section 451.
- 2 (2) Bribery, as defined in Sections 67, 67.5, and 68.
- 3 (3) Child pornography or exploitation, as defined in subdivision
- 4 (b) of Section 311.2, or Section 311.3 or 311.4, which may be
- 5 prosecuted as a felony.
- 6 (4) Felonious assault, as defined in Section 245.
- 7 (5) Embezzlement, as defined in Sections 424 and 503.
- 8 (6) Extortion, as defined in Section 518.
- 9 (7) Forgery, as defined in Section 470.
- 10 (8) Gambling, as defined in Sections 337a to 337f, inclusive,
- 11 and Section 337i, except the activities of a person who participates
- 12 solely as an individual bettor.
- 13 (9) Kidnapping, as defined in Section 207.
- 14 (10) Mayhem, as defined in Section 203.
- 15 (11) Murder, as defined in Section 187.
- 16 (12) Pimping and pandering, as defined in Section 266.
- 17 (13) Receiving stolen property, as defined in Section 496.
- 18 (14) Robbery, as defined in Section 211.
- 19 (15) Solicitation of crimes, as defined in Section 653f.
- 20 (16) Grand theft, as defined in Section 487.
- 21 (17) Trafficking in controlled substances, as defined in Sections
- 22 11351, 11352, and 11353 of the Health and Safety Code.
- 23 (18) Violation of the laws governing corporate securities, as
- 24 defined in Section 25541 of the Corporations Code.
- 25 (19) ~~Any of the offenses~~ *Offenses* contained in Chapter 7.5
- 26 (commencing with Section 311) of Title 9, relating to obscene
- 27 matter, or in Chapter 7.6 (commencing with Section 313) of Title
- 28 9, relating to harmful matter that may be prosecuted as a felony.
- 29 (20) Presentation of a false or fraudulent claim, as defined in
- 30 Section 550.
- 31 (21) False or fraudulent activities, schemes, or artifices, as
- 32 described in Section 14107 of the Welfare and Institutions Code.
- 33 (22) Money laundering, as defined in Section 186.10.
- 34 (23) Offenses relating to the counterfeit of a registered mark,
- 35 as specified in Section 350.
- 36 (24) Offenses relating to the unauthorized access to computers,
- 37 computer systems, and computer data, as specified in Section 502.
- 38 (25) Conspiracy to commit any of the crimes listed above, as
- 39 defined in Section 182.

- 1 (26) Subdivision (a) of Section 186.22, or a felony subject to
- 2 enhancement as specified in subdivision (b) of Section 186.22.
- 3 (27) ~~Any offenses~~ *Offenses* related to fraud or theft against the
- 4 state’s beverage container recycling program, including, but not
- 5 limited to, those offenses specified in this subdivision and those
- 6 criminal offenses specified in the California Beverage Container
- 7 Recycling and Litter Reduction Act, commencing at Section 14500
- 8 of the Public Resources Code.
- 9 (28) Human trafficking, as defined in Section 236.1.
- 10 (29) ~~Any~~ A crime in which the perpetrator induces, encourages,
- 11 or persuades a person under 18 years of age to engage in a
- 12 commercial sex act. For purposes of this paragraph, a commercial
- 13 sex act means ~~any~~ sexual conduct on account of which anything
- 14 of value is given or received by any person.
- 15 (30) ~~Any~~ A crime in which the perpetrator, through force, fear,
- 16 coercion, deceit, violence, duress, menace, or threat of unlawful
- 17 injury to the victim or to another person, causes a person under 18
- 18 years of age to engage in a commercial sex act. For purposes of
- 19 this paragraph, a commercial sex act means any sexual conduct
- 20 on account of which anything of value is given or received by any
- 21 person.
- 22 (31) Theft of personal identifying information, as defined in
- 23 Section 530.5.
- 24 (32) Offenses involving the theft of a motor vehicle, as specified
- 25 in Section 10851 of the Vehicle Code.
- 26 (33) Abduction or procurement by fraudulent inducement for
- 27 prostitution, as defined in Section 266a.
- 28 (34) *Sale of tangible personal property or other secondhand*
- 29 *goods, including, but not limited to, gold and other precious metals,*
- 30 *without a license, as prohibited by Section 21640 of the Business*
- 31 *and Professions Code.*
- 32 (b) (1) “Pattern of criminal profiteering activity” means
- 33 engaging in at least two incidents of criminal profiteering, as
- 34 defined by this chapter, that meet the following requirements:
- 35 (A) Have the same or a similar purpose, result, principals,
- 36 victims, or methods of commission, or are otherwise interrelated
- 37 by distinguishing characteristics.
- 38 (B) Are not isolated events.
- 39 (C) Were committed as a criminal activity of organized crime.

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

9 (c) “Prosecuting agency” means the Attorney General or the
10 district attorney of any county.

11 (d) “Organized crime” means crime that is of a conspiratorial
12 nature and that is either of an organized nature and seeks to supply
13 illegal goods and services such as narcotics, prostitution,
14 loan-sharking, gambling, and pornography, or that, through
15 planning and coordination of individual efforts, seeks to conduct
16 the illegal activities of arson for profit, hijacking, insurance fraud,
17 smuggling, operating vehicle theft rings, fraud against the beverage
18 container recycling program, or systematically encumbering the
19 assets of a business for the purpose of defrauding creditors.
20 “Organized crime” also means crime committed by a criminal
21 street gang, as defined in subdivision (f) of Section 186.22.
22 “Organized crime” also means false or fraudulent activities,
23 schemes, or artifices, as described in Section 14107 of the Welfare
24 and Institutions Code, and the theft of personal identifying
25 information, as defined in Section 530.5.

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

28 *SEC. 3. No reimbursement is required by this act pursuant to*
29 *Section 6 of Article XIII B of the California Constitution because*
30 *the only costs that may be incurred by a local agency or school*
31 *district will be incurred because this act creates a new crime or*
32 *infraction, eliminates a crime or infraction, or changes the penalty*
33 *for a crime or infraction, within the meaning of Section 17556 of*
34 *the Government Code, or changes the definition of a crime within*
35 *the meaning of Section 6 of Article XIII B of the California*
36 *Constitution.*

37 ~~SECTION 1. Section 6031 of the Business and Professions~~
38 ~~Code is amended to read:~~

39 ~~6031. (a) The board may aid in all matters pertaining to the~~
40 ~~advancement of the science of jurisprudence or to the improvement~~

1 of the administration of justice, including, but not limited to, all
2 matters that may advance the professional interests of the members
3 of the State Bar and such matters as concern the relations of the
4 bar with the public.

5 (b) Notwithstanding this section or any other provision of law,
6 the board shall not conduct or participate in, or authorize any
7 committee, agency, employee, or commission of the State Bar to
8 conduct or participate in, any evaluation, review, or report on the
9 qualifications, integrity, diligence, or judicial ability of any specific
10 justice of a court provided for in Section 2 or 3 of Article VI of
11 the California Constitution without prior review and statutory
12 authorization by the Legislature.

13 The provisions of this subdivision shall not be construed to
14 prohibit a member of the State Bar from conducting or participating
15 in such an evaluation, review, or report in his or her individual
16 capacity.

17 The provisions of this subdivision shall not be construed to
18 prohibit an evaluation of potential judicial appointees or nominees
19 as authorized by Section 12011.5 of the Government Code.